

## CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT (this "Agreement") is made on August 31, 2018, (the "Effective Date"), by and between East Bay Innovation Academy (the "District"), located at 3400 Malcolm Ave., Oakland, CA and East Bay Speech Pathology, Inc., a California professional corporation (the "Contractor") located at 23 Altarinda Road, Suite #201, Orinda, CA 94536.

WHEREAS, the District is interested in receiving from Contractor, and Contractor is interested in furnishing to the District, speech therapy services, all upon the terms and condition set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the District and Contractor agree as follows:

1. *Services.* Contractor shall provide speech & language pathology and therapy services to students (i.e. consultation (including preparation time for each session), assessments, and reports) as requested by the District in writing from time to time (the "Services"). Contractor agrees that the Services will be furnished by professionals that are licensed with the California Speech-Language Pathology and Audiology Board. In addition, Contractor agrees to have any of its staff furnishing the Services to comply with any clearance requirements requested by the District, including any background checks, TB tests, health statements, verification of licensure, mandatory child abuse reporting statements, and IRS W-9 submissions.

2. *Fees; Invoicing.*

- (a) *Fees.* Agency shall pay to Contractor the following hourly rates for the Services: (a) \$136.50 per hour for Services furnished by a Licensed Speech & Language Pathologist; and (b) \$55.00 per hour for Services furnished by a Licensed Speech & Language Pathologist Assistant (with supervision to be provided by the Agency as its own expense).
  - a. As of August 1, 2018 Agency shall pay to Contractor the following hourly rates for the Services: (a) \$140.00 per hour for Services furnished by a Licensed Speech & Language Pathologist; and (b) \$56.00 per hour for Services furnished by a Licensed Speech & Language Pathologist Assistant; and (c) \$25.00 per hour for Services furnished by a licensed Speech Aide (with supervision to be provided by the Agency as its own expense).

The District acknowledges and agrees that the full hourly fees will still be charged and paid if a patient fails to attend a session scheduled with the Contractor. In such an event, the Contractor will use that allotted time to plan and prepare for future therapy sessions with that patient.

(b) *Invoicing.* Contractor shall submit invoices to the District on a monthly basis, which shall be paid by the District within thirty (30) days. If the District fails to pay any amount when due, then the unpaid balance shall be charged interest at one and one-half percent (1.5%) per month (or the greatest amount permitted by applicable law). In addition, the District agrees to pay all costs and expenses, including without limitation reasonable attorney's fees, incurred by the Contractor in collecting such unpaid invoices.

3. *Term and Termination.*

(a) This Agreement shall commence on the Effective Date and shall remain in effect until terminated by either party upon thirty (30) days written notice to the other party by certified mail.

(b) This Agreement may also be terminated immediately by either party if the other party is in breach of this Agreement and fails to correct such breach within five (5) days of written notice (by certified mail) of such breach. A breach giving rise to termination of this Agreement may include failure by the District to pay any amount due to Contractor hereunder, and may include Contractor not performing the Services in compliance with this Agreement or failure to perform such Services in conformity with the District's reasonable standards.

(c) Upon termination of this Agreement for any reason, each party shall be released from all obligations and liabilities to the other occurring or arising after the date of such termination, except as provided in Sections 5 and 6 hereof and except that any termination of this Agreement shall not relieve Contractor or the District from any liability arising from any breach of this Agreement.

4. *Relationship of Parties.*

(a) It is agreed that Contractor's services are made available to the District on the basis that Contractor is an independent contractor to the District and not an employee of the District. Contractor shall use its own discretion in performing the tasks assigned, subject to the general direction of the District and subject to the express condition that Contractor shall at all times comply with applicable law. Contractor shall supply all of the tools and materials required for performance of the Services.

(b) Contractor shall not be considered under the provisions of this Agreement or otherwise as having the status as an employee of the District, nor shall Contractor be entitled hereafter to participate in any plans, arrangements, or distributions by the District relating to any pension, deferred compensation, bonds, stock bonus, stock option, insurance, or other benefits extended to its employees since Contractor is performing services as an independent contractor. The District will not make deductions from its fees to Contractor for payroll taxes, insurance, bonds or any other similar deductions made for employees of the District.

