



FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

RFP NO. NC- 2024-06
MUSIC INSTRUCTION

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The following documents and each addendum or document as FCSS may issue prior to the award of the Contract are a part of this Request for Proposals (“**RFP**”) and shall constitute the “**RFP Packet**”:

1. RFP Document A: Notice of Request for Proposals
2. RFP Document B: Instructions to Respondents
3. “**RFP Response Forms**” shall mean the following, each referred to as a “**RFP Response Form**”:
 - 3.1 RFP Document C-1: Proposal Form
 - 3.2 RFP Document C-2: Non-Collusion Affidavit
 - 3.3 RFP Document C-3: Anti-Lobbying Certificate
4. RFP Document D: Proposal Evaluation Sheet
5. RFP Document E: Expanded Learning Program Agreement (“**Contract**”)

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NOTICE OF REQUEST FOR PROPOSALS

RFP DOCUMENT A

RFP NO. NC- 2024-06

MUSIC INSTRUCTION

Contact Person: Helena Silva

Executive Director, Safe and Healthy Kids Department

1111 Van Ness Ave. Fresno, CA 93721

Email: hsilva@fcoe.org

NOTICE IS HEREBY GIVEN that FCSS requests proposals from interested respondents, in accordance with this Notice of Requests for Proposals and other documents that are part of this RFP ("**RFP Packet**"), for providing music instruction. The particular requirements are in the RFP Packet and the Contract. Minority businesses, women's business enterprises, and labor surplus area firms are encouraged to submit proposals. Before the award of the Contract, FCSS reserves the right to cancel this Request for Proposals ("**RFP**"), change any dates stated below, or modify any provisions of the RFP Packet, including the Contract.

1. **RFP PACKET.** The **RFP Packet, including the Contract, is available starting on the Publication Start Date stated below** and may be obtained by contacting the Contact Person listed above or from FCSS' website at <http://www.fcoe.org>.
2. **PRE-SUBMITTAL CONFERENCE.** An **optional pre-submittal conference** to acquaint prospective respondents with the RFP Packet and applicable requirements will be held at **10:00 a.m. on 04/29/2024 via Zoom**. Vendors who wish to attend the conference must email hsilva@fcoe.org at least 24 hours before the conference for meeting instructions. Whether or not a respondent attends the conference, which may include dissemination of additional information, the respondent shall be deemed to have notice of all information disseminated at the conference.
3. **QUESTIONS.** Questions regarding the RFP Packet and/or applicable requirements shall be submitted in writing to, and received by, the Contact Person at the above email **before 3:00 p.m. on 05/03/2024**.
4. **SUBMITTAL AND CONSIDERATION.** All responses to this RFP shall be submitted **before 3:00 p.m., based on the clock designated by FCSS, on 05/24/2024 ("Submittal Deadline")** via email to hsilva@fcoe.org. Vendors are solely responsible for confirming timely receipt of the Proposal. Responses that are timely received will be considered by FCSS. FCSS reserves the right to request additional information and conduct one or more interviews of those respondents selected by FCSS.
5. **CONTRACT AWARD.** The Contract will be paid, in part or in whole, with federal funds and is subject to applicable federal and state laws, regulations, and requirements. The Contract will be awarded based on the Method of Contract Award in the Proposal Evaluation Sheet. FCSS anticipates awarding the Contract before **07/01/2024**. The Contract will be for an initial period of 3 years.

INSTRUCTIONS TO RESPONDENTS
RFP DOCUMENT B

FCSS seeks proposals to this RFP in accordance with this RFP Packet. These Instructions to Respondents shall apply to this RFP and all proposals in response to this RFP. Terms used in these Instructions to Respondents shall have the meaning set forth in this RFP Packet.

1. **DESCRIPTION OF GOODS/SERVICES.** FCSS seeks proposals for music instruction for students and/or families participating in expanded learning programs through various mediums. Respondents shall identify all proposed services using the Proposal Form included in this RFP Packet, itemized by service at a rate calculated per student, per day, per session. The selected respondent shall provide all labor, materials, supplies, equipment, and transportation necessary to perform the services required of the respondent to be included in the rate calculation. The services shall be performed at various Expanded Learning Programs throughout Fresno County, both on school campus and/or virtually.
2. **RFP PACKET.** FCSS issues this RFP Packet to invite interested respondents to submit proposals to provide the above-listed goods/services. FCSS' issuance of this RFP Packet is not an offer and no contract will result from a respondent's submittal of a RFP Response unless and until the Contract is entered into and executed with the selected respondent in accordance with these Instructions to Respondents and the Contract.
 - 2.1 **EXAMINATION.** Before submitting a RFP Response, each respondent shall carefully review and examine this RFP Packet, including the Contract. If a respondent desires to modify any terms or conditions of the Contract, the respondent shall make and submit the proposed modifications to FCSS in accordance with Paragraph 4.2.2 below.
 - 2.2 **ADDENDA OR DOCUMENTS.** Any addenda or other documents issued by FCSS during the time of this RFP shall be made a part of this RFP Packet.
3. **RESPONDENT QUALIFICATIONS AND EXPERIENCE.** FCSS shall have the sole and exclusive right to determine whether a respondent has the qualifications and experience to provide the goods/services required by this RFP. FCSS shall consider each respondent's qualification and experience based on the evaluation factors set forth in the Proposal Evaluation Sheet.
4. **RFP RESPONSES.** To receive consideration, a RFP Response shall be made in accordance with this Notice of Request for Proposals and other documents in this RFP Packet, and the following instructions:
 - 4.1 **SUBMISSION.**
 - 4.1.1 **SUBMITTAL.** All RFP Responses shall be delivered via email to hsilva@fcoe.org. The respondent is responsible for ensuring that FCSS actually receives the respondent's RFP Response in accordance with the Submittal Deadline. Any RFP Response that, for any reason, FCSS does not actually receive in accordance with the Submittal Deadline shall not be opened or considered.
 - 4.1.2 **SINGLE SUBMISSION.** A respondent may submit only one RFP Response in response to this RFP.
 - 4.2 **RFP RESPONSE FORMS, FORMAT, AND CONTENT.**
 - 4.2.1 **RFP RESPONSE FORMS.** Each RFP Response shall be made using the RFP Response Forms provided by FCSS in this RFP Packet. FCSS will not consider any response that is not made on the RFP Response Forms. The RFP Response Forms shall be completed in accordance with these Instructions to Respondents and the instructions on each RFP Response Form.

