



Boosterthon Fun Run Contract

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this “**Agreement**”) is made and entered into on 6/26/2013 (the “**Effective Date**”), by and between **BOOSTER ENTERPRISES, INC.**, a Georgia Corporation (“**Booster**”), and White Oaks Elem, a PTA (the “**Client**”) (Booster and the Client are referred to collectively herein as the “**Parties**” or individually as a “**Party**”).

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WHEREAS, Booster is in the business of organizing, marketing, and leading fundraising campaigns whereby students of educational institutions raise funds to sponsor their participation in an exercise based event, such funds (net of compensation to Booster) to be used by such institutions for the furtherance of the purpose thereof (each a “**Boosterthon Fun Run**”);

WHEREAS, the Client is interested in hosting a Boosterthon Fun Run, and Booster is willing to offer its services in connection therewith on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Engagement.** The Client hereby engages Booster to organize, market and manage a Boosterthon Fun Run (the “**Services**”), and Booster hereby agrees to provide the Services for the benefit of the Client, all on the terms and subject to the conditions set forth herein.
2. **Obligations of Booster.** Booster shall conduct a Boosterthon Fun Run on behalf of the Client. The services and materials provided by Booster as part of the Boosterthon Fun Run shall include, but are not limited to, supplying all prizes, advertising, promotion, organization, and refreshments necessary or appropriate, in the sole discretion of Booster, to conduct a Boosterthon Fun Run in accordance with Booster’s customary practices and customs.
3. **Obligations of the Client.** The Client shall make available to Booster, its personnel and agents, any and all school grounds and facilities, as specified on Exhibit A, as well as any and all Client students, faculty, and staff, as specified, on the dates and during the times as set forth in Exhibit A. The Client shall arrange for the Volunteers (as defined herein) to participate, at the direction of Booster and its representatives, in the Primary Collection (as defined herein) to be held on the date specified in Exhibit A.

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4. **Base Cost. Within 5 business days of the execution** of this Agreement, the Client shall pay to Booster a Base Cost of 2000.00 *dollars* (the “**Base Cost**”). The Client agrees that except as set forth in Section 9, the Base Cost is non-refundable, earned as of the date of the execution of this Agreement, and will not be returned to the Client under any circumstances. The Client agrees that the Base Cost is independent of the Booster Share set forth in Section 7 of this Agreement, and that the Base Cost is not deductible or otherwise taken into consideration when calculating the Booster Share.
5. **Date of the Boosterthon Fun Run.** The dates and times of the Boosterthon Fun Run shall take place on the schedule set forth in Exhibit A.
6. **Collection of Funds.** The collection of funds raised as a result of the Boosterthon Fun Run shall take place as follows:
 - (a) The primary collection shall take place on the date and time specified on Exhibit A (the “**Primary Collection**”). The Client shall send collection reminders regarding the Primary Collection to students on at least two separate occasions prior to the Primary Collection.
 - (b) In connection with the Primary Collection, the Client shall provide at least six (6) volunteers (the “**Volunteers**”) to assist with the Primary Collection. The Volunteers (with the assistance of Booster representatives, if requested) shall tally all of the funds collected by each of the participating students and/or classrooms from their respective Boosterthon Fun Run sponsors (the “**Collected Funds**”). In the event a Booster representative is unable to attend the Primary Collection, the Volunteers shall be solely responsible for collecting and tallying the Collected Funds.
 - (c) Prior to the Primary Collection, Booster representatives will meet with the Volunteers to train them on the use of the Booster online collection program.
 - (d) After all Collected Funds have been satisfactorily accounted for by the Booster representatives and/or the Volunteers, the Collected Funds shall be immediately distributed according to Sections 4 and 7 of this Agreement.
 - (e) After the Primary Collection, the Parties may organize one or more additional collection dates. In the event that the Parties agree to pursue additional collection dates, the Parties will agree on a mutually acceptable date to hold such collection. Any additional collections shall be conducted in the manner set forth in Section 6(a)-(d) above.
7. **Distribution of Raised Funds.** As compensation for the services provided in conducting the Boosterthon Fun Run, Booster shall retain from the Collected Funds, or the Client shall cause to be paid, as applicable, an amount equal to forty-eight percent (48%) of the Gross Revenues generated by the Boosterthon Fun Run (the “**Booster Share**”). Fifty-two percent (52%) of the Gross Revenues raised by the Boosterthon Fun Run shall be retained by the Client. For purposes of this Agreement, “**Gross Revenues**” shall mean all funds collected or otherwise received by Booster, the Client, the participants in the Boosterthon Fun Run, or any other student, parent or Client employee or representative in connection with the fundraising efforts that are the object and purpose of the Boosterthon Fun Run or otherwise related thereto.

