
Professional services agreement

Butler Street Consulting, LLC ("Butler Street") agrees to provide professional services to Wheaton Park District ("Customer") under the following terms and conditions (the "Agreement"). By agreeing to have Butler Street perform professional services for Customer, Customer agrees to be bound by this Agreement:

1. Professional Services.

1.1 Butler Street will provide such resources and utilize such employees and/or consultants as it deems necessary to perform the Services. Customer agrees to furnish Butler Street with the contacts and materials suitable for Butler Street to be able to perform the Services. Customer further agrees to provide Butler Street with any technology owned or controlled by Customer (the "Licensed Technology") as Butler Street reasonably requires to perform the Services.

1.2 Customer and Butler Street agree to cooperate in good faith to achieve completion of the Services in a timely and professional manner. Butler Street shall bear no liability or otherwise be responsible for delays in the provision of Services or any portion thereof occasioned by Customer's failure timely to complete a Customer task or adhere to a Customer schedule.

2. Term of Agreement.

This Agreement commences on the earlier of the date of the Statement of Work, Purchase Order, or date that Butler Street begins providing Services ("Effective Date") and, unless terminated earlier pursuant to the terms of this Agreement, shall continue in force until exhaustion of the services identified in the Statement of Work or as otherwise agreed to by Butler Street and Customer.

3. Right to Perform Consulting Services.

Customer acknowledges that Butler Street has extensive expertise, experience, and proprietary products and tools in client, talent and organizational development that Butler Street intends to utilize such expertise, experience, products and tools in providing consulting services and other services in such field to other clients. Subject to Butler Street's compliance with the confidentiality provisions stated herein, nothing in this Agreement shall restrict or limit Butler Street from performing such development, consulting or other services to any other entity in any industry.

4. Services Fees and Expenses.

4.1 For the Services provided by Butler Street, Customer agrees to pay Butler Street the fees set forth in a quote issued by Butler Street to Customer or as otherwise agreed to by Butler Street and Customer (the "Payment Schedule") plus any applicable sales or use taxes or other charges as discussed in Section 4.2. Customer also shall reimburse Butler Street for actual, reasonable travel and out-of-pocket expenses incurred.

4.2 The amounts payable to Butler Street set forth in the Payment Schedule are exclusive of any sales or use or other taxes or governmental charges. Customer shall be responsible for payment of all such taxes or charges except for any taxes based solely on Butler Street's net income. If Customer is required to pay any taxes based on this Section 4.2, Customer shall pay such taxes with no reduction or offset in the amounts payable to BUTLER STREET hereunder.

5. Invoicing and Payment.

Unless otherwise set forth in a Statement of Work, Butler Street will invoice on a monthly basis for all Services fees and reimbursable expenses that have accrued. Each invoice shall be due and payable upon receipt of a proper invoice, and shall be deemed overdue if they remain unpaid beyond 10 business days. If past due amounts owing from Customer are not paid within thirty (30) days, the unpaid amount shall accrue interest at the rate of 1.0% per month, or at the highest legal interest rate, if less.

6. Intellectual Property Rights.

Except as described below, the Deliverables which are first produced or created for Customer by Butler Street under a Statement of Work incorporating this Agreement shall be the property of Customer and shall be considered works made for hire under this Agreement. Notwithstanding the foregoing, any developed technology, including patentable and unpatentable ideas, know-how, technical data, or techniques, and all intellectual property rights appurtenant thereto which may be developed by Butler Street under this Agreement or in the delivery of any services hereunder that derive from, improve, enhance or modify Butler Street's product(s) or pre-existing intellectual property, will be the property of Butler Street (collectively, "Butler Street Developments").

Customer will have a non-exclusive license to the Butler Street Developments to the extent necessary to enable Customer to use any Butler Street Deliverable(s). Subject to the limitations placed on Butler Street by the confidentiality provisions of this Agreement or by any existing non-disclosure agreement between Butler Street and Customer, Butler Street may in its sole discretion develop, use, market, license, or sell the Butler Street Developments and any software, application or product that is similar or related to that which was developed by Butler Street for Customer. Butler Street shall not be required to disclose information concerning any Butler Street Developments which Butler Street deems to be proprietary or confidential.

7. Limited Warranties and Exceptions.

7.1 Butler Street warrants that the Services provided hereunder will be performed in a professional manner consistent with the quality of Butler Street's performance of services for similarly situated customers and in accordance with generally accepted industry standards. Butler Street makes no guarantees or assurances that the Services will achieve Customer's specific goals.

