

## **E-RATE CONSULTING AGREEMENT**

This E-Rate Consulting Agreement “Agreement” is made and entered into on this 19<sup>th</sup> day of October, 2015 between the School District of the City of Harrisburg (the “**District**”) and Julie Tritt-Schell (the “**Consultant**”) t/d/b/a Tritt-Schell Consulting Services.

### **BACKGROUND**

A. Consultant is in the business of providing School and Libraries Program of the Universal Service Fund (“**E-rate**”) consulting services to school districts. The Schools and Libraries portion of the Universal Service Fund, more widely known as E-rate, was authorized as part of the Telecommunications Act of 1996.

B. The District intends to contract for the Consultant's services for assistance for procuring telecommunications, Internet services and any E-rate eligible equipment needs for the July 2016 to June 2017 school year (the “**Year 2016**”).

C. The Consultant's services include work performed prior to Year 2016 as hereinafter set forth.

D. The Consultant's services includes assistance, if necessary, to the District after Year 2016 with any audit of the District's E-Rate funding for Year 2016 as hereinafter set forth.

Therefore, the Consultant and the School District, in consideration of this Agreement and the mutual covenants and conditions contained herein, with the intent to be legally bound, hereby agree as follows:

### **1. Consultation Services.**

E. The District hereby engages the Consultant to perform the following E-rate consulting services in accordance with the terms and conditions set forth in this Agreement:

#### **(1) Pre-Application Services**

- (a) Review current telecommunications, Internet services and any E-rate eligible equipment needs as well as discuss with District any**

future upgrades in service to ensure all eligible services will be included in application.

- (b) Conduct a discount analysis to determine whether the District's E-rate discount could be raised by conducting a school income survey or using other financial data.
- (c) Verify with Pennsylvania Department of Education (“**POE**”) that technology plan has been submitted and approved to meet E-rate deadlines, if applicable.
- (d) Verify with District that the Children's Internet Protection Act (“**CIPA**”) (acceptable use policies and filtering) are in place. Work with District to implement new CIPA requirements recently enacted regarding education of students regarding online activities.
- (e) Review and comment on any Letter of Offer and Acceptance (“**LOA**”) or other documentation required by Capital Area Intermediate Unit (“**CAIU**”) in connection with the District's participation in the regional wide area network.
- (f) Respond to any request for information on behalf of the District concerning CAIU' s preparation of the regional wide area network E-rate forms.

(2) Application Submission Services

- (a) Submit Form 470, Description of Services Requested and Certification Form applications to the Schools and Libraries Division of the Universal Service Administrative Company

(“**SLD**”) to satisfy competitive bidding requirements and draft any necessary Requests for Proposals (“**RFPs**”).

- (b) Contact vendors to encourage bid participation in order to seek the lowest possible pre-discount costs.
- (c) Work with the District to review vendor proposals and help determine most cost effective service and lowest responsible bidder.
- (d) Work with District personnel and counsel to negotiate contracts with vendors and prepare any necessary modifications / amendments to current contracts.
- (e) Ensure all contract language is E-rate compliant and that contracts are fully executed in a timely manner.
- (f) Submit Services Ordered and Certification Form (Form 471) applications and required attachments to SLD to formally apply for funding.
- (g) Perform cost allocation to confirm that funding for remote Internet access is not included in the District’s Form 471 application.
- (h) Coordinate all responses to Problem Resolution/Program Integrity Assurance (“**PIA**”) staff concerning applications and, if required, secure additional information from District to forward to PIA.
- (i) Communicate with vendors regarding the funding requests submitted to the SLD in order to enable vendors to set up discounts on bills.
- (j) Review vendor bills issued to District to confirm that discounts are properly reflected on bills.
- (k) Develop contractual language to be included in all E-rate-related purchase orders.
- (l) Prepare summary of E-rate funding requests submitted to the SLD, and compute the amounts that the District must pay for the non-discounted portion of services, and the amounts that the District may

have to pay up front and then seek reimbursement from the SLD (if a vendor is unable to provide discounts on bills).