8. The Client's Acknowledgments, Representations and Covenants.

(a) The Client shall not actively promote any other fundraiser, including any annual fund, from the date of the "Initial Teacher Meeting" (according to the date assigned to this meeting on Exhibit A) until the date of the Primary Collection.

(b) The Client hereby acknowledges that the Boosterthon Fun Run involves strenuous physical activity and hereby agrees that it is the sole responsibility of the Client to determine the physical condition, health, and fitness of its students and other participants in the Boosterthon Fun Run and the safety and suitability of each student's and other participant's participation in the Boosterthon Fun Run. The Client further acknowledges and agrees that Booster has no, and will not at any time have any, independent knowledge of, and is not responsible for investigating or determining (and will take no measures to investigate or determine) the physical condition, health, and fitness of the Client's students and other participants in the Boosterthon Fun Run or the safety or suitability of any student's or other participant's participation in the Boosterthon Fun Run, and the Client takes full responsibility for assessing physical condition of its students and all Boosterthon Fun Run participants and for alerting such students, their guardians, and any other participants to the nature of the Boosterthon Fun Run and any appropriate safety precautions.

(c) The Client shall obtain legally enforceable liability waivers and releases from each and every participant in, and attendee to, the Boosterthon Fun Run (or from a parent or guardian on behalf of the participant, if the participant is not of the age of majority under applicable law), either in the form provided by Booster (if any) or in another form as is approved in advance by Booster, (i) which approval may be withheld in Booster's sole discretion, (ii) which indemnifies and holds harmless Booster and its officers, directors, shareholders, employees, agents, representatives and contractors of and from any and all expenses, losses, costs, demands, settlements, claims, lawsuits liability and judgments incurred by Booster to any and all of the participants in the Boosterthon Fun Run or any other third party arising from any event, act, occurrence or omission during the Boosterthon Fun Run not caused solely by Booster's gross negligence or willful misconduct and (iii) which further consents to and authorizes Booster and their designees to utilize the photograph, picture, likeness and/or voice of any such participant in any documentary, promotion or marketing efforts of Booster without any compensation to such participant.

(d) The Client is responsible for obtaining and maintaining through the Boosterthon Fun Run all necessary permits as may be required for such events.

9. Termination.

(a) This Agreement may be terminated by the Client for any reason at any time prior to the date of the Student Pep-Rally set forth on Exhibit A by written notification (including email) to Booster.

(b) This Agreement may be terminated by Booster at any time, and for any (or no) reason by written notification (including email) to the Client. In the event of termination of this Agreement by Booster, the Base Cost shall be returned to the Client within thirty (30) days. The refund of the Base Cost shall be the sole and exclusive liability of Booster, and the sole and

exclusive remedy of the Client, with respect to termination of this Agreement pursuant to this Section 9(b).

(c) The Parties acknowledge and agree that the termination of this Agreement, whether by the Client or by Booster, shall not affect the distribution of Gross Revenues as set forth in Section 7 whether such Gross Revenues are collected prior to or after the termination of this Agreement.

10. **Indemnification.** The Client shall indemnify, defend and hold harmless Booster, its shareholders, directors, officers, employees, agents, contractors and any other personnel retained by Booster for any and all expenses, losses, costs, demands, settlements, claims, lawsuits, liability, and judgments which Booster may become liable to defend or pay in whole or in part as a direct or indirect result of (a) any action, inaction, or negligence of the Client, its agents, employees, students, and volunteers; (b) any condition or hazard located on or part of the site designated by the Client for the Boosterthon Fun Run; (c) any failure by the Client to obtain the liability waiver and release from any participant (or guardian thereof) as contemplated by Section 8(c); and (d) any event, act, occurrence or omission during the Boosterthon Fun Run or arising out of or related to the provision of the Services by Booster not caused solely by Booster's gross negligence or willful misconduct. Booster shall indemnify and hold harmless the Client, its agents and employees for any and all expenses, losses, costs, demands, settlements, claims, lawsuits, liability, and judgments which the Client may become liable to defend or pay resulting from any event, act, occurrence or omission during the Boosterthon Fun Run or arising out of or related to the provision of the Services by Booster caused solely by Booster's gross negligence or willful misconduct.
11. **Assignment.** The Client will not transfer, assign or encumber this Agreement without the prior written consent of Booster, and any such attempted assignment or encumbrance without such consent shall be null and void. Booster shall have the right to assign this Agreement in whole or in part to any of its affiliates without the consent of the Client.
12. **Audit Right.**
 - (a) The Client shall keep, maintain and preserve in its principal place of business, during the term of this Agreement and for at least one (1) year following its termination or expiration, complete and accurate books, accounts, records and other materials covering all transactions (including all donations and Gross Revenues generated by the Boosterthon Fun Run) related to this Agreement. Upon reasonable notice, Booster and/or its duly authorized representatives shall be given full access to, and shall have the right to inspect and audit, all such records and other materials related to this Agreement. Such records and other materials shall be available for inspection and audit (including photocopying) during reasonable business hours at any time during the term of this Agreement and for at least one (1) year following its termination or expiration. The Client will cooperate and will not cause or permit any interference with Booster and/or its representatives in the performance of their duties of inspection and audit. Except as set forth in paragraph (b) below, any such audit shall be performed at Booster's sole expense.
 - (b) Should an audit indicate an underpayment by the Client of any of the compensation to be paid to Booster hereunder, the Client shall be liable for the full amount of

