This Agreement will be posted on the CPS Internet website.

#### COST ESTIMATING SERVICES AGREEMENT

This COST ESTIMATING SERVICES AGREEMENT ("Agreement") is effective as of the last date written below ("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 the Concord Consulting Group of Illinois Inc. (Consultant").

#### RECITALS

- A. On or about March 12, 2012, the Board issued a Request for Proposals for Cost Estimating Services (the "RFP") to the Board over a pariod beginning the Effective Date and ending December 31, 2013;
- B. The Board desires that Consultant render certain cost estimating services to the Board for its various schools and facilities, as more particularly described in this Agreement, as part of the Board's Capital Improvement Program (the "CIP") for various schools and facilities (hereinafter referred to as "Project" or "Projects"). Consultant is engaged in facility assessments and desires to provide such Services to the Board Facilities;
- C. Consultant acknowledges and agrees that the Board has retained Consultant in order to make available cost estimating services ("Services"), as set forth in Exhibit A attached hereto and incorporated herein, for the benefit of its various public schools and other Board facilities (collectively the "Board Facilities") located within the City of Chicago;
- D. The Board desires to engage Consultant under the terms and conditions of this Agreement pursuant to Consultant's response and submittals to the RFP; and
- E. Consultant has demonstrated expertise in providing such Services and represents to the Board 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:
- Incorporation of Recitals: The matters recited above are hereby incorporated into and made a
  part of this Agreement.
- 2. <u>Term:</u> This Agreement is for a term commencing on the Effective Date and ending December 31, 2013 ("Term"), unless terminated sooner as provided herein. The Board has three (3) options to extend this Agreement for successive twelve (12) month periods.
- 3. Scope of Services: Consultant agrees to provide the Services to the CIP as set forth on Exhibit A attached hereto and incorporated herein, including the deliverables set forth thereon, in accordance with the terms and conditions of this Agreement. The parties acknowledge that the goal of these Services is to provide for the effective and efficient overall management of the CIP. The Board retains final authority with respect to all Services related decisions. The Board may, from time to time, request changes in the Services by issuing a written clarification letter to Consultant from the Board's Chief Operating Officer ("COO"). Any such changes in Services which will increase the maximum compensation payable to Consultant hereunder shall also be documented by an amendment to this Agreement duly authorized by the Board.
- 4. <u>Compensation</u>: Compensation for Services during the Term shall be payable on a monthly basis at the rates set forth in Exhibit B1 (attached hereto and made a part hereof). Consultant may be reimbursed for those expenses identified in Exhibit B2 ("Reimbursables") attached hereto and made a part hereof. The maximum compensation payable to Consultant during the

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Term for all Services and Reimbursables shall not exceed the sum of One Million One Hundred Twenty-Five and 00/100 Dollars (\$1,125,000) in the aggregate. The Board shall not be obligated to pay for any Services or Reimbursables not in compliance with this Agreement. The Board shall not be obligated to pay for any Services not in compliance with this Agreement. In the event of early termination of this Agreement, the Board shall only be obligated to pay for Services rendered or costs incurred up to the date of termination. In no event shall the Board be liable for any costs incurred or Services performed after the effective date of termination as provided herein. Consultant shall submit monthly invoices referencing this Agreement with such supporting documentation as may be requested by the Board. The Board shall process payment in its normal course of business.

## 5. Billing and Payment Procedures; Electronic Payments:

- A. <u>Billing and Payment Procedures</u>: 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 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.
- B. <u>Electronic Payments</u>: Consultant agrees that, at the Board's sole discretion, the Board may make payment electronically to Consultant for any and all amounts due to Consultant pursuant to this Agreement by means of the Board's procurement charge card account. Consultant recognizes that any charge to the Board's procurement charge card that is in excess of the open remaining amount as stipulated in the applicable Purchase Order, or any charge unaccompanied by the requisite documentation and data as required by the Board, shall be deemed invalid and disputed by the Board. Consultant further recognizes that, in the absence of any supporting documentation as may be required by the Board, payments associated with disputed charges shall be rescinded by the Board and deemed not owed by the Board. Consultant agrees to comply with the rules, procedures and documentation required for electronic payment via the Board's procurement charge card as established by the Board's Department of Procurement and Contracts.

