

STRATEGIC SOURCING CONSULTING SERVICES AGREEMENT

This STRATEGIC SOURCING CONSULTING SERVICES AGREEMENT ("**Agreement**") is effective as of the 23rd day of August, 2012 ("**Effective Date**"), and is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate (the "**Board**") and A.T. Kearney, Inc., a Delaware corporation, ("**Consultant**").

RECITALS

- A. The Board desires that Consultant render certain strategic sourcing consulting services more fully described herein; and
- B. Consultant has demonstrated expertise in providing such services, has represented that it has the requisite knowledge, skill, experience and other resources necessary to perform such services and is desirous of providing such services for the Board.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

- 1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.
- 2. **Term of Agreement:** The term of this Agreement will be for a period commencing on the Effective Date and ending on August 22, 2013 ("**Term**") unless otherwise agreed by the parties.
- 3. **Scope of Services:** Consultant agrees to provide the services set forth on Exhibit A), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board may, from time to time, request changes in the scope of Services. Any such changes, including any increase or decrease in Consultant's fees, shall be documented by a written amendment to this Agreement signed by both parties.

Orders must be on the Board's Standard Purchase Order Form ("**PO**"). The terms and conditions found on the PO shall apply to the extent that such terms are not inconsistent with the terms and conditions contained in this Agreement. For the avoidance of doubt, the parties acknowledge that the indemnification provision in this Agreement supersedes and controls over the indemnification provision in the PO.

The provisions of this Section 3 shall survive the expiration or termination of this Agreement.

4. Compensation; Billing and Payment Procedures:

4.1 **Compensation:** Compensation for the Services to be provided by Consultant during the Term shall not exceed Three Million Dollars (\$3,000,000), the "**Maximum Compensation Amount**", without the prior approval of the members of the Board and a written amendment to this Agreement. It is understood and agreed that the Maximum Compensation Amount referenced hereinabove is a 'not-to-exceed amount' and is not a guaranteed payment. Compensation shall be based on actual Services performed during the Term and the Board shall not be obligated to pay for any Services or deliverables not in compliance with this Agreement. In the event the Contract is terminated early, the Board shall only be obligated to pay the fees incurred up to the effective date of termination and Consultant shall promptly refund to the Board any payments received for Services and deliverables not provided.

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4.2 **Billing and Payment Procedures:** All invoices must include: a valid purchase order number, itemized description of the services rendered and/or materials delivered, date the services were rendered, date the materials were delivered, invoice date, and invoice amount. Invoices shall be submitted in a timely manner. The final invoice shall be submitted no later than ninety (90) days after the expiration or termination of this Agreement. If Consultant has more than one contract with the Board, separate invoices must be submitted for each contract. The Board shall process payments in its normal course of business and in no event later than 30 days after receipt of invoices and all supporting documentation necessary for the Board to verify the Services provided under this Agreement. Original invoices must be sent to: Chicago Public Schools, Accounts Payable, P.O. Box 661, Chicago, Illinois, 60690-0661.

Standards of Performance: Consultant must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a consultant performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Consultant must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as required by law.

Any review, approval, acceptance of Services or deliverables or payment for any of the Services by the Board does not relieve Consultant of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. This provision in no way limits the Board's rights against the Consultant under this Agreement, at law or inequity. Consultant shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Consultant or its subcontractors or others on its behalf.

6. Personnel:

6.1 **Adequate Staffing:** Consultant must assign and maintain during the Term and any renewal of it, an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. Consultant must include among its staff the Key Personnel and positions, if any, identified in an attachment hereto. If the Board determines in its reasonable discretion that any employee, subcontractor or other person providing Services hereunder for the Consultant is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right, upon ten (10) business days prior written notice, to direct the Consultant to remove that person from performing Services under this Agreement.

6.2 **Key Personnel:** Exhibit A to this Agreement lists an individual employee of the Consultant who has particular expertise on which the Board is relying ("Key Personnel"). Consultant may not reassign or replace Key Personnel without the written consent of the Board, which consent shall not be unreasonably withheld or delayed. If the Key Personnel terminates its employment with Consultant, takes a leave of absence or otherwise become unavailable for reasons beyond Consultant's reasonable control, Consultant shall promptly replace such person with another person with comparable training and experience, subject to the approval of the Board, which approval shall not be unreasonably withheld or delayed.

7. Non-appropriation: Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Board for performance under this Agreement, the Board shall notify Consultant and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification shall be made to Consultant except that no payment shall be made or due to

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Consultant under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

8. Termination, Suspension of Services, Events of Default, Remedies, and Turnover of Documents:

8.1 Early Termination. The Board may terminate this Agreement in whole or in part, without cause, at any time, by a notice in writing from the Board to Consultant in accordance with the notice provisions herein. The effective date of termination shall be thirty (30) calendar days from the date the notice is received or the date stated in the notice, whichever is later.

After notice is received, Consultant must restrict its activities and those of its subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually performed in accordance with the terms and conditions of this Agreement, before the effective date of the termination is on the same basis as set forth herein in the provision regarding compensation and payment.

