

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CIV. 09-5045, 10-5088, 10-5087

vs.

STIPULATION FOR
COMPROMISE SETTLEMENT

OGLALA SIOUX TRIBE, a
federally recognized Indian Tribe,

Defendant.

I. BACKGROUND

WHEREAS, the United States of America ("United States"), on behalf of the Secretary of the Department of Health and Human Services ("HHS"), filed a Complaint in Civ. 09-5045 under 28 U.S.C. § 1345 to collect unappealed audit disallowances related to Grant 90 CI 8867 which was used to operate the Oglala Sioux Tribe's Head Start/Parent & Child Center; and

WHEREAS, the United States has also filed a Complaint against the Oglala Sioux Tribe in United States District Court, District of South Dakota, Western Division, Civil Action No. 10-5088, pursuant to 28 U.S.C. § 1345 to collect two additional unappealed audit disallowances related to this same Head Start/Parent & Child Center Grant, (90 CI 8867), but for other years (December 1, 1999, to