

**Contract Committee Review Request**  
**MUST BE COMPLETED IN FULL**

Date: 08/08/2022

Contract/Agreement Vendor:   
Name of Vendor & Contact Person  
  
Vendor Email Address  
  
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.*  
  
Reason/Audience to benefit  
   
BOE Date Amount of agreement

Person Submitting Contract/Agreement for Review:

**PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK**

Principal &/or Director or Administrator: 

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

Leadership Team Member:

Funding Source:    
Fund/Project OCAS Coding

**Consent**

**Action**

**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.**



# FUNDRAISING CONTRACT

Contract #: 2350132

Contract Date: 5/19/2022

Proposed Start Date: 9/14/2022

**Centennial MS Orchestra**  
225 East Omaha Street  
Broken Arrow, OK 74012

**Sign eContract**

**Start Date: 9/14/2022**

**Enrollment: 110**

**End Date: 9/28/2022**

**Prize Program: Prize Carnival**

## Catalogs

OTCMB2	Otis Spunkmeyer & More \$20 CD	40%
ZCD2	Heart & Home	40%

## Terms

This Fundraiser Agreement ("Agreement") is entered into between CDFund LLC, dba as Cherrydale Fundraising, a Colorado corporation ("Cherrydale", "we", "our", "us") located at 9540 Maroon Cir, #100, Englewood, CO 80112, and the organization listed above ("Client", "You", "Awesome Fundraising Group"), and is effective as of the date listed on this Agreement. Cherrydale and Awesome Fundraising Group may hereinafter be referred to individually as a "Party," and collectively as the "Parties." This Agreement, and any invoices delivered pursuant to this Agreement, are subject to the "Terms and Conditions to Fundraiser Agreement", attached, which are incorporated by reference and made part of this Agreement and all invoices from us to you. Whew: That basically said we have terms and conditions like any other company.

- 1) Fundraising Services. You acknowledge & agree that Awesome Fundraising Group is purchasing merchandise from us to resell to the public in your name.
- 2) Payment. All payments by Awesome Fundraising Group must be made payable to "Cherrydale Fundraising" only and must be sent to 9540 Maroon Cir, #100, Englewood, CO 80112. No other person or entity is authorized to accept payment on behalf of Cherrydale. Preferred payment methods include check, money order, cashier check and check by phone. All prices/invoices include a built-in 3% discount when paid via our preferred payment methods. Credit card payments are accepted but will result in the 3% discount reversal. There is a \$35 fee when bad things like bouncing a check happen. All payments are due in full 15 days from merchandise arrival (i.e. when you get your stuff); provided, however, if Awesome Fundraising Group is not associated with a public school district, you must submit payment equal to invoice provided by us or 75% of all money collected as an estimated payment prior to shipment.
- 3) Minimums (Non-Frozen). Catalogue, magazine, flower, candle and Entertainment® fundraisers with a contracted profit percentage of 40% DO NOT HAVE MINIMUMS CHARGES. Fundraisers not at 40% profit with a total fundraiser retail (Including Combined Frozen Food) of less than \$5,000 will be subject to minimums charge of: (i) \$0-\$2,499 - 10% (ii) \$2,500-\$4,999 - 5%. This will appear on invoices as a "% Profit Adjustment".
- 4) Minimums (Frozen). For tasty Otis Spunkmeyer frozen food fundraisers, there is a minimums charge if total fundraiser items sold is less than 350 equal to: \$1.00 per item below 350 items (example: 300 units delivered means a \$50 charge). There is no minimum charge for orders of 350 items or more.
- 5) Minimums (Participation). If your average sale per enrolled student is \$8 or less, there is a minimums charge equal to: (i) \$0.40 per enrolled student for fundraisers kicked off between January 1 and June 30. (ii) \$0.75 per enrolled student for fundraisers kicked off between July 1 and December 31. This will appear on invoices as "Student Packet Minimum".
- 6) Category Limits. Fundraiser categories including flowers, media, magazines, candles, chocolates, snack items, items with a retail price of \$25 or more, brand name items, mystery items and all internet sales are limited to 40% profit (Catalog code ZCD2: % will be equal to amount listed on contract under "Fundraiser" terms). Categories of spirit gear, personalized products and clothing items are limited to 20% profit and Tervis products are limited to 35% profit. Online donations are limited to 70% with remainder being retained to cover student prizes, "Register. Share. Win" giveaways, credit card processing, gateway processing, bank and fundraising representative fees.
- 7) Direct to Seller Delivery. A super-duper cool service where all paper order forms that would normally ship to the school/group are delivered to each seller's home for them to then distribute. This is a 10% of retail surcharge.
- 8) Promotions. Awesome Fundraising Group must have a minimum of \$5,000 in retail sales to qualify for Cherrydale sponsored sign-on bonuses.