Consultant must include in its contracts with subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the Board arising from termination of subcontracts after the early termination of this Agreement.

Consultant shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Consultant or the Board to the extent inconsistent with this provision.

8.2 Suspension of Services. The Board may, upon thirty (30) calendar day's written notice, direct Consultant to suspend Services in whole or part. Upon any such suspension, Section 6.2 hereof shall be of no further force or effect. Consultant shall promptly resume performance of Services upon written notice from the Board and upon such equitable extension of time as may be mutually agreed upon in writing by the Board and Consultant. Responsibility for any additional costs or expenses actually incurred by Consultant as a result of remobilization shall be determined by mutual agreement of the parties.

8.3 Consultant's Events of Default. Events of default ("**Events of Default**") include, but are not limited to, the following:

- a) Any material misrepresentation by Consultant in the inducement or the performance of this Agreement.
- b) Breach of any term, condition, representation or warranty made by Consultant in this Agreement.
- c) Failure of Consultant to perform any of its obligations under this Agreement, including, but not limited to, the following:
 - i) Failure to timely perform any portion of the Services in the manner specified herein, except in the event of the failure of the Board or its personnel to cooperate in a timely manner as reasonably requested by Consultant;
 - ii) Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services
 - iii) Failure to promptly re-perform within a reasonable time and at no cost to the Board, Services that were determined by the Board in its reasonable judgment to fail to conform in all material respects to this Agreement;
 - iv) Discontinuance of the Services for reasons within Consultant's reasonable control; or
- d) Any action or failure to act by Consultant which affects the safety and/or welfare of students or Board staff; and

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- e) Assignment by Consultant for the benefit of creditors or consent by Consultant to the appointment of a trustee or receiver or the filing by or against Consultant of any petition or proceeding under any bankruptcy, insolvency or similar law.

8.4 Remedies. The occurrence of any Event of Default which Consultant fails to cure within fifteen (15) calendar days (or such longer period as the Board's Chief Procurement Officer ("CPO") may authorize in writing) after receipt of notice given in accordance with the terms of this Agreement and specifying the Event of Default or which, if such Event of Default cannot be reasonably cured within said cure period after notice, Consultant fails to commence and continue diligent efforts to cure in the reasonable opinion of the Board, may permit the Board to declare Consultant in default. Whether to declare Consultant in default is within the sole discretion of the CPO. Written notification of an intention of the CPO to terminate this Agreement, in whole or in part, shall be provided and shall be final and effective upon Consultant's receipt of such notice or on the date set forth in the notice (which shall include the cure period described in the first sentence of this Section 8.4), whichever is later. When a notice of an intention to terminate is given as provided in this Section, Consultant must discontinue all Services, unless otherwise directed in the notice, and must deliver to the Board all materials prepared or created in the performance of this Agreement, whether completed or in-process. Upon the giving of such notice as provided in this Agreement, the Board may invoke any or all of the following remedies:

- a) Terminate this Agreement, in whole or in part, as to any or all of the Services yet to be performed, effective at a time specified by the Board.
- b) Suspend Services during the fifteen (15) day cure period if the default results from an action or failure to act by Consultant which affects the safety and/or welfare of students or Board staff.
- c) Seek specific performance, an injunction or any other appropriate equitable remedy.
- d) Receive from Consultant any and all direct damages incurred as a result or in consequence of an Event of Default.
- e) Seek money damages.
- f) Withhold all or part of Consultant's compensation under this Agreement that is due or future payments that may become due under this Agreement for work not yet performed and work determined by the Board, in its reasonable judgment, to have failed to conform in all material respects to this Agreement, and which work has not been satisfactorily re-performed.
- g) Deem Consultant non-responsible in future contracts to be awarded by the Board, and/or seek debarment of the Consultant pursuant to the Board's Debarment Policy on Non-Responsible Persons in Procurement Transactions (08-1217-PO1), as may be amended from time to time.

The CPO may elect not to declare Consultant in default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the Board and that if the Board permits Consultant to continue to provide the Services despite one or more Events of Default, Consultant shall in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the Board waive or relinquish any of its rights under this Agreement, at law, equity or statute, nor shall the Board be deemed to have waived or relinquished any of the rights it has to declare an Event of Default in the future.

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The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

If the Board's election to terminate this Agreement for default under this Section is determined by a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered an early termination pursuant to Section 8.1 above.

8.5. Turnover of Documents and Records. Upon demand of the Board after termination of this Agreement for any reason or the expiration of this Agreement by its terms, Consultant shall turn over to the Board or its designee within ten (10) days of demand, all materials, supplies, equipment owned or purchased by the Board, completed or partially completed work product or analyses, data, computer disks, documents and any other information relating in any way to this Agreement or the performance or furnishing of Services, except that Consultant may keep a copy of such information for its own records.