5. *Maintenance of Records; HIPPA Compliance.*

(a) *Maintenance of Records.* Contractor shall prepare and maintain written records concerning the treatment of all patients referred to Contractor under this Agreement, including all sessions and progress notes, as necessary to comply with legal standards as established by good medical record management and practice. Contractor agrees to keep such records confidential, and will not disclose such records to any third parties without the written consent of the patient. However, the District retains the right to access and receive copies of such records, unless the applicable patient objects to such disclosure. Upon termination of this Agreement, Contractor agrees to return or destroy all such records and any protected health information (as defined under the HIPPA Rules) provided by the District, and shall comply with federal and state laws as they may be amended from time to time governing the maintenance or retention of protected health information.

(b) *HIPPA Compliance.* The parties acknowledge that federal regulations relating to the confidentiality of individually identifiable health information require certain covered entities to comply with the privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E (the "HIPPA Rules"). Contractor shall not use or disclose the protected health information as defined in the HIPAA Rules (the "PHI") of any patient treated by Contractor under this Agreement except as necessary to fulfill the purposes of this Agreement. Contractor is permitted to use and disclose PHI as necessary for the proper management and administration of Contractor or to carry out its responsibilities under this Agreement. However, Contractor shall in such case:

- (i) provide training to its staff regarding the confidentiality requirements in the HIPAA Rules and this Agreement;
- (ii) obtain reasonable assurances from the person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity;
- (iii) agree to notify the District of any occurrences of which it is aware that the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules; and
- (iv) ensure that all disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request may be disclosed.

6. Non-Interference with Business.

(a) During the term and for a period of one (1) year immediately following the termination of this Agreement, the District shall not interfere with the Contractor's business by either: (a) soliciting or inducing any employee or independent contractor of the Contractor placed with the District under this Agreement (the "Personnel") to terminate his/her employment or consulting agreement with the Contractor, or (b) hiring or engaging the services of any Personnel.

(b) In the event that the District employs or engages the services of any Personnel in violation of this Section 6, then the District shall pay to the Contractor a placement fee (the "Placement Fee") equal to the greater of: (i) \$75,000.00 or (ii) one year total salary and all other compensation to be earned by the Personnel during the first twelve (12) months of employment or engagement with the District. The Placement Fee shall be due and payable in full immediately upon the District's employment or engagement of any Personnel as an employee or independent contractor. Because the determination of damages resulting from the hiring or engagement of the other party's Personnel is impracticable and extremely difficult to fix in an actual amount, the Placement Fee described above is agreed on as compensation for the injury suffered by the Contractor arising from the District's breach of this section 6, and shall not be construed to be a penalty.

7. General Provisions.

(a) *Waiver.* No failure on the part of either party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or a future exercise thereof or the exercise of any other right or remedy granted hereby or by any related document or by law.

(b) *Miscellaneous.* This Agreement sets forth the entire agreement and understanding between the parties as to the Services and merges all prior discussions, agreements, and negotiations between them as to the Services. No change or supplement to this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each party. This Agreement shall be binding upon and accrue to the benefit of the successors and permitted assigns of the parties. The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement. This Agreement shall not be strictly construed against either party. This Agreement may be executed simultaneously in any number of counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same agreement. If any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, no other provision of this Agreement shall be affected thereby.

(c) *Notices.* Any notice required or permitted hereunder shall be given to the appropriate party at the address specified in this Agreement. Such notice shall be deemed given upon personal delivery to the appropriate address, two (2) business days after the date of mailing if sent by certified U.S. mail, or one (1) business day after the date of deposit with Federal Express or similar overnight courier. Any notice of termination pursuant to section 3 shall be delivered by certified mail.

(d) *Electronic Signatures.* Each party agrees that (i) any signed document transmitted by facsimile transmission or electronically (e.g. in .pdf format) (a "E-Document") shall be treated in all manner and respects as an original document, (ii) the signature of any party on such E-Document shall be considered an original for all purposes under this Agreement, (iii) any E-Document shall be considered to have the same binding and legal effect as an original document and (iv) at the request of any party hereto, any E-Document shall be re-executed by all of the parties hereto in its original form. Each party further agrees that they shall never raise the use of an E-Document as a defense and hereby forever waives such defense.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date(s) set forth below.

**DISTRICT:**

**CONTRACTOR:**

**East Bay Speech Pathology, Inc.**

By: \_\_\_\_\_  
[ ]  
[ ]

By: \_\_\_\_\_  
Laurie Amador  
Chief Executive Officer