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November 13, 2018

Mr. John Zhuang, Esq.  
BYD Motors  
1800 S. Figueroa Street  
Los Angeles, CA 90015

SENT VIA CERTIFIED MAIL AND EMAIL: JOHN.ZHUANG@BYD.COM

Re: Notice of rejection and/or revocation of acceptance

Dear Mr. Zhuang:

I write to inform you that we have been retained by the City of Albuquerque (the "City"), Office of the City Attorney, to assist in addressing the concerns the City has with Build Your Dream Motors' ("BYD") performance under the contract between the City and BYD, dated January 26, 2017. The contract, which incorporates the Request for Proposal #P2016000031 ("RFP") and BYD's Proposal and Best and Final Offer (the "Contract"), articulates specifications and warranties for the manufacture and delivery of eighteen (18) sixty foot, electric, public transportation buses.

The City has inspected the fifteen (15), on-site buses delivered to it by BYD and discovered that the buses do not conform to the specifications and warranties under the Contract. The City has informed BYD that the specifications and warranties have not been met, and, most importantly, that there are safety and operational concerns with the buses. Moreover, the buses have not passed Altoona testing as required by Section 3.D of the Contract. As such, the City cannot place the buses into operation.

With this communication, the City is formally giving BYD notice that the City is rejecting all eighteen (18) buses and the chargers, or in the alternative, revoking acceptance of any of the buses it may have accepted, without admitting that it has accepted the buses.

The City has repeatedly informed BYD that there are fleet-wide and bus specific issues evidencing that the buses do not conform to the contractual specifications and warranties. Of particular alarm:

1. As noted, the buses have not timely passed the Altoona testing, contrary to the agreed date of October 2, 2017 as stated in Section 2 of the Contract. The failure of BYD to perform means the City of Albuquerque does not have buses to put into revenue service.

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2. BYD has not provided certifications that are contractually and federally required for the buses, such as the crash worthiness certifications.
3. The City has informed BYD that the bus batteries and chargers do not meet the specifications as required under BYD's Proposal.
4. City inspectors have identified serious and non-repairable safety and operational issues with the buses that prohibit the City from proceeding with any launch of the BYD buses within the Albuquerque community.

The City has operated in good faith by extending BYD ample (beyond reasonable) opportunity to cure the defects, which BYD has not done. The citizens of Albuquerque have been adversely impacted by BYD's unwillingness and inability to fulfill its contractual and legal obligations; they cannot continue relying on BYD.

The City demands that BYD remove and take possession of the buses and chargers by November 30, 2018. The City is also putting BYD on notice that it will seek all damages, costs, attorney fees and other relief to which it is legally entitled.

BYD has the responsibility to take all reasonable steps to preserve all evidence, including documents, electronically stored information ("ESI"), and any other information within its possession, custody, and control related to the manufacture and inspections of the BYD buses pursuant to the Contract in question. In addition, once the buses are again in BYD possession, BYD may not alter, change, or modify the buses in any way. The above also applies to third parties that may be under BYD control. We will be relying upon this letter in court to evidence our request and notification of your preservation obligations.

Any future communication, oral or written, must be directed to this office. Further, no BYD employee or representative may contact any representative of the City or visit any City transit facility without first seeking our approval.

Sincerely,

SANCHEZ, MOWRER & DESIDERIO, P.C.



Robert J. Desiderio

RJD/bjo

cc: Ms. Stella Li, President BYD  
Esteban A. Aguilar, Jr., Albuquerque City Attorney  
Timothy Keller, Mayor, City of Albuquerque