9. Assignment: This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party.

10. Confidential Information, Dissemination of Information, Ownership, Survival:

10.1 Confidential Information. In the performance of this Agreement, Consultant may have access to or receive certain information that is not generally known to others ("**Confidential Information**"). Consultant acknowledges that Confidential Information includes, but is not limited to, proprietary information, copyrighted material, educational records, employee data, information relating to health records, and other information of a personal nature. Except for any Consultant Intellectual Capital (as defined below), Consultant shall not use or disclose any Confidential Information or any finished or unfinished, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, data, data studies, drawings, maps, files, records, computer printouts, designs, equipment descriptions, or other materials prepared or generated as a result of this Agreement ("**Work Product**") without the prior written consent of the Board. For the avoidance of doubt, "Work Product" shall not include any Consultant Intellectual Capital. All methodologies, procedures, management tools, workshops, manuals, software, data files, work papers, concepts, ideas, inventions, know-how and other intellectual capital that Consultant has heretofore created or acquired or, with respect to any of the foregoing generally related to the provision of management consulting services or not specifically created for the Board, may hereafter create or acquire, while performing the Services or otherwise ("Consultant Intellectual Capital"), are and shall be the exclusive property of Consultant. Consultant shall use at least a commercially reasonable standard of care in the protection of the Confidential Information of the Board. Upon the expiration or termination of this Agreement, Consultant shall promptly cease using and shall return or destroy (and certify in writing destruction of) all Confidential Information furnished by the Board along with all copies thereof in its possession including copies stored in any computer memory or storage medium.

10.2 Dissemination of Information. Consultant shall not disseminate any information obtained in performance or delivery of Services and/or materials for the Board to a third party without the prior written consent of the Board. Consultant shall not issue publicity news releases or grant press interviews during or after the performance or delivery of the Services and/or materials, except as may be required by law or with the prior written consent of the Board. If Consultant is presented with a request for documents by any administrative agency or with a *subpoena duces*

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tecum regarding any Confidential Information and/or Work Product which may be in Consultant's possession as a result of Services and/or materials provided under this Agreement, Consultant shall immediately give notice to the Board and its General Counsel with the understanding that the Board shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Consultant shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. Consultant shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Consultant under this Agreement.

10.3 Ownership. Consultant agrees that, to the extent permitted by law, any and all Work Product shall exclusively be deemed "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ *et seq.* To the extent any Work Product does not qualify as a "work for hire," Consultant irrevocably grants, assigns, and transfers to the Board all right, title, and interest in and to the Work Product in all media throughout the world in perpetuity and all intellectual property rights therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. All Confidential Information, and Work Product shall at all times be and remain the property of the Board. Consultant shall execute all documents and perform all acts that the Board may request in order to assist the Board in perfecting or protecting its rights in and to the Work Product. All of the foregoing items shall be delivered to the Board upon demand at any time and in any event, shall be promptly delivered to the Board upon expiration or termination of this Agreement within three (3) business days of demand. In addition, Consultant shall return the Board's data in the format requested by the Board. If any of the above items are lost or damaged while in Consultant's possession, such items shall be restored or replaced at Consultant's expense.

10.4 Injunctive Relief. In the event of a breach or threatened breach of this Section 10, Consultant acknowledges and agrees that the Board would suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, Consultant agrees that the Board shall be entitled to immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that the Board may have in equity, by law or statute.

10.5 Freedom of Information Act. Consultant acknowledges that this Agreement and all documents submitted to the Board related to this Agreement are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. Consultant further acknowledges that this Agreement shall be posted on the Board's Internet website.

10.6 Survival. The provisions of this Section 10 shall survive the termination or expiration of this Agreement.

11. **Representations and Warranties of Consultant:** Consultant represents and warrants that the following shall be true and correct as of the Effective Date and shall continue to be true and correct during the Term.

11.1 Licensed Professionals. Consultant shall perform no Services for which a professional license is required by law and for which Consultant, its employees, agents, or subcontractors, as applicable, are not appropriately licensed.

11.2 Compliance with Laws. Consultant is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to this

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Agreement and the performance of Services in effect now or later and as amended from time to time, including but not limited to the Prevailing Wage Act, 820 ILCS 130/1 et seq., the Drug-Free Workplace Act, the Illinois Student Records Act, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Act and any others relating to non-discrimination. Further, Consultant is and shall remain in compliance with all applicable Board policies and rules. Board policies and rules are available at <http://www.cps.edu/>.

11.3 Good Standing. Consultant is not in default and has not been deemed by the Board to be in default under any other agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement.

11.4 Authorization. In the event Consultant is an entity other than a sole proprietorship, Consultant represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Consultant is duly authorized by Consultant and has been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Consultant.

11.5 Financially Solvent. Consultant warrants that it is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all Services and perform all obligations under this Agreement.

11.6 Gratuities. No payment, gratuity or offer of employment was made by or to Consultant in relation to this Agreement or as an inducement for award of this Agreement.