7.2 BUTLER STREET EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

7.3 In order to receive warranty remedies, deficiencies in the Services must be reported to Butler Street in writing within ninety (90) days of completion of the Services. After such time, any corrective Services requested by Customer shall be billed to Customer at Butler Street's standard consulting rates then in effect and subject to scheduling availability of Butler Street personnel. Customer's sole remedy for a breach of the warranty described in Section 7.1 shall be re-performance of the non-conforming Services or to receive a refund of the pro rata amount of the fees allocable to such non-conforming Services, at Butler Street's option.

7.4 UNLESS DAMAGES OCCUR AS A RESULT OF CONSULTANT'S NEGLIGENCE OR INTENTIONAL ACT, CONSULTANT'S AGGREGATE LIABILITY TO CLIENT UNDER THE TERMS OF THIS AGREEMENT SHALL NOT EXCEED THE TOTAL PAYMENTS ACTUALLY RECEIVED BY CONSULTANT FROM CLIENT UNDER THIS AGREEMENT IN THE PRECEDING TWELVE-MONTH PERIOD. FURTHER, UNLESS DAMAGES OCCUR AS A RESULT OF EITHER PARTY'S NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Termination.

8.1 This Agreement may be terminated by either party upon thirty (30) days' prior written notice without cause.

8.2 Each party's obligations under Sections 3 - 14 of the Agreement shall survive termination or expiration of the Agreement. If Butler Street terminates the Agreement for failure of Customer to pay any amounts owing hereunder, the rights of Customer to use the Deliverables including any express or implied licenses which may have been granted herein shall immediately terminate.

8.3 Customer agrees to pay for all services rendered up to termination. Customer will not be required to pay any fees incurred after agreement is terminated.

9. Indemnification.

9.1 General. Butler Street and Customer each agrees to indemnify, defend and hold the other, its affiliates, and their respective officers, directors, employees, and agents ("Indemnitees") harmless from and against any and all liabilities, losses, damages, costs, and expenses ("Losses"), and any reasonable attorney's fees and expenses relating to its defense, resulting from any third party suit or action brought against the Indemnitees due to third party claims for death, bodily injury or the damage to or loss of any real or tangible personal property to the extent arising out of the indemnitor's negligence or willful misconduct in the performance of this Agreement.

9.2 Intellectual Property Infringement. Butler Street agrees to indemnify, defend and hold harmless Customer Indemnitees from and against any Losses, and any reasonable attorney's fees and costs relating to its defense, which Customer may incur for third party claims arising out of any suit brought against Customer based upon a claim that a Service or Deliverable includes any trade secret that Butler Street has unlawfully misappropriated or infringes: (a) a patent duly issued by the United States, Canada, Japan, or a country that is a member of the European Economic Area; (b) a registered trademark enforceable in any country that has ratified or acceded to either the Madrid Agreement Concerning the International Registration of Marks or the Protocol Relating to the Madrid Agreement; or (c) a copyright valid in any country that has ratified or acceded to The Berne Convention on Literary and Artistic Works. Butler Street will have the right, at its option and expense: (i) to obtain for Customer rights to use the Service or Deliverable, (ii) to replace or modify the Service or Deliverable so that they become non-infringing, or (iii) to accept return of the Deliverables for a refund not to exceed the purchase price paid by Customer for such Deliverables. The foregoing, subject to the following restrictions, states the exclusive liability of Butler Street to Customer concerning infringement. Butler Street will have no liability for any claim of infringement based on: (i) use of a Service or Deliverable in combination with equipment or software not supplied by Butler Street where the Service or Deliverable would not itself be infringing, (ii) software or technology not developed by Butler Street or (iii) Services or Deliverables that have been altered or modified in any way by anyone other than Butler Street or according to Butler Street's instructions.

9.3 Condition to Indemnification. If any claim or action is commenced against a party entitled to indemnification under this Section 9 for Losses resulting from such claim or action (a "Claim"), such party shall give written notice to the other party within ten (10) days of notice of such Claim. If such party receiving notice is obligated under this Section 9 to defend the party against such Claim, then the indemnifying party shall take control of the defense and investigation of the Claim, using such attorneys and other assistance as it selects in its discretion. The indemnified party shall cooperate in all reasonable respects in such investigation and defense, including trial and any appeals, provided that such party may also participate, at its own expense, in such defense. No settlement of a Claim that involves a remedy other than payment of money by indemnifying party shall be agreed to and entered without the consent of the indemnified party, which consent shall not be unreasonably withheld.

10. Limitations on Liability.

EXCEPT FOR DAMAGES OR LOSSES ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS OR INFRINGEMENT OR MISAPPROPRIATION OF A PARTY'S INTELLECTUAL PROPERTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT NEGLIGENCE, STRICT LIABILITY, LOSS OF DATA, LOSS OF USE, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUTLER STREET'S TOTAL LIABILITY TO CUSTOMER SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER HEREUNDER.

