

## VOLUNTARY EXCLUSION AND SETTLEMENT AGREEMENT

This Voluntary Exclusion and Settlement Agreement ("Agreement") between the Board of Education of the City of Chicago ("Board"), and Frank Cooney Company, Inc. ("FCC") and its principals, Kevin Cooney and Gregory Cooney (collectively "FCC Respondents"), is entered this 15 day of April, 2013.

### RECITALS

WHEREAS, the Board's Office of the Inspector General ("OIG") investigated allegations that FCC Respondents had violated certain Board Rules and policies in connection with contracts for computer tables purchased by the Board;

WHEREAS, the Board instituted proceedings against FCC Respondents pursuant to the Board's *Debarment Policy*, adopted by Board Report 08-1217-PO1 ("Debarment Policy"), based on the OIG's investigative findings and served FCC Respondents with a Notice of Proposed Debarment and Interim Constraints on December 6, 2012 ("Notice of Proposed Debarment");

WHEREAS, the FCC Respondents contest their debarment and deny any and all allegations in the Notice of Proposed Debarment; and

WHEREAS, the Board and FCC Respondents desire to amicably resolve all issues and disputes set forth in the Notice of Proposed Debarment.

NOW THEREFORE, in consideration of the mutual promises made herein, the Board and FCC Respondents agree as follows:

[The remainder of this page is intentionally blank.]

## AGREEMENT

1. In consideration of the Board's agreement to dismiss debarment proceedings, FCC Respondents and FCC's officers, shareholders, partners, agents, employees, successors and assigns, accept the voluntary exclusion of FCC Respondents and FCC's officers, shareholders, partners, agents, employees, successors and assigns under Section 4.7 of the Board's Debarment Policy, for a period of eighteen (18) months, as set out in the Board Report or Resolution authorizing the execution of this Agreement.

2. FCC Respondents expressly understand and agree that, upon execution of this Agreement, neither FCC Respondents, nor FCC's officers, shareholders, partners, agents, employees, successors and assigns, may submit any Bid or invoice, respond to any Request for Proposal ("RFP"), Request for Quotation ("RFQ") or Request for Information ("RFI"), or in any way participate in any business transactions with the Board or any of its Departments or schools, whether as a contractor, a subcontractor, or employee or agent of a contractor or subcontractor, during the period of voluntary exclusion set forth in his Agreement, and that any Bid, or invoice and any response to an RFP, RFQ or RFI FCC Respondents or FCC's officers, shareholders, partners, agents, employees, successors and assigns make will be null and void, that no contract will result from such Bid or response, and that neither FCC Respondents nor any of its officers, shareholders, partners, agents, employees, successors and assigns shall have any claim, in law or equity, against the Board, its members, officers, employees or agents, for breach of contract, improper rejection of Bid, invoice or response, or under

any quasi-contract theory. Notwithstanding the foregoing, FCC Respondents agree to fulfill all purchase orders that were opened before February 27, 2013.

FCC Respondents understand and agree that their vendor number, 22173, has been revoked. FCC Respondents further understand and agree that after the period of voluntary exclusion set forth in his Agreement expires, it is the duty of FCC Respondents to comply with all Board requirements, including but not limited to applying for a valid vendor number, prior to participating in any business transactions with the Board or any of its Departments or schools, whether as a contractor, a subcontractor, or employee or agent of a contractor or subcontractor.

FCC Respondents agree that they will not sell or otherwise provide FCC product to a third party with the knowledge or intention that the product will be sold or otherwise provided by the third party to the Board. Further, FCC Respondents and Board understand and agree that a third party's sale or provision of FCC product to the Board which was acquired from FCC Respondents without FCC Respondents' knowledge or intention that the product be delivered to the Board is not a breach of the Agreement, unless FCC Respondents learns of such resales and fails to notify the Board.

It is agreed that this Agreement is not applicable to independent public schools established under the Charter Schools Law, 105 ILCS 5/27A-1, *et seq.*, as amended.

3. FCC Respondents expressly understand and agree that if FCC Respondents or FCC's officers, shareholders, partners, agents, employees, successors and assigns provide any goods or services to the Board or any of its Departments or schools, whether as a contractor, subcontractor, or employee or agent of a contractor or

subcontractor, during the period of voluntary exclusion set forth in this Agreement, FCC Respondents will not be paid for any goods or services so provided, and that any such goods or services shall be deemed an irrevocable gift to the Board.

4. In further consideration of the Board's agreement to dismiss debarment proceedings against FCC Respondents, FCC Respondents will pay to the Board the total sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) in three equal monthly installments of Seventy-Five Thousand Dollars (\$75,000.00) on the first day of April, May and June, 2013.

5. FCC Respondents stipulate and agree that there is due and owing to the Board the total sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) on the date that this Agreement is fully executed by the parties and that the FCC Respondents are jointly and severally liable for the total payment. In the event that FCC Respondents fail to timely pay any amount owed pursuant to this Agreement, all then-outstanding payments are immediately due in full and a judgment by confession may be entered against each of the FCC Respondents for the full unpaid balance, plus interest, costs and attorneys' fees. Additionally, if FCC Respondents miss any payment or if a check is returned due to non-sufficient funds, all then-outstanding payments are immediately due in full and a judgment by confession may be entered against each of the FCC Respondents for the full unpaid balance, plus interest, costs and attorneys' fees. The Board also reserves the right to use all other available remedies in the enforcement of this Agreement. FCC Respondents understand that any such judgment would adversely affect each of their credit reports.