any such underpayment, including interest at the highest rate allowable under applicable law. The Client shall submit any and all of the foregoing payments owed to Booster within thirty (30) days from the date of the conduct of the audit.

13. **Intellectual Property.**

(a) The Client hereby acknowledges and agrees that Booster's trademarks, label designs, product and service identification, artwork and other symbols associated with Booster's Services ("**Booster Marks**") are and shall remain Booster's property.

(b) The creative ideas, concepts (including the concept of the Boosterthon Fun Run as a fundraiser), slogans, art and printed material provided to the Client prior to the date hereof are the property of Booster and cannot be used, duplicated, copied or repeated without Booster's prior written consent.

(c) The Client shall not manufacture or sell, or license or procure the manufacture or sale of, any tee-shirts or other promotional or other merchandise which bears the Booster Marks except as otherwise consented to by Booster in writing.

(d) Booster shall own all right, title and interest in and to all intellectual property created by or on behalf of either Party in connection with this Agreement or the Boosterthon Fun Run, including, without limitation, all logos, names, ideas, concepts, creative materials, promotional materials, advertising, and graphics, including all copyrights and proprietary rights therein, and any inventions and discoveries first conceived or developed, whether or not protected by patent, trade secret or copyright. The distinctive colors, concepts, indicia and look displayed by Booster at the Boosterthon Fun Run and by Booster in its regular business operations and materials shall constitute Booster property and therefore be owned by Booster. The Client expressly acknowledges that the Parties have agreed that all copyrightable aspects of the Boosterthon Fun Run are to be considered "works made for hire" within the meaning of the Copyright Act of 1976, as amended (the "**Act**"), of which Booster is to be the "author" within the meaning of such Act. All such copyrightable works, as well as all copies of such works in whatever medium fixed or embodied, shall be owned exclusively by Booster as its creation, and the Client hereby expressly disclaims any interest in any of them. The Client expressly acknowledges that it is not a joint author and that all works created in connection with the Services hereunder are not joint works under the Act.

(e) Any and all rights of Booster, including those in and to the Boosterthon Fun Run, are reserved to Booster and may be exercised, marketed, licensed, exploited or disposed of by Booster with respect to any third parties concurrently with the term of this Agreement.

14. **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (a) delivered personally, (b) transmitted by guaranteed overnight delivery services, or (c) sent by certified mail, return receipt request, postage prepaid, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. All notices personally delivered or sent by overnight delivery service shall be deemed received on the date of delivery. All notices forwarded by mail shall be deemed received on the date of the return receipt.

Booster: Booster Enterprises, Inc.
1000 Mansell Exchange West, Suite 350
Alpharetta, GA 30022
Telephone: _____
Attn: _____

Client: white oaks Elem

a PTA

Street: 6130 Shiplett Blvd

City: Burke

State, Zip: VA 22015

Telephone: _____

Attn: _____

15. **Choice of Law/Venue.** This Agreement will be construed and enforced according to the laws of the State of Georgia, United States of America, without giving effect to any conflicts of law rule or principle that might require the application of the laws of another jurisdiction. The Client agrees that any action or proceedings arising out of this Agreement shall be brought and maintained in Georgia, and hereby consents to the jurisdiction of courts located in Georgia. Service of process in any such action or proceeding shall be deemed sufficient if mailed, first class, postage prepaid, to Booster or the Client at the respective address set forth above.