WE HAVE TO DO IT SO SAYS OUR LAWYERS. SO, HERE IS OUR OFFICIAL LEGAL MUMBO-JUMBO AKA TERMS AND CONDITIONS TO THE FUNDRAISER AGREEMENT.



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The terms and conditions stated herein shall take precedence over any other conditions, and no contrary, additional or different provisions shall be accepted.

**Entire Agreement.** This Agreement constitutes the entire agreement between Cherrydale and Client, and supersedes all prior agreements, understandings, purchase orders and/or requests, whether written or oral, relating to the subject matter of this Agreement. No representation or statement not contained in the original of this Agreement shall be binding upon Cherrydale as a warranty or otherwise, nor shall this Agreement be modified or amended except by a writing signed by the authorized representatives of both Cherrydale and Client. This Agreement shall be binding on, and shall inure to the benefit of, the Parties and their authorized successors and assigns. Client expressly disclaims having relied upon any representation or statement concerning any merchandise provided by Cherrydale pursuant to this Agreement except to the extent such representation or statement is set forth in this Agreement.

**Warranties.** Cherrydale expressly disclaims and excludes all guaranties, representations, promises, statements, estimates, conditions, inducements and warranties, express or implied, including implied warranties of merchantability and fitness for a particular purpose, relating to any merchandise provided pursuant to this agreement. Cherrydale shall not be liable for: (i) personal injury; (ii) property damage; (iii) loss of revenue or profit; or (iv) other incidental and/or consequential damages unless caused by Cherrydale's gross negligence. Additionally, Cherrydale shall not be liable to client for: (a) client's expenditures for substitute merchandise or services; (b) client's loss of revenue or profit, (c) client's failure to realize savings or other benefits; (d) client's storage or shipping charges; or (e) other incidental or consequential damages arising out of Cherrydale's failure to perform under this agreement, or from client's use or resale, or inability to use or resell, any merchandise provided pursuant to this agreement, regardless of the legal theory on which the claim is based, and even if Cherrydale has been advised of the possibility of such damages. Any and all such claims are hereby expressly waived by client.

**Indemnification.** Client shall at all times indemnify and hold Cherrydale, its successors and assigns, and any officers, directors, employees, representatives and/or agents of each of them, harmless from and against any and all liabilities, obligations, claims, damages, fines, penalties, interest, taxes, causes of action, costs and expenses, including, without limitation, reasonable attorneys' fees imposed upon or asserted against, or incurred by, Cherrydale in any suit, action or proceeding between Client and Cherrydale, or between Cherrydale and any third party, related to or arising from or by reason of, performance of any of the terms, covenants or conditions of this Agreement, or the use, modification, consumption, resale and/or distribution of any merchandise sold hereunder. In the event any suit, action or proceeding is brought against Cherrydale, or filed upon Cherrydale's request and at Client's sole expense, Client shall defend such suit, action or proceeding, or cause the same to be defended, by counsel designated and approved by Cherrydale. Client's obligations under this paragraph shall survive the expiration or termination of this Agreement.

**Delivery.** Client shall not terminate this Agreement for delays in delivery or other cause until ten (10) days after written notice of such intention has been actually received by Cherrydale, and Client shall be obligated to accept any portion of the merchandise which is shipped by Cherrydale during such period. Cherrydale shall not be liable for failure to deliver of delays in delivery occasioned by causes beyond Cherrydale's control including, without limitation, delays of carriers or suppliers, receipt of orders exceeding its suppliers then scheduled production capacity, governmental acts and regulations, fires, floods, strikes, lockouts, riots, insurrections, war or acts of terrorism. Cherrydale reserves the right to make delivery in installments and all such installments shall be separately invoiced and paid for when due without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Client of its obligation to accept remaining installments.