### 6. Key Personnel:

- A. <u>Adequate Staffing:</u> Consultant must assign and maintain during the term of this Contract 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, as identified below. If the Board determines, in its sole 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 to direct the Consultant to remove that person from performing Services under this Contract.
- B. <u>Key Personnel:</u> This Contract may list individuals of the Consultant who have particular expertise on which the Board is relying ("Key Personnel") as set forth in Exhibit C attached hereto and made a part hereof. 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 one or more Key Personnel terminate their employment with Consultant 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.

- Standards of Performance: Consultant shall devote, and shall cause all of its staff and 7. subcontractors to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to perform all Services effectively, efficiently and consistent with the best interests of the Board and to the satisfaction of the COO. Consultant shall retain and utilize sufficient staff to assure the most effective and efficient performance of Services and shall utilize, as required by law or by this Agreement, professionals licensed to practice in the State of Illinois in the applicable profession. Consultant shall use efficient business administration methods and perform the Services in the best way and in the most expeditious and economical manner consistent with the best interests of the Board, so as to assure, among other things, that the Services are performed at a reasonable cost to the Board and that Services performed by other entities or persons in connection with this Agreement are efficiently and cost-effectively delivered. Consultant acknowledges and accepts a relationship of trust and confidence with the Board and agrees to cooperate with the Board, and all other persons or entities which may be retained by the Board, in performing Services to further the best interests of the Board. Consultant understands that it does not have the authority to represent or commit the Board to any obligation hereunder without first obtaining approval from the COO and/or his designee.
- 8. 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 sufficient funds are not appropriated in a subsequent fiscal year by the Board for performance under this Agreement, the Board shall notify Consultant and this Agreement shall terminate on the last day of the fiscal period for which funds were appropriated.
- 9. Audit and Document Retention: Consultant shall furnish the Board with such information as may be requested relative to the progress, execution and costs of the Services. 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 completion of Services and shall be subject to inspection and audit by the Board. Consultant shall include in all subcontractor agreements for Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board the same right to inspect and audit said records as set forth herein.

#### 10. <u>Termination</u>:

- A. <u>Termination for Convenience</u>. If at any time during the Term, the Board determines, in its sole discretion, that the Services provided by Consultant are no longer in its best interest, the Board shall have the option to terminate this Agreement upon thirty (30) calendar days written notice to Consultant.
  - i) 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 and satisfactorily performed before the effective date of the termination is on the same basis as set forth herein in the provisions regarding compensation and payment.

- ii) 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.
- iii) 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.
- B. <u>Suspension of Services</u>. The Board may, upon thirty (30) calendar day's written notice, request that Consultant suspend Services in whole or part. 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 paid by the Board.
- C. <u>Consultant Events of Default</u>. Events of default ("Events of Default") include, but are not limited to, the following:
  - i) Any material misrepresentation by Consultant in the inducement of this Agreement or the performance of Services
  - ii) Breach of any agreement, representation or warranty made by Consultant in this Agreement.
  - iii) Failure of Consultant to perform in accordance with or comply with the terms and conditions of this Agreement, including, but not limited to, the following:
    - a) Action or failure to act which affects the safety and/or welfare of students or Board staff;
    - Failure to perform in accordance with terms, conditions and specifications of this Agreement;
    - c) Failure to provide any portion of the Services herein at the time fixed for performance and in the manner specified herein;
    - Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services due to a reason or circumstances within Consultant's reasonable control;
    - e) Failure to perform the Services in a manner satisfactory to the Board;
    - f) Failure to promptly re-perform Services within a reasonable time that were determined by the Board to be incomplete or unsatisfactory;
    - g) Discontinuance of the Services for reasons not beyond Consultant's reasonable control; or
    - h) Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in this Agreement constituting an Event of Default.
  - iv) 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.
  - v) Default by Consultant under any other agreement Consultant may presently have or may enter into with the Board;