6. Upon execution of this Agreement by FCC Respondents, the Board agrees to dismiss Notice of Proposed Debarment with prejudice.

7. FCC Respondents expressly understand and agree that any violation of this Agreement by FCC Respondents constitutes grounds for permanent debarment of FCC Respondents.

8. It is agreed that this Agreement is the embodiment of a compromise of disputed claims, that the payment made to the Board is not to be construed as an admission of liability on the part of FCC Respondents, and that FCC Respondents deny liability. Further, this Agreement neither constitutes nor operates as an acknowledgment or admission by either the Board or FCC Respondents of any violations of federal, state, local, or common law, or any rule, regulation, order or statute, or that either the Board or FCC Respondents breached any other legal duty each has or ever had to each other or to any other person or entity.

9. FCC Respondents expressly understand that this Agreement will be a public record subject to disclosure under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* However, this Agreement will not be distributed to any other agency or unit of government unless required by law.

10. FCC Respondents agree to release all claims and defenses that were or could have been made against the Board or its members, officers, employees or agents, in connection with the allegations made in the Notice of Proposed Debarment or debarment proceedings.

11. Kevin Cooney and Gregory Cooney, by their signatures below, warrant and represent that they have the legal authority to enter this Agreement on their own behalf and on behalf of FCC and on behalf of FCC's officers, shareholders, partners, agents, employees, successors and assigns, that they have consulted with competent legal counsel of their own choosing regarding the debarment proceedings and this Agreement, that they have read and understand each and every provision in this Agreement, and that FCC Respondents agree to be legally bound by those provisions.

12. No change, amendment, modification or discharge of this Agreement, or any part hereof, shall be valid unless in writing and signed by an authorized representative of all parties hereto, or their respective successors and permitted assigns.

13. This Agreement shall be governed and controlled by the laws of the State of Illinois, and any suit arising out of this Agreement must be commenced and prosecuted in the Circuit Court of Cook County, Illinois, except that any debarment proceeding instituted in the event of an alleged breach hereof shall follow the procedures set forth in the Board's Debarment Policy.

14. All parties to this Agreement acknowledge that 105 ILCS 5/34-13.1 authorizes the Board's OIG to investigate any allegations of waste,

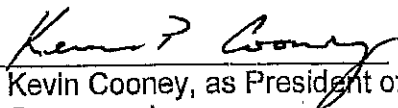
fraud and mismanagement in public education within the jurisdiction of the Board, and that the OIG shall have access to all information and personnel necessary to perform the OIG's statutory duties.

• 15. The invalidity or unenforceability of any provision in this Agreement shall not affect the validity or enforceability of any other provision to the fullest extent allowed by law.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Settlement Agreement to be executed on the day and year set forth above.

**FRANK COONEY COMPANY, INC.**

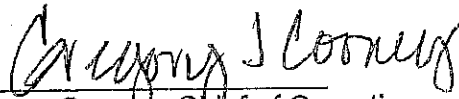
By:



Kevin Cooney, as President of Frank Cooney Company, Inc.

and

By:



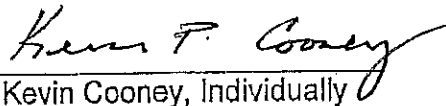
Gregory Cooney, Chief of Operations of Frank Cooney Company, Inc.

Dated:

3-28-07

**KEVIN COONEY**

By:



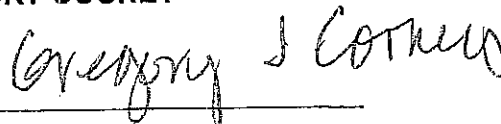
Kevin Cooney, Individually

Dated:

3-28-07

**GREGORY COONEY**

By:



Gregory Cooney, Individually

Dated: 5-28-09

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

By:

\_\_\_\_\_  
 Sébastien de Longeaux, Chief Purchasing  
 Officer Board of Education of the City of Chicago

Approved as to Legal Form:

By:

\_\_\_\_\_  
 James L. Bebley, General Counsel  
 Board of Education of the City of Chicago

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 Approved by the Board of Education of the City of  
 Chicago in Board Report no. 13-0227-AR9.

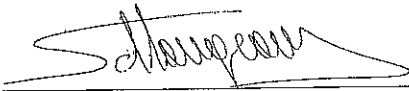
Dated: \_\_\_\_\_



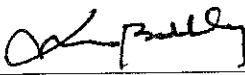
Gregory Cooney, Individually

Dated: \_\_\_\_\_

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

By:   
Sébastien de Longeaux, Chief Purchasing Officer  
Board of Education of the City of Chicago

Approved as to Legal Form:

By:   
James L. Bebley, General Counsel  
Board of Education of the City of Chicago

*dot*

Approved by the Board of Education of the City of Chicago  
in Board Report no. 13-0227-AR9.

Dated: 4-15-13