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**BROKEN ARROW PUBLIC SCHOOLS**  
*Educating Today      Leading Tomorrow*

Contract Committee Review Request  
 MUST BE COMPLETED IN FULL

Date: October 7, 2024

Contract/Agreement Vendor: Blue Bird Corporation - United States Environmental Protection Agency/EPA

Name of Vendor & Contact Person  
 Ryan Ross  
 Vendor Email Address

Bus replacement for Transportation

*Describe Contract (Technology, program, consultant-prof Development, etc.)*  
 Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

District

Reason/Audience to benefit  
 10/14/2024 \$ 774,050.00

BOE Date Amount of agreement

Person Submitting Contract/Agreement for Review: Grant Moore

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal &/or Director or Administrator: *Grant Moore*

Does this Contract/Agreement utilize technology? YES/NO  
 If yes, Technology Admin: No

Cabinet Team Member:

Funding Source:

Fund/Project OCAS Coding

**Consent**

**Action**

Accept and approve a memorandum of understanding for the Blue Bird Corporation under the 2023 EPA Clean School Bus Rebate, will provide financial assistance to Broken Arrow Public Schools to replace five diesel engine vehicles for five propane engine vehicles. Financial assistance will be a maximum amount of \$35,000.00 of total costs per bus. The remaining costs will be used from PO's 2024-21-322, 2024-35-5, and 2024-38-147 G. Moore

**Summary** This area must be complete with full explanation of contract

*The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.*

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into as of the 10/15 day of 2024 (the "Effective Date") by and between Blue Bird Body Company, a Georgia corporation, with a principal place of business at 3920 Arkwright Rd., Ste. 200, Macon, Georgia 31210 (hereinafter referred to as "Blue Bird") and CBPS with its principal place of business at 701 S. Main St. Bremen, Ga 3012 (hereinafter referred to as "Purchaser"), either or both of which may be hereinafter referred to as the "Party" or the "Parties", respectively

**I. PURPOSE:** The purpose of this MOU is to confirm a basic understanding of the Parties regarding participation in the US Environmental Protection Agency Clean Bus Program (the "EPA Program"). Certain proposed terms, activities, and target dates related to the EPA Program are described in **Attachment A** to this MOU.

**II. INTENT OF PARTICIPATION:** This MOU is an expression of the Parties' intent to and commitment to enter into binding sales orders regarding buses awarded to and accepted by Purchaser under the EPA Program. The Parties acknowledge that there is no obligation on the part of either Party to accept any buses awarded under the EPA Program or to continue to pursue the EPA Program in future rounds. The provisions of this MOU, including **Attachment A**, reflect the Parties' mutual commitment only as to buses awarded to and accepted by Purchaser, and for which Blue Bird or its dealer network submitted the application on Purchaser's behalf ("Blue Bird-sourced Award Units").

**III. TERM:** This MOU shall commence as of the Effective Date and shall terminate upon the earlier of the completion of Purchaser's obligations under the EPA Program related to Blue Bird-sourced Award Units.

**IV. CONFIDENTIALITY:** Any confidentiality obligation will be established in a separate Mutual Confidential Non-Disclosure Agreement as described in **Attached B**. This Mutual Confidential Non-Disclosure Agreement shall survive any termination or expiration of this MOU and remain in full force and effect. To the extent the terms of the NDA conflict with any obligations of either Blue Bird or Purchaser under the terms of the EPA Program, the terms of the EPA Program shall prevail, and it shall not be a violation of the NDA to disclose information required under the EPA Program.

**V. PURCHASER'S OBLIGATIONS:** Purchaser agrees to the following in respect to all Blue Bird-sourced Award Units:

- a. To use any and all funds received directly from the EPA that are dedicated solely for the purchase and acquisition of Blue Bird-sourced Award Units to purchase Blue Bird buses;
- b. To purchase Blue Bird-sourced Award Units solely from Blue Bird or its dealer network notwithstanding the final purchase price of such unit and whether or not the final purchase price of the Blue Bird-sourced Award Unit exceeds the amount of the EPA Program award for the individual unit;
- c. To comply with all requirements under the terms of the EPA Program, including, but not limited to, record-keeping and reporting requirements, identification of and decommissioning of buses, maintenance and upkeep, all requirements under **Attachment A**, and all other current or future requirements under the EPA Program; and,
- d. To cooperate with Blue Bird in responding to any EPA-requested actions or communications related to the EPA Program.