- 4.2.2 **AGREEMENT FORM.** The Contract shall include the Contract, the form of which is attached to this RFP Packet. **Any respondent that desires to make any changes to the Contract form shall do so using a method to track changes and submit the proposed Agreement to FCSS at the same time as the respondent submits its RFP Response. After the Submittal Deadline, FCSS will not receive or consider from any respondent any exception, change, or reservation to the Contract form.**
- 4.2.3 **RESPONSES TO EVALUATION FACTORS.** Each respondent shall prepare and submit to FCSS written responses to the evaluation factors set forth in the Proposal Evaluation Sheet. If a response to an evaluation factor is missing, 0 points will be assigned to that evaluation factor. **The responses to the evaluation factors shall be no more than 10 pages, which shall include within such pages any cover, attachments, and exhibits.**
- 4.3 **EXCEPTIONS, CHANGE, OR RESERVATION.** Except as stated with respect to the Contract form in 4.2.2 above, FCSS will not consider any RFP Response where there is any exception, change, or reservation to any terms or conditions of this RFP Packet or any RFP Response Form.
- 4.4 **INTERVIEW.** FCSS, at its discretion, may conduct one or more interviews of those respondents selected by FCSS. Upon notice from FCSS of any interview, the applicable respondent shall cooperate with FCSS to schedule and hold the interview(s). A respondent's refusal or failure to participate in an interview as requested by FCSS shall be deemed a withdrawal by the respondent of its RFP Response and the respondent's RFP Response will not be considered.
- 4.5 **REFERENCES.** FCSS may request from any or all respondents references of other persons or agencies with which a respondent has provided goods/services similar to those required by this RFP and contact such persons or agencies to verify, clarify, or obtain additional information. Upon FCSS' request, the applicable respondent shall provide the list of references to FCSS within three business days of FCSS' request unless FCSS and the respondent agrees to a different timeline. A respondent's refusal or failure to provide the references as requested by FCSS shall be deemed a withdrawal by the respondent of its RFP Response and the respondent's RFP Response will not be considered.
- 4.6 **ADDITIONAL DOCUMENTATION AND INFORMATION.** At FCSS' request, the applicable respondent shall submit such additional information as FCSS may request in order to evaluate the respondent's response to this RFP. If requested by FCSS, a respondent shall promptly submit to FCSS any requested additional information or documentation. A respondent's refusal or failure to provide the requested additional information or document to FCSS, within three business days of FCSS' request or such other timeline as may be agreed to between FCSS and the respondent, shall be deemed a withdrawal by the respondent of its RFP Response and the respondent's RFP Response will not be considered.
- 4.7 **WITHDRAWAL OF RFP RESPONSE.** A respondent may withdraw its RFP Response by notifying FCSS, in writing, of such withdrawal before the Submittal Deadline. A respondent shall be deemed to have withdrawn its RFP Response pursuant to the provisions in 4.4, 4.5, and 4.6 above. After the Submittal Deadline and except as provided in 4.4, 4.5, or 4.6, a selected respondent shall not be relieved of its RFP Response unless by FCSS' written consent or as required by applicable laws.
- 5. EVALUATION OF RFP RESPONSES.** FCSS will review and evaluate all RFP Responses that FCSS receives in accordance with the Submittal Deadline.

- 5.1 EVALUATION AND EVALUATION FACTORS. FCSS shall evaluate each RFP Response based on the information provided in the RFP Response, information that FCSS receives from any interview(s) of the respondent or from reference(s), and such other information as FCSS may obtain from other sources. In conducting the evaluation, FCSS shall use the evaluation factors set forth in the Proposal Evaluation Sheet.
- 5.1.1 LINE-ITEMS. Proposers may submit pricing for any one or more of the line-items included on the Proposal Form. Proposers may submit additional line-items on the Proposal Form for FCSS' consideration.
- 5.1.2 AWARD. Award of the Contract shall be made on an individual line-item basis to the RFP Response most advantageous to FCSS for that item. FCSS reserves the right to reject one or more of the line-items, at its sole discretion.
- 5.2 REJECTION AND IRREGULARITY. FCSS reserves all rights to reject any or all responses, to contract for goods/services with whomever and in whatever manner, to cancel or abandon this RFP entirely, and/or to waive any informality or irregularity of any RFP Responses.

6. AWARD AND EXECUTION OF CONTRACT.

- 6.1 AWARD OF CONTRACT. FCSS shall notify the selected respondent and inform all other respondents regarding the award of the Contract. The Contract shall be awarded based on the Method of Contract Award stated in the Proposal Evaluation Sheet. FCSS shall have no obligation or liability to the selected respondent until the Contract has been executed by FCSS and the selected respondent.
- 6.2 EXECUTION OF CONTRACT. If a respondent is selected by FCSS, the respondent shall negotiate in good faith with FCSS regarding any modifications to the Contract form that that the respondent timely submitted to FCSS in accordance with 4.2.2 above. Upon agreement on the modifications and the Contract, the selected respondent shall execute the Contract and submit all documents required of the selected respondent within 10 days of the notice of award.
- 6.3 AWARD TO ANOTHER RESPONDENT. If FCSS and the selected respondent are not able to agree on the Contract or the selected respondent does not execute the Contract in accordance with 6.2 above, FCSS, without any obligation or liability to the selected respondent, may terminate negotiation with the selected respondent and commence negotiation with the second respondent selected by FCSS. If FCSS and the second selected respondent, after negotiating in good faith, is not able to agree on the Contract or the second selected respondent does not execute the Contract in accordance with 6.2 above, FCSS, without any obligation or liability to the second selected respondent, may commence negotiation with the third respondent that FCSS selects. Upon agreement on the terms and conditions of the Contract, the selected respondent shall execute the Contract and submit all documents required of the selected respondent within 10 days of FCSS' notice of award.
- 6.4 AWARD OF OVERFLOW CONTRACT. FCSS may, without any obligation, award a Contract to the second respondent (or subsequent respondent if negotiations are terminated with the selected respondent in accordance with 6.3 above) to provide overflow goods/services to the extent the selected respondent is unable to meet all the demands of FCSS as part of the selected respondent's Contract ("Overflow Contract"). FCSS, without any obligation or liability to the second respondent, may commence negotiations over the terms and conditions of the Overflow Contract consistent with 6.2 above.

- 6.5 **CANCEL AWARD OF CONTRACT.** FCSS reserves the right, without any obligation or liability, to cancel the award of the Contract at any time before the full execution of the Contract between FCSS and the selected respondent.
7. **COMPENSATION.** The amount that FCSS shall pay to the selected respondent for performance of the Contract shall be as set forth in the Contract that is entered into and fully executed by FCSS and the selected respondent.
8. **ECONOMIC PRICE ADJUSTMENT.** All pricing included in the proposal shall be fixed for the first year of the Contract. Following the first year, the selected respondent may request a price increase based upon percentage increase in the annual Consumer Price Index (C.P.I.), not to exceed five percent (5%).
9. **SUBCONTRACTS AND ASSIGNMENT.** Except as permitted by the Contract, the selected respondent shall not subcontract with or assign to any other entities or persons the respondent's obligations to provide the goods/services required by the Contract.
10. **PUBLIC RECORDS.** This RFP Packet and any addenda thereto, all RFP Responses and any other documents submitted by respondents, and other documents relating to this RFP and the information contained therein are subject to the California Public Records Act and other applicable federal and state laws and requirements.
11. **COMPLIANCE WITH LAW.** All respondents shall be required to comply with all applicable laws. Further, all respondents understand that the Contract is being funded through a federal grant, and agree to comply with applicable Federal law, including but not limited to, Equal Employment Opportunity, Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements (37 CFR Part 401), Clean Air and Federal Water Pollution Acts, Debarment and Suspension, Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), Surveillance Equipment Restrictions (2 CFR Section 200.216), Domestic Preferences (2 CFR Section 200.322), Procurement of Recovered Materials (2 CFR Section 200.323), Small and Minority Business Preferences (2 CFR Section 200.321), Federal Occupational Safety and Health Act (34 CFR 75.609), and Energy Conservation Compliance (34 CFR 75.616).
12. **QUESTIONS/ADDENDA.** Questions regarding documents, discrepancies, omissions, or doubt as to meanings related to this RFP must be submitted in accordance with the deadline for questions stated in the Notice of Request for Proposals. If a respondent discovers any ambiguity, conflict, discrepancy, omission, or error in this RFP Packet, the respondent shall immediately notify FCSS in writing of the problem. If a respondent knows of or should have known of an ambiguity, conflict, discrepancy, omission, or error and does not notify FCSS of it, the respondent shall respond to this RFP at its own risk and, if the respondent is awarded the Contract, the respondent shall not be entitled to additional compensation by reason of such matter. FCSS shall provide responses and clarifications to questions through written addenda.