- vi) Any action or failure to act by Consultant which affects the safety and/or welfare of students or Board staff; and
- vii) 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.
- D. Remedies. The occurrence of any Event of Default which Consultant fails to cure within fifteen (15) calendar days 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 fifteen (15) calendar days after notice, Consultant fails to commence and continue diligent efforts to cure, in the sole opinion of the Board, may permit the Board to declare Consultant in default. Whether to declare Consultant in default is within the reasonable discretion of the Board. Written notification of an intention of the Board 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. Upon the giving of such notice as provided in this Agreement, the Board may invoke any or all of the following remedies:
  - i) Take over and complete the Services or any part thereof, by agreement or otherwise as agent for and at the cost of Consultant either directly or through others. Consultant shall be liable to the Board for any excess costs incurred by the Board. Any amount due Consultant under this Agreement or any other agreement Consultant may have with the Board may be offset against amounts claimed due by the Board.
  - ii) The right to 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.
  - iii) Suspend Services during the fifteen (15) day cure period if the default results from Consultant's action or failure to act which affects the safety and/or welfare of students or Board staff
  - iv) Seek specific performance, an injunction or any other appropriate equitable remedy.
  - v) Receive from Consultant any and all damages incurred as a result or in consequence of an Event of Default.
  - vi) Money damages.
  - vii) Withhold all or part of Consultant's compensation under this Agreement.
  - viii) Deem Consultant non-responsible in future agreements to be awarded by the Board.

If the Board considers it to be in its best interest, it 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 to declare an event of default in the future.

The remedies under 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 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 10 A above.

11. <u>Turnover of Documents and Records.</u> 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 five (5) days of demand, all materials, supplies, equipment owned or purchased by the Board, completed or partially completed work 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.

#### 12. Confidential Information, Dissemination of Information, Ownership, Survival:

#### A. Confidential Information.

In performance of Services to the Board, Consultant may have access to or receive certain information that is not generally known to others ("Confidential Information"). Consultant agrees not to use or disclose any Confidential Information or any records. 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. 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 Contract ("Work Product") without the prior written consent of the Board. 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 Contract, 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.

It is understood that, once such information becomes known to third parties or the general public through a source other than Consultant, such information shall no longer be considered Confidential Information for purposes of this Agreement.

B. <u>Dissemination of Information</u>. Consultant agrees not to use or disclose any Confidential Information or any records, reports or documents prepared or generated as a result of this Agreement ("Work Product") without the prior written consent of the Board. Consultant shall not issue publicity news releases or grant press interviews, except as may be required by law, during or after the performance of the Services, nor shall Consultant disseminate any information regarding Services without the prior written consent of the Board. In the event that Consultant is presented with a request for documents by any administrative agency or with a subpoena duces tucem regarding any records, data, or Work Product which may be in Consultant's possession as a result of Services 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 will 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 agrees to cause its

- personnel, staff and subcontractors, if any, to undertake the same obligations of confidentiality agreed to by Consultant under this Agreement.
- C. 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 intellectual property, 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 and all intellectual property rights relating 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 Contract 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.
- D. Injunctive Relief: In the event of a breach or threatened breach of this Section, Construction Manager 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.
- E. <u>Freedom of Information Act.</u> 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 at www.cps.edu.
- F. <u>Survival</u>. The provisions of this paragraph shall survive the termination or expiration of this Agreement.
- 13. <u>Representations and Warranties of Consultant</u>: Consultant represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct (as may be modified from time to time subject to Board approval) during the Term of this Agreement:
  - A. <u>Contractor's Disclosure Form</u>. The disclosures in the Contractor's Disclosure Form submitted by Consultant to the Department of Procurement and Contracts are true and correct. Consultant shall promptly notify the Board 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.
  - B. <u>Licensed Professionals</u>. Services required by law or by this Agreement to be performed by professionals shall be performed by professionals licensed to practice by the State of Illinois in the applicable professional discipline.