**VI. BLUE BIRD'S OBLIGATIONS:** Blue Bird agrees to the following in respect to all Blue Bird-sourced Award Units:

- a. To negotiate in good faith with Purchaser to timely fill any firm order for buses awarded to Purchaser pursuant to the EPA Program;
- b. To comply with all requirements under the terms of the EPA Program for Original Equipment Manufacturers ("OEM") for buses awarded under the EPA Program, including but not limited to, record-keeping and reporting requirements, parts and support, all requirements under **Attachment A**, and all other current or future requirements under the EPA Program; and

c. To cooperate with Purchaser in responding to any EPA-requested actions or communications related to the EPA Program.

**VII. PUBLICITY:** No public disclosures or other announcements regarding this MOU or the EPA Program shall be made by either Party without the prior written consent of the other Party.

**VIII. INTELLECTUAL PROPERTY RIGHTS:**

All existing products, ideas, processes, software or other technical data, and future inventions or other intellectual property in development, made, developed, authored or created solely by employees, agents, subcontractors or consultants of one of the Parties in the performance of this Agreement shall be the sole property of that Party.

**IX. INDEMNIFICATION:**

Purchaser shall indemnify, defend and hold harmless Blue Bird, its employees, officers, directors and agents, from and against any claims, demands, losses, damages, or expenses (including reasonable attorneys' fees) arising from or relating to any claim by the EPA or other third parties that Purchaser has failed to comply with the terms, conditions, or requirements of the EPA Program, unless such failure to comply was caused by the negligence or willful misconduct of Blue Bird.

**X. LIMITED LIABILITY:**

EXCEPT FOR PURCHASER'S INDEMNIFICATION OBLIGATIONS ABOVE, IN NO EVENT SHALL ANY PARTY BE LIABLE OR OBLIGATED TO ANY OTHER PARTY IN ANY MANNER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE.

The Parties agree that the terms of Clause(s) IV, IX, X, and XI shall survive the termination of this MOU ("Binding Provisions"), unless superseded in a writing signed by both Parties.

**XI. NO WARRANTIES:** The Parties agree to make their own independent evaluation of any information provided by the other Party. Neither Party makes any representation or warranty regarding the use, accuracy or sufficiency of any information provided in connection with the EPA Program, the EPA Program product, without limitation, warranties against infringement of intellectual property rights of third Parties.

**XII. RELATIONSHIP OF PARTIES; NO RIGHTS CONFERRED:** Nothing in this MOU shall be construed as giving rise to a relationship among or between the Parties of prime contractor and subcontractor, employer and employee, partners, agency or joint ventures. Neither Party shall have the authority or power to bind the other or to contract in the name of, or create a liability against, the other in any way or for any purpose, regardless of the legal theory or basis therefore. Nothing contained in this MOU shall be construed as

1. Granting or conferring any right to use any information or know-how which a Party shall elect to furnish hereunder except as expressly authorized in this MOU; or
2. Conferring any license or right with respect to any trademark, trade or brand name, the corporate name of either Party hereto or the corporate name of a subsidiary of either Party hereto or of any other name or mark or any contraction, abbreviation or simulation thereof.

**XIII. TERMINATION:** Either Party may, upon written notice to the other Party, terminate negotiations and this MOU at any time, provided that:

1. any and all products and/or confidential and/or proprietary information provided by one Party to the other Party will be immediately returned; and,
2. the expiration or termination of this MOU will not affect the obligation of Purchaser to source any buses already awarded to and accepted by Purchaser under the EPA

Program at or before termination of this MOU, or which Purchaser may subsequently be awarded through the assistance of Blue Bird or its dealer network. At the expiration or termination of this MOU, unless mutually agreed upon at that time, each Party shall return any and all product provided by the other Party that was used for development of the EPA Program or for sales/marketing purposes related to the EPA Program.

**XIV. COSTS:** Except as otherwise mutually agreed to in writing by the Parties, each Party shall be responsible for its own costs and expenses and shall receive no compensation in any form from the other Party, in connection with this MOU. This provision is applicable solely to the application process under the EPA Program and shall not apply to the actual purchase price or any costs or expenses associated with the actual purchase order and process of purchasing a bus after the Purchaser has been awarded.

**XV. ENTIRE AGREEMENT/INDEPENDENT SALES AGREEMENT:** This MOU constitutes the entire agreement between the Parties relating to the EPA Program and the Blue Bird-sourced Units in regard to the EPA Program. The Parties agree that this MOU is independent of and shall not modify or supersede the terms of any purchase of the Blue Bird-sourced Units, which shall be exclusively governed by the independent terms and conditions of sale associated with the specific purchase transactions. As to the participation in the EPA Program and the Parties' respective relationship thereto, this agreement supersedes any inconsistent provisions of any prior agreements, correspondence, discussions, negotiations and understandings of the Parties are merged herein and made a part hereof. No amendment, waiver or modification hereto or hereunder shall be valid unless made in writing and signed by the Parties.