PROPOSAL FORM
RFP DOCUMENT C-1

From:

Name of Respondent: _____

Contact Person: _____ Title _____

Address: _____

Phone: _____ Email: _____

Dear Fresno County Superintendent of Schools (“**FCSS**”):

The above-named respondent hereby proposes and agrees, in accordance with the Contract, to provide to FCSS music instruction. If FCSS awards the Contract to respondent at any time before this RFP is withdrawn, the respondent hereby agrees to, and shall execute and deliver, the Contract in accordance with the Instructions to Respondents. Respondent designates the above contact person and address as its office to which FCSS may deliver any notice that is required or permitted by this RFP.

Respondent shall complete the information requested on this Proposal Form and the other RFP Response Forms listed below and submit them to FCSS in accordance with the Instructions to Respondents and other RFP Documents. Failure to so complete and submit shall render the RFP response non-responsive.

PROPOSAL PRICE. Respondent proposes the Proposal Price stated below:

Line Item #, Description	Price per student, per day, per session
1. Guitar	\$
2. Piano	\$
3. Woodwinds	\$
4. Brass	\$
5. Percussion	\$
6. String Instruments	\$
7. Marimba	\$
8. Drums	\$
9.	\$
10.	\$
11.	\$
12.	\$

All applicable taxes shall be included in the Proposal Price. FCSS will pay only the sales and use taxes required by the State of California. Federal excise taxes are not applicable to FCSS because it is a public agency.

ADDENDA. Addenda and other documents issued by FCSS are included in this RFP and are a part of the Contract. Respondent acknowledges receipt of the following addenda:

Addendum No. ___	Date _____	Addendum No. ___	Date _____
Addendum No. ___	Date _____	Addendum No. ___	Date _____
Addendum No. ___	Date _____	Addendum No. ___	Date _____

DEBARMENT AND SUSPENSION: Bidder hereby certifies that it and its principals: (a) are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; (b) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity; and (d) have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

RFP RESPONSE DOCUMENTS SUBMITTED. The above-listed respondent submits the following documents (collectively “RFP Response” or “RFP Response Documents,” separately “RFP Response Document” *(must mark and submit all of the documents)*):

- __1. Proposal Form (RFP Document C-1)
- __2. Non-Collusion Affidavit (RFP Document C-2)
- __3. Anti-Lobbying Certificate (RFP Document C-3)
- __4. Responses to Evaluation Factors

The undersigned declares under penalty of perjury under the laws of the State of California and signs on behalf of the above-named respondent that the representations made in this Proposal Form and other RFP Response Documents are true and correct.

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____
Title: _____
Date: _____

NOTE: This Proposal Form must state the respondent’s full legal name and business address. If respondent is a partnership, this Proposal Form must be signed in the partnership’s name and by a general partner authorized to bind the partnership, with the name and title of the person signing typed or printed below the signature. If respondent is a corporation, this Proposal Form must be signed in the corporation’s legal name and by the chairman of the board, president or any vice president, *and* by the secretary, assistant secretary, the chief financial officer or assistant treasurer, with the name and title of each person signing typed or printed below the signature. All persons signing this Proposal Form must be authorized to bind the respondent to its RFP Response. Upon FCSS’ request, a respondent shall provide written evidence of each such person’s authority. **If this Proposal Form is not signed, FCSS will not consider the respondent’s RFP Response.**

NON-COLLUSION AFFIDAVIT
RFP DOCUMENT C-2

Name of Respondent: _____

The undersigned declares:

1. Respondent's RFP Response is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The RFP Response is genuine and not collusive or sham.
2. Respondent has not directly or indirectly induced or solicited any other respondents to put in a false or sham response to the RFP. Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any respondent or anyone else to put in a sham response/proposal, or to refrain from submitting a response to the RFP. Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposed price of respondent or any other respondent, or to fix any overhead, profit, or cost element of the proposed price, or of that of any other respondent. All statements contained in the RFP Response are true. Respondent has not, directly or indirectly, submitted its, his, or her proposed price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid/RFP depository, or to any member or agent thereof to effectuate a collusive or sham response to the RFP, and has not paid, and will not pay, any person or entity for such purpose.
4. I have full power to execute, and do execute, this Non-Collusion Affidavit on behalf of the above-listed respondent and declare under penalty of perjury under the laws of the State of California that the statements contained in this Non-Collusion Affidavit are true and correct and that this Non-Collusion Affidavit is executed on the date stated below.

Signature: _____

Date: _____

Print Name: _____

Title: _____

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ANTI-LOBBYING CERTIFICATE
RFP DOCUMENT C-3

(Certification Required for Contract of \$100,000 or above)

Name of Respondent: _____

The above-listed respondent certifies that the following are true and accurate, and agrees to comply with the provisions of 31 U.S.C 3801 et seq.

1. Respondent will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. Respondent shall disclose any lobbying with non-federal funds that takes place in connection with obtaining federal award.
3. Respondent shall require certification similar to this Certificate in sub-awards at all tiers.

Submission of this Anti-Lobbying Certificate is a prerequisite for making or entering into the Contract imposed by federal law, 31 USC 1352. Any person who makes an expenditure prohibited in 1 above shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

The undersigned represents that he/she has full power to execute, and do execute, this Anti-Lobbying Certificate on behalf of the above-listed respondent and declare under penalty of perjury under the laws of the State of California that the statements contained in this Anti-Lobbying Certificate are true and accurate and that this Anti-Lobbying Certificate is executed on the date stated below.

Signature: _____

Date: _____

Print Name: _____

Title: _____

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PROPOSAL EVALUATION SHEET
RFP DOCUMENT D
 (Sheet to be completed by FCSS or designee)

Name of Respondent: _____

METHOD OF AWARD OF CONTRACT: FCSS shall award the Contract to responsible respondents whose proposal are most advantageous to FCSS' program, taking into consideration whether each such respondent is eligible based on the evaluation factors in Part 1 and whether such respondent's total rating is the highest by line-item on the evaluation factors in Part 2. The pricing for additive or deductive alternate, if any, shall not be considered in selecting the successful respondent. FCSS reserves the right to add any additive alternate or deduct any deductive alternate after the selected respondent is determined.

PART 1 – ELIGIBILITY FACTORS

No.	Evaluation Factor	Yes	No	N/A
1.1	If respondent is a corporation or other entity, is respondent duly formed and in good standing under applicable state laws (e.g., respondent's status is not terminated, revoked or suspended)? <i>Respondent is ineligible if the answer is "no"; do not proceed.</i>			
1.2	If respondent is a corporation or other entity, is respondent registered with the California Secretary of State to do business in California (check California Secretary of State website)? <i>Respondent is ineligible if the answer is "no"; do not proceed.</i>			
1.3	Is respondent currently debarred, suspended, or otherwise ineligible to be awarded a contract paid for with federal funds (see federal System for Award Management (SAM))? <i>Respondent is ineligible if the answer is "yes"; do not proceed.</i>			
1.4	Has respondent provided assurance that it will be able to maintain, during the term of the Contract, commercial general liability insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate? <i>Respondent is ineligible if the answer is "no"; do not proceed.</i> NOTE: Acceptable assurance includes a copy of a current Certificate of Insurance evidencing the required insurance and policy limits or a written statement from respondent's insurance broker/agent that respondent will be able to obtain and maintain the required insurance and policy limits.			
1.5	Has respondent, if it has any employees, provided assurance that it will be able to maintain during the term of the Contract workers' compensation insurance policy as required by Labor Code or is legally self-insured pursuant to Labor Code section 3700 et seq.? <i>Respondent is ineligible if the answer is "no"; do not proceed.</i> NOTE: Acceptable assurance includes a copy of a current Certificate of Insurance evidencing the required insurance and policy limits or a written statement from respondent's insurance broker/agent that respondent will be able to obtain and maintain the required insurance and policy limits. If respondent has no employees, it shall submit a written statement so stating.			

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PART 2 – RATING FACTORS

No.	Evaluation Factor	Rating
2.1	During the last five years, has respondent or any of its owners, partners, or officers been debarred, disqualified, removed or otherwise ineligible to bid on, submit proposals for, or be awarded any contract by a government agency? Yes -5 point No 5 points	
2.2	Is respondent currently, or during the last five years, the debtor in a bankruptcy case? Yes -5 point No 5 points	
2.3	During the last five years, how many claims have been filed in court or arbitration against respondent on any contracts or transactions with any government agencies? 0 claims 5 points 1-3 claims 3 points 4 or more claims -5 point	
2.4	During the last five years, what experience does respondent have in providing to California public educational agencies goods/services that are similar to those requested under this RFP? 5 years or more experience 10 points 3-4 years of experience 8 points 1-2 years of experience 4 points No experience 0 point	
2.5	During the last five years, what experience does respondent have in providing goods/services to FCSS that are similar to those requested under this RFP? 5 or more years of experience 5 points 1-4 years of experience 3 points No experience 0 point	
2.6	What is respondent's Proposal Price? (See Proposal Form completed by respondent) Lowest 25 points 2 nd Lowest 20 points 3 rd Lowest 15 points 4 th Lowest 10 points 5 th or Higher 0 points	
2.7	Does the respondent have the qualifications and ability to successfully provide the goods/services requested by this RFP? NOTE: Qualification and ability include but are not limited to respondent's financial capability, staffing and capacity, and methods, sequence, and timeline for providing the goods/services required by this RFP. Meets qualification and has ability to successfully perform 15 points Deficient in qualification and ability to successfully perform 5 points Is not qualified and is not likely to successfully perform -10 points	
2.8	Does respondent accept the Contract as attached to this RFP. (See Contract form with respondent's proposed modifications, if any) Respondent proposes no changes to the Contract 5 points Respondent proposes minor changes to the Contract 4 points Respondent proposes substantial changes to the Contract 0 point	
	Total Rating:	

THIS PAGE WILL BE SCORED SEPARATELY FOR EACH LINE-ITEM, IF APPLICABLE

**EXPANDED LEARNING PROGRAM AGREEMENT
RFP DOCUMENT E**



Legal Doc. No. of this signed Agreement (*Legal use only*): _____

COVER

Program/Event: **MUSIC INSTRUCTION**

CONTRACTOR

Full legal name of other party (“**Contractor**”) DBA (*leave blank if none*):
 Attn: Name of contact person, Title
 Street address (**no PO box**)
 City, State #####
 Phone: (###) ###-####
 Email: email

FCSS

Fresno County Superintendent of Schools (“ FCSS ”) Attn: Helena Silva, Executive Director Dept.: Safe and Healthy Kids Department 1111 Van Ness, Fresno CA 93721 Phone: (559) 265-3093 Email: hsilva@fcoe.org	ADDRESS FOR INVOICE TO FCSS: All invoices to FCSS shall be addressed to the attention of Internal Business Services – Accounts Payable, Office of Fresno County Superintendent of Schools, 1111 Van Ness Ave, Fresno, CA 93721
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INITIAL CONTRACT TERM (see § 3.1)

“**Effective Date**”: Month ##, 2022
 “**Termination Date**”: Month ##, 2025

EXTENSION OF INITIAL CONTRACT TERM

 Mark if applicable: At FCSS’ discretion and upon written notice to Contractor at least 60 days before the Termination Date, FCSS may extend the Initial Contract Term for up to two one-year periods.

CONTRACT AMOUNT, INVOICE, AND PAYMENT (see Art. 2). Contractor shall invoice FCSS and FCSS shall pay Contractor the Contract Amount pursuant to the Payment Schedule stated below:

- A. *Contract Amount, Invoice, and Payment Schedule.* As full consideration and compensation for Contractor’s performance of the required Services and the Contract (including all equipment and labor), FCSS shall pay Contractor as follows: Services that Contractor satisfactorily performs in accordance with the Contract, to be invoiced monthly and billed at \$_____ per student cost for each session per day and the sum of which shall *not exceed* the “**Contract Amount**” of \$_____. Contractor shall submit each invoice to FCSS monthly by no later than the 15th day of the month immediately following the last day of the month for which Contractor requests payment. FCSS shall pay Contractor within 30 days after: (A) Contractor has completed, in accordance with the Contract, the Services required of Contractor for the period for which Contractor requests payment; and (B) FCSS has received and approved Contractor’s invoice, which shall comply with the requirements in B below and Section 2.2.
- B. *Invoice Requirements.* Each itemized invoice must be received and approved by FCSS before Contractor may receive any payment under the Contract. Each invoice shall state, at a minimum, the following: the Services that Contractor has performed in accordance with the Contract, the period during which the Services were performed, the amount that Contractor requests as compensation for performance of the Services, the total amount that Contractor has been paid under the Contract, and the total amount that remains unpaid under the Contract.

 PREVAILING WAGE (*mark if a portion or all of the Services are subject to the payment of prevailing wages*): A portion or all of the Services that Contractor will provide under the Contract are subject to the payment, monitoring, and enforcement of prevailing wages. The Prevailing Wage Work

Addendum (General/ Standard Services Agreement) is attached hereto and constitutes a part of the Contract. FCSS shall pay Contractor within 30 days after: (A) Contractor has completed, in accordance with the Contract, the Services required of Contractor for the period for which Contractor requests payment; and (B) FCSS has received and approved Contractor's invoice, which shall comply with the requirements in B below and Section 2.2. **NOTE:** If prevailing wage work is marked here, FCSS' Facilities & Operations shall complete and attach the Prevailing Wage Work Addendum (General/Standard Services Agreement).

CONTRACTOR OBLIGATIONS. Unless specifically stated otherwise on this Cover, Contractor shall provide all labor, materials, supplies, equipment, and transportation necessary to perform all obligations required of Contractor as set forth elsewhere in the Contract and the Services stated below, of which shall be performed in accordance with the terms and conditions of the Contract:

A. **“Services”:** Contractor shall provide the following music instruction:

The Services will be provided consistent with RFP No. NC-2024-06 and Contractor's proposal.

B. **Performance Period:** The Services shall start on the Effective Date and continue through the Termination Date unless earlier terminated as provided herein. The schedule of the Services (including days and location) shall be determined by FCSS.

The Parties' designated staff may mutually change any date stated above if such new date is within the Contract Term and there is no change to the Contract Amount.

C. **Location(s) for Performance of Services:** Contractor shall perform the Services at various Expanded Learning Programs throughout Fresno County, both on school campus and/or virtually, to be designated by FCSS.

SUBCONTRACTOR DESIGNATION (mark if Contractor will use any subcontractor to perform any of the Services): Contractor is subcontracting with one or more subcontractors to perform a portion of the Services. Contractor has listed each subcontractor on the Subcontractor Designation Form, which is attached and constitutes a part of the Contract. **NOTE:** If subcontractor designation is marked here, the FCSS department listed above shall provide the Subcontractor Designation Form to Contractor for Contractor to complete and return to the department.

FCSS OBLIGATIONS. FCSS shall perform all obligations required of FCSS as set forth elsewhere in the Contract and the following (leave blank if no additional obligations):

REQUIRED DOCUMENTS. Contractor shall provide to FCSS each document marked below and those required of Contractor elsewhere in this Agreement (collectively **“Required Document”**):

A. Insurance marked below and complying with Section 4.1, written proof of which Contractor shall provide to FCSS when Contractor delivers this Agreement signed by Contractor and before Contractor commences any Service (mark each required):

Commercial general liability with additional insured coverage (see Section 4.1.1).

