

Deaf/Hard of Hearing Services Contract

2021-2023

This Agreement, is made and entered into by and between **Nova Academy** (hereinafter referred to as the "DISTRICT") and Jason Milano, Deaf / Hard of hearing consultant, (thereinafter referred to as the "CONTRACTOR")

RECITALS

Whereas, the DISTRICT desires to enter into an agreement with a qualified CONTRACTOR with expertise in providing Deaf/Hard of Hearing services and evaluation; **and**

Whereas, the CONTRACTOR is duly qualified and will provide the requested consulting services;

Whereas, the DISTRICT is willing to enter into an agreement with the CONTRACTOR to provide these services; **and**

Whereas, the CONTRACTOR understands and agrees that:

1. The CONTRACTOR will act as an independent contractor in the performance of all duties under this agreement;
2. The CONTRACTOR is not an agent, servant or employee of the DISTRICT and shall not make any such representations nor hold himself out as such;
3. The CONTRACTOR shall have no authority to bind the DISTRICT for the performance of any services or to otherwise obligate the DISTRICT, the CONTRACTOR's authority being specifically limited to the duties assigned to the CONTRACTOR under this Agreement;
4. The CONTRACTOR shall not be considered, under the provisions of this Agreement or otherwise, as having employee status, and accordingly, the CONTRACTOR shall be responsible for payment of all taxes, including federal, state and local taxes arising out of the CONTRACTOR's activities under this Agreement, including, but not limited to , federal and state income tax, FICA, unemployment insurance taxes, and any other taxes or business license fees as required;
5. The CONTRACTOR shall not accrue any continuing contract rights for the services performed to this Agreement;
6. The CONTRACTOR shall comply with all applicable School Board policies, procedures, rules and regulations that are relevant to the CONTRACTOR's provision of services under this Agreement.
7. Services provided are for students with a disability and whose Individual Education Program (IEP) contain documentation of the need for services. This service is unique to students identified as special education students. It is specifically designed instruction and not available to non-disabled students. The decision to provide this service was made by the IEP team. This service is provided at no cost to the parent. Facilities where this service is provided are of high quality.
8. The CONTRACTOR holds and will maintain the licensure required to perform services outlined in this contract.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and board members, its administrators, its employees, its officers, its attorneys, its insurers, agents, CONTRACTORS, and representatives other good and valuable consideration, it is agreed as follows:

ARTICLE I
SERVICES TO BE PROVIDED

Section 1. Provision of Services. The CONTRACTOR agrees to provide Deaf/Hard of Hearing services and evaluation as identified by the IEP team and documented in the student's IEP. Consultation services may include, but are not necessarily limited to, review of pertinent educational records of selected students; discussion and consultation with teaching staff, school administration and related service providers, and providing consultation and recommendations on appropriate goals and objectives, and working individually with students on educationally related issues.

Section 2. Agreement Term. This Agreement is in effect for the school year from August 15, 2021 to June 30, 2023 unless prematurely terminated as outlined in Article V below. This agreement may be renewed only in writing and signed by both parties.

Section 3. Warranties/Disclaimers. The CONTRACTOR has the required skill, experience, and qualifications to perform the Services, shall perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, and shall devote sufficient resources to ensure that the Services are performed in a timely and reliable manner. The CONTRACTOR shall also perform the Services in accordance with applicable law and warrants that the CONTRACTOR has all rights and title to the work product delivered under the Agreement and it does not infringe on the intellectual property of other parties.

Section 4. Monitoring/Review of Services. The Services provided by the CONTRACTOR pursuant to this Agreement will be determined exclusively by the DISTRICT. Contracts are reviewed every term. During this review period, the Director of Accounts or School Official will collect documentation of services provided, the dates thereof, costs of service and remaining balance on the contract. If incongruencies between the contract and work performed occur, the Director of Accounts or School Official will alert the discrepancy to the Principal. The Agreement will remain in effect for the 2021-2023 school year/s but may be terminated by either party upon written notice to the other; however, any termination shall not be effective less than Thirty (30 days) following said notice.

ARTICLE II
INSURANCE AND OTHER BENEFITS

Section 1. Insurance. During the term of this Agreement, it is specifically agreed and understood that the CONTRACTOR shall not be eligible for nor provided insurance coverage of any kind from the DISTRICT, including, but not limited to, health, medical, dental, life, and long-term disability. CONTRACTOR is solely responsible for obtaining or providing such insurance coverage to CONTRACTOR and CONTRACTOR's employees, as applicable.