11.7 Contractor's Disclosure Form. The disclosures in the Contractor Disclosure Form, previously submitted by Consultant, are true and correct. Consultant shall promptly notify Board in writing of any material change in information set forth therein, including but not limited to change in ownership or control, and any such change shall be subject to Board approval which shall not be unreasonably withheld.

11.8 Criminal History Records Search. Consultant represents and warrants that, at its own cost and expense, it shall have a complete fingerprint-based criminal history records check ("**Records Check**") conducted on any and all employees, agents and subcontractors ("**Staff**") who may have direct, regular contact with CPS students under this Agreement in accordance with the Illinois School Code (§105 ILCS 5/34-18.5); the *Sex Offender and Child Murderer Community Notification Law*, created under Illinois Public Act 94-219, eff. August 2005; and the *Child Murderer Violent Offender Against Youth Notification Law*, created under Public Act 94-945. Such complete Records Check consists of the following:

- fingerprint-based checks through the Illinois State Police (ISP) and the FBI,
- check of the Illinois Sex Offender Registry (IL-SOR), and
- check of the Violent Offender Against Youth Registry (see below).

The purpose of the Records Check is to confirm that none of these persons have been convicted of any of the criminal or drug offenses enumerated in subsection (c) of §105 ILCS 5/34-18.5 or any offenses enumerated under the *Sex Offender and Child Murderer Community Notification Law*, or the *Child Murderer Violent Offender Against Youth Notification Law*, or have been convicted within the past seven (7) years of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in the State of Illinois, would have been punishable as a felony under the laws of Illinois.

Consultant understands and agrees that it shall not allow any of its employees or subcontractors to have direct regular contact with a CPS student until a Records Check has been conducted for such person and the results of the Records Check satisfies the requirements of §105 ILCS 34-

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18.5 and the requirements of the Acts and Laws referenced in the preceding paragraph, as amended from time to time.

If Consultant is an individual, Consultant represents and warrants that Consultant is in compliance with Section 5/34-18.5 of the Illinois School Code as from time to time amended, and has never been convicted of the offenses enumerated therein. Further, Consultant agrees to submit to the above procedure regarding background investigations and to fully cooperate and provide the Board with all necessary information in order for the Board to perform all checks as set forth above on Consultant, all at Consultant's expense.

It is understood and agreed that Consultant's non-compliance with this Section 11.8 will constitute a material breach of this Agreement, and the Board also will have the right to withhold payments due hereunder until Consultant remedies such non-compliance to the Board's reasonable satisfaction, or take any other action or remedy available under this Agreement or by law.

11.9 Research Activities and Data Requests. Consultant acknowledges and agrees that in the event Consultant seeks to conduct research activities in the Chicago Public Schools or use CPS student data for research purposes in connection with this Agreement, Consultant shall comply with the Board's Research Study and Data Policy adopted on November 14, 2007, as may be amended from time to time. Consultant acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Chief Procurement Officer of the Board, or his designee.

11.10 Prohibited Acts. Within the three (3) years prior to the Effective Date, Consultant or any of its members if a joint venture or a limited liability company, or any of its or their respective officers, directors, shareholders, members, managers, other officials, agents or employees: (i) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity; and (ii) have not been convicted of agreeing or colluding among contractors or prospective contractors in restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code.

12. Independent Contractor: It is understood and agreed that the relationship of Consultant to the Board is and shall continue to be that of an independent contractor and neither Consultant nor any of Consultant's employees shall be entitled to receive Board employee benefits. As an independent contractor, Consultant agrees to be responsible for the payment of all taxes and withholdings specified by law which may be due in regard to compensation paid to Consultant by the Board. Consultant agrees that neither Consultant nor its employees, staff or subcontractors shall represent themselves as employees or agents of the Board. Consultant shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including but not limited to, a social security number or federal employer identification number.

13. Indemnification: Consultant agrees to defend, indemnify and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including reasonable costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent or willful acts or omissions of the Consultant, its officers, agents, employees and subcontractors in the performance of Services required under this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation.

Consultant shall, at its own cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, the Consultant shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to

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participate in the defense of any suit, without relieving the Consultant of any of its obligations hereunder. The Board retains final approval of any and all settlements or legal strategies which involve the interest of the Board.

However, if Consultant, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the Board may (without further notice to Consultant) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Consultant, subject to the right of Consultant to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Board in these circumstances shall be borne by Consultant and Consultant shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while the Board was represented by counsel retained by the Board pursuant to this paragraph, or while Consultant was conducting the defense.

To the extent permissible by law, Consultant waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any losses, including any claim by any employee of Consultant that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2nd 155 (1991)). The Board, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

The indemnities set forth herein shall survive the expiration or termination of this Agreement.