(3) Post-Commitment Services

- (a) Submit Receipt of Service Confirmation Form (Form 486) to SLD to turn-on funding and certify CIPA compliance and technology plan approval.
- (b) Submit Billed Entry Applicant Reimbursement Form (Form 472) (**“BEAR”**) to vendor for signature and forward to SLD to collect funding (for any vendor that does not reflect discounts on bills).
- (c) Complete all vendor paperwork to ensure discounts are applied to District's accounts, if District chooses discounted billing.
- (d) Submit Service Provider Identification Number (**“SPIN”**) change request to SLD if District changes Consultants in mid-funding year.
- (e) Review vendor bills issued to District to confirm that discounts are properly reflected on bills and services delivered are consistent with the documentation submitted to the SLD.
- (f) Prepare Service Certifications, which require the District to validate its receipt as well as payment documentation of all services and products for which the vendor has invoiced to the SLD in order to secure payment for the vendor(s).
- (g) Submit Service Substitution requests if the vendor delivers services or equipment that is different from the documentation that was submitted to the SLD (this may occur when the District's requirements change or vendor service offerings may be updated).
- (h) Confirm that the District is using all of the services for which funding was received, and if the District's needs change, work with

District and vendor to confirm service offerings with the District's needs.

- (i) Review all vendor invoices for E-rate services to confirm that the bills accurately reflect E-rate discounts on bills.
- (j) Review and edit vendor drafts of appeals of any denied vendor invoices.
- (k) File necessary appeals, if required.
- (l) Provide paper or electronic copies of all E-rate documentation for Year 2016 to comply with the E-rate document retention requirements.
- (m) Assist District with E-rate pre-commitment or post-commitment audits related to Year 2016.

(4) Other Services

- (a) Attend District E-Rate related meetings upon request by the District at any District building, District school, or any other location in the City of Harrisburg.
- (b) Provide E-Rate on-site consultations at District buildings and District schools.

F. Consultant shall perform the services with due diligence in a timely, competent, and professional manner and in accordance with the highest professional standards. The District shall cooperate by providing timely responses to Consultant's reasonable requests for information needed to enable Consultant to perform the services.

G. The District shall own all of Consultant's work product resulting from Consultant's services provided pursuant to this Agreement.

H. Consultant shall keep in strictest confidence all information acquired in connection with this Agreement that the District designates as confidential or proprietary. The District may provide Consultant with access (orally, visually or otherwise) to confidential, proprietary, and highly sensitive information relating to the District, which may include, without limitation, information pertaining to the business, operations, finances, employees, students and parents of the District (collectively, "Confidential Information"). Consultant acknowledges that from time to time the District may disclose Confidential Information to Consultant in order to enable Consultant to engage in the services described in this Agreement. Consultant recognizes and agrees that the unauthorized disclosure of Confidential Information could be harmful to the District. Consequently, Consultant agrees not: (1) to use, at any time, any Confidential Information for Consultant's own benefit or for the benefit of any person, entity, or company other than the District; or (2) to disclose, directly or indirectly, any

Confidential Information to any person who is not a current employee of the District authorized to receive such Confidential Information, except in the performance of the services described in this Agreement, at any time prior or subsequent to the termination of this Agreement, without the express, written consent of the District. Consultant acknowledges that any and all documents, including documents containing Confidential Information and are marked as such, furnished by the District or otherwise acquired or developed by Consultant in connection with this Agreement (collectively, "District Materials") shall at all times be the sole property of the District. Upon the termination of this Agreement or association with the District, Consultant shall return to the District or destroy any and all District Materials that are in Consultant possession, custody, or control, whether in hard copy written or electronic form. The provisions of this ID shall survive termination or expiration of this Agreement. The parties acknowledge that the unauthorized access to or dissemination of school student records is prohibited under State and federal law. Consultant shall comply with the Family Education Rights and Privacy Act of 1974 and any other applicable State and federal laws and regulations regarding the privacy of student records.

I. Consultant shall fully obey and comply with all laws, ordinances, and regulations which are or shall become applicable to the services performed under this Agreement applicable to the services performed under this Agreement.

