

**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 Kotter International, Inc. (hereinafter “Contractor”), with its principal place of business at 5 Bennett Street Cambridge MA 02138.

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. 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, Disclaimer

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:

Kotter International will work with district leader and school based administration to guide critical learning that directly effects their schools'/ district improvement priorities. Kotter will design fit- for - purpose coaching sessions that focuses on increased support to CSI and MRI schools.

Kotter International will provide district leaders with the following services:

One (1) Full-day in person session for planning, Two (2) one-hour virtual sessions to refine/update Phase 2, and Five (5) one-hour virtual small group coaching sessions.

Kotter International will provide school based administrators with the following services:

Two (2) in person sessions during July 22, and July 23, 2024 printed materials, participant licenses, six (6) months of access to the Kotter Community, and up to five (5) one hour virtual sessions with a Kotter coach TBD by need

JCPS expressly acknowledges that all related training materials and any other participant materials (collectively "Training Materials") are the exclusive and proprietary property of ("Intellectual Property") Kotter International, Inc., and, as such, are protected under both domestic and international copyright, trademark and other applicable intellectual property laws. Nothing in this Agreement shall be construed as transferring, assigning, or conveying any ownership rights whatsoever in or to the Intellectual Property of the Training Materials to JCPS or to any other person or entity. Additionally, JCPS shall not, and shall make every reasonable effort to ensure that others do not, (i) copy, reproduce, modify, or in any way edit any part of the Training Materials, (ii) attempt to make, or make any works derived from or in any way based on the elements comprising the Training Materials, (iii) remove, alter, or obscure any copyright legal, or proprietary notices or acknowledgements placed on any part or element of the Training Materials, or, (iv) permit any exhibition, duplication, distribution, adaptation, transmission, re-transmission, broadcast, or other use of all or any part of the Training Materials except as expressly allowed under this Agreement or by prior written permission from Kotter.

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CONTRACTOR PROVIDES THE SERVICES, TRAINING MATERIALS AND INTELLECTUAL PROPERTY "AS IS" AND MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING OR RELATING TO THE SERVICES, TRAINING MATERIALS, AND INTELLECTUAL PROPERTY, CONTRACTOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES, TRAINING MATERIALS, AND INTELLECTUAL PROPERTY.

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:	\$83,500.00
Progress Payments (if not applicable, insert N/A):	<u>N/A</u>
Costs/Expenses (if not applicable insert N/A):	Not to exceed \$6,000 (included in amount above)
Fund Source:	1552170-0322-320JC for \$77,500 1552170-0580-320JC - up to \$6,000

ARTICLE IV
Term of Contract

Contractor shall begin performance of the Services on March 27, 2024 and shall complete the Services no later than September 30, 2024, 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 during Contractor's normal business hours.

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 third party claims or losses accruing or resulting from bodily injury, property damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with resulting from the Contractor's 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 of Contractor who furnishing work, services, or materials to Contractor in connection with the performance of this Contract, except to extent such claims or losses are the results of the Board's or its members', agents', and employees' negligence or willful misconduct. This provision survives termination of this Contract. To be so indemnified, the Board must (i) notify Contractor promptly after learning of a claim for which indemnification is sought hereunder (a "Claim"); (ii) reasonably cooperate with Contractor in any defense or settlement (other than by way of monetary contribution); and (iii) give Contractor the right to control the defense of such Claim, including the right to settle such Claim on behalf of the Board and/or Contractor at no cost to the Board.

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 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, disability, or limitations related to pregnancy, childbirth, or related medical conditions. 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- Either Party (the "Terminating Party") may, by written notice of default Contractor the other Party (the "Non-Terminating Party"), terminate the whole or any part of this Contract, if Contractor- the Non-Terminating Party breaches any provision of this Contract, or where Contractor is the Non-Breaching Party, 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 fifteen (15) 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 the 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. Contractor may also terminate this Contract upon~~

providing ten (10) business days' prior written notice if the Board has committed, or is accused of committing, a bad act of a nature that has or would materially lessen or damage the reputation of Contractor (and Dr. John Kotter in particular), in Contractor's reasonably good faith opinion. In such event, any prepaid and unearned fees will be refunded to the Board within ten (10) days following the effective date of termination.

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 or as otherwise set forth herein including without limitation in Article II, 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 to the extent the same do not contain Training Materials or Contractor's Intellectual Property, (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 upon not less than ten (10) business days' advance written notice 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. Limitation of Liability. In no event shall either party be liable for any special, punitive, exemplary, incidental, indirect, or consequential damages hereunder. A party's total aggregate liability for any and all claims arising out of this agreement will not exceed the amounts paid to contractor under this agreement during the twelve-month period preceding the last event that gave rise to such liability. The foregoing limitations, exclusions, and disclaimers will apply to the maximum extent permitted by applicable law, even if any remedy fails of its essential purpose.
- B. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- C. 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.
- D. 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.
- E. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- F. 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.
- G. 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.
- H. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, 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 administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- I. 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, March 27, 2024.

Contractor's Social Security Number or Federal Tax ID Number:

JEFFERSON COUNTY BOARD OF
EDUCATION

Kotter International, Inc.
CONTRACTOR

By: _____

By: Tanya Kruger

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

Title: Tanya Kruger
CFO

Cabinet Member: Robert Moore _____
(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: educational specialist
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.

Tim Godbey
Print name of person making Determination

AIS Office
School or Department

Tim Godbey
Signature of person making Determination

3/11/24
Date

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