**Late Charges / Default.** In the event Client fails to pay any charges or amounts due to Cherrydale pursuant to this Agreement, all such outstanding charges and invoices shall be subject to a monthly service charge of \$25, and all outstanding amounts shall accrue interest at a rate of 25% per annum (or the maximum interest rate allowable pursuant to law if lower) until paid in full. All payments shall be applied first to the payment of any interest and service charges, and then to the reduction of principal due and owing. Cherrydale reserves the right to send any Client account to a third-party collection agency in the event any payment due pursuant to this Agreement remains unpaid for more than 60 days after it become due and owing. Client hereby agrees to pay all and costs of collection, including Cherrydale's reasonable attorney's fees, regardless of whether a lawsuit or other action is commenced.

**Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Colorado, irrespective of the choice of law rules of any jurisdiction. The Parties hereby waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in Arapahoe County, Colorado. In the event of any litigation arising from this Agreement or the performance thereof, the Parties agree that the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs, and all other expenses incurred in connection with the action, whether or not taxable as costs, in addition to any other relief to which it may be entitled. Any suit between the Parties hereto, other than one seeking payment of the purchase price due hereunder, shall be commenced, if at all, within one (1) year of the date that the claim accrues.

**Privacy.** Cherrydale values the protection, privacy and confidentiality of personal information. Cherrydale does not permit unauthorized release of



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customer data, including name, address, phone number, email and physical addresses. Such protection applies to all customers, including students, teachers and all fundraiser participants. Cherrydale abides by all related state, federal and local law, such as NYS Section 2D. Customer data is encrypted, securely stored and not disclosed to third parties.

**Waiver.** No consent or waiver, express or implied, by any party hereto of any breach or default by any other party hereto in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of another party or to declare another party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. In case any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

**Authority.** As additional consideration hereunder, Client hereby represents and warrants to Cherrydale that it has the full right, power, and legal authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. Client further represents and warrants to Cherrydale that the person executing this Agreement on behalf of Client is doing so with all necessary authority and that this Agreement constitutes a legal, valid and binding obligation of Client enforceable against Client in accordance with its terms. Cherrydale reserves the right to withhold shipment until the merchandise is fully paid. In consideration of this Agreement, Client being the undersigned, unconditionally and personally, jointly and severally guarantee payment of all monies due and owing by the Organization to Cherrydale and understand that pre-payment may be required prior to shipment if financial condition or other circumstances warrant.

**Acceptance / Cancellation.** Cherrydale will replace damaged or missing, non-frozen, merchandise at no charge provided Cherrydale is provided notice within 14 days of delivery. Frozen food must be inspected and accounted for at time of delivery, and any discrepancy between the ordered and delivered merchandise, or damaged merchandise, must be noted on the driver's Bill of Lading and reported to Cherrydale within 24-hours of delivery. Upon execution by an authorized representative of Cherrydale and Client ("Effective Date"), this Agreement shall be binding upon all administrators, successors and assigns of both Cherrydale and Client. In the event that Client terminates this Agreement without submitting an order for merchandise, Client agrees to pay a cancellation fee equivalent to: (i) all costs and expenses incurred by Cherrydale relating to the printing and shipping of brochures; and (ii) all product or cash incentives advanced by Cherrydale to Client, if any.

**Payment of Profit by Cherrydale.** Profit payable to Client is calculated by applying the contracted profit percentage to the total fundraiser retail sales. Once fundraiser processing is complete, Cherrydale will issue a check to Client for the applicable profit payment. Cherrydale reserves the right to deduct any amounts due and owing by Client pursuant to this Agreement from any payment of profit to Client.

**Taxes.** Client shall be responsible for the collection and remittance of all applicable federal, state and local taxes, including without limitation, all sales taxes relating to the resale of any merchandise provided by Cherrydale pursuant to this Agreement. This includes the determination of effective state and local tax rates.

**Signature.** This Agreement may be executed electronically, by telex, telecopy or other facsimile transmission, and may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument.