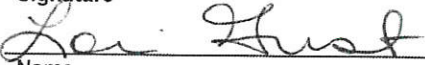


**SAN JOSÉ UNIFIED SCHOOL DISTRICT  
SERVICE AGREEMENT OVER \$25,000**

<b>Budget Clearing Form</b> (To be completed by School/Department)	
<b>CONTRACTOR FULL NAME</b> Rhythm & Moves, Inc.	
<b>DBA (DOING BUSINESS AS)</b>	
<b>SSN or TAX ID NO.</b>	<b>BUSINESS LICENSE NO.</b>
<b>DESCRIPTION OF SERVICE:</b> Music Education program onsite at Booksin Elementary School for grades TK-5 for 15 hours per week for school year 2018-2019, plus performances showcasing students' growth and development.	
<b>CONTRACT TERM FROM</b> September 17, 2018	<b>TO</b> June 6, 2019
<b>BUDGET NO.</b> 061-345-000-9223-0-100-5810-1110-1000	<b>AMOUNT</b> \$50,250.00
<b>BOARD DATE</b> 9/13/18	<b>REQUISITION NO.</b>
<b>SCHOOL/DEPARTMENT</b> Booksin Elementary School	
<b>PREPARED BY:</b> Cindy Urenda _____ <b>Name</b> School Secretary _____ <b>Position</b> 408-535--6213, ext. 24100 _____ <b>Phone Number</b>	<b>AUTHORIZED BY (BUDGET CONTROL ADMINISTRATOR):</b> Loretta Gustafson _____ <b>Signature</b>  _____ <b>Name</b> Principal _____ <b>Position</b>

**SAN JOSÉ UNIFIED SCHOOL DISTRICT  
SERVICE AGREEMENT OVER \$25,000**

This Service Agreement ("Agreement") is made this 14 day of August, 2018, between San José Unified School District ("District"), and Rhythm and Moves Inc ("Contractor"), a/an (Please choose one)

☐ Individual ☐ Partnership ☒ Corporation ☐ LLP ☐ LLC ☐ Other (Please specify): \_\_\_\_\_.

1. **SERVICES.** Contractor shall perform the following services ("Services"): (If a separate scope of services or proposal generated by the District or the Contractor is available, attach exhibit(s) and reference it here. Please do not attach a separate contract.)

Music Education program onsite at Booksin Elementary School for grades TK-5 for 15 hours per week for school year 2018-2019, plus performances showcasing students' growth and development.

2. **LOCATION.** Work will be performed at the following: (e.g., District-wide or specific District sites - a list of sites may also be attached and referenced here) Booksin Elementary School

3. **COMPENSATION.** District agrees to pay Contractor for Services as follows (check and complete one of the following):

- ☐ At the rate of \$ \_\_\_\_\_ per \_\_\_\_\_, with the total amount not to exceed \$ \_\_\_\_\_.
- ☐ In an amount not to exceed \$ \_\_\_\_\_, invoiced to the District in increments as Services are actually completed.
- ☒ In 10 installments of \$5025.00 each, for a total amount not to exceed \$50,250.00.

Payment shall be made for all undisputed amounts within thirty (30) days after the Contractor submits a detailed invoice to the District's Accounts Payable Department.

4. **TERM/TERMINATION** The term of this Agreement shall commence on 9/17/18 and shall continue through 6/6/19. The District may terminate this Agreement immediately for any reason at any time, by giving written notice to the Contractor. Such written notice shall be sufficient to stop further performance of services by Contractor. In the event of termination prior to the end of the term of this Agreement, Contractor shall invoice the District for any work performed and documented expenses incurred prior and up to the date of termination, and shall promptly return any District property or records, and any copies thereof, in its possession to the District. Termination shall not affect the rights and obligations of the Parties arising prior to the effective date of termination.
5. **INSURANCE.** Contractor shall be responsible for any damage, loss or other claim arising out of the performance of its services under this Agreement. Contractor shall carry the insurance indicated below throughout the term of this Agreement. The certificate of liability insurance must have San Jose Unified School District, 855 Lenzen Avenue, San Jose, CA 95126, as the Certificate Holder and as additional insured.

Commercial General Liability Insurance	Each Occurrence	\$2,000,000
	General Aggregate	\$4,000,000
Automobile Liability Insurance	Each Occurrence – Commercial vehicles	\$1,000,000
	Injury/one death – Personal vehicles	\$15,000
	Injury/multiple death	\$30,000
	Property damage	\$5,000
Professional Liability	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Abuse and Molestation Liability	Each Occurrence	\$1,000,000
	General Aggregate	\$1,000,000
Workers' Compensation		Statutory limits
Employer's Liability	Each Occurrence	\$1,000,000



**SAN JOSÉ UNIFIED SCHOOL DISTRICT  
SERVICE AGREEMENT OVER \$25,000**

**Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

**Subcontractors**

Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, and any other insurance required of Contractor under this Agreement, in a company or companies lawfully authorized to do business in California as admitted carriers, in like amounts and scope of coverage as that required of Contractor hereunder.

6. **TAXES; INDEPENDENT CONTRACTOR STATUS.** District shall not withhold or set aside income tax, Federal Insurance Contributions Act Tax, Unemployment Insurance, Disability Insurance, or any other Federal or State funds whatsoever. It shall be the sole responsibility of the Contractor to account for all of the above and Contractor agrees to hold District harmless from all liability for these taxes. While engaged in carrying out the Services Contractor is and shall be an Independent Contractor, and not an Officer, Employee, Agent, Partner, or joint venture of the District.
7. **COMPLIANCE WITH APPLICABLE LAW.** In performing services under this Agreement, Contractor shall comply with all applicable law, including but not limited to Education Code Sections 45125.1 and 49406. Contractor must complete and sign the Contractor Certification attached as Exhibit A. It shall be the sole responsibility of Contractor to obtain any needed business licenses, certificates, permits to conduct business to meet the terms of this Agreement.
8. **WORK PRODUCT.** District is the owner of and entitled to exclusive possession of all records, documents, graphs, photographic or other reproductions of any kind ("Work Product") produced as part of or resulting from this Agreement, and all rights in such Work Product, and no uses thereof except in Contractor's performance of the Services will be permitted except by express written permission of the District. Contractor acknowledges that this Agreement and its work hereunder, including the Work Product, may be subject to disclosure to the public. With respect to records in the District's or Contractor's possession that may be protected from disclosure by applicable law, Contractor agrees to abide by such law.
9. **INDEMNIFICATION.** Contractor shall defend, indemnify, and hold harmless the District and its agents, employees, Board of Education, and members of the Board of Education, from and against claims, damages, losses, and expenses (including, but not limited to attorney's fees and costs including fees of consultants) arising out of or resulting from performance of this Agreement including, but not limited to, the Contractor's use of the sites listed herein; the Contractor's completion of its duties under this Agreement; injury to or death of persons or damage to property or delay or damage to the District, its agents, employees, Board of Education, members of the Board of Education, for any act, omission, negligence, or willful misconduct of the Contractor or its respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or District described in this paragraph.
10. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the Pupil Records Rider for Digital Records Storage or Digital Educational Software contract requirements (Education Code §49073.1, "Pupil Records").
11. **ENTIRE AGREEMENT; AMENDMENT.** This constitutes the entire Agreement between the District and Contractor supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. This Agreement may only be amended in writing executed by both parties and approved by the District's Board of Education. This Agreement consists of:
- 11.1 Service Agreement
  - 11.2 Exhibit A – Contractor Certification
  - 11.3 Pupil Records Rider for Digital Educational Software Contracts. Required ☒ YES ☐ NO  
(Refer to Section 10; Statement of Compliance)
12. **NO ASSIGNMENT.** This Agreement may not be assigned by the Contractor, nor any part of the services hereunder subcontracted, without the express written permission of the District.

**SAN JOSÉ UNIFIED SCHOOL DISTRICT  
SERVICE AGREEMENT OVER \$25,000**

13. **SEVERABILITY.** In the event that any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, no other provision of this Agreement will be affected by such holding, and all of the remaining provisions of this Agreement will continue in full force and effect, unless to do so would invalidate the intent of the parties in entering into this Agreement.