Workers compensation and employer's liability if Contractor has any employees.

Commercial auto liability with a combined single limit of not less than \$1,000,000 per accident if Contractor operates any vehicle to perform the Services and such Services do not include the transportation of students and/or other persons. If the Services required of Contractor includes the transportation of students and/or other persons, this insurance shall contain: (1) a combined single limit of not less than \$5,000,000 per accident and (2) a blanket additional insured endorsement or be endorsed to name the Fresno County Superintendent of Schools, the Fresno County Board of Education, and their officers, employees, agents, and volunteers as an additional insured.

Professional liability.

- B. Fingerprinting and Criminal Background Check Certification (“**Fingerprinting Certification**”), which Contractor must obtain from and submit to FCSS before Contractor commences any Services.
- XC. Tuberculosis Certification (“**TB Certification**”), which Contractor must obtain from and submit to FCSS before Contractor commences any Services.
- XD. At FCSS’ request and as applicable, Taxpayer Identification Number Request, W-9 (*the form of which Contractor shall obtain from FCSS*) or Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (W-8); *and* Nonresident Withholding Allocation Worksheet (Form 587), Withholding Exemption Certificate (Form 590), or other Franchise Tax Board forms; *and* documents that FCSS requires to process payment to Contractor.

In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from the Contract, Contractor and FCSS, separately referred to as a “**Party**” and collectively as the “**Parties**,” have reviewed and understand and hereby enter into the Contract. Unless the context requires otherwise, any reference to a Party in the Contract includes, as applicable, its governing body and members thereof, officers, employees, and agents. Each person executing the Contract on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to the Contract.

CONTRACTOR

FCSS

By: _____
 Print Name:
 Title:

By: _____
 Dr. Michele Cantwell Copher, Superintendent
 or Authorized Designee

NOTE – ELECTRONIC SIGNATURE: While FCSS will accept digital signatures on contracts and amendments, they must be validated by a reliable Certificate Authority, and if a digital signature is used to execute any such document, the signature page thereof must be provided to FCSS in the electronic format it was signed in.

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GENERAL TERMS AND CONDITIONS

The following documents, each of which is referred to as a “**Contract Document**” and collectively as the “**Contract Documents**,” form the “**Contract**”:

This Agreement, containing the Cover and these General Terms and Conditions:

- Article 1 Scope of Services and Obligations
- Article 2 Payment
- Article 3 Term and Termination of Agreement; Suspension of Services
- Article 4 Insurance
- Article 5 Indemnity
- Article 6 Dispute Resolution
- Article 7 General Provisions

Packet issued by FCSS

Contractor’s Response

“**Required Documents**” (not attached) means documents to support Contractor’s representations in Section 1.1 of the General Terms and Conditions and documents required of Contractor on the Cover.

Terms with initial capital letter shall have the respective meanings set forth in the Contract.

ARTICLE 1 SCOPE OF SERVICES AND OBLIGATIONS.

SECTION 1.1 RECITALS AND REPRESENTATIONS. The following recitals and representations constitute a part of this Agreement and the Contract:

- 1.1.1 Contractor represents that it is authorized to conduct business in the State of California, is authorized to provide the Services, is willing and able to so provide in accordance with the Contract, and is authorized to enter into the Contract.
- 1.1.2 FCSS is a local public agency duly organized and operating in the State of California, and is authorized to enter into the Contract.
- 1.1.3 The Contract will be paid, in part or in whole, with federal grant funds and is subject to applicable federal laws, regulations, and requirements. The Contract is entered into in accordance with Section 200.320 of Title 2 of the Code of Federal Regulations.
- 1.1.4 By the Contract, the Parties desire to set forth the terms and conditions upon which Contractor shall perform those obligations required of Contractor and FCSS shall pay Contractor therefor, and to set forth other rights and obligations of the Parties.

SECTION 1.2 NON-EXCLUSIVE CONTRACT. Contractor understands and agrees that the Contract does not constitute an exclusive contract for Contractor to provide services to FCSS. Throughout the Contract Term, FCSS, at its sole discretion and without any notice, obligation, or liability to Contractor, may provide, through FCSS’ work force or procure through one or more third parties, services that are identical or similar to the Services. FCSS’ use of its work force or a third party shall not constitute or be deemed a breach of any provision of the Contract.

SECTION 1.3 CONTRACTOR QUALIFICATION. Contractor represents and shall ensure that it and all persons whom it employs or retains to perform the Contract have the necessary training, skill, and experience and are qualified to so perform, including having throughout the Contract Term all required licenses, permits, and/or certifications (collectively and separately “**License**”). Contractor shall provide FCSS with written proof of each License upon FCSS’ request and notify FCSS in writing no later than 10 days after Contractor receives any notice that any such License has been revoked, suspended, placed on probation, or non-renewed.

SECTION 1.4 CONTRACTOR RESPONSIBILITY. Unless stated otherwise in a Contract Document in which case such provisions shall apply to the extent provided therein, Contractor is solely responsible for: (A) all means, methods, techniques, sequences, procedures, safety, and work coordination necessary or proper for Contractor to perform the Contract; (B) the acts and omissions of Contractor’s officers, employees, agents, and

any other persons who Contractor retains to perform the Contract; and (C) taking all reasonable precautions for the safety and prevention of injury to the person of and/or damage or loss to the property of Contractor's officers, employees, agents and any persons who Contractor retains to perform the Contract, to any officers, employees, agents, students, or invitees of FCSS, or to any Third Party.

SECTION 1.5 WORK PRODUCTS AND RIGHTS THERETO. Unless stated otherwise on the Cover in which case such provisions shall apply to the extent provided therein, this Section shall survive the termination of the Contract and apply to: (A) any Work that FCSS provides to Contractor pursuant to or relating to the Contract ("**FCSS Work**"); and (B) any Work that is prepared for and/or provided to FCSS by or on behalf of Contractor pursuant to or relating to the Contract ("**Contractor Work**"). The following applies to the FCSS Work: (A) the FCSS Work is FCSS' property and FCSS has all interests and rights thereto; (B) Contractor does not own and shall not claim any interest or right to or in the FCSS Work; (C) FCSS grants to Contractor a limited license during the Contract Term to use and reproduce only those portions of the FCSS Work necessary for Contractor to perform the Contract; and (D) Contractor shall return any or all FCSS Work to FCSS upon FCSS' request. The following applies to the Contractor Work: (A) Contractor represents that the Contractor Work is Contractor's original work and does not contain any unlawful matter or infringe upon any Third Party's copyright, right, or interest; (B) the Contractor Work is an instrument of service and constitutes FCSS' sole property, and Contractor shall deliver to FCSS the Contractor Work within 30 days of the date of completion of the Services or the date of termination of the Contract, whichever is earlier; and (C) FCSS shall have the right to, and may authorize others to, use, modify, duplicate, distribute, sell, dispose, and/or disclose, in whole or in part, in any manner, and for any purpose, the Contractor Work. "**Work**" means any data, document, display, drawing, report, material, invention, work, and discovery, including any copyright, right, and interest therein or thereto and whether written, recorded, or electronically stored, and shall include source codes and other codes and information if the Contract requires Contractor to prepare, create, modify, update, or perform work relating to any website, webpage, and/or computer software, program, or product.

SECTION 1.6 COMPLIANCE WITH APPLICABLE LAWS AND GRANT.