14. **Non-Liability of Board Officials:** Consultant agrees that no Board member, employee, agent, officer or official shall be personally charged by Consultant, its members if a joint venture, or any subcontractors with any liability or expense under this Agreement or be held personally liable under this Agreement to Consultant, its members if a joint venture, or any subcontractors.
15. **Board Not Subject to Taxes:** The federal excise tax does not apply to the Board by virtue of Exemption Certificate No. 36-600584, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109. The compensation set forth in Exhibit A is inclusive of all other taxes that may be levied or based on this Agreement, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Services to be provided under this Agreement, but excluding taxes levied or imposed on the income or business privileges of the Consultant. The Consultant shall be responsible for any taxes levied or imposed upon the income or business privileges of the Consultant.
16. **Insurance.** Consultant, at its own expense, shall procure and maintain insurance covering all Services and operations under this Agreement, whether performed by Consultant or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. Consultant shall submit to the Board satisfactory evidence of insurance coverage. Minimum insurance requirements include the coverage set forth below and any additional coverage which may be specified by the Board:
 - 16.1 **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all employees who are to provide Services under this Agreement with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence. The workers' compensation policy must contain a waiver of subrogation clause.
 - 16.2 **Commercial General Liability Insurance (Primary).** Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal

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injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), and defense.

16.3 Automobile Liability Insurance. Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

16.4 Umbrella/Excess Liability Insurance. Umbrella or Excess Liability Insurance with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, which will provide additional limits for employers' general and automobile liability insurance and shall cover the Board and its employees, subject to that of the primary coverage.

16.5 Additional Insured. Consultant shall have its General and Automobile Liability Insurance policies endorsed to provide that "the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board".

The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board will not pay Consultant for any Services if satisfactory proof of insurance is not provided by Consultant prior to the performance of any Services. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of the City of Chicago
125 S. Clark Street, 7th Floor
Chicago, Illinois 60603

Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Consultant's obligation to obtain the required insurance. The receipt of any certificate does not constitute agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. Consultant's failure to carry or document required insurance shall constitute a breach of the Consultant's Agreement with the Board. In the event Consultant fails to fulfill the insurance requirements of this Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Agreement may be terminated.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Consultant. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by the Consultant under this Agreement.

All subcontractors are subject to the same insurance requirements of Consultant unless otherwise specified in this Agreement. The Consultant shall require any subcontractors under this Agreement to maintain comparable insurance naming the Consultant, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. The Consultant will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

The coverages and limits furnished by Consultant in no way limit the Consultant's liabilities and responsibilities specified within this Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language in this Agreement, if any, or any limitation that might be placed on the indemnity in this Agreement given as a matter of law.

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The Consultant agrees that insurers waive their rights of subrogation against the Board.

Consultant must register with the insurance certificate monitoring company designated by the Board stated below, and must maintain a current insurance certificate on file during the entire Term. Consultant must register and pay the initial annual monitoring fee to the insurance certificate monitoring company prior to performing Services for the Board. The **initial** annual monitoring fee is currently Twelve 00/100 Dollars (\$12.00) per year, but is subject to change.

Each year, Consultant will be notified 30 to 45 days prior to the expiration date of its required insurance coverage (highlighted on its latest submitted insurance certificate on file) that it must submit an updated insurance certificate with the insurance certificate monitoring company. Insurance certificate submissions and related annual fees are required to be made online at the dedicated website established by the certificate monitoring company identified below. Questions on submissions and payment options should be directed to the certificate monitoring company.

Certificate Monitoring Company:

Topiary Communications Inc.
676 N. LaSalle - Suite 230
Chicago, IL 60654
Phone - (312) 494-5709
Email - dans@topiarycomm.net

Website for online registration, insurance certificate submissions and annual fee payments: URL - <http://www.cpsvendorcert.com>

17. **Audit and Document Retention:** Consultant shall permit and cooperate in good faith in any audits by the Board, including its Department of Procurement and Contracts, or its agents for compliance by the Consultant with this Agreement. Consultant shall furnish the Board with such information, supporting documentation and reports as may be requested relative to the progress, execution and costs of the Services and compliance with applicable MBE/WBE requirements. Failure of the Consultant to comply in full and cooperate with the requests of the Board or its agents shall give the Board, in addition to all other rights and remedies hereunder, the right to charge the Consultant for the cost of such audit. Consultant shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Consultant's Services under this Agreement. All records referenced above shall be retained for five (5) years after the termination or expiration of this Agreement and shall be subject to inspection and audit by the Board. Consultant shall require all of its subcontractors to maintain the above-described records and allow the Board the same right to inspect and audit said records as set forth herein.
18. **MBE/WBE Program:** Consultant acknowledges that it is familiar with the requirements of the Board's *"Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts"*. Consultant agrees to adhere to the minimum participation goals and to all other applicable MBE/WBE requirements as set forth in the plan. Consultant agrees to submit such documentation in connection with the plan as may be requested by the Board.
19. **Right of Entry:** Consultant and any of its officers, employees, subcontractors or agents, performing Services hereunder shall be permitted to enter upon Board property in connection with the performance of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board and, if applicable, the subject school principal. Consultant shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a site given by the Board shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Board. Consultant shall use, and shall cause each of its officers, employees and agents to use, the highest degree of care when

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entering upon any property owned or leased by the Board in connection with the Services. Any and all claims, suits or judgments, costs, or expenses, including reasonable attorney fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Agreement, including without limitation, the indemnification provisions contained in this Agreement.