- C. <u>Financially Solvent</u>. 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.
- D. <u>Technical Accuracy</u>. Consultant warrants that all Services will be technically accurate and correct.
- E. <u>Compliance with Laws</u>. Consultant is and shall remain in compliance with all local, State and Federal laws, ordinances, regulations and statutes relating to this Agreement and the performance of Services, including, but not limited to, the Prevailing Wage Act, 820 ILCS 130/1 et seq., the Drug-Free Workplace, and any others referenced in this Agreement relating to non-discrimination. Further, Consultant is and shall remain in compliance with all Board policies and rules.
- F. <u>Gratuities</u>. No payment, gratuity or offer of employment was made to Consultant, any of its members if a joint venture or, to the best of Consultant's knowledge, to any subcontractors, in relation to this Agreement or as an inducement for award of this Agreement. Consultant is and shall remain in compliance with all applicable anti-kickback laws and regulations.
- G. Good Standing. Consultant, each of its joint venture members if a joint venture, and each of its subcontractors, if any, are not in default or have not been deemed by the Board's Chief Purchasing Officer 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, and have not been debarred under the Board's Debarment Policy during the three (3) year period immediately preceding the effective date of this Agreement.
- H. Authorization. Consultant 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.
- I. <u>Criminal History Records Search.</u> 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, daily contact with CPS students under this Agreement in accordance with the <u>Illinois School Code</u> (§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 34-18.5 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 such above checks 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.

- J. 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 Officer of the Office of Research, Evaluation and Accountability or his/her designee.
- K. <u>Prohibited Acts:</u> Within the three (3) years prior to the effective date of this Agreement, 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.
- 14. <u>Independent Contractor</u>: 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 staff, agents, employees or subcontractors shall be entitled to receive Board employee benefits. It is further understood and agreed that the Board shall not be responsible for, nor incur any liability for, any State or Federal withholding or other taxes or for FICA or State unemployment insurance for Consultant, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by Consultant shall be the sole responsibility of Consultant. Consultant agrees that neither Consultant nor its 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 a federal employer identification number.
- 15. <u>Indemnification</u>: 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 costs and reasonable 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 Consultant, its officials, agents, employees and subcontractors in the performance of this Agreement.

Consultant shall, at its own cost and expense, appear, defend and pay all reasonable attorney fees and other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, 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 participate in the defense of any suit, without relieving 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 III. 2<sup>nd</sup> 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.

- 16. <u>Disclaimer</u>: No provision of this Agreement, nor any act of the Board or the Consultant shall be deemed or construed by either of the parties, or by third persons, to create any relationship of third party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the Board or the Consultant.
- 17. 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.
- 18. 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 in the Schedule of Compensation 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.
- 19. <u>Insurance</u>: Consultant, at its own expense shall procure and maintain insurance covering all operations under this Agreement, whether performed by Consultant or by a subcontractor. 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 unless a written waiver is granted by the Board's Bureau of Risk and Benefits Management. At any time upon request, Consultant shall submit to the Board satisfactory evidence of insurance coverage. Minimum insurance requirements are:

#### A. 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 Contract 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.

#### B. Commercial General Liability Insurance (Primary and Umbrella):

Commercial General Liability Insurance or equivalent with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to the following: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion) and defense. The Board and its employees shall be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from services provided by Consultant.

Subcontractors performing work for Contractor must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

#### C. 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 and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

#### D. <u>Professional Liability/Errors and Omissions</u>.

If professional services are rendered, Consultant shall maintain such coverage with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per claim for errors and omissions in conjunction with professional services inclusive of assumption of contractual liability. The policy shall have a retroactive date effective with the commencement of professional services and have an extended reporting period of not less than two (2) years following completion of such professional service.