Section 2. Other Benefits. It is specifically agreed and understood that the CONTRACTOR shall not be eligible for nor provided any other DISTRICT-provided benefits, including, but not limited to, working compensation and unemployment benefits. CONTRACTOR is solely responsible for obtaining or providing such benefits to CONTRACTOR and CONTRACTOR's employees, as applicable.

Section 3. Liability Insurance. Contractor will provide and maintain, during the life of this agreement, insurance coverage.

- * Private Educators Professional Liability Insurance
- * Professional Liability Insurance with limits of \$250,000 each occurrence, \$500,000 aggregate.
- * Contractor must provide the District with 30-day notice of cancellation, non-renewal or material change to coverage.
- * CONTRACTOR is not required to provide a performance bond pursuant to Minn. Stat. 574.26.

ARTICLE III
COMPENSATION

Section 1. Compensation/Fees. The CONTRACTOR shall provide the agreed to services at a rate of \$ 95.00 per hour, with a minimum of one hour per scheduled or site visit, in addition to the time for communications needed to fulfill the service for the D/ HH student. The per hour rate shall be prorated to full quarter-hour increments. Travel/Prep time of 0.25 hours will be added to each school visit; travel time is calculated from the offices of CONTRACTOR to the school. Ten additional hours for Evaluations and IEPs will be available to the DISTRICT at the DISTRICT'S request at a rate of \$ 95.00 per hour. Total maximum threshold of expenditure is \$ 15,000 . If this maximum is reached without written agreement from both parties, the CONTRACTOR does so at its own risk and expense (**Per Calendar Year**).

DIRECTOR has the authority to sign legally binding contracts up to \$15,000 . Contracts beyond \$ 15,000 must be approved by DISTRICT Board Chair.

The CONTRACTOR services to be provided will be determined solely by the DISTRICT. The CONTRACTOR will not provide any services above and beyond those services specifically requested by the DISTRICT. The DISTRICT agrees to notify the CONTRACTOR of canceled sessions/meetings no less than 24 business hours. Furthermore, the CONTRACTOR agrees that during the term of this Agreement, the CONTRACTOR will not accept monetary payment or other remuneration from any entity or individual other than the DISTRICT for providing consulting services to a student or child currently enrolled or receiving education services or funding from the DISTRICT, unless specifically permitted by the DISTRICT. It is the responsibility of the CONTRACTOR to submit an invoice for payment, within 30 days of services provided. The DISTRICT shall **pay all invoices within 30 DAYS** of receipt of invoice. Payment shall be paid through **direct deposit** or **mailed** to:

Jason Milano
7229 3rd Ave South
Minneapolis, MN 55423

ARTICLE IV
INDEMNIFICATION

Section 1. The DISTRICT Indemnification. Except to the extent that such liability is caused by the negligence or tortious act or omission of CONTRACTOR or its agents, contractors or employees, the DISTRICT agrees to defend, indemnify, and hold harmless the CONTRACTOR, its members, managers, governors, contractors, representatives, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from the following:

- (i) any willful, negligent or tortious act or omission of the DISTRICT, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the delivery of education services, and
- (ii) against all loss by reason of the failure of the DISTRICT or its employees to adhere to applicable state and federal law. In no

Section 2. The CONTRACTOR Indemnification. Except to the extent that such liability is caused by the negligence or tortious act or omission of the DISTRICT or its agents, contractors or employees, CONTRACTOR agrees to defend, indemnify, and hold harmless the DISTRICT, its members, managers, governors, contractors, representatives, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from the following:

- (i) any willful, negligent or tortious act or omission of CONTRACTOR, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the delivery of education services, and
- (ii) against all loss by reason of the failure of the CONTRACTOR or its employees to adhere to applicable state and federal law.

Section 3. Duty to Notify. The indemnified party shall promptly notify the indemnifying party of any claim, action, cause of action or litigation brought against the indemnified party, its employees, officers, agents or sub-schools, which arises out of the services contained in this Agreement. The indemnified party shall also notify the indemnifying party whenever the indemnified party has a reasonable basis for believing that the indemnified party and/or its employees, officers, agents or sub-school, and/or the indemnifying party might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Agreement.

Section 4. Failure to provide the notices required by this section is a material violation of the terms and conditions of this Agreement.