20. **Non-Discrimination:** It shall be an unlawful employment practice for Consultant or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability. Consultant shall particularly remain in compliance at all times with: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, *et seq.*, as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, *et seq.*, as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, *et seq.*; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*, as amended; the Illinois School Code, 105 ILCS 5/1-1 *et seq.*; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*; the Individuals with Disabilities Education Act (IDEA) 20 U.S.C.A. §1400 *et seq.*; and, the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws. Nothing in this paragraph is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this paragraph shall be construed to create contractual or other rights or expectations for the Consultant's employees or the Consultant's subcontractors' employees.
21. **Entire Agreement:** This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this Agreement. No modification or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.
22. **Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois.
- Consultant irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Consultant agrees that service of process on the Consultant may be made, at the option of the Board, by either registered or certified mail addressed to the office identified in the notice provision herein, by registered or certified mail addressed to the office actually maintained by the Consultant, or by personal delivery on any officer, director, or managing or general agent of the Consultant. If any action is brought by the Consultant against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.
23. **Limitation of Liability:** IN NO EVENT SHALL EITHER CONSULTANT OR THE BOARD BE LIABLE FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOST PROFITS, INCOME OR SAVINGS, OR INTERRUPTION OF BUSINESS) THAT MAY BE SUFFERED OR INCURRED BY THE OTHER PARTY OR ANY PERSON OR ENTITY AFFILIATED OR ASSOCIATED WITH THE OTHER PARTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN

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ADDITION, THE LIABILITY OF CONSULTANT FOR LOSSES, DAMAGES, LIABILITIES, SUITS AND CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND THE PERSON OR ENTITY BRINGING SUCH ACTION, SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF FEES UNDER THIS AGREEMENT (EXCLUDING PAYMENTS FOR TAXES AND EXPENSES).

24. **Conflict of Interest:** This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.
25. **Indebtedness:** The Consultant agrees to comply with the Board's Indebtedness Policy adopted June 26, 1996 (96-0626-PO3), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
26. **Ethics:** No officer, agent or employee of the Board is or shall be employed by the Consultant or has or shall have a financial interest, directly, or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy adopted May 25, 2011 (11-0525-PO2), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
27. **Inspector General:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board of Education of the City of Chicago has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.
28. **Waiver:** No delay or omission by the Board to exercise any right hereunder shall be construed as a waiver of any such right and the Board reserves the right to exercise any such right from time to time as often and as may be deemed expedient.
29. **Debarment Policy.** Consultant acknowledges that, in performing the Services for the Board, Consultant shall not utilize any firms that have been debarred from doing business with the Board under the Board's Debarment Policy, 08-1217-PO1, as amended from time to time.
30. **Survival/Severability.** All express representations or indemnifications made or given in this Agreement shall survive the completion of Services or the termination of this Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, the Agreement shall be considered divisible and any such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects the Agreement shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.
31. **Joint and Several Liability.** In the event that Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Consultant shall be the joint and several obligation or undertaking of each such individual or other legal entity.
32. **Counterparts and Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

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33. **No Third Party Use.** The Services and deliverables are personal to the Board and intended solely for the internal use of the Board. The Board shall ensure that no person or entity other than the Board will use or rely upon the deliverables, the Services or any recommendations that Consultant may make.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**BOARD OF EDUCATION OF THE
CITY OF CHICAGO**

By: David J. Vitale
David J. Vitale, President

Attest: Estela G. Beltran 9/4/12
Estela G. Beltran, Secretary

Approved as to legal form:

James L. Bebley
James L. Bebley, General Counsel

A.T. KEARNEY, INC.

By: Kish Khemani
Name:

Title: Partner

Attest: Vishwa Chandra
Title: Vishwa Chandra Prinsora

Board Report No: 12-0822-PR 19-1

Exhibits:

Exhibit A- Scope of Services, Compensation Schedule and Key Personnel

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EXHIBIT A

**Scope of Services
(Statement of Work)**

Between

A.T. Kearney, Inc. ("Consultant") and Chicago Board of Education ("Board")

Dated August 23, 2012

I. Scope of Services

Overall Project Summary

The Board is determined to aggressively reduce its overall external spending through a more effective procurement approach. A.T. Kearney will provide strategic sourcing consulting services for several categories being procured by the Board. The services will include development and execution support of sourcing strategies. The overall objective is to generate sustainable bottom-line impact, while improving service and building more professional and best practice procurement capability into the organization.

Project Scope and Overview

The project is structured into two phases, with Phase 2 only proceeding with agreement of both parties after the conclusion of Phase 1.

Phase 1 will be launched immediately and will focus on rapidly executing strategic sourcing of two (2) "quick-win" categories and launching one (1) more complex category. Quick win categories include:

- Custodian services, including janitorial supplies
- Office and Classroom supplies, including similar items currently classified as Educational supplies
- Small Vehicle transportation, in which A.T. Kearney will assist with category strategy and RFP development and release, with full launch of the bus transportation category continuing in Phase 2.