Subcontractors performing work for Contractor must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

E. <u>Umbrella/Excess Liability Insurance:</u> 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 insurance and shall cover the Board and its employees, subject to that of the primary coverage.

#### F. Insurance-Additional Insured.

The 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 corporate and politic, and its members, employees and agents, and any other entity as may be designated by the Board are named as ADDITIONAL INSUREDS on a primary basis without recourse or right of contribution from the Board."

#### Insurance Certificates.

Before commencing work under this Agreement, the Consultant shall have its insurance company or its representative submit an insurance certificate evidencing insurance coverage maintained by the Consultant and indicating that the Board of Education and its employees as well as any other entity designated by the Board are additional insureds on

the general and automobile liability insurance and must evidence thirty (30) days prior written notice of material change, cancellation or non renewal of any policy maintained by Consultant be given to:

Board of Education of the City of Chicago Risk Department 125 South Clark Street 7<sup>th</sup> Floor Chicago IL 60603 Attention: Celeste Sullivan

Copy to: Chief Procurement Officer
Board of Education of the City of Chicago
125 S. Clark Street, 10<sup>th</sup> floor
Chicago, Illinois 60603
ATTN: Demetra Knowles

Consultant's failure to carry or document required insurance shall constitute a breach of this Agreement and any failure by 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 Board will not pay the Consultant for any work if satisfactory proof of insurance is not provided before the commencement of Services. The Board reserves the right to obtain copies of insurance policies and insurance records by written request at any time from the Consultant or its subcontractors and to modify, delete, alter or change insurance requirements at any time.

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 of Education do not contribute with insurance provided by the Consultant under this Contract.

Consultant shall require any subcontractors under this Agreement to maintain comparable insurance which shall name 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.

- 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 the terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, disability, marital status, parental status, military discharge status, or national origin; or to limit, segregate, or classify employees or applicants for employment from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, religion, sex, age, disability, marital status, parental status, military discharge status, or national origin. Consultant shall comply with the Civil Rights Act of 1964, 42 U.S.C.A. §2000, et seq., as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, et seq. 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 5/1-10, as amended; and the Chicago Human Rights Ordinance, MCC ch. 2-160.
- 21. <u>Assignment</u>: This Agreement shall be binding on the parties and their respective successors and assigns; provided, however, Consultant may not assign this Agreement or any obligations imposed hereunder without the prior written consent of the Board.
- 22. <u>Continuing Obligation To Perform</u>: In the event of any dispute between Consultant and the Board, Consultant shall expeditiously and diligently proceed with the performance of all of its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

- 23. <u>Survival/Severability</u>: All express representations or indemnifications made or given in this Agreement shall survive the completion of Services by Consultant or the termination of this Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this 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.
- 24. <u>Governing Law:</u> 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 Consultant may be made, at the option of the Board, by either registered or certified mail to the address and to the person set forth on the Signature Page or to such other address or person as may be designated by Consultant in writing, to the office actually maintained by Consultant or by personal delivery on any officer, director or managing or general agent of Consultant. If any action is brought by 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.

- 25. <u>Waiver:</u> No delay or omission, or series of delays or omissions, by the Board to exercise any right hereunder shall be construed as any type of waiver of any such right, and the Board reserves the right to exercise any such right from time to time as often as may be deemed expedient.
- **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.
- 27. <u>Conflict of Interest</u>: 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 during the one year period following expiration or other termination of their terms of office.
- 28. <u>Indebtedness</u>: Consultant agrees to comply with the Board's Indebtedness Policy adopted July 26, 1995 (95-0726-EX3), as may be amended from time to time, which policy is hereby incorporated by reference as if fully set forth herein.
- 29. <u>Ethics:</u> 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 Contract 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 Contract as fully set forth herein.
- 30. <u>Inspector General</u>: Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education 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.
- 31. <u>Right of Entry:</u> Consultant and any of its officers, employees, or agents, performing Services hereunder shall be permitted to enter upon various Board sites, subject to the terms and conditions contained herein and those rules established by the Board. 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 entering upon any property owned 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.