14. **INFORMATION REGARDING CONTRACTOR**

Contact Name:	<u>Claire Loud</u>	Email Address:	<u>cloud@rhythmandmoves.com</u>
Address:	<u>2179 Harbor Bay Parkway, Alameda, CA 94502</u>		
Telephone:	<u>(510) 521-2505</u>	Facsimile:	<u>(510) 521-0471</u>

15. **GOVERNING LAW; VENUE.** This Agreement shall be governed under the laws of the State of California. Any action to enforce the terms of this Agreement shall be brought in the appropriate court having jurisdiction over matters arising in Santa Clara County, California.

16. **ATTORNEY'S FEES.** If any action at law or equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which such party may be entitled.

17. **BOARD APPROVAL REQUIRED.** This Agreement shall not be a valid and binding obligation of the District, and Contractor shall not be entitled to payment for services rendered, unless and until executed by both parties and approved by the District's Board of Education.

18. Executed by the parties at San José, California, on the day and year indicated below.

San José Unified School District

Contractor

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

Date: 8/14/18

Signature: \_\_\_\_\_

Signature: [Signature]

Print Name: FLORENCE ENG

Print Name: Claire Loud

Title: Director, Business Support Services

Title: CEO

\*Federal Code of Regulations sections 3041 and 3209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payor. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires Contractor's federal tax identification number or Social Security number, whichever is applicable.



PURCHASING & CONTRACT MANAGEMENT  
855 Lenzen Avenue, San Jose, CA 95128  
(408) 535-6141  
Rev 1.12.2018

SAN JOSÉ UNIFIED SCHOOL DISTRICT  
SERVICE AGREEMENT OVER \$25,000

"EXHIBIT A"  
CONTRACTOR CERTIFICATION

**Fingerprint and Background Certification**

Business entities entering into a Service Agreement with the District shall comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations.

One of the two boxes below must be checked, with the corresponding certification provided, and this form attached to the Service Agreement:

- ☒ I, Claire Loud, am (an authorized representative of/doing business as) Rhythm and Moves, Inc., (Name of Contractor) and hereby certify that Contractor have Conducted the required criminal background check(s) of all persons who will be providing services to the San José Unified School District on behalf of this business District, and that none of those persons have been reported by the Department of Justice ("DOJ") as having been convicted of a serious or violent felony as specified in Penal Code Sections 667.5 and/or 1192.7(c). I understand that this Certificate is not to be signed and submitted until I have received clearance from DOJ regarding those persons named. I have also attached hereto and incorporated herein is a list of the names of the employees of the undersigned who will be providing services to San José Unified School District and who may come in contact with pupils. I agree to keep this list current and to notify San José Unified School District of any additions/deletions as they occur.

Signature C. Loud Date 8/14/18

- ☐ Arrange to have a District employee whom the DOJ has ascertained has not been convicted of a violent or serious felony, continually monitor and supervise the Contractor.

District Representative's Name & Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of the Contractor and the Subcontractor(s) under this agreement are not listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Signature C. Loud Date 8/14/18

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

- ☐ 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.
- ☒ The following 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 District, they have received a tuberculosis test that complies with the requirements of California Education Code Section 49406.

Contractor shall maintain on file the certificates showing that the Contractor Parties were examined and found free from active tuberculosis. 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 tuberculosis certification requirements and shall be prohibited from having any contact with District students until the tuberculosis certification requirements have been satisfied and District determines whether any such contact is permissible.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature C. Loud Date 8/14/18



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Rev 1.12.2018



**SAN JOSE UNIFIED SCHOOL DISTRICT  
PUPIL RECORDS RIDER FOR  
DIGITAL RECORDS STORAGE AND/OR  
DIGITAL EDUCATIONAL SOFTWARE CONTRACTS**

San Jose Unified School District ("District") and RHYTHM AND MOVES, INC. ("Contractor") have entered into that certain Service Agreement ("Contract") as of April 20, 2018 for the 2018/2019 school year. The Contract includes the digital storage, management and retrieval of pupil records and/or digital educational software through which Contractor accesses, stores and uses pupil records. This Pupil Records Rider ("Rider"), executed by the District and Contractor as of April 22, 2018 is intended to supplement and amend the terms of the Contract, as set forth below. This Rider concerns pupil records, as that term is defined by Education Code section 49073.1 ("Pupil Records") and/or covered information, which means personally identifiable information or materials as defined by Business and Professions Code section 22584 ("Covered Information").

