

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this 12th day of July, 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 Boca Speech Center, Inc., a for-profit, 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 employees Stephanie Askew, Melissa Diaz, Deborah Diwiecki, and Ashley Simons, 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 employees Stephanie Askew, Melissa Diaz, Deborah Diwiecki, and Ashley Simons, 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: \$63.00 per hour, not to exceed \$340,000.00 annually. Contractor shall render bi-monthly invoices to the Board and payment shall be due within thirty (30) days of invoice date. If provided in accordance with the Board’s payment schedule, Contractor will be paid twice per month.

The therapist(s) will present the school system with weekly time sheets, which are to be signed by the school principal, or his/her designee, at the school. These time sheets are used for billing purposes and payment is to be made for all hours signed off on by the authorized individual.

(c) The Contractor agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes. The Contractor, all employees of the Contractor, and all other individuals acting by or on behalf of the Contractor, who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of Board funds shall, prior to providing any services under this Agreement, (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. The parties agree that the failure of the Contractor to perform any of the duties described in this paragraph shall constitute a material breach of the Agreement, entitling the Board to terminate immediately with no further responsibilities or duties to perform under this Agreement. The Contractor agrees to indemnify and hold harmless the Board, its officers and employees from any liability in the form of physical or mental injury, death, or property damage resulting in the Contractor's failure to comply with the requirements of this paragraph.

(d) The Contractor agrees that each individual providing services to the Board in accordance with this Agreement shall meet all professional certification, licensing, and/or registration requirements applicable to the services provided by such individual ("Professional Requirements"). Prior to the term of this Agreement commencing as provided in paragraph 4 below, and not less than annually thereafter, the Contractor shall provide to the Board such documentation as the Contract Manager for the Board shall reasonably require demonstrating compliance with all Professional Requirements applicable to each such individual. If compliance with Professional Requirements is a prerequisite for or condition of the Board receiving funding or reimbursement for the services provided by such individual, then the Contractor shall refund to the Board any revenue lost, and shall hold the Board harmless from any loss or cost incurred, as a result of (i) any lapse in such Professional Requirements or (ii) any other error attributable to the action or inaction of the Contractor and subsequently identified in any audit conducted respecting funding received by the Board for such services.

3. **CONTRACT MANAGER.** The Contract Manager for the Board is Bill R. Tomlinson. The Contract Manager for the Contractor is Audrey B. Greenwald. 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 the date of execution by both parties 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.

8. **INSURANCE.** The Contractor shall maintain insurance, through the term of this Agreement, as follows:

(a) Commercial General Liability Insurance, including Contractual Liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage - any 1 fire	\$100,000
Medical expense - any 1 person	\$10,000

(b) Business Automobile Liability for any auto (all owned, hired, and non-owned autos) with a combined single limit of not less than \$1,000,000. In the event Contractor does not own any automobiles, the Board will accept proof of hired and non-owned Auto Liability only.

(c) Worker's Compensation Insurance with limits equal to Florida statutory requirements, or a certificate of exemption from such requirement. Employer's Liability must include limits of at least \$100,000 each accident, \$100,000 each disease/employee, \$500,000 each disease/maximum.

(d) Professional Liability (Errors & Omissions Liability) including coverage for corporal punishment and sexual misconduct, with limits of at least \$1,000,000 each claim and in the aggregate.

(e) Certificates of all insurance shall be provided to and approved by the Contract Manager for the Board prior to the term of this Agreement commencing as provided in paragraph 4 above. The Board shall be listed as an Additional Insured under both the General Liability and Auto Liability Insurance Policies. The policies must be specifically endorsed to grant the District the same notification rights that it provides to the first named insured as respects cancellation and nonrenewal. This endorsement must be attached to the certificate of insurance. A waiver of subrogation shall be provided under the General Liability, Auto Liability, and Worker's Compensation Insurance Policies. Coverage applies on a primary basis.

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.

(c) 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.

(d) 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.

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 R. Tomlinson, Asst. Superintendent
Student Services and ESE
School District of St. Lucie County
4204 Okeechobee Road
Fort Pierce, FL 34982

With copies to:

If to the Contractor:
Audrey B. Greenwald, Director
Boca Speech Center, Inc.
160 NW 4th Street
Boca Raton, FL 33432

With copies to:
Dr. Stuart N. Greenwald

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

(Seal)

By: _____
KATHRYN HENSLEY, Chair

CONTRACTOR:

ATTEST:
Print Name: _____
Secretary

(Seal)

By: _____
Print Name: _____
Title: _____

SCHEDULE OF PROFESSIONAL SERVICES

For the 2011 - 2012 school year:

Provision of speech language pathologist services for identified students
with disabilities, on an as-needed basis, at the hourly rate of \$63.00 per hour,
not to exceed \$340,000.00 annually.

*Contractor may not bill for, nor will Board pay for mileage, meals, or travel time.