- 32. <u>Principal's Right to Direct:</u> The principal at each school shall have the authority, to the maximum extent possible, to direct Consultant and its subcontractors when performing the Services on the school site.
- 33. <u>Joint and Several Liability</u>: 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.
- 34. MBEWBE Plan: 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", which is incorporated by reference as if fully set forth herein. Consultant agrees to adhere to the minimum participation goals and to all other applicable MBEWBE requirements as set forth in the program. Consultant agrees to submit such documentation in connection with the program as may be requested by the Board.
- 35. <u>Notices:</u> All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally; (ii) sent by confirmed facsimile (followed by the actual document); or (iii) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt.

IF TO THE BOARD: Board of Education of the City of Chicago

Department of Operations

125 South Clark Street, 17th Floor

Chicago, Illinois 60603 Attn: Chief Real Estate Officer Fax No. (773) 553-2901

WITH A COPY TO: Board of Education of the City of Chicago

Law Department

125 South Clark Street, 7th Floor

Chicago, Illinois 60603 Attn: General Counsel Fax No. (773) 553-1701

IF TO CONSULTANT: The Concord Consulting Group of Illinois Inc.

161 North Clark Street, SUITE 2050

Chicago, Illinois 60601 Attn: Eamon Ryan Phone No. 312-424-0250 Fax No.312-424-0252

36. <u>Kickbacks</u>. Neither Consultant nor any of its members, if a joint venture or limited liability Company, has accepted and shall not accept from or on behalf of any subcontractor or any

intermediate tier subcontractor, any payment, gratuity or offer of employment in relation to the Agreement or as an inducement for the acceptance of the Agreement. Consultant is and shall remain in compliance with all applicable anti-kickback laws and regulations

37. <u>Entire Agreement; Amendments</u>: This Agreement, including all exhibits and referenced documents, constitutes the entire agreement of the parties with respect to the matters contained herein. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties.

**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.

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BOARD OF EDUCATION OF THE CITY OF CHICAGO	THE CONCORD CONSULTING GROUP
By: David J. Vitale, President	Name EDWARD P. STRITCH
Attest: <u>Stella S. Beltran</u> 7/2/12 Estela G. Beltran, Secretary	Attest: Bannel Pyr
Board Report No: 12-0523-PR16⊶ ↑	Name: FAMON C. RYAN  Its: SECRETARY
Approved as to legal form:	<del></del>
Patrick Rocks, General Coursel	Date. <u>6/26// 2</u>

#### Exhibit A

#### 1. STATEMENT OF WORK

The estimating work includes estimating costs for demolition, renovation, new construction, utilities, etc. Estimates are required during various phases of design and during construction to review and validate the cost implications associated with change management. The estimates shall be organized by the updated 2010 Construction Standards Institute ("CSI") MasterFormat. The work processes and methodologies shall be developed and implemented with due consideration to CPS policies and project delivery calendars.

The Consultant must possess the necessary aptitude to develop the expert knowledge of estimating principles including a real understanding of how a project will actually be built from site assessment through design development project closeout.

