



Physical Education Annual Contract 2020/2021

This agreement made between Mountain View Whisman School District having a principal place of business at 1400 Montecito Ave., Mountain View, CA 94043 hereinafter referred to as the "Client" and Rhythm and Moves, Inc., an independent contractor, having a principal place of business at 2179 Harbor Bay Parkway, Alameda, CA 94502, hereinafter referred to as the "contractor".

It is hereby agreed:

1) Term of Contract. This agreement will become effective beginning August 17, 2020 and will continue until June 4, 2021 unless this contract is sooner terminated as herein provided.

2) Services to be performed by Contractor. Contractor agrees to provide a Physical Education Program which includes the equipment, teacher, curriculum, and supervision of the program. The program will be for 240 singles per week. The classes will be on the property of the client. Contractor will assure that all teachers assigned to work at MVWSD schools have been fingerprinted and backgrounds checked with the Department of Justice and deemed, by the contractor, to be cleared to work with children; and have had a clear Tuberculous test within four (4) years. These documents shall be provided to the client before the first day of work at any MVWSD school.

Contractor recognizes with the COVID-19 pandemic, the client may be subject to shelter-in-place orders issued by various governmental agencies including, but not limited to, the State of California, and/or local Counties. Should a shelter-in-place order be in effect or subsequently issued by a governmental agency during the Term of the Contract which would necessitate distance learning at the Client's school(s), Contractor will provide distance learning content for its physical education and/or music education programs at a discounted rate while the shelter-in-place order is in effect at the Client's school(s). The Fees for Services for live classroom distance learning content through platforms (e.g. Zoom and Google Hangouts) will be discounted by 25% and the Fees for Services for interactive standard based content through a shared video link distance learning (e.g. Flip Grid) will be discounted by 45% for the period in which the shelter-in-place order is in effect. Contractor will generate monthly installment invoices for any discounted Fees for Services.

3) Fees for Services. Contractor shall be entitled to the following fees for its services. \$835,200.00 for the contract, which shall be paid in 10 monthly installments of \$83,520.00 each. These payments are due on the 15th day of each month, August through May. There will be a 5% late charge for payments received after the 20th of each month.

4) Independent Contractor. Contractor will act as an independent contractor. Therefore the Client will pay no employer costs. (I.e. worker's compensation, employer taxes, or benefits)

5) Termination upon Notice. This agreement can be terminated by either party giving 30-day notice. If the agreement is terminated as provided for herein then the Contractor shall be paid on a pro rata basis for all work performed through the date that such termination becomes effective.

6) Direct Employment of Employees of Rhythm and Moves, Inc. Client acknowledges that Contractor has recruited, trained and supervised Contractor's employees and that Contractor's employees will be providing educational services at Client's school site(s). Client further acknowledges that the recruitment, training and supervision of Contractor's employees are costly and time-consuming to Contractor. Should Client directly or indirectly employ or otherwise retain the services of any employee of Contractor who has worked at Client's school site(s) during the term of this contract or within 12 months of the termination of this contract in a position which is the same or substantially similar to those services provided by Contractor in this agreement, Client shall pay Contractor a finder's fee in the amount of \$30,000.00. Client further acknowledges that the finder's fee amount accurately reflects the reasonable value of Contractor's time and costs. Client will be billed separately for the finder's fee and payment will be due within 60 days.

7) Liability Insurance/Hold Harmless. Contractor agrees to maintain a policy of insurance in the minimum amount of \$1,000,000 to cover any negligent acts committed by Contractor or Contractor's employees or agents during the performance of any duties under this agreement, and shall name Client as an additional named insured on said policy. A certificate is on file with the District office.

8) Time is of the Essence. Time is of the essence in this agreement.

9) Assignment. Neither this agreement, nor any duties or obligations under this agreement, may be assigned without the prior written consent of the Client.

10) Notices. Any notice under this agreement shall be sufficient if written and delivered personally or by first class mail to the addresses listed at the beginning of this agreement.

11) Attorney's Fees. If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the party may be entitled.

12) Entire Agreement of the Parties. This agreement contains the entire agreement of the parties and supersedes any and all prior agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for Client. Any modifications of this agreement will be effective only if it is in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this agreement.



Contractor

5/14/20
Date

Client (Principal)

Date