1. Pupil Records Property of District. All Pupil Records are and will continue to be the property of and under the control of the District. The parties agree that as between them, all rights, including all intellectual property rights in and to Pupil Records shall remain the exclusive property of the District, and Contractor has a limited, nonexclusive license to such Pupil Records. The Contract and Rider do not give Contractor any rights, implied or otherwise, to Pupil Records, District content, or intellectual property, except as expressly stated in the Contract and this Rider.
2. Pupil-Generated Content. Notwithstanding the provisions of section 1, pupils shall retain ownership and control of pupil-generated content, if any (as that term is defined by Education Code section 49073.1(d)(4)). Contractor shall make all pupil-generated content, if any, available to the pupil who created it and provide a process by which a pupil can transfer his or her pupil-generated content to a personal account. Within thirty (30) days of the execution of this Rider, Contractor shall provide the District with a written description of the process it will provide to pupils in compliance with this section 2.
3. Use of Information in Pupil Records. Contractor may not and will not use any Pupil Record or information in a Pupil Record for any purpose other than those required or specifically permitted by the Contract and this Rider.
4. Personally Identifiable Information. Contractor shall provide a process by which a pupil's parent, legal guardian, or the eligible pupil can review personally identifiable information in the pupil's records and correct erroneous information. Within thirty (30) days of the execution of this Rider, Contractor shall provide the District with a written description of the process it will provide to pupils and their parents/legal guardians in compliance with this section 4.
5. Security and Confidentiality of Pupil Records. Contractor will access, store and use Pupil Records in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type. Without limiting the foregoing, Contractor

warrants that all Pupil Records will be encrypted in transmission via web interface using SSL (Secure Socket Layer) (including via web interface) and stored at no less than 128-bit level encryption.

In addition, Contractor will use industry-standards and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under the Contract and/or this Rider.

Contractor will designate employees or agents it holds and will hold primarily responsible for meeting the Contractor's duties to securely maintain and protect Pupil Records. Contractor will ensure that the designated persons have or will receive all training and information necessary to meet the Contractor's duties to securely protect and maintain Pupil Records. The designation of employees or agents required under this section does not relieve the Contractor of any of its duties under the law or the Contract and/or this Rider, nor relieve the Contractor of any liability for any breach thereof.

6. Unauthorized Disclosure. Immediately upon becoming aware of an unauthorized disclosure of Pupil Records, or of circumstances that could have resulted in unauthorized access to or disclosure or use of Pupil Records, Contractor will notify the District, fully investigate the incident, and cooperate fully with the District's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to parents, legal guardians, or pupils whose personally identifiable information was involved, to regulatory agencies, or to other entities, without prior written permission from the District. District may, by written request, direct Contractor to provide notice of the incident directly to parents, legal guardians or pupils whose personally identifiable information was involved, or to regulatory agencies or other entities.

7. Retention of Pupil Records. The Contractor hereby certifies that Pupil Records shall not be retained or available to the Contractor, including any subcontractors, partners, or associated entities of the Contractor, upon completion of the terms of the Contractor and this Rider. Notwithstanding the foregoing, Contractor may maintain pupil-generated content (as that term is defined by Education Code section 49073.1(d)(4)), if any, upon completion of the term of the Contract and this Rider if, and only if, the parent, legal guardian, or eligible pupil chooses to establish or maintain an account with the Contractor for the purpose of storing the pupil-generated content and the Contractor receives the written permission of a pupil's parent or legal guardian to establish or maintain the pupil's account.

