

[Achieving Milestones, Inc., for Speech and Language Services]

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made this 23<sup>rd</sup> day of August, 2011, between the SCHOOL BOARD OF ST. LUCIE COUNTY, a district school board constituted as provided in Article IX, Section 4, of the Florida Constitution (“Board”), and Achieving Milestones, Inc., a Florida corporation (“Contractor”).

**WITNESSETH**

1. **PURPOSE.** The Board is the governing body of the School District of St. Lucie County, Florida, which District is in turn a unit of government of the State of Florida. The Contractor agrees to provide certain professional services to the Board through its employee, Michelle A. Smith, and the Board agrees to compensate the Contractor for such services.

2. **AGREEMENT.** The Board agrees to accept from the Contractor, and the Contractor agrees to provide to the Board, professional services subject to the following terms and conditions:

(a) The Contractor agrees to provide professional services to the Board as described in the attached Schedule. All services provided by the Contractor in accordance with this Agreement shall be performed by its employee(s) Michelle A. Smith, unless the Board agrees, in writing, to the Contractor's substitution of another individual to perform such services.

(b) The Board agrees to pay to the Contractor for professional services provided in accordance with this Agreement, and for expenses incurred in the provision of such services, as follows: speech language pathology services at the rate of \$57.00 per hour, not to exceed \$50,000.00 annually.

(c) All employees of the Contractor, and all other individuals acting by or on behalf of the Contractor, who will provide services under this Agreement that involve direct contact with students shall, prior to providing any such services, (i) file a complete set of fingerprints, (ii) submit to a drug screen, and (iii) receive clearance from the criminal background check and drug screening, all in the same manner as required of Board employees whose positions involve direct contact with students. Verification of compliance with these requirements shall be provided to the Contract Manager for the Board designated in paragraph 3 below.

3. **CONTRACT MANAGER.** The Contract Manager for the Board is Bill Tomlinson. The Contract Manager for the Contractor is Michelle A. Smith. The parties shall direct all matters arising in connection with the performance of this Agreement, other than notices, to the attention of the Contract Managers for attempted resolution or action. The Contract Managers shall be responsible for overall resolution, action, coordination, and oversight relating to the performance of this Agreement.

4. **TERM.** The term of this Agreement shall be from August 15, 2011, through and including June 30, 2012, unless renewed in accordance with paragraph 9 below, provided, however, and notwithstanding any other provision, this Agreement may be terminated by either party with or without cause upon 30 days written notice.

5. **CONSIDERATION.** The parties agree that the consideration for this Agreement shall be, for the Board, the professional services provided by the Contractor, and for the Contractor, the sums paid by the Board.

6. **PUBLIC RECORDS.** The Contractor shall allow public access to all documents, papers, letters, and other materials that are subject to the provisions of Ch. 119, Fla. Stat., and made or received by the Board in conjunction with this Agreement.

7. **CONTRACTOR RESPONSIBILITY.**

(a) The Contractor is an independent contractor and is not an employee or agent of the Board. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Board, on the one hand, and the Contractor and its employees, agents, or subcontractors, on the other, during or after the performance of this Agreement. The Contractor shall take the whole responsibility and shall bear all losses resulting to it on account of errors or omissions.

(b) The Contractor shall comply with all applicable provisions of safety laws, rules, ordinances, regulations, and orders of duly constituted public authorities and agencies exercising regulatory authority over it. The Contractor assumes all risk of loss, damage, and destruction to all of its materials, tools, appliances, property of every description, and that of its respective employees or agents or subcontractors and each of their respective employees or agents, and injury to or death of its employees or agents, subcontractors, or their respective employees or agents, including legal fees, court costs or other legal expenses, arising out of or in connection with the performance of this Agreement.

(b) Any and all personally identifiable records of a student are confidential, and the Contractor shall access such records in the course of providing professional services under this Agreement only if and to the extent the Contractor or the Contractor's employee has a legitimate educational interest in the information contained in such records. The Contractor shall implement operating practices and procedures that will (i) maintain the confidentiality and assure the physical security of all student records accessed and used in the course of providing professional services under this Agreement; (ii) prohibit the release or disclosure of such records to anyone except authorized Board personnel, (iii) prevent any unauthorized access to such records, and (iv) preclude the unauthorized use, release, or disclosure of the information contained in such records.

(c) The Contractor agrees forever to save and keep harmless and fully

indemnify the Board, its officers, employees, and agents of and from all losses, liabilities, damages, claims, actions, legal proceedings, settlements, judgments, recoveries, costs, and expense because of loss of, or damage to, property, or injury to or deaths of persons in any way arising out of or in connection with the performance of this Agreement and attributable to the negligence or other wrongful conduct of the Contractor or its employees, agents, or subcontractors, including but not limited to any loss or action resulting from the failure of the Contractor to comply with its obligations under this Agreement.