#### 2. DETAILS OF SERVICES:

Within two (2) to ten (10) working days after Consultant's receipt of required project documentation for each Service listed below, Consultant shall articulate, in writing, responses through examples and scenarios to the following outline:

- A. Provide complete cost estimates while allowing 2 to 10 working days maximum per project; ranging from \$10,000 to \$7,000,000 per project for a total of \$350,000,000. Often times, 5-10 estimates will be required per week.
- B. Demonstrate familiarity with school construction in the City of Chicago in the form of a narrative and matrix indicating project name, scope and project cost for new construction and renovations.
- C. Provide on-screen and digitizer take-offs and pricing including escalation rates/factors.
- D. Derive material quantities and productivity units from Building Information Modeling (BIM) design environment.
- E. Provide estimates at various milestones of the design life-cycle, such as transfer estimates 75% design, 100% design and out to bid ("OTB") estimates.
- F. Provide assessment costing tables to supplement the CPS Biannual assessment tool to assist with long-term capital plan. (see sample Assessment Pricing Table Attachment F)
- G. Review Job Order Costing Proposals for accuracy.
- H. Review all change orders using Oracle Contracts Manager.
- Provide accurate estimates including statistical analysis with respect to construction trends, material price changes, Leadership in energy and Environmental Design ("LEED") requirements, environmental, labor dispute and other influences in the market place.
- J. Provide the Schedule of Values ("SOV") from the above bid estimates and identify areas that might require increased project control efforts to mitigate front-end loading and over expenditures.

The above list is not exhaustive and CPS reserves the right to add additional services as necessary.

#### Scope of Services

#### 3. COMPENSATION AND REIMBURSEABLE EXPENSES

#### A. Compensation:

- 1) Consultant shall be required to submit electronic timesheets weekly to the Board for review. Any timesheets not submitted on a weekly basis may be ineligible for compensation.
- 2) Authorization requests shall be submitted to, and approved by, the CIP Director of Construction for any services being performed.

#### B. Reimbursable Expenses:

Consultant shall be entitled to reimbursement for direct Project expenses related solely to Project activities based upon actual expenses incurred with supporting documentation, without any administrative or handling charges and subject to the limitations outlined herein ("Reimbursable Expenses"):

#### 1) Transportation Expenses:

- Mileage for personal or company vehicles when used for travel to multiple project sites only. Rate shall be determined by the Board.
- Travel outside the City of Chicago requires pre-authorization and written approval by the Board.
- Project related parking fees and taxi fares.

#### 2) Reproduction:

- Charges for copying and printing of Project documents and photographs when provided by an outside vendor and upon Board approval. Pre-authorization for these expense are required as the Board is moving toward a completely electronic, work flow based system and paper reproduction is expected to be minimized.
- Copying, faxing, and printing in-house are not Reimbursable Expenses. Special printing may be allowed with written Board approval.

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# Exhibit B COST PROPOSAL --

The Cost Estimating Services shall be paid for on an hourly basis per the table below:

Position	Hourly Base Rate
Eamon Ryan (Principal)	\$72.12
Maurizio Magalli (Senior MEP Cost Estimator)	\$56.39
John Tilleman (Senior Cost Estimator)	\$48.08
Robert White (Senior Mechanical Estimator)	\$40.38
Richard Bertovic (Senior Cost Estimator)	\$37.26
Derek McLoughlin (Senior Cost Estimator)	\$37.02
Josh Houston (Cost Estimator)	\$35.58
Seamus Wallace (Cost Estimator)	<b>\$</b> 29.81
Ken Osborne (Cost Estimator)	\$24.04
Raymond Keaveney (Cost Estimator)	\$26.00
Andrew Mejia (Cost Estimator)	\$27.64
Christian Flores (Technician)	<b>\$33</b> .65
Robert Kempa (Cost Estimator) (SPAAN TECH)	\$33.65
Other(Cost Estimator) (SPAAN TECH)	\$33.65
Other (Cost Estimator) (Starr Design)	\$33.65

Consultant shall provide a multiplier based on the sized of the projects as set forth below.

Project cost FROM \$	TO\$	Multiplier
\$0	\$250,000	2.5
\$250,001	\$1,000,000	2.5
\$1,000,001	\$5,000,000	2.5
\$5,000,001 and above		2.5

# Exhibit C

# KEY PERSONNEL

Additional Key Personnel shall be determined by mutual agreement between the parties.