In furtherance of the foregoing, upon termination or expiration of the Contract and this Rider, Contractor will ensure that all Pupil Records are securely returned or destroyed as directed by the District. Transfer to the District or a third party designated by the District shall occur within a reasonable period of time, and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the District or its transferee, and to the extent technologically feasible, that the District will have reasonable access to Pupil Records during the transition. In the event that the District requests destruction of any Pupil Records, Contractor agrees to securely destroy all Pupil Records in its possession and in the possession of any subcontractors or agents to which

the Contractor might have transferred Pupil Records. The Contractor agrees to provide documentation of data destruction to the District.

8. Family Educational Rights and Privacy Act. Contractor agrees to assist District in maintaining the privacy of Pupil Records as may be required by State and Federal law, including but not limited to the Protection of Pupil Rights Amendment (PPRA), the Children's Online Privacy Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and the Student Online Personal Information Protection Act (SOPIPA).

Contractor will provide access to Pupil Records, including deidentified information, only to its employees and subcontractors who need to access the data to fulfill Contractor obligations under the Contract and/or this Rider. Contractor will ensure that employees and subcontractors who perform work under the Contract and/or this Rider have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Rider. Contractor will use the education records only for the purpose of fulfilling its duties under the Contract and/or this Rider for District's and its pupils' benefit, and will not share such data with or disclose it to any third party except as provided for in this Rider, required by law, or authorized in writing by the District.

If Contractor will have access to "education records" for the District's pupils as defined under FERPA, Contractor acknowledges that, for the purposes of the Contract and/or this Rider, it will be designated as a "school official" with "legitimate educational interests" in the District education records, as those terms have been defined under FERPA and its implementing regulations, and the Contractor agrees to abide by the FERPA limitations and requirements imposed on school officials. Contractor will use the education records only for the purpose of fulfilling its duties under the Contract and/or this Rider for District's and its pupils' benefit, and will not share such data with or disclose it to any third party except as provided for in this Rider, required by law, or authorized in writing by the District.

9. No Targeted Advertising. Contractor will not use Pupil Records for advertising or marketing purposes unless such use is specifically authorized by this Contract or otherwise authorized in writing by the District. Contractor will not use Pupil Records to engage in targeted advertising. Contractor is prohibited from mining Pupil Records for any purposes other than those agreed to by the parties.

10. Covered Information. To the extent Contractor is an operator of an Internet Web site, online service, online application, or mobile application, with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes, Contractor agrees to comply with all of the requirements of Business and Professions Code section 22584. Contractor agrees not to engage in targeted advertising as described in section 22584. Contractor agrees not to use information, including persistent unique identifiers, created or gathered by the Contractor's site, service, or application, to amass a profile about a student except in furtherance of District's purposes. Contractor further agrees to that it will not sell, disclose, or otherwise use Covered Information without the prior written consent of the District. Contractor will implement and maintain reasonable security



procedures to protect Covered Information and fulfill all other requirements of Business and Professions Code section 22584.

11. Compliance with Law. In the event of a conflict between this Rider and the Contract, the terms of this Rider shall govern. This Rider is intended to comply with Education Code section 49073.1 and Business and Professions Code section 22584. In addition to any other penalties, if the Contract and this Rider, taken together, fail to comply with Education Code section 49073.1 and Business and Professions Code section 22584, the Contract shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the Contract. All parties subject to a Contract voided in accordance with this paragraph and Education Code section 49073.1 or Business and Professions Code section 22584 shall return all Pupil Records and Covered Information in their possession to the District. The term of this Rider is coextensive with the term of the Contract.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Rider, in duplicate, as of the day and year first above written.

RHYTHM AND MOVES, INC.

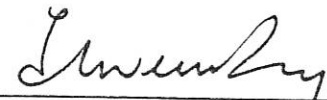
Signature: 

Name: CLAIRE CLOUD

Title: C.E.O.

Date: 4/30/2018.

SAN JOSE UNIFIED SCHOOL DISTRICT

Signature: 

Name: Florence Eng

Title: Director, Business Support Services

Date: 6/15/2018