



**Business Office**  
**131 West Nittany Avenue**  
**State College, PA 16801**  
**814-231-1021**

To: Board of Directors  
From: Robert J. O'Donnell and Randy L. Brown  
RE: Development Contract – revised document  
Date: January 21, 2016

The administration is requesting Board approval of the attached document representing a contractual agreement between the District and Mr. Paul Olivett for development and fundraising services. The Board previously approved an agreement on August 24, 2015. The attached document includes revisions required by the Pennsylvania Department of State Bureau of Corporations and Charitable Organizations.

The revisions have been reviewed and incorporated in this document by the district solicitor. The revised document does not modify or change the intent of the contractual arrangement between the District and Mr. Olivett, merely meeting the requirements for the state.

Thank you for your consideration of this action item.

**AGREEMENT TO MANAGE THE OPERATION  
OF A DEVELOPMENT OFFICE**

This Agreement to Manage the Operation of a Development Office (“Agreement”) made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the State College Area School District, a school district of the second class organized and existing under and pursuant to the Public School Code of 1949, as amended, with administrative offices at 131 West Nittany Avenue, State College, Pennsylvania (the "District") and Paul G. Olivett, an independent contractor, with a mailing address of 2036 Chelsea Lane, State College, PA 16801 (“Contractor”), for the purpose of setting out the terms and conditions of the DISTRICT’s engagement of CONTRACTOR to manage the fundraising activities of the District.

1. **Development Operation.** In consideration of the fees described in Section 2 of this Agreement, CONTRACTOR shall organize and manage a development operation for the DISTRICT, as described in Exhibit A attached hereto and further directed or modified by the Superintendent. CONTRACTOR represents that he has the skills, knowledge, and expertise to do so, and that he has, and shall continue to have, all applicable, current, and required certifications, registrations, and/or licenses. CONTRACTOR shall, in the performance of his duties and responsibilities hereunder, carry them out in strict compliance with any applicable state or federal statute, rule, and regulation, as well as any applicable District Policy, practice, or procedure.
2. **Fees and Expenses.** In exchange for the management, the DISTRICT shall pay CONTRACTOR a fixed fee of Four Thousand (\$4,000) U.S. Dollars monthly plus additional hourly charges, at \$50 per hour, as approved in advance by the DISTRICT. CONTRACTOR's invoices and supporting documentation shall be prepared in an itemized format, and shall contain sufficient detail to clearly identify the services to be performed, and shall be submitted to the DISTRICT's Business Office for payment. DISTRICT shall pay such invoices within ten (10) days of receipt.

The DISTRICT (via the SCASD Foundation) shall receive One Hundred (100%) Percent of the gross receipts from charitable contributions. It is estimated that the CONTRACTOR fees will be approximately Fifty (50%) Percent of the total contributions (projected to be roughly \$300,000) during the initial three (3) year term of the agreement.

3. **Term and Termination of this Agreement.**

- A. **Term.** This Agreement shall commence on the effective date of this Agreement and continue for a period of three (3) years, subject to earlier termination under provisions stated below.
- B. **Mutual Termination.** This Agreement may be terminated by a written instrument duly executed by CONTRACTOR and the DISTRICT.
- C. **Unilateral Termination.** The Agreement may be terminated by either party upon written notice if the other party breaches any material term or condition of this Agreement and such breach remains uncorrected for thirty (30) days during the first

year or sixty (60) days during the second and third years of the Agreement following written notice from the non-defaulting party specifying the alleged breach. Provided, however, that if any such breach shall, despite due diligence by the breaching party to correct it, take longer than thirty (30) days to correct, then the period to correct it shall be extended accordingly.

**D. Obligations Upon Termination.** Upon termination of this Agreement for any reason, the parties shall have no further obligations pursuant to the terms of this Agreement, except the DISTRICT shall be obligated to pay Contractor the installment payments through the effective date of termination of this Agreement.

**E. Additional Terms.** Either party may extend the initial term of the Agreement for additional one (1) year terms by providing the other party with written notice of an intention to extend the term not less than ninety (90) days prior to the expiration of the then and there existing term, whether the original three (3) year term or any one (1) year extension thereof.

4. **Independent Contractor.** CONTRACTOR shall perform this Agreement solely as an independent contractor, and not as the DISTRICT's agent or employee, and shall be solely responsible for the payment of income taxes or other taxes or contributions which are imposed with respect to or measured by wages, salaries, or other compensation, for all amounts paid to CONTRACTOR hereunder (including making such estimated payments as may be necessary or appropriate) and CONTRACTOR hereby agrees to indemnify and save the DISTRICT and its affiliates harmless against any and all such liability or claims therefor.

CONTRACTOR shall also be fully and solely responsible for the generation and dissemination of all required tax forms relating to its subcontractors, if any should be utilized by CONTRACTOR, or any other persons engaged by CONTRACTOR pursuant to this Agreement or any Project Authorization.

CONTRACTOR has no authority hereunder to make any statement, representation, or commitment of any kind on behalf of the DISTRICT or to bind the DISTRICT to the performance of any duties or to accept on behalf of the DISTRICT any responsibilities.

Neither party shall hold itself out to third persons as purporting to act on behalf of, or serving as the agent of, the other party, except as contemplated by this Agreement. CONTRACTOR shall not be authorized to enter into any contract or agreement on behalf of the DISTRICT without the express written authorization of the DISTRICT.