**XVI. GOVERNING LAW:** This MOU shall be governed by and construed in accordance with the laws of the Georgia, without regard to Georgia principles of conflicts of law and the United Nations Convention of contracts for the international Sale of Goods.

**XVIII. ASSIGNMENT:** Neither Party shall assign this MOU or any portion thereof without the advance, written consent of the other Party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized officers or representatives as written below.

BLUE BIRD BODY COMPANY ("Blue Bird")

*Broken Arrow*  
*Public Schools* ("Purchaser")

By: *Albert Burleigh*  
Name: Albert Burleigh  
Title: VP, Sales  
Date: 10/4/24

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT A**  
**EPA PROGRAM & PURCHASER'S SUBMISSION**

2023 EPA Clean School Bus (CSB) Rebate Program Guide –  
<https://www.epa.gov/system/files/documents/2024-05/420b24034.pdf>



- (d) is disclosed by DISCLOSER to a third party without a duty of confidentiality on the third party;
- (e) is independently developed by RECIPIENT without reference to the disclosed Confidential Information; or
- (f) is required to be disclosed by operation of law or government process, provided that RECIPIENT notifies DISCLOSER in writing thereof, as promptly as practicable and to the extent feasible under the circumstances, prior to the disclosure of the Confidential Information.

5. **Covenant.** RECIPIENT may disclose the Confidential Information provided hereunder to such employees who have a need to know such Confidential Information to fulfill the Purpose provided that all such employees are bound by an agreement that requires the Confidential Information be treated and maintained accordingly and has terms substantially similar to those contained herein.

Confidential Information may be disclosed to a third party, providing that the third party is notified of the terms of this Agreement; is bound by an agreement that requires the Confidential Information be treated and maintained accordingly and has terms substantially similar to those contained herein; and that RECIPIENT remains liable for any breach of any terms herein by such third parties. Upon request, RECIPIENT shall provide DISCLOSER with a list of all third parties having had access to such Confidential Information.

6. **Property Rights.** Nothing in this Agreement shall be construed, by implication or otherwise, to grant any right or license to RECIPIENT under any patent, invention, copyright, trademark, or any other intellectual property right, now or hereafter owned or controlled by DISCLOSER.

7. **Obligation.** This Agreement shall not constitute or imply any promise or commitment to make any purchase of products or services by either Party or its affiliated companies.

8. **Export Law.** Regardless of any disclosure made by RECIPIENT of an ultimate destination of the Confidential Information, RECIPIENT will not export or transfer the Confidential Information, whether directly or indirectly, to any party outside of the United States of America without first complying strictly and fully with all export controls which may be imposed on the Confidential Information by the United States Government or any country or organization of nations within whose jurisdiction RECIPIENT operates or does business.

9. **Representations.** Each DISCLOSER represents that it has the right to make disclosures under this Agreement. Confidential Information received and/or disclosed hereunder shall be provided "as is", with no warranties, whether verbal or written, express or implied, and no representations regarding the accuracy of the Confidential Information. RECIPIENT assumes complete responsibility for decisions made or actions taken based on the Confidential Information. Any statements made by DISCLOSER concerning the usefulness of the Confidential Information are not to be construed as expressed or implied warranties or assurances of any kind.

10. **Remedies.** RECIPIENT acknowledges that a breach of this Agreement can cause the DISCLOSER to suffer irreparable harm with no adequate remedy at law. If any such breach occurs or is threatened, the DISCLOSER will be entitled (in addition to any and all other remedies) to seek injunctive relief, specific performance and other equitable remedies without proof of monetary damages or the inadequacy of other remedies.

11. **Relationship of the Parties.** This Agreement is not intended and shall not be construed to create or evidence any partnership, joint venture, agency, or similar relationship of any kind whatsoever between the Parties.

12. **Governing Law.** This Agreement is made in, and shall be governed, interpreted and enforced exclusively in accordance with the laws of the State of Georgia, regardless of the laws that might otherwise govern under applicable Georgia principles of conflicts of laws.

13. **Assignment.** This Agreement may not be assigned, in whole or in part by either Party, without the other Party's prior written consent.

14. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and supersedes all prior and contemporaneous understandings, commitments or agreements between the Parties, whether verbal or written, express or implied, relating to the subject matter herein. Any additions or modifications to this Agreement must be made in writing and must be signed by authorized representatives of both Parties.

For: Blue Bird Body Company  
Party)

For: Broken Arrow Public Schools

By:

Name:

Title:

Date:

[Signature]  
Albert Burdick  
VP, Sales  
10/4/24

By:

Name:

Title:

Date:

[Signature]  
Steve Allen  
BIS President  
10.14.2024