Phase 1 is expected to last 10-12 weeks, with the objective of rapidly generating value to the Board and also providing funding for consulting support of Phase 2. The effort targets at least \$5MM in annualized value.

At the conclusion of Phase 1 or sooner if a Board Steering Committee elects, a Board Steering Committee will review the outcomes and savings generated through Phase 1 and will determine whether to proceed with Phase 2. Phase 2 would be launched only upon a mutual agreement to proceed.

Phase 2 will include the strategic sourcing execution of Transportation, Construction, and Food and Milk. It is expected to last 24 weeks and is designed to generate significant sustainable value. Phase 2 targets an additional \$20MM - \$50MM in annualized value.

Phase 1 activities

For Custodian services, including janitorial supplies, A.T. Kearney will assist in the strategy, drafting, and execution of a modular Request for Proposal (RFP). This will be structured to allow "turnkey" proposals that include all necessary equipment and janitorial supplies and will attempt to negotiate short-term rate reductions as well.

Likely strategies for custodian services and janitorial supplies include "should-cost" modeling, relationship restructuring, including the use of fixed fee per unit contracts (e.g., cost per square foot), and standardization of service levels and cleaning supplies. A.T. Kearney will further assist the Board in reviewing the responses to the RFP, strategy for negotiation, negotiation, and contract execution. For office and educational supplies, A.T. Kearney will assist in the strategy, drafting, and execution of a Bid or alignment of current prices to proven best in class. A.T. Kearney will analyze the products purchased through the Board's contracts for office and educational supplies, combine similar products to increase volume and achieve better pricing, seek to increase MWBE spend, employ demand management strategies, and develop policies to direct supplies away from higher cost providers. A.T. Kearney will further assist the Board in reviewing the responses to the Bid, any negotiation for lower cost, and in contract execution.

For small vehicle transportation, A.T. Kearney will assist in the strategy, drafting, and execution of a RFP for the approximately 400 routes with 3 or fewer riders that represent approximately \$24 million in annual cost. A.T. Kearney will assist in developing a procurement strategy, benchmark costs and strategies with public and private busing contracts, remove impediments to the use of a smaller, more efficient fleet for these students, consider other quickly-implementable demand management alternatives, and invite suppliers to submit proposals for small vehicle services. The procurement strategy for small vehicle transportation will be consistent with the Board's longer-term objectives for transportation. A.T. Kearney will further assist the Board in reviewing the responses to the RFP, strategy for negotiation, negotiation, and contract execution. Category strategy and contract execution for small vehicle transportation may continue in Phase 2, during which A.T. Kearney will launch an entire transportation sourcing strategy.

Phase 2 Activities

The three (3) complex categories that comprise the second phase offer significant benefit opportunity. Phase 2 will include the strategic sourcing execution of Transportation, Construction, and Food and Milk. Phase 2 targets an estimated savings of \$20MM - \$50MM in annualized value.

For each of the three (3) categories, A.T. Kearney will provide the following at a minimum:

1) Review of the Current State

- a. A detailed break-down of the current total cost of delivery (internal and external).
- b. A review of the supply/demand market for each category.
- c. A review of the key cost drivers and price trends.
- d. A gap analysis vs. best practices identified through proven benchmarks.

2) Three (3) Year Category Strategy

- a. A sourcing strategy for each category.
- b. A detailed comparison of the current total cost of delivery vs. the "should-be" cost model and a recommended target.
- c. A review of the recommended levers with related financial impact.
- d. A year-over-year cost roadmap.

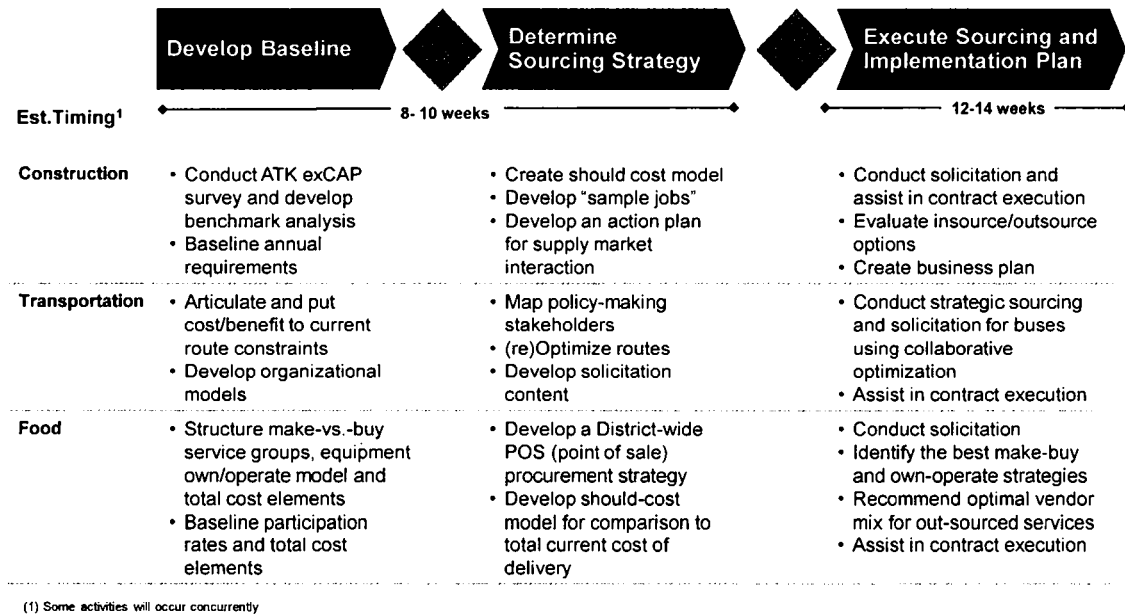
3) Detailed Action Plan to Deliver the Strategy