11. Confidentiality and Non-Use.

11.1 By virtue of this Agreement, each party hereto may disclose to the other party information that is confidential and otherwise proprietary. Unless governed by the terms of an existing or contemporaneously executed non-disclosure agreement ("NDA"), the following Sections 11.3 and 11.4 apply.

11.2 Each party shall treat as confidential and shall not copy or duplicate or, except as required by applicable law, disclose to any person or organization, any confidential information which is submitted to such party by the other party to this Agreement. Acknowledged and incorporated herein is the Party's signed Business Associates Agreement ("BAA") and all obligations therein contained are made part of this Agreement

11.3 Subject to the exceptions listed below, a party's "Confidential Information" shall be defined as information disclosed by the party to the other party under this Agreement and clearly marked or otherwise clearly designated as "confidential" or information disclosed by one party that is reasonably understood by the other party to be confidential. However, a party's Confidential Information shall not include any information that: (a) is or becomes a part of the public domain through no act or omission of the other party; or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party by employees or agents without access to the party's Confidential Information.

11.4 Each party agrees, for the term of this Agreement and three (3) years after its expiration or termination, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties not authorized by the disclosing party to receive such Confidential Information, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this Agreement. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent certain Confidential Information is required to be disclosed by the receiving party as a matter of law or by order of a court, provided that the receiving party uses reasonable efforts to provide the disclosing party with prior notice of such obligation to disclose and reasonably assists in obtaining a protective order therefore.

12. Independent Contractors.

Butler Street shall perform the Services as an independent contractor, and nothing contained in this Agreement shall be construed to create or imply a joint venture, partnership, principal-agent or employment relationship between the parties. Neither party shall take any action or permit any action to be taken on its behalf which purports to be done in the name of or on behalf of the other party and shall have no power or authority to bind the other party to assume or create any obligation or responsibility express or implied on the other party's behalf or in its name, nor shall such party represent to any one that it has such power or authority.

13. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Georgia excluding those laws that direct the application of the laws of another jurisdiction.

14. Miscellaneous.

14.1 Notices. Notices to be given or submitted by either party to other pursuant to this Agreement shall be in writing and directed in the case of the Customer to the address in the Statement of Work or otherwise provided To Butler Street, and in the case of Butler Street, to: 5775 Peachtree Dunwoody Road, Building C, Suite 240, Atlanta, GA 30342

14.2 Severability. If any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties to extent possible. In any event, all other terms and provisions shall be deemed valid and enforceable to the maximum extent possible.

14.3 Force Majeure. Neither party shall be liable for any loss, damage, or penalty arising from delay due to causes beyond its reasonable control.

14.4 Assignment. Butler Street may not assign or transfer any of its rights or duties under this Agreement without the prior written consent of Customer which consent will not be unreasonably withheld or delayed; provided, however, that consent shall not be required in the case of an assignment by either party to the surviving entity in a merger or consolidation in which it participates or to a purchaser of all or substantially all of its assets. Customer may assign this Agreement to a wholly owned subsidiary or affiliate entity of Customer upon providing Butler Street prior written notice of assignment.

14.5 Complete Agreement. This Agreement, the Statement of Work, and the documents referenced herein are the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof, which supersedes all proposals, oral or written, and all other communications between the parties relating to such subject matter.

14.6 Modification. Each party agrees that any terms and conditions of any purchase order or other instrument issued by Customer in connection with the Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement shall be of no force or effect. This Agreement may be modified only by a written instrument duly executed by an authorized representative of Butler Street and Customer.

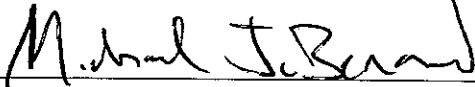
14.7 No Waiver. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver of such provision or the right of such party to enforce such provision or any other provision.

Acceptance and authorization

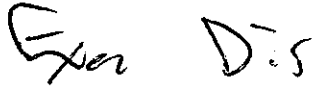
The terms and conditions of the **Professional Services Agreement** apply in full to the services and products provided under this Statement of Work.

IN WITNESS WHEREOF, the parties hereto each acting with proper authority have executed this Statement of Work, under seal.

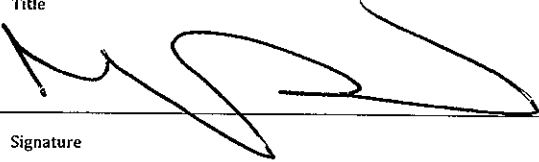
Wheaton Park District



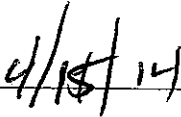
Full name



Title



Signature



Date

Butler Street Consulting

Mary Ann McLaughlin

Full name

Managing Partner, Butler Street Consulting

Title

Signature

Date