

DESERT SANDS UNIFIED SCHOOL DISTRICT

INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES

This Independent Contractor Agreement for Professional Services ("Agreement") is made as of March 15, 2022, between the Desert Sands Unified School District ("District") and Nickerson-Rossi Dance ("Contractor") (together, "Parties").

**WHEREAS**, the District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required;

**WHEREAS**, the District is authorized by Section 20111 of the California Public Contract Code to contract with and employ any persons for the furnishing of non-construction services, if the contract amount is no greater than the annually adjusted statutory limit, which is \$96,700; and

**WHEREAS**, the District is in need of such services and advice; and

**WHEREAS**, the Contractor warrants that it is specially trained, licensed, and experienced and competent to perform the services required by the District;

**WHEREAS**, the Contractor agrees to perform the Services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Services:** The Contractor shall furnish to the District the following services **[OR]** the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"):

Nickerson-Rossi Dance is being brought in to mentor students in the Professional Dance Pathway by setting in a series of choreographic works in various styles to enhance the technique, artistry and overall skills sets of students in preparation for their Dance Showcase on May 14, 2022. Four different choreographers will be coming for a series of three weeks from March 16 to April 8 and will also be coming in to rehearse with the students 1-2 times a week during April. Each choreographer has worked in a different style, giving students versatile exposure with various artists.

2. **Term:** Contractor shall commence providing services under this Agreement on March 16, 2022, and will diligently perform as required or requested by District as applicable. The term for these services shall expire April 30, 2022. This Agreement may be extended upon mutual approval of both parties on an annual basis to the extent permissible under applicable law.
3. **Submittal of Documents:** The Contractor shall not commence the work under this Contract until the Contractor has submitted and the District has approved, the signed agreement, received the endorsement(s) of insurance, W-9 (if new vendor), and Board of Education approval, as required.
4. **Compensation:** District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement the rate of \$ 3500, per flat rate. The rate shall not be increased by Contractor over the course of this Agreement unless set forth in a duly executed written amendment to this Agreement. Total payment by District to contractor shall not exceed \$ 3500.
5. **Expenses:** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, except as follows:

5.1 NA

6. **Independent Contractor:** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees.

7. **Materials:** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

7.1 N/A

8. **Post-Retirement Employment:**

**Earning Limitation for STRS Retirees.** The post-retirement earnings limitation for STRS retirees performing creditable service, shall be in accordance with the California Education Code Section 2119.5. Compensation in excess of the limitation will result in reduction in the retirement allowance by the amount of compensation that exceeds the earnings limitation.

The CONSULTANT shall hold the District harmless of any loss of retirement income due to the change in his/hers exemption status as determined by CalSTRS.

**Hour Limitation for CalPERS Retirees.** For CalPERS retirees the total hours worked during the fiscal year shall not exceed 960 hours. Hours worked in excess can result in mandatory reinstatement from retirement.

It is the sole obligation of the CONSULTANT to ensure that the total sum of the hours worked or amount earned does not exceed the allowable amounts.

9. **Standard of Care:** Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.

10. **Originality of Services:** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.

11. **Copyright/Trademark/Patent:** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

12. **Audit:** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents. For a period of three years after final payment under the contract, all contracts involving the expenditure of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be

confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the contract.

13. **Termination:** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party; however, the parties may agree in writing to a shorter time period for the effectiveness of such termination. The District's Board of Education shall have the authority to terminate this Agreement on behalf of the District. Notwithstanding the foregoing, District may terminate this Agreement effective immediately and at any time by giving written notice to Contractor, if Contractor materially breaches any of the terms of this Agreement, Contractor or the Contractor Parties commits any act or omission that exposes District to potential liability or may cause an increase in District's insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency. Such termination shall be effective immediately upon Contractor's receipt of said notice.

14. **Fingerprinting/Criminal Background Investigation Certification:** Contractor, and the Contractor Parties, shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

A. ☒ Contractor and/or the Contractor Parties shall have no contact with District students at any time during the Term of this Agreement or the Contractor and/or Contractor Parties will have contact with District students only when under the observation of a District employee.