5. **Confidential Information.** During the term of this Agreement, the DISTRICT may disclose to CONTRACTOR certain information and other data which is considered by the DISTRICT to be confidential. In order for such information and data to be considered confidential and subject to this Agreement, it shall be identified in writing at the time of the disclosure by an appropriate legend, marking, stamp or positive written identification on the face thereof to be confidential. Any confidential information which is disclosed by the DISTRICT to CONTRACTOR orally or visually shall be identified as such by the DISTRICT to

CONTRACTOR orally at the time of disclosure and in writing within thirty (30) days after such oral or visual disclosure in order to be subject to this Agreement. CONTRACTOR shall not, during the term of this Agreement or at any time thereafter, use or disclose confidential information or any portion thereof to any third party, except as such use or disclosure is reasonably necessary in connection with CONTRACTOR's performance of its obligations under this Agreement or is consented to, in advance and in writing, by the DISTRICT.

6. **Dispute resolution.** Any and all disputes arising from or in connection with this Agreement shall be settled in the Court of Common Pleas of Centre County, Pennsylvania, and shall be a non-jury proceeding.

8. **Indemnification.** In addition to any and all other indemnification and remedies provided herein, CONTRACTOR shall indemnify and hold harmless District and its officers, directors, and employees from and against any and all damages, liabilities, obligations, losses, deficiencies, actions, costs (including reasonable attorneys' fees and expenses), demands, suits, judgments, or assessments ("Claims") arising out of (a) CONTRACTOR's negligence in the performance of any Services; (b) any acts or omissions of CONTRACTOR, his employees, subcontractors, or agents in connection with the Services hereunder; or (c) any breach of this Agreement by CONTRACTOR, his employees, subcontractors, or agents. In the event of any Claim to which this indemnification applies, District shall promptly notify CONTRACTOR of such Claim, provided, however, the failure to give such notice shall not relieve CONTRACTOR from his indemnification obligations. This obligation shall survive termination or expiration of this Agreement.

8. **Insurance requirements.**

A. Unless otherwise agreed to in writing, CONTRACTOR shall, at his own expense, carry and maintain during the performance of Services under this Agreement the following insurance with companies satisfactory to District and in amounts no less than that specified herein:

1. Commercial General Liability insurance in an amount of not less than \$1,000,000, per Claim and annual aggregate, covering premises and operations, independent contractors, bodily injury (including death), personal injury, property damage including, and without limitation, all contractual liability for such injury or damage assumed by CONTRACTOR under this Agreement. District shall be named as additional insured as our interest may appear under the Commercial General Liability policy of insurance;

2. Workers' Compensation in accordance with all federal and state statutory requirements (coverage must include all states in which operations are conducted) and Employer's Liability Insurance in an amount of not less than \$500,000 per accident for bodily injury and \$500,000 per employee/aggregate for disease;

3. Automobile Liability Insurance with a limit of not less than \$500,000.00; Commercial Automobile Liability insurance in an amount of not less than \$1,000,000 combined single limit covering bodily injury (including death) and property damage for all

owned, hired and non-owned vehicles used by CONTRACTOR. District shall be named as additional insured as our interest may appear under the Automobile Liability policy of insurance; and

4. Umbrella Liability Insurance with respect to Workers' Compensation, Commercial General Liability, and Commercial Automobile Liability in an amount of not less than \$1,000,000. District shall be named as additional insured as its interest may appear under the Umbrella Liability policy of insurance.

B. The insurance company(ies) issuing the policies for such insurance coverage must have at least an A+ rating from AM Best. CONTRACTOR shall provide District with certificates of insurance evidencing the foregoing coverage. Such certificates should indicate any deductible and/or self-insured retention and stipulate that the insurance will not be canceled while this Agreement is in effect without thirty (30) days' prior written notice to District. CONTRACTOR shall have District named as an additional insured on its Commercial General Liability Policy as its interests may appear in connection with this Agreement. CONTRACTOR shall ensure that all subcontractors it retains in connection with a Project maintain adequate insurance coverage with respect to the Services to be performed under this Agreement and/or an approved Project Authorization.

## 9. General Provisions.

- A. **Agreement Binding on Successors.** This Agreement and its validity, construction, administration, and all rights hereunder, shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions.
- B. **Severability.** In the event any part or clause of this Agreement shall be held unenforceable, this Agreement shall not fail, but the remainder of the Agreement shall remain in full force and effect.
- C. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, representations, commitments and writings.
- D. **Modification of Agreement.** This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written agreement duly executed by each of the parties hereto.
- E. **Forbearance – No Waiver.** The forbearance or failure of any party hereto at any time to enforce any of the provisions of this Agreement shall in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.
- F. **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the parties hereto.

G. **Assignment Restricted.** Neither party may assign this Agreement in whole or in part without the written consent of the other party, provided that CONTRACTOR may contract with other parties to provide services hereunder subject to the DISTRICT's prior approval.

**10. This Agreement is intended to replace and supercede a prior version, which was approved and dated August 24, 2015, and which is, as of the approval and acceptance of this Agreement, null and void, and of no further force or effect.**

IN WITNESS WHEREOF, the DISTRICT and CONTRACTOR have duly executed this Agreement as of the day and year first above written.

**STATE COLLEGE AREA SCHOOL DISTRICT**

\_\_\_\_\_  
**President**

**ATTEST:**

\_\_\_\_\_  
**Board Secretary**

**CONTRACTOR**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_

## **Exhibit A**

**Oversee process to develop district educational foundation, including recruitment of Foundation board members**

**Complete assessment of fundraising capacity/goals for annual fund campaign to be held within one year**

**Analyze current district advertising structure and opportunities**

**Assess and establish district program goals for EITC funding**

**Assess potential naming opportunities and initial development projects for high school**

**Assess and establish activity and monetary goals for major gift program**

**Create and begin to promote planned giving option**

**Annual update/report**