ARTICLE V
GENERAL

Section 1. Data. The CONTRACTOR agrees that any information and data received by the CONTRACTOR during the term of this Agreement shall be treated and maintained by the CONTRACTOR in accordance with all applicable federal, state and local laws, rules and regulations governing same, including, but not limited to, the provision of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. The CONTRACTOR also agrees to comply with all of the provisions and requirements of DISTRICT's data privacy policies. Any data or materials, including, but not limited to, reports, studies, photographs, negatives, or any and all other documents prepared by the CONTRACTOR in the performance of the CONTRACTOR's obligations under this Agreement shall be the exclusive property of the DISTRICT, and any such data and materials shall be remitted to the DISTRICT by the CONTRACTOR upon completion or termination of the Agreement.

Section 2. Non-discrimination.

CONTRACTOR is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, familial status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. CONTRACTOR must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, CONTRACTOR shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, DISTRICT certifies that it complies with all applicable federal and state laws as well as DISTRICT policies related to non-discrimination, equal employment opportunity, and affirmative action.

Section 3. Dispute Resolution. Either party may terminate this Agreement, with or without cause, with Thirty (30) days written notice to the other Party. In the event of such termination, CONTRACTOR shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by the District in its sole discretion, for work or services satisfactorily performed. In no event shall CONTRACTOR be paid for work performed or costs incurred after the expiration of the 30-day notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided. The DISTRICT may terminate this Contract in whole or in part for *cause* upon thirty (30) days written notice if the CONTRACTOR fails to comply with any material term or condition of this Contract. If a dispute arises, the parties will meet to resolve the dispute at the offices of The DISTRICT or a mutually agreed upon neutral location. If the Parties to do meet a resolution within a period of Sixty (60) days, then, upon notice by either party to the other, all disputes, claims and questions or disagreements shall be finally settled by mediation.

This Agreement and any rights, remedies or obligations provided for in this Agreement, shall be construed and enforced in accordance with the laws of the State of Minnesota and venue at the county the DISTRICT is located in.

Section 4. Notices. Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing and shall be sent registered or certified mail to the authorized representative of the Party. Notices to The CONTRACTOR shall be sent to: Jason Milano, 7229 3rd Avenue South; Minneapolis, MN 55423. Notices to the DISTRICT shall be sent to: the Executive Director at Nova Academy

Section 5. Waiver. Either party's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed as a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the agreement.

Section 6. Severability. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions, or parts.

Section 7. Force Majeure. Neither party shall be held responsible for any delay or failure in performance of any part of this agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other part in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding thirty (30) days from the date the other party receives notice under this paragraph, the non-affected party will have the right without any liability to the other party, to terminate this agreement.

Section 8. Counterparts. This agreement may be executed in counterparts, and each executed counterpart shall have the same force and effect as the original instrument as if all the Parties to the counterparts had signed the same instrument. The Parties also agree that facsimile, portable document format ("PDF"), scanned, and/or electronic signatures shall have the same effect as manually signed originals and shall be effective upon transmission.

Section 9. Entire Agreement. The agreement is the entire agreement between the DISTRICT and the CONTRACTOR and it supersedes all prior written or oral agreements. There are no covenants, promises, undertakings, or understandings outside of this Agreement other than those as specifically set forth. Any term, condition, prior course of dealing, course of performance, usage of trade, understanding, or agreement purporting to modify, vary, supplement, or explain any provision of this Agreement is null and void and of no effect unless in writing and signed by representatives of both parties authorized to amend this Agreement.

Section 10. Assignment. The CONTRACTOR may not assign its rights and obligations under this Agreement without written consent of the DISTRICT.

Section 11. Representations. The parties represent that entering into this Agreement does not create a conflict of interest or breach any of the parties' existing agreements. The parties further understand and agree that, by entering into this Agreement, they are not entering into a partnership or joint venture with one another.

Section 12. Special Education Provisions. The Services provided are specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability or related services in order for a child with a disability to benefit from specially designed instruction.

WHEREFORE, THIS Agreement was entered into on the date set forth below and undersigned, by execution hereof, represent that they are authorized to enter into this Agreement on behalf of the respective parties and state that this Agreement has been read by them and that the undersigned understand and fully agree to each, all and every provision hereof, and hereby acknowledge receipt of a copy hereof.

Jason Milano

Deaf/Hard of Hearing Consultant Name (Printed)

05/20/2021

Date

Jason Milano

Deaf/Hard of Hearing Consultant Signature

District Representative Name/Title (Printed)

Date

District Representative Signature