J. Consultant shall not discriminate against any person for employment on the basis of race, national origin, sex, disability, age, religion, ancestry, or any other legally-protected classification in accordance with all state and federal laws.

**2. Representations and Warranties.** Consultant represents and warrants that at the time of executing this Agreement and during the Term hereof:

A. All employees and agents that will perform services under this contract have not been convicted of any felonies;

B. All employees and agents that will perform services under this contract have not been convicted of any crimes for fraud, bribery, molestation, sexual misconduct or moral turpitude;

C. All employees and agents that will perform services under this contract are qualified to do so;

D. Consultant is in full compliance with all laws;

E. Consultant has not been disbarred as a consultant for any state or the federal government; and

F. Consultant is not a party to any litigation.

**3. Term of Agreement.**

A. This Agreement will commence on the date first set forth above and will end on June 30, 2016.

B. Notwithstanding Section 3A hereof, Consultant shall provide all post-commitment services relating to the Year 2015 including, but not limited to, assisting the District with any Federal Communications Commission audit of Year 2016.

**4. Time Devoted by Consultant.** The District is interested only in the result to be achieved, and the conduct and control of the Consultant's work will be the Consultant's sole and complete responsibility. The Consultant alone shall determine the hours the Consultant is to work on any given day and the location where the Consultant performs the Consultant's services. The District will rely on the Consultant to work the number of hours that are reasonably necessary to fulfill the purposes of this contract.

**5. Intellectual Property Rights.**

A. The parties expressly agree that all work product is "work made for hire" under the copyright laws of the United States and other countries, and shall be considered work prepared by an employee within the scope of his or her employment or work specially ordered or commissioned for use as a contribution to a collective work. To the extent that any work product is not deemed "work made for hire," Consultant hereby assigns all copyrights and intellectual property rights to the District.

B. All work product shall become the sole property of the District upon completion by the Consultant and may be used by the District in any manner during or after the term of this Agreement.

**6. Payment to Consultant.**

A. The fee for the Consultant's services shall not exceed \$45,000.00 and shall be invoiced at a mutually agreeable schedule.

B. Consultant shall invoice the District for the amounts set forth herein. Any expenses incurred shall be the Consultant's responsibility. As an independent contractor the Consultant shall not be entitled to any fringe or other benefits, including workers' compensation coverage and insurance of any nature, which the District provides to its employees. The Consultant is solely responsible for meeting all of the Consultant's insurance needs. Consultant understands that it is not insured by or under the insurance policies of the District. Consultant represents and warrants that Consultant has secured and shall maintain at Consultant's own expense all insurance that Consultant is required by law to carry in connection with the services described in this Agreement, as well as commercially reasonable insurance covering risks arising in connection with the services described in

this Agreement, including professional liability insurance. Evidence of professional liability insurance for Consultant shall be promptly provided to the District upon written request.

C. Payment is not due until the District receives a proper invoice containing Consultant's federal tax identification number.

D. Consultant is not entitled to receive any compensation, commissions, or benefits other than those expressly provided for in this Agreement.

E. Notwithstanding any other payment provisions of this Agreement, the District reserves the right to withhold payments for Consultant's failure to perform as agreed. Consultant may cure its failure to perform within twenty (20) days of its receipt of the District's rejection notice, in which case the District will promptly pay Consultant the balance owed, if the cure is so made.