**8. INSURANCE.**

(a) **WORKERS' COMPENSATION:** Provider(s) shall procure and maintain, for the life of the contract/agreement, Statutory Workers Compensation coverage as required under Chapter 440 of Florida Statute, or provide a certificate of exemption from such requirement. Employers Liability should be included with limits of at least \$100,000 Each Accident, \$100,000 Each Disease/Employee and \$500,000 Each Disease/Maximum. A waiver of subrogation rights endorsement must be included.

(b) **COMMERCIAL GENERAL LIABILITY:** Provider(s) are advised to procure and maintain, for the life of the contract/agreement, Commercial General Liability Insurance. This policy should provide coverage for death, bodily injury, property damage and personal/advertising injury that could arise directly or indirectly from the performance of this agreement. It should be an occurrence form policy. The minimum limits of coverage should be \$1,000,000.00 per occurrence with no less than \$2,000,000 General Aggregate. A waiver of subrogation rights endorsement should be included.

(c) **BUSINESS AUTOMOBILE LIABILITY:** Provider(s) shall procure and maintain, for the life of the contract/agreement, Business Automobile Liability Insurance. The minimum limits of coverage shall be \$100,000 per person and \$300,000 per accident for Bodily Injury Liability, and \$100,000 per accident for Property Damage Liability.

(d) **ERRORS & OMISSIONS LIABILITY:** Provider(s) shall procure and maintain for the life of the contract/agreement, Errors & Omissions Liability Insurance, including coverage for corporal punishment and sexual misconduct. The minimum limit should be no less than \$1,000,000 per claim/\$1,000,000 Aggregate.

SCHOOL DISTRICT OF ST. LUCIE COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED FOR BOTH GENERAL LIABILITY AND AUTOMOBILE LIABILITY.

POLICIES SHOULD RESPOND AS PRIMARY.

**9. RENEWAL OR EXTENSION.** This Agreement may be renewed or extended for successive terms of one year each upon written agreement of the parties.

**10. NONDISCRIMINATION.** The Contractor covenants and agrees that it shall not discriminate against any employee or applicant for employment to be employed in the

performance of the Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, or disability (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin, or ancestry.

11. **AUDIT.** The Contractor agrees that until the expiration of three years after expenditure of funds under this Agreement, the Board and any of its duly authorized representatives shall have access to and the right to examine any and all directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement. The Contractor agrees that payments made under this Agreement shall be subject to reduction for amounts charged that are found on the basis of audit examination not to constitute allowable fees or costs. All required records shall be maintained until an audit is completed and all questions arising from such audit are resolved, or until three years after completion of all work under this Agreement.

12. **VERIFICATION OF EMPLOYMENT STATUS.** The Contractor agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control Act of 1986, of all persons it employs in the performance of this Agreement.

13. **ASSIGNMENT.** The Contractor shall not assign this Agreement to any other person or firm without first obtaining the Board's written approval.

14. **ATTORNEYS' FEES AND COSTS.** In the event either party defaults in the performance of any of the terms, covenants, and conditions of this Agreement, the defaulting party agrees to pay all damages and costs incurred by the other party, including reasonable attorneys' fees.

15. **NOTICES.** All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail, return receipt requested, and addressed as follows:

If to the Board:  
Bill Tomlinson, Asst. Superintendent  
Student Services and ESE  
4204 Okeechobee Road  
Ft. Pierce, FL 34947

With copies to:  
Vicki Jenkins, Director  
Exceptional Student Education

If to the Contractor:  
Michelle A. Smith, President  
Achieving Milestones, Inc.  
4253 SW Muncie Street  
Pt. St. Lucie, FL 34953

With copies to:

16. **INDULGENCE NOT WAIVER.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement, either at the time of the breach or failure occurs, or at any time throughout the term of this Agreement.

17. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements between the parties. This Agreement may only be amended by written document, properly authorized, executed, and delivered by both parties.

18. **INTERPRETATION; VENUE.** This Agreement shall be interpreted as a whole unit, and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court.

\* \* \*

**IN WITNESS WHEREOF**, the Board has subscribed and the Contractor has affixed its name and seal on the date first above-written.

ATTEST:

**SCHOOL BOARD OF ST. LUCIE  
COUNTY, FLORIDA**

\_\_\_\_\_  
MICHAEL J. LANNON, Superintendent  
and Ex Officio Secretary

By: \_\_\_\_\_  
KATHRYN HENSLEY, Chair

(Seal)

CONTRACTOR:

ATTEST:

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

Print Name \_\_\_\_\_

(Seal)

## **SCHEDULE OF PROFESSIONAL SERVICES**

Provision of Speech and Language services for identified students with disabilities, at the rate of \$57.00 per hour, not to exceed \$50,000.00 annually, during the 2011-2012 school year.