B. ☐ The following Contractor/Contractor Parties will have contact with District students during the term of this Agreement while not under the observation of a District employee:

\_\_\_\_\_  
\_\_\_\_\_. (List names or attach additional pages, as needed.)

C. ☐ (Required only if Box 14.B is checked.) All of the Contractor Parties noted above, at no cost to District, have completed background checks and have been fingerprinted under procedures established by the California Department of Justice and the Federal Bureau of Investigation, and the results of those background checks and fingerprints reveal that none of these Contractor Parties have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

Contractor further agrees and acknowledges that if at any time during the Term of this Agreement Contractor learns or becomes aware of additional information, including additional personnel, which differs in any way from the representations set forth above, Contractor shall immediately notify the District's Assistant Superintendent of Human Resources and prohibit any new personnel from having any contact with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any such contact is permissible. The Parties further understand and agree that the District's Superintendent may, at any time, provide written notice withdrawing consent to any of Contractor's employees performing services under this Agreement when, in the reasonable discretion of the Superintendent, it is inappropriate for Contractor's employee to continue providing services under this Agreement owing to criminal convictions or other misconduct or other factors deemed relevant by the District's Superintendent.

15. **Tuberculosis Certification:** Contractor and the Contractor Parties shall at all times comply with the tuberculosis ("TB") certification requirements as set forth below. Specifically, by checking the applicable boxes below, Contractor hereby represents and warrants to the District the following:

A. ☐ Contractor and/or Contractor Parties will not be present on a District school site and will not have contact with District students during the term of this Agreement.

B. ☒ Contractor and/or Contractor Parties shall or may be on a District school site and have contact with District students during the term of this Agreement and, at no cost to the District, they have completed a TB risk assessment questionnaire and/or received a TB test, as applicable, that complies with the requirements of

California Education Code section 49406.

Contractor shall maintain on file either a completed TB risk assessment questionnaire and/or the certificates showing that the Contractor Parties was examined and found free from active TB, as applicable, in satisfaction of California Education Code section 49406. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement are subject to the TB risk assessment questionnaire and/or TB certification requirements, as applicable, in satisfaction of California Education Code section 49406 and shall be prohibited from having any contact with District students until the TB risk assessment questionnaire and/or TB certification requirements have been satisfied and District determines whether any such contact is permissible.

16. **Labor Code:** Contractor shall comply with all applicable provisions of the Labor Code, Section §1720-1861, AB 1506 and the District's Labor Compliance Program, State of California (prevailing wages). Approved wage scales are on the internet at [www.dir.ca.gov](http://www.dir.ca.gov).
17. **Indemnification:** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and *all* demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.
18. **Insurance:** CONSULTANT shall maintain in force at all times during the performance of this Agreement, the following insurance policies evidencing coverage during the entire term of the Agreement. **All insurance policies shall name and be endorsed to name, the Desert Sands Unified School District as additional insured for the purpose of this contract.**
  - 18.1 **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance, with minimum limits of one million dollars (\$1,000,000.00) for each occurrence for bodily injury, death, loss or property damage, and General Aggregate, with minimum limits of two million dollars (\$2,000,000.00) for each occurrence, for services, products and any and all other activities undertaken by the CONTRACTOR in the performance of this Agreement. The Commercial General Liability Insurance policy shall contain an endorsement naming the Desert Sands Unified School District, as an additional insured.
  - 18.2 **Automobile Liability.** Automobile Liability Insurance with minimum limits of one million dollars (\$1,000,000.00) for each occurrence.
  - 18.3 **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance for the CONTRACTOR's employees or agents as required by the State of California (**Sole Proprietor's excluded**). (Labor Code 3700).
  - 18.4 **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.
  - 18.5 **Employer's Liability.** Employer's Liability Insurance with minimum limits of one million (\$1,000,000.00).
  - 18.6 **Cyber Liability Insurance.** Five Million Dollars (\$5,000,000.00) in Cyber Liability Insurance to cover Security, Privacy, Business Interruption, Cyber Extortion, and Denial of Service. Vendor shall indemnify, defend and hold District harmless from all claims, liabilities, damages or judgements involving a third party, including District's costs and attorney's fees, which arise as a result of the Vendor's negligent acts or omissions related to such unauthorized disclosures or misuse District Data, including Pupil Records, or Vendor's breach of any terms of the Agreement or this Amendment, excluding those claims, liabilities, damages, or judgments arising from the sole active negligence or willful misconduct of District. (if applicable).