- a. The actual assistance in the implementation of the "to-be" state validated by the Board, including the sourcing process for new contracts.
- b. The support in negotiation of new contracts.
- c. A best-in-class category management methodology based on actual work done for specific categories.
- d. Formalization of the category strategy using a similar template/approach that will become a standard for CPS to utilize for future category strategy

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For each of these categories, the team will execute a work plan as shown below (which may be modified based on mutual agreement).

Approach and Key Activities



Project Resources for Both Phases

For Phase 1, A.T. Kearney will deploy a team ranging from 2-4 consultants (3.0 FTE), plus senior leadership and subject matter expert support (0.5 FTE). The Board will assign one (1) leader for each of the categories and provide additional ad hoc functional support.

Should Phase 2 proceed, A.T. Kearney will deploy a team ranging from 3-5 consultants (4.0 FTE) which includes a dedicated leader for each category, plus analytical support that may be shared across categories. Senior leadership and subject matter expertise will be provided in addition (0.6 FTE). The Board will assign one (1) leader for each of the categories and provide additional ad hoc functional support.

If at any point during A.T. Kearney's services in Phase 1 or Phase 2, the Board determines that a consultant for A.T. Kearney is unsatisfactory, A.T. Kearney will replace that consultant with an equally qualified consultant. The Board will provide A.T. Kearney with a notice of ten (10) business days for any request to replace a consultant.

Project Governance

In addition to the core project execution teams, the following roles will be established:

Board's Steering Committee

The Board's Steering Committee will provide overall guidance and direction to the effort including the following responsibilities:

- Ensuring resources are available and aiding in the removal of barriers
- Ensuring the interests of stakeholders are adequately represented
- Approving recommendations made by the project teams
- Validate the category strategies
- Confirming whether sufficient benefit threshold has been crossed which would then trigger bonus payment to A.T. Kearney for Phase 1
- Confirming whether sufficient benefit threshold has been crossed to warrant proceeding with Phase 2
- Approving Phase 2 to proceed

The Board's Steering Committee will be comprised entirely of Board employees and be chaired by the Board's Executive Project Sponsor. Additional participants will be determined by the Executive Project Sponsor. The Board's Steering Committee will meet approximately once every four (4) weeks.

Advisory Council

An advisory council of stakeholders may be assembled to represent broader stakeholder interests. Members will be engaged individually and/or collectively as needed. Approval of advisory council members will be determined by the Board's Executive Project Sponsor or his designee.

Executive Project Sponsor and Weekly Updates

A.T. Kearney will provide weekly project updates to the Executive Project Sponsor (Board's Chief Procurement Officer or his designee) and any additional individuals included by the Executive Project Sponsor. Weekly project updates will be in-person meetings, unless otherwise directed by the Executive Project Sponsor. Upon request, the Executive Project Sponsor may request A.T. Kearney to provide written updates and analysis.

Accountability for the overall performance of A.T. Kearney will be the responsibility of Kish Khemani (A.T. Kearney Partner).

Compensation

Professional fees and expenses paid to A.T. Kearney for Phase 1 include the following two (2) components:

- Fixed fee of \$250,000 payable at the time of project launch
- If A.T. Kearney generates \$2,500,000.00 in savings during Phase 1, A.T. Kearney will be compensated an additional payment of \$250,000.00. Savings will be identified by the difference in year-over-year cost per unit multiplied by the forecast for this year's volume (the previous year's volume will be used as a proxy unless there is reason to provide a different volume). The CPS Steering Committee will determine whether A.T. Kearney has generated \$2,500,000 in savings to trigger the additional payment.

Phase 2 will only proceed if sufficient benefit (e.g. \$5MM) is secured for the Board during Phase 1, and is further subject to approval by the Board's Steering Committee and mutual agreement between A.T.

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Kearney and the Board. For execution of Phase 2, A.T. Kearney will be compensated \$2,500,000.00, payable over five (5) months starting at a mutually agreed-upon date.