**7. Independent Contractor.** Both the District and the Consultant agree that the Consultant will act as an independent contractor in the performance of the Consultant's duties under this Agreement. Accordingly, the Consultant shall be responsible for payment of all taxes including federal, state and local taxes arising out of the Consultant's activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required. During the Consultant's contacts with third parties, the Consultant and its employees and agents shall identify themselves as a Consultant for the District and not as an employee of the District. The Consultant does not have the power or authority to bind the District in any capacity. No joint venture, partnership, agency, employer-employee, or similar relationship is created in or by this Agreement. Neither party may assume or create obligations on the other party's behalf, and neither party may take any action that creates the appearance of such authority. Consultant shall retain control over its employees and agents and Consultant's employees shall not be considered common law employees of the District. Notwithstanding anything to the contrary stated herein, with respect to the Patient Protection and Affordable Care Act of 2010 and the guidance issued thereunder by the Internal Revenue Service, the U.S. Treasury Department, the U.S. Department of Labor, and the U.S. Department of Health and Human Services, and, in particular, Section 4980H of the Internal Revenue Code of 1986, as amended, those persons performing services for Consultant on behalf of the District shall not be considered common law employees of the District. The Consultant specifically acknowledges and understands that, as an Independent Consultant, the Consultant is not entitled to health benefits, vacation days, sick days, pension benefits, unemployment compensation, workers' compensation, disability benefits, insurance, or other benefits that may now, or in the future, be provided to District employees, based on their status as employees.

**8. Indemnification and Insurance.**

A. The Consultant hereby agrees to indemnify, pay for the cost of defense of, and hold the District harmless for and from any claim (including, but not limited to, claims for personal injury, damage to property, and negligence) and liability arising out of the Consultant's activities



or in connection with providing the consulting services or subcontracting the consulting services to another party(s).

B. Throughout the term and for a period of four (4) years thereafter, Consultant shall maintain adequate insurance for its obligations and duties under this Agreement, including but not limited to: (i) automobile; and (ii) professional liability or its equivalent insurance in the insurance certificates incorporated herein as Attachment "A".

C. The cost of the premiums for all insurance that Consultant is required to maintain by this Agreement is to be paid by Consultant.

**9. Notices/Addresses.** All notices shall be in writing. The addresses of the parties are as follows:

If to Consultant: Julie Tritt Schell  
1300 Bent Creek Blvd., Suite 102  
Mechanicsburg, PA 17050

If to the District: Business Manager  
Harrisburg School District  
1601 State Street  
Harrisburg, PA 17103

With copy to: Harrisburg School District  
1601 State Street  
Harrisburg, PA 17103  
Attn: Board of School Directors, President

**10. Limitations on Liability.** No individual official, employee, or agent of the District shall have any direct or indirect personal liability under or in connection with this Agreement. The District is a local agency and at all times retains its statutory immunity defense as provided by the laws of the Commonwealth of Pennsylvania. 42 Pa. C.S.A. §§ 8501, 8541.

**11. Survival of Certain Obligations.** Injunctive Relief. The obligations set forth in Paragraphs 1D, 1E, 3B, 8, 10, 13, 16, and 19 shall survive the expiration or termination of this Agreement. Should there be a breach of the provisions of Paragraph 8 hereof, the Consultant acknowledges that the District would suffer irreparable harm and, therefore, the District shall be entitled to injunctive relief in addition to any other available remedies.

**12. No Conflicts.** The Consultant certifies that it currently is under no outstanding agreement or obligation which directly or indirectly conflicts with or prevents the Consultant from performing consulting services under this Agreement, and that this Agreement does not constitute a breach of

any obligation the Consultant has to a third party. The Consultant further agrees not to enter into any such conflicting agreement during the term of this Agreement.

**13. Severability.** In the event that any section, paragraph or term of this Agreement shall be determined to be invalid or unenforceable by any competent tribunal for any reason, the remainder of this Agreement shall be unaffected thereby and shall remain in full force and effect and if any section, paragraph, or term of this Agreement is adjudged to any extent to be invalid or unenforceable by any competent tribunal, such section, paragraph, or term will be deemed modified to the extent necessary to make it enforceable.

**14. Amendment.** This Agreement may be amended only by mutual agreement of the parties signed by the parties in writing.

**15. Governing Law.** This Agreement is made under, governed by, and will be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to any conflict of laws provisions.

**16. Disputes.**

A. Any dispute or controversy arising out of any interpretation, performance, or breach of this Agreement shall first be reviewed administratively by the District. The District shall designate a claims administrator no later than thirty (30) days after a demand for an administrative determination. Consultant shall provide documentation in support of its claim or forfeit the right to proceed with the claim. Within thirty (30) days of the completion of the administrative investigation, the claims administrator will render a nonbinding decision and recommendation to both parties. The decision shall not be admissible in any proceeding.