- 1.6.1 **GENERALLY.** Each Party shall comply with all laws and regulations (collectively "**Law**") applicable to its performance of the Contract, and all Law that it agrees to comply under the Contract (referred to collectively and separately as "**Applicable Law**" and shall include amendments and Law that are in effect as of the Effective Date or become effective during the Contract Term). Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in the Contract and an Applicable Law, the provision in the Contract shall govern except where such provision is specifically prohibited or void by the Applicable Law in which case the Applicable Law shall govern to the extent provided therein. Each Party shall comply with each grant (if any) that provides funding to pay for the Contract and all Law and requirements applicable to such grant.
- 1.6.2 **FEDERAL GRANT FUNDS.** The Contract is paid, in part or in whole, with federal grant funds. Each Party shall comply with federal laws, regulations, and requirements applicable to such federal grant funds. Contractor represents that it is not debarred, suspended, or otherwise excluded or ineligible to be awarded the Contract. Contractor shall comply with federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Orders 12549 and 12689. Contractor shall also comply with: (A) applicable federal laws, regulations, and requirements, including but not be limited to, non-discrimination based on race, color, national origin, sex, disability, or age; (B) applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 1251-1387); and (C) Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Upon FCSS' request, whether during or after the Contract Term, Contractor shall cooperate with and provide FCSS with documents and information relating to the Contract that are necessary for FCSS to comply with applicable federal laws, regulations, and requirements. The provisions of this Subsection shall survive the termination of the Contract.

SECTION 1.7 RECORDS AND INFORMATION.

- 1.7.1 **REQUIRED DOCUMENTS.** Contractor shall provide to FCSS each Required Document marked on the Cover, each of which is incorporated into and constitutes a part of the Contract. If any Required Document becomes incorrect or inapplicable or expires during the Contract Term, Contractor shall

promptly notify in writing and/or submit to FCSS the corrected, updated, or effective Required Document. If Contractor refuses to provide any Required Document or corrected, updated, or effective version thereof, FCSS shall have the right to withhold payment of any or all of the Contract Amount until such time that FCSS receives the Required Document from Contractor.

- 1.7.2 **CONFIDENTIAL MATERIAL.** If any documents and/or information (for example and not as a limitation, employee or student record) that are subject to nondisclosure or protection under federal and/or California laws (collectively and separately “**Confidential Material**”) are provided to or created by Contractor for or pursuant to the Contract, Contractor shall: (A) not release, disseminate, publish, or disclose the Confidential Material, except as required by law or a court order or as the Contract may permit; (B) unless specifically permitted by Applicable Law, not use the Confidential Material for any purpose not related to Contractor’s performance of the Contract; and (C) protect and secure the Confidential Material, including Confidential Material saved or stored in an electronic form, to ensure that it is safe from theft, loss, destruction, erasure, alteration, and unauthorized viewing, duplication, and use. The provisions of this Subsection shall survive the termination of the Contract.
- 1.7.3 **RECORD RETENTION, INSPECTION, AND AUDIT.** Contractor shall maintain accurate books and records of all Services provided under, amounts billed pursuant to, and all documents required of Contractor under the Contract for at least five years after the date on which the Contract terminates and make them available, upon FCSS’ request, for review, audit, and/or copying by FCSS and/or any federal or state agencies. Upon FCSS’ written notice to Contractor that a longer retention period is necessary in order for FCSS to comply with records retention requirements under a court order or federal or state laws, Contractor shall continue to retain such books and records for the period stated in FCSS’ notice. If the Contract involves the expenditure of \$10,000 or more in funds from the State of California, it is subject, for three years after the final payment is made, to the State Auditor’s examination and audit at FCSS’ request or as part of an audit of FCSS. The provisions of this Subsection shall survive the termination of the Contract.

SECTION 1.8 COOPERATION AND COORDINATION. If Contractor is replacing a third party in the provision of the Services, Contractor shall cooperate and coordinate with the third party and FCSS to facilitate an orderly transition of Services in order to minimize disruption and interruption of FCSS’ operations and programs.

ARTICLE 2 PAYMENT.

SECTION 2.1 PAYMENT. Compensation for Contractor’s performance of the Contract and Services are as stated on the Cover. Except as stated in this Agreement or an amendment to the Contract, Contractor shall not be entitled to any other payment from FCSS; in the event Contractor has received any payment that is not set forth in this Agreement or an amendment to the Contract, Contractor shall refund such payment to FCSS within 30 days of FCSS’ request.

SECTION 2.2 INVOICE AND PAYMENT REQUEST DOCUMENTS. Before Contractor may receive any payment under the Contract, Contractor shall submit an itemized invoice in accordance with the requirements stated on the Cover as well as other documents stated below, to FCSS at FCSS’ address for invoice stated on the Cover.

2.2.1 **DECLARATION UNDER PENALTY OF PERJURY.** Each person submitting and/or signing an invoice on behalf of Contractor declares under penalty of perjury under California laws, and certifies and attests that: (A) he/she has thoroughly reviewed the claim for payment and knows its content; (B) the invoice and supporting information are true, accurate, and complete, and reflect amounts due and Services that Contractor has completed in accordance with the Contract and the correct amount for those Services; (C) Contractor has complied and is in compliance with all obligations required of Contractor under the Contract; and (D) he/she is familiar with Penal Code section 72 pertaining to false claims, and knows and understands that submission and/or certification of a false claim may lead to fines, imprisonment, and/or other legal consequences.

2.2.2 **ADDITIONAL DOCUMENTATION.** Upon receiving an invoice and if FCSS objects to it and/or requires additional information or documentation, FCSS shall notify Contractor and Contractor shall provide such information and/or documentation to FCSS within 10 days after Contractor receives FCSS’ notice.

If Contractor fails or refuses to provide the additional information, FCSS shall have the right to withhold any payment due to Contractor under the Contract until such time that FCSS receives such information from Contractor.

SECTION 2.3 DEDUCTION AND RELEASE. FCSS may deduct from each payment, if applicable, withholdings required by applicable laws, including but not limited to, those for non-California or foreign residents. Contractor's acceptance of any payment under the Contract shall constitute, effective on the date of acceptance, a release of all claims and liabilities that Contractor has or may have against FCSS for any additional payment for the Services, and/or matters, for which the payment was made. However, FCSS' payment shall not relieve Contractor of Contractor's obligations under the Contract or for deficient or defective Services that FCSS discovers after the payment is made.

SECTION 2.4. PRICE INCREASE. Contractor may request to increase the Contract Amount at the end of the first year based on the cumulative increase in the Consumer Price Index (CPI) for all urban consumers for the Fresno area during the previous year, but in no event shall any such increase exceed 5%. The request for a price increase must be submitted in writing at least sixty (60) days prior to the anniversary of the Effective Date be considered. The request must include sufficient detail for FCSS to substantiate the price increase. If approved, the Contract Amount shall be modified by written agreement consistent with Section 7.1.

ARTICLE 3 TERM AND TERMINATION OF AGREEMENT; AND SUSPENSION OF SERVICES.

SECTION 3.1 CONTRACT TERM. The Contract is effective on the Effective Date and continues in full force and effect thereafter until and including the Termination Date ("**Initial Contract Term**") and any extension thereto in accordance with the provisions set forth on the Cover ("**Extended Contract Term**") and, unless terminated during the Contract Term in accordance with Section 3.2 below, shall terminate at 12:00 midnight on the last day of the Contract Term without any notice or action by either Party. "**Contract Term**" shall mean the Initial Contract Term and the Extended Contract Term.

SECTION 3.2 TERMINATION DURING CONTRACT TERM.

3.2.1 TERMINATION BY CONTRACTOR - FCSS MATERIAL BREACH; NOTICE AND OPPORTUNITY TO CURE. Contractor may terminate the Contract only upon FCSS' material breach of one or more of FCSS' obligations under the Contract. If Contractor believes that FCSS has materially breached one or more of FCSS' obligations under the Contract, Contractor shall provide FCSS with written notice stating the specific obligations of the Contract that FCSS materially breached and the acts or omissions of FCSS that caused the material breach. FCSS shall have 30 days from the date that FCSS receives Contractor's notice to cure the material breach and provide Contractor written notice of such cure. If, upon expiration of the 30-day cure period and provided that FCSS has not disputed the material breach, FCSS has not cure the material breach, the Contract shall terminate at 12:00 midnight on the 30th day after FCSS receives Contractor's notice of material breach without any further notice or action by either Party. Any dispute between the Parties relating to FCSS' material breach and corrective actions shall be resolved in accordance with Article 6. During the 30-day cure period and the pendency of any dispute between the Parties, Contractor shall continue performing all Services required of Contractor.

3.2.2 TERMINATION BY FCSS. During the Contract Term, FCSS may terminate the Contract pursuant to one or more of the following:

3.2.2.1 WITH OR WITHOUT CAUSE/CONVENIENCE. FCSS may terminate the Contract, with or without cause, by giving Contractor written notice at least 30 days before the effective termination date.

3.2.2.2 LOSS OF RIGHTS TO CONDUCT BUSINESS. FCSS may terminate the Contract effective on the date stated in FCSS' written notice of termination to Contractor if: (A) Contractor's legal rights to exist or conduct business in California has been revoked or terminated by the State of California, any other agency, or a court; or (B) Contractor's legal rights to exist or conduct business in California has been suspended or rendered inactive by the State of California, any other agency, or a court and such suspension lasts more than 30 consecutive days.

3.2.2.3 OTHER GROUNDS. FCSS may terminate the Contract effective on the date stated in FCSS' written notice of termination to Contractor pursuant to any of the following: (A) Contractor is required to but fails to provide to FCSS and/or comply with the Fingerprinting Certification or the Sole Proprietor Fingerprinting Addendum; (B) Contractor is required to but fails to provide to FCSS and/or comply with the TB Certification; (C) FCSS, federal or state agency, and/or any entity from which FCSS receives or is to receive funds to pay for the Contract reduce or eliminate some or all such funds, or fail or determine not to appropriate sufficient funds to make future payments under the Contract; (D) a government or issuing agency revokes, suspends, places on probation, or non-renews any License that Contractor must hold to perform the Contract; (E) Contractor assigns, transfers, or subcontracts any or all of Contractor's obligations and/or rights under the Contract in breach of Section 7.3; (F) Contractor fails to maintain and provide written proof of insurance as required by Article 4; or (G) Contractor is required to provide particular staff to perform the Contract but such staff is not able, not willing, or not available to perform the Contract.

3.2.3 BANKRUPTCY OR INSOLVENCY. The Contract shall terminate effective the day immediately preceding the day on which Contractor: (A) files a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors; (B) applies for, consents to, or has an order, judgment, or decree entered by a court for, approval of a petition or appointment of a receiver, trustee, custodian, or liquidator of all or a substantial part of Contractor's assets; (C) is unable to, fails to, or admits in writing its inability generally to pay its debts or obligations as they become due; and/or (D) makes a general assignment for the benefit of creditors.

SECTION 3.3 RIGHTS AND OBLIGATIONS UPON TERMINATION DURING CONTRACT TERM. If the Contract is terminated during the Contract Term for any reasons and the Parties have not agreed otherwise in a writing executed by them or this Agreement does not provide otherwise, the following applies and survives the termination of the Contract:

3.3.1 PAYMENT BY FCSS. FCSS shall pay Contractor only for Services that Contractor is required to perform, and has performed in accordance with, the Contract before the effective date of termination. Contractor shall submit an invoice within 30 days of the effective date of termination. The provisions in Article 2 shall apply to Contractor's invoice and FCSS' payment under this Subsection. Upon FCSS' payment, if any has been invoiced by Contractor and is due to Contractor, FCSS is not obligated to make any further payment to Contractor, whether pursuant to contract, law, or equity.

3.3.2 CESSATION AND TRANSITION OF SERVICES. Contractor shall cease performance of any Services that remain and assist FCSS to transition such Services to FCSS' work force or any third party engaged by FCSS to complete the Services.

3.3.3 DELIVERY OF FCSS WORK AND CONTRACTOR WORK. Within 30 days of the effective termination date of the Contract, Contractor shall deliver to FCSS any FCSS Work that FCSS provided to Contractor and any Contractor Work, whether or not it is complete.

SECTION 3.4 SUSPENSION OF SERVICES. Despite any contrary provision in this Agreement or any other Contract Documents, FCSS shall have the right to suspend, delay, or interrupt any or all Services at any time during the Contract Term by providing written notice to Contractor at least 15 days before the date on which the suspension, delay, or interruption is to begin, and stating the beginning and ending dates thereof ("**Suspension Period**"). Unless the Parties agree otherwise in writing, the following shall apply upon FCSS' exercise of the rights under this Section: (A) Contractor shall suspend, delay, or interrupt such Services as stated in FCSS' notice but shall continue to perform all other Services; (B) Contractor shall not be entitled to any compensation for Services that Contractor would have been required to perform under the Contract but did not perform during the Suspension Period, and the amount due to Contractor shall be adjusted to deduct the amount of such compensation and such adjustment shall be set forth in an amendment executed by the Parties; (C) Contractor shall not be entitled to any damage, loss, or cost arising out of, resulting from, or relating to FCSS' exercise of its right under this Section or the Suspension Period; (D) Contractor shall resume

performance of the suspended Services on the next business day following the last day of the Suspension Period; and (E) the Contract Term shall remain the same.

SECTION 3.5 FORCE MAJEURE. A Party is not liable for failing to perform or delaying performance of the Contract due to events that are beyond the Party's reasonable control and occurring without its fault or negligence, for example, acts of God such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters (collectively "**Force Majeure**"), provided that the Party has promptly notified the other Party in writing of the occurrence of the Force Majeure, except that a Force Majeure shall not excuse FCSS' payment to Contractor of any amount that is due to Contractor where Contractor has performed, in accordance with the Contract, the Services for which payment is requested, and submitted an invoice and supporting information as required on the Cover and Section 2.2. Contractor shall not receive any payment for Services that Contractor did not perform during the period in which the Force Majeure occurred.

ARTICLE 4 INSURANCE.

SECTION 4.1 REQUIRED INSURANCE. Contractor, at its cost, shall maintain in effect insurance as marked on the Cover and complying, at a minimum, with the applicable requirements stated below. If Contractor is a California public agency, the required coverage may be through self-insurance. FCSS, in its sole discretion, may waive in writing any requirement in this Article; however, FCSS' failure to insist or request that Contractor comply with such requirements shall not constitute a waiver on FCSS' part. FCSS reserves the right to reject any insurance and/or to require that Contractor obtain insurance through an insurer satisfactory to FCSS.

- 4.1.1 *Commercial General Liability*, in effect during the Contract Term, coverage for property damage, bodily injury, and personal and advertising injury with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This insurance shall contain a blanket additional insured endorsement or be endorsed to name the Fresno County Superintendent of Schools and the Fresno County Board of Education and their officers, employees, agents, and volunteers as an additional insured.
- 4.1.2 *Workers Compensation* in accordance with California laws and *Employer's Liability Insurance* with a limit of not less than \$1,000,000 per accident, both of which shall be in effect during the Contract Term.
- 4.1.3 *Commercial Automobile Liability*, in effect during the Contract Term, with limits per accident not less than the amount stated on the Cover and providing coverage, at a minimum, for non-owned and hired autos and, if there are any autos owned by Contractor, then also covering owned autos.
- 4.1.4 *Professional Liability*, in effect during the Contract Term and three years thereafter, with limits of not less than \$1,000,000 per claim and \$2,000,000 general aggregate, written on a claims-made basis. The obligation to maintain this insurance shall survive the termination of the Contract.

SECTION 4.2 PROOF AND NOTICE; DEDUCTIBLE OR SELF-INSURED RETENTION. Contractor shall provide to FCSS: (A) as required on the Cover and from time to time as FCSS may request, written proof satisfactory to FCSS of the existence of the insurance required of Contractor, including any required endorsement; (B) upon FCSS' request, a copy of the insurance policy and/or other evidence of insurance satisfactory to FCSS; (C) no later than 15 days before the date on which a required insurance expires, written proof of renewal of the insurance, including any required endorsement; and (D) written notice within two business days of the occurrence of any of the following: (1) any required insurance is cancelled or non-renewed, (2) notice from the insurer that the insurer intends to or will cancel or non-renew the insurance, and/or limit, restrict, or reduce Contractor's insurance coverage such that the insurance does not comply with the requirements in Section 4.1, or (3) any required insurance's policy limits have been reduced below those required in Section 4.1. Contractor shall disclose any deductible or self-insured retention for any of the required insurance. FCSS reserves the right to require that such deductible or self-insured retention be eliminated or reduced, that Contractor obtain a bond or other security guaranteeing payment of losses and costs within the limits of the deductible or self-insured retention, or that Contractor provide other assurances satisfactory to FCSS. Contractor's obligation to provide written proof of the insurance required under Section 4.1 shall survive the termination of the Contract.

ARTICLE 5 INDEMNITY.

The indemnity provision of the Fingerprinting Certification, the Sole Proprietor Fingerprinting Addendum, and/or the TB Certification, to the extent such document(s) is/are applicable as indicated on the Cover, shall govern to the extent provided therein. In all other respects relating to the Contract, each Party's indemnity, defense, and hold harmless obligations to the other Party under or related to the Contract shall be governed solely by the provisions of this Article. A Party ("**Indemnitor**") shall: (A) indemnify and hold harmless the other Party ("**Indemnitee**") to the full extent permitted by California laws for any Loss sustained by Indemnitee or a Third Party only in proportion to Indemnitor's liability based on a Final Determination; and (B) defend and pay for all of Indemnitor's attorney's fees and litigation costs related to any Claim or Loss without any right against or from the Indemnitee for indemnity and/or hold harmless of such costs and fees, or any right for defense. A Party who intends to seek or seeks indemnity and/or hold harmless for any Loss from the other Party shall notify the other Party in writing and within a reasonable time after the Party knows or becomes aware of any Claim that may or will result in a Loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed. A Party's obligations under this Article are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by California laws, and shall survive the termination of the Contract. "**Claim**" means any claim, demand, lawsuit, cause of action, action, cross-complaint, cross-action, and/or proceeding arising out of, resulting from, or relating to the Contract where there has been no Final Determination. "**Loss**" means any bodily injury, property damage, personal injury, advertising injury, liability, loss, damage, judgment, expense, and/or cost (excluding attorney's fees and litigation costs that a Party or a Third Party incurred or paid related to a Loss or Claim) arising out of, resulting from, or relating to the Contract and for which there has been a Final Determination that a Party is or both Parties are liable. "**Third Party**" means a person who or an entity that is *not* any of the following: (A) a Party; (B) an owner, director, officer, employee, or agent of Contractor; (C) an employee, agent, or volunteer of FCSS or a member, officer, or agent of the Fresno County Board of Education; or (D) contracted with (whether directly or through a subcontract of any level) or otherwise retained by a Party to act for or on the Party's behalf. "**Final Determination**" means any judgment, order, or decision, each a "**Determination,**" by a court of competent jurisdiction or a governmental entity with jurisdiction to render the Determination where the Determination is not subject to appeal or the period for an appeal has expired.

ARTICLE 6 DISPUTE RESOLUTION.

The Parties shall meet and confer in good faith to resolve any dispute between them arising out of, resulting from, or relating to the Contract, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 5 and any dispute relating to the Contract that arises or occurs after the termination of the Contract. During any dispute, FCSS' decision, for the time being, shall prevail and Contractor shall perform the Contract as FCSS directs without prejudice to a Final Determination, as this term is defined in Article 5. During a dispute regarding payment under the Contract, FCSS shall pay Contractor the amount that is undisputed and due to Contractor; if a disputed amount is determined in a Final Determination to be due to Contractor, FCSS shall pay such amount to Contractor within 30 days of the date of the Final Determination, unless a different date is stated in the Final Determination or in an agreement executed by the Parties, in which case, FCSS shall pay Contractor in accordance therewith. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to the Contract until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of the Contract.

ARTICLE 7 GENERAL PROVISIONS.

SECTION 7.1 ENTIRE AGREEMENT, CONFLICT, EXECUTION, AMENDMENT, AND WAIVER. The Contract is a complete and exclusive statement of the Parties' agreement under Code of Civil Procedure section 1856. The Contract consists of, and any conflict or inconsistency in the Contract shall be resolved by giving precedence as follows: Cover, General Terms and Conditions, request for price quotations or proposals issued by FCSS, the Required Documents, and Contractor's response to FCSS' request for price quotations or proposals. The Parties may execute the Contract and any amendment in counterparts such that each Party's signature is on a separate page. A copy or an original of the Contract or an amendment with the Parties' signatures, whether original or transmitted by electronic means, shall be deemed a fully executed contract. The Parties may amend or waive any provision of the Contract only by a writing executed by them.

SECTION 7.2 INTERPRETATION; APPLICABLE LAWS AND TIME ZONE; VENUE; SEVERABILITY; AND SURVIVAL OF TERMINATION. If there is uncertainty of any language in the Contract, the Parties agree that Civil Code section 1654 shall not apply to interpret the uncertainty. The language of the Contract shall be interpreted according to its fair meaning and not strictly for or against any Party and under California laws without giving effect to California's choice of law provisions that may result in the application of the laws of another jurisdiction. All dates and times stated in the Contract shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to the Contract shall be adjudicated in state or federal court in Fresno County, California, provided that FCSS does not hereby waive any immunity to suit. If a court of competent jurisdiction holds any provision of the Contract void, illegal, or unenforceable, the Contract shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of the Contract and the remaining provisions shall be construed to preserve the Parties' intent in the Contract. Any provision in the Contract that by its nature applies after, or is specifically stated to survive, the termination of the Contract shall survive the termination of the Contract.

SECTION 7.3 INDEPENDENT CONTRACTOR, ASSIGNMENT, TRANSFER, AND SUBCONTRACT. Contractor is an independent contractor, and it and its officers, employees, and agents are not, and shall not represent themselves as, officers, employees, or agents of FCSS. The Contract does not and shall not be construed to create an employment or agency relationship, partnership, or joint venture between the Parties. Contractor and its officers, employees, agents, and any other person performing services for or on behalf of Contractor shall not have any right or claim against FCSS for wages or employee compensation, social security benefits, workers compensation benefits, health benefits, vacation, sick leave, or other employee benefits. Contractor shall not assign or transfer any or all of its obligations and/or rights under the Contract, including by operation of law or change of control or merger, without FCSS' prior written consent. Unless stated on the Cover, Contractor shall not subcontract with any third party to perform some or all of the Services required of Contractor.

SECTION 7.4 NOTICES. Except as may be stated otherwise in this Agreement in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under the Contract in writing and by one of the following methods to the other Party at its address and/or email stated on the Cover, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, postage prepaid; or (D) sent by regular mail *and* transmitted by e-mail; and, ***if to FCSS, a copy of any notice and demand by email to: Legal Services at legalservices@fcoe.org.*** A Party may change its contact person and/or contact information stated on the Cover by notifying the other Party of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of the Contract.

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