*\*May be waived or limits decreased/increased as approved by Assistant Superintendent or their designee.*

19. **Assignment:** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
20. **Compliance with Laws:** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.
21. **Permits/Licenses:** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
22. **Safety and Security:** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
23. **Employment with Public Agency:** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
24. **Anti-Discrimination:** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
25. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors:** The District may evaluate the Contractor in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 25.1 Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
- 25.2 Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).
26. **Limitation of District Liability:** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
27. **Disputes:** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop Work.
28. **Confidentiality:** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

29. **Force Majeure:** May be invoked by either party, due to any act or event that prevents or delays the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Force Majeure includes but is not limited to: (i) acts of God and other natural phenomena, such as storms, extraordinary seasonal conditions, tornados, hurricanes, floods, lightning, landslides, and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omission of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage or vandalism, epidemic, pandemic, terrorist acts, or rebellion; (iv) any industry or trade-wide national labor dispute or strike or any other strike or labor dispute not directed solely at a contractor or vendor; (v) any Utility power outage at the Premises; (vi) a reasonably unanticipated action, delay or failure to act by a Governmental Authority, including a moratorium on any activities related to this Agreement.
30. **Conflict of Interest:** The CONSULTANT covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract.
31. **Attorney Fees:** If any legal action is taken to enforce the terms of this Agreement, each party shall bear its own legal expenses related to such action.
32. **Notice:** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:
- |   |   |
|---|---|
| <p><b><u>District</u></b><br/>Desert Sands Unified School District<br/>47-950 Dune Palms Road<br/>La Quinta, CA 92253<br/>ATTN: Sylvia Ambriz</p> | <p><b><u>Contractor</u></b><br/>Nickerson-Rossi Dance<br/>611 South Palm Canyon Drive, Unit #10-12<br/>Palm Springs, CA 92264<br/>Attn: Michael Nickerson-Rossi</p> |
|---|---|
33. **Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
34. **California Law:** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California County in which the District's administration offices are located.
35. **Waiver:** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
36. **Severability:** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
37. **Incorporation of Recitals and Exhibits:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Desert Sands Unified School District

Date: \_\_\_\_\_

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

Print Name: Jordan Aquino

Title: Assistant Superintendent, Business Services

Contractor: Nickerson-Rossi Dance

Date: 2.22.22

By: Michael Nickerson-Rossi

Print Name: Michael Nickerson-Rossi

Title: Executive Director

Information regarding Contractor:

Contractor: Nickerson-Rossi Dance

License No.: 20025175

Address: 611 S Palm Canyon Dr, Unit  
Palm Springs, CA 92264

Telephone: 760 992 6075

Facsimile: \_\_\_\_\_

E-Mail: info@nickersonrossidance.c

Type of Business Entity:

☐ Individual

☒ Sole Proprietorship

☐ Partnership

☐ Limited Partnership

☐ Corporation, State:

☐ Limited Liability Company

☐ Other: \_\_\_\_\_

\*Section 18 INSURANCE has been waived, decreased, or increased by the District as follows: (Initial subject section)

General Liability Insurance: \_\_\_\_\_

Automobile Liability Insurance: CA state liability limits

Workers' Compensation & Employer's Liability Insurance: sole proprietor

Professional Liability Insurance: N/A

Cyber Insurance: N/A

Felina Waymak  
District Signature

Director, RMC Management  
District Title

**EXHIBIT A**  
**Scope of Services**