16. **Relationship of Parties.** Booster is an independent contractor and nothing herein shall be construed to make either Party the partner, employee, joint venture or agent of the other Party. Except as set forth in this Agreement, neither Party shall have the right or power to obligate or bind the other in any manner whatsoever. Except as expressly set forth otherwise herein, the Client shall not exercise direct supervision or control over Booster's day-to-day activities or over Booster's employees, agents or subcontractors. Each of Booster and the Client shall be solely responsible for its actions and the actions of its employees and agents. For the avoidance of doubt, neither Booster nor its employees, agents or subcontractors, including, without limitation, any temporary labor, shall be deemed the Client's employees, agents or subcontractors, and no such party or individual shall hold itself out as such. In no event shall the Client be responsible for providing any employee benefits to any such party or individual. Without limiting the generality of the foregoing, (a) the Client shall not withhold from any of the consideration hereunder, except when required by law, any amount for federal income taxes, social security, Medicare or any other legal deductions; and (b) the Client shall not make premium payments or contributions for any workers' compensation or unemployment compensation benefits for any employee or agent of Booster or its agents, payment of which shall be Booster's responsibility.

17. **Unavoidable Delay.** The Parties shall not be liable for failure to perform its complete obligations described in this Agreement, if such failure results from any act of God, inclement or

severe weather, flood, earthquake, terrorist attack, riot, war, civil unrest or other cause outside of a Party's control that prevents such Party from fulfilling its obligation as outlined in this agreement (a "**Force Majeure Event**"). If a Boosterthon Fun Run is not staged due to a Force Majeure Event, Booster shall be permitted to keep the Base Cost for the Boosterthon Fun Run, and no Party shall have further recourse against the other Party for fees or services with respect to such cancelled event. In the event that the Boosterthon Fun Run is cancelled due to a Force Majeure Event, Booster will work with the Client to schedule an alternative date for the Boosterthon Fun Run at a date that is mutually convenient for the Parties.

18. **Further Assurances.** The parties agree to take such action, and to produce or execute such other documents or agreements as may be necessary or desirable for the execution and implementation of this Agreement and the consummation of the transactions contemplated hereby.
19. **Jury Trial Waiver.** **BOOSTER AND THE CLIENT HEREBY WAIVE ANY AND ALL RIGHT TO ANY TRIAL BY JURY IN THE EVENT ANY DISPUTE, ACTION, DISAGREEMENT, DIFFERENCE, CONTROVERSY, CLAIM OR PROCEEDING (EACH, A "CLAIM") ARISES CONCERNING THIS AGREEMENT AND/OR THE BOOSTERTHON FUN RUN.** Any Claim arising out of or relating to this Agreement or the breach thereof shall be submitted to a meeting of the Parties. Representatives of the Parties shall meet within ten (10) days after one Party submits a notice to the other Party requesting such meeting. If the Claim is not settled within ten (10) days after the date of the aforesaid notice, any Party may cause the Claim to be submitted to and be determined by binding arbitration to be administered in accordance with the by the American Arbitration Association's ("**AAA**") commercial rules and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in Atlanta, Georgia, and conducted before a panel of three (3) neutral arbitrators selected from a panel supplied to the Parties by the AAA. The arbitration proceedings shall be conducted using the expedited procedures of the AAA.
20. **Severability.** If any provision of this Agreement, or part thereof, or the application of any provision, or part thereof, to any person, entity, or circumstance, is held invalid or unenforceable, the application of such provision, or part thereof, other than to the extent it is held invalid or unenforceable, shall remain in full force and effect. All other provisions in this Agreement shall remain in full force and effect.
21. **Entire Agreement/Amendment.** This Agreement, together with Exhibit A, constitutes the final, complete, and exclusive embodiment of the entire agreement and understanding between Booster and the Client and supersedes and preempts any prior or contemporaneous understandings, agreements, or representations by or between the parties, whether written or oral. Any amendment to this Agreement shall be set forth in writing, dated, and signed by both parties to this Agreement.
22. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement. Documents, including signatures, transmitted via facsimile or electronic transmission shall have the full force and effect of original documents.

(signatures on the following page)

IN WITNESS WHEREOF, this Agreement has been executed and delivered effective on the date first above written.

“Booster”

BOOSTER ENTERPRISES, INC.

By: DocuSigned by: Chris Magouyrk
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Name: Chris Magouyrk

Title: DC City Leader

“Client”

Name of Client: White Oaks Elem

a PTA

By: DocuSigned by: Erin Hackney
DE439E8776C9475...

Name: Erin Hackney

Title: PTA President

By: _____

Name: _____

Title: _____

Exhibit A

Boosterthon Fun Run Schedule

Event	Date(s)	Parties Involved
Initial Teacher Meeting	will be discussed at	preprogram meeting
Student Pep-Rally	2014-04-01	
Team Day 1	2014-04-02	
Team Day 2	2014-04-03	
Team Day 3	2014-04-04	
Team Day 4	2014-04-07	
Team Day 5	2014-04-08	
Team Day 6	2014-04-09	
Boosterthon Fun Run Event	2014-04-10	
Primary Collection	will be discussed at	preprogram meeting

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