B. Jurisdiction in connection with any dispute or controversy that is unresolved shall be only with the Court of Common Pleas of Dauphin County, Pennsylvania (the "Court"). Any action related in any manner to this Agreement may only be filed in the Court.

C. During the pendency of the claim, Consultant shall continue to carry out its responsibilities under this Agreement and the District shall continue to make all undisputed payments due and owing to Consultant.

**17. Complete Agreement.** This Agreement contains the entire agreement between the parties in respect to the subject matter hereof and supersedes any and all other agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

The language of all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against any of the parties.

**18. Headings.** The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.

**19. Audit Provisions.** Consultant shall maintain records that relate to the expenses for services performed under this Agreement for a period of four (4) years from the date of final payment, and shall make these records available to the District and its representatives at reasonable times and with reasonable notice to Consultant.

**20. Waiver of Breach.** The waiver by the District or Consultant of a breach of any provision of this Agreement by the other party does not operate and shall not be construed as a waiver of any other breach of the other party.

**21. Publicity.** Consultant shall not issue any media release, press release, or public announcement, including any promotional or marketing materials or presentations, relating to this Agreement or its subject matter without the prior written consent of the District.

**22. Assignment and Subcontracting.**

A. Consultant shall not assign this Agreement or any of its rights or obligations without the prior written consent of the District.

B. Consultant may subcontract some of its obligations under this Agreement to Debra M. Kriete, Esq. ("Kriete").

C. Consultant remains fully liable and responsible to the District for all of the work performed by Kriete under its subcontract with Consultant pursuant to Section 22 (B) hereof.

D. Kriete may not assign or subcontract any of the work it receives from Consultant pursuant to Section 22 (B) hereof.

E. Kriete shall maintain professional liability insurance in accordance with the insurance certificates incorporated herein as Attachment "A".

**23. Termination.** This Agreement may be terminated for the convenience of the District upon ten (10) days prior written notice to the Consultant. Termination for cause may be without notice. Consultant is entitled to a pro-rated payment for all satisfactory services performed up to the time

of termination. The representations, warranties, and indemnities contained in this Agreement shall survive termination or expiration of it.

**24. Force majeure.** Consultant shall immediately notify the District in writing of any cause that will prevent or delay its performance. After receipt of Consultant's notice, the District may elect either to cancel this Agreement or to extend the time of performance as reasonably necessary.

**25. Final Approval.** This Agreement is valid only upon approval by the governing body of the District. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected on this Agreement as the signatories. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall have the same binding effect as delivery of an executed original.

**26. Approval of governing body.** The contractual understanding set forth in this written Agreement is valid only if the contract is approved by the governing body of the District.

**27. No Third-Party Beneficiaries.** Nothing in the Agreement or Terms shall be construed to create or extend any rights to any third parties as third-party beneficiaries.

**28. Binding Agreement.** The Agreement shall be binding upon the parties hereto, their personal representatives, heirs, executors, administrators, successors and assigns.

NOW THEREFORE, with the intent to be legally bound, each party hereto, by it duly authorized representative, hereby executes this Agreement to be effective as of the date first set forth above.

WITNESS OR ATTEST

SCHOOL DISTRICT OF THE CITY OF  
HARRISBURG

\_\_\_\_\_  
Name

By:\_\_\_\_\_

Title:Carol Kaufmann, Board Secretary Title: Jennifer Smallwood, Board President

WITNESS OR ATTEST

\_\_\_\_\_  
Name

\_\_\_\_\_  
Julie Tritt-Schell  
t/d/b/a Tritt-Schell Consulting Services

Agenda 10.19.15

Item 9.3C

Approved:

Final:

**ATTACHMENT A**

**INSURANCE CERTIFICATES**

*[Attach in compliance with Section 8(B)]*

Agenda 10.19.15

Item 9.3C

Approved:

Final: