

JEFFERSON COUNTY PUBLIC SCHOOLS

CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Franklin Covey Client Sales, Inc. (hereinafter "Contractor"), with its principal place of business at 2200 W. Parkway Blvd., Salt Lake City, UT 84119.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract related to the subject matter of this Agreement. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

ARTICLE II

Services

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

Contractor shall provide Coaching services for 24 schools in order to implement the Leader in Me curriculum schoolwide for all students and provide specialized experiences for students identified as gifted in leadership and creativity. Coaching at each school shall include six 3-hour site visits; two (2) full day site visits; and eight (8) virtual 60-minute sessions. Dates for all coaching shall be agreed upon by the Contractor and the Title IV Director. The cost shall be \$72,000.

Contractor shall provide professional development (PD) to all staff at 19 elementary schools on the 7 Habits of Highly Effective People and Launching Leadership in order to understand how to

integrate the teaching of Leadership and Creativity into existing curricula as well as implement the Leader in Me Framework as aligned to: Backpack of Success Skills, Equity, Culture, and Gifted Services. Each school shall receive 18 hours of onsite PD on dates agreed upon by the Contractor and the Title IV Director. The cost shall be \$201,400.

Contractor shall provide PD to all staff at three (3) middle schools on the 7 Habits of Highly Effective People and Launching Leadership in order to understand how to integrate the teaching of Leadership and Creativity into existing curricula as well as implement the Leader in Me Framework as aligned to: Backpack of Success Skills, Equity, Culture, and Gifted Services. Each school shall receive 18 hours of onsite PD on dates agreed upon by the Contractor and the Title IV Director. The cost shall be \$37,800.

Schools to Receive Services Provided by Franklin Covey Client Sales, Inc. Contract is attached and incorporated herein by reference. Board shall agree to the additional provisions described in the attached Exhibit A incorporated herein by reference.

ARTICLE III Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	<u>\$311,200</u>
Progress Payments (if not applicable, insert N/A):	<u>Within 30 days of approved invoice for services provided</u>
Costs/Expenses (if not applicable insert N/A):	<u>N/A</u>
Fund Source:	<u>Title IV</u>

ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on July 17, 2019 ("Effective Date") and shall complete the Services no later than May 31, 2020, unless this Contract is modified as provided in Article VIII.

ARTICLE V

Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and ~~naming~~ including the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI

Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, or disability. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

ARTICLE VII
Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

ARTICLE VIII
Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX
Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

ARTICLE X
Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. If the cost to the Board exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE XI
Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

ARTICLE XII
Contractor's Work Product

Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter "Works") produced or delivered by

Contractor under this Contract. Contractor agrees that the Works are “works for hire” and Contractor assigns all right, title and interest in the Works to the Board.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

ARTICLE XIII Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board’s Chief Financial Officer.

ARTICLE XIV Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor’s place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

ARTICLE XV Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records,

Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.

- G. If this Contract requires Contractor and/or any employees of Contractor to perform services on the premises of any JCPS schools during JCPS school hours, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- H. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of July 17, 2019.

Contractor's Social Security Number or Federal Tax ID Number: 87-0561601

JEFFERSON COUNTY BOARD OF
EDUCATION

By: _____

Title: Martin A. Pollio, Ed.D.
Superintendent

Franklin Covey Client Sales, Inc.
CONTRACTOR

By: _____

Title: Michael Bettin
Director of Legal Services

Michael Bettin 6/3/19

Cabinet Member: Carmen Coleman

cc

(Initials)

Jefferson County Public Schools
**NONCOMPETITIVE NEGOTIATION
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: _____

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: _____

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: Franklin Covey will provide education specialists to provide professional development and on-site coaching.

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): _____

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): _____

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): _____

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: _____

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: _____

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: _____

I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Staci Eddleman

Print name of person making Determination

Teaching and Learning

School or Department

Staci Eddleman

Signature of person making Determination

6/5/19

Date

Franklin Covey Client Sales, Inc.

Name of Contractor (**Contractor Signature Not Required**)

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011

SCHOOLS TO RECEIVE SERVICES PROVIDED BY FRANKLIN COVEY CLIENT SALES, INC. CONTRACT

24 Schools Receiving Leader in Me
Advanced Membership Services:

Atkinson Elementary School
Bates Elementary School
Blue Lick Elementary School
Bowen Elementary School
Brandeis Elementary School
Chenoweth Elementary School
Dunn Elementary School
Eisenhower Elementary School
Fern Creek Elementary School
Frayser Elementary School
Johnson Traditional Middle School
Kerrick Elementary School
Lassiter Middle School
Laukhauf Elementary School
Medora Elementary School
Middletown Elementary School
Mill Creek Elementary School
Okolona Elementary School
Shacklette Elementary School
Smyrna Elementary School
St. Matthews Elementary School
Thomas Jefferson Middle School
Trunnell Elementary School
Wheeler Elementary School

19 Elementary Schools Receiving
Professional Development:

Bates Elementary School
Blue Lick Elementary School
Bowen Elementary School
Brandeis Elementary School
Chenoweth Elementary School
Dunn Elementary School
Eisenhower Elementary School
Fern Creek Elementary School
Frayser Elementary School
Kerrick Elementary School
Laukhauf Elementary School
Medora Elementary School
Middletown Elementary School
Okolona Elementary School
Shacklette Elementary School
Smyrna Elementary School
St. Matthews Elementary School
Trunnell Elementary School
Wheeler Elementary School

3 Middle Schools Receiving Professional
Development:

Johnson Traditional Middle School
Lassiter Middle School
Thomas Jefferson Middle School

EXHIBIT A
Leader in Me®

General: For those schools who pay for Advance Membership, Teachers and/or staff of such schools (“Users”) are entitled to access “The Leader in Me Online” protected site of FranklinCovey’s Leader in Me website (the “TLIM Online”) located at www.TheLeaderInMeOnline.org and receive a limited license to use certain FranklinCovey intellectual property as defined in this Exhibit. Board shall provide each school a copy of this Exhibit.

Grant of Rights To TLIM Online: FranklinCovey hereby grants Board, a limited, non-exclusive, non-transferable, revocable license for Users, for whom an annual license fee has been paid, to access the TLIM Online. Access to the TLIM Online shall be available only to Users, who will receive a unique registration code from an authorized representative of Board (e.g. Principal) prior to logging into the site. Board and Users agree not to make the TLIM Online available in any manner to individuals who are not a party to this Exhibit or to the general public and specifically students. The TLIM Online is provided for the benefit of Users only who have paid a license fee for this site. FranklinCovey will not provide technical support to Board and Users or be liable in the event the TLIM Online or related technology fails. Users agree to accept the terms and conditions of the TLIM Online site.

Intellectual Property License: FranklinCovey hereby grants to the Board, a limited, non-exclusive license (the “License”), to use the FC IP (defined below) within Board's school only in connection with the delivery or promotion of FranklinCovey's The Leader in Me® solution within its school. For clarity, the FC IP may be used with, but not meant to be limiting, lesson plans, bulletin boards, posters, tee shirts, pins and songs and other similar uses, excluding planners/agendas, unless purchased through Premier, a division of School Specialty. Further, Board shall not use a FranklinCovey trademark, such as “The Leader in Me®,” in or as a domain name. The License to the FC IP shall not be sublicensed, assigned, or transferred by Board. All works created by Board, using the FC IP shall be deemed derivative work (“Derivative Works”), and are owned by FranklinCovey and may be used only pursuant to the license granted herein. The “FC IP” shall mean The Leader in Me trademarks and copyrighted materials provided to the Board by FranklinCovey, including The 7 Habits®. Board shall effectively communicate to its staff, employees, teachers and anyone else who may have access to or receive the FC IP, that such FC IP is copyright-protected and the proprietary property of FranklinCovey, and that neither Board nor its employees shall modify, reproduce, file share, email, distribute to a third party, or publicly post (Slide Share, YouTube, etc.) the FC IP and any Derivative Works created by Board or its employees except as expressly provided for in this Exhibit. The FC IP is for the benefit of Board for use within its schools only.

Regional and Community Training: If included in your Membership package, FranklinCovey will provide an opportunity for participants to attend professional development days (i.e. coaching) at a location in or near your community determined by FranklinCovey. The Cost of the Membership does not include travel/lodging expenses which would be borne by the Board.

Refund Policy: The fee for the Membership is non-refundable. Therefore, it is Board's responsibility to coordinate a date for the Coaching described herein

Measurable Results Assessment: The Leader in Me process includes a survey whereby staff, parents and students are asked some questions related to leadership, culture and academics. An authorized person from the school will be provided a URL link of the survey questions to share with staff, parents and students. Personally identifiable information (“PII”) will not be collected as part of the survey, but in the event information is categorized as PII, then FranklinCovey will not permit disclosure outside its own organization and it will take all commercially practicable measures to destroy PII when it is no longer needed for the purpose of the survey. Survey results will be compiled in an aggregate form and shared with third parties such as donors and sponsors. It may also be used for research. To emphasize, no PII will be collected and the survey is not mandatory.

Termination, and Events of Termination: If Board terminates this Agreement for convenience, FranklinCovey shall not refund any prepaid fees. Upon termination of this Agreement for any reason, schools shall immediately discontinue all use of the FC IP.

Scheduling a Consultant. If Board wishes to engage a FranklinCovey consultant to deliver the Program, Board shall contact FranklinCovey in writing (email is sufficient) at least thirty (30) days in advance in order to secure a FranklinCovey consultant. Once scheduled, the cancellation/rescheduling provisions below shall apply. Further, Board is required to provide the number of participants attending the Program at least twenty (20) days in advance of the scheduled Program in order to receive the lowest shipping and handling rates, if applicable.

Cancellation/Rescheduling Fees: Fifteen (15) calendar days' notice is required to cancel or reschedule the Services. If Board provides fewer than fifteen (15) days' notice, Board will be billed a cancellation fee of \$1,250 or a rescheduling fee of \$625 to cover costs incurred by FranklinCovey. Board will not be assessed a cancellation/rescheduling fee if the Onsite Coaching day is cancelled or rescheduled by FranklinCovey.

Copyright: Notwithstanding Article XII FranklinCovey owns all intellectual property rights, proprietary rights and copyrights to

all training session concepts and materials. Any unauthorized use, reuse, copying, reproduction, recording, transmittal, modification or revision of such materials or concepts of the scheduled training session or any portion thereof is expressly prohibited and shall constitute a breach of this Agreement and/or federal copyright law. The training session materials provided herein are intended for personal use only by the participant to apply the concepts learned within the school, and are not for resale or public display. Nothing in this Agreement implies a grant of license for Board to use the training session concepts and materials outside of the scope of this Agreement. For clarity and avoidance of doubt, nothing in this Agreement shall be considered a work for hire or "Works."

Leader in Me Notifications: FranklinCovey may send to teachers, staff and employees via email or other means, promotional materials, product updates, upcoming events and other information pertinent to The Leader in Me process. Anyone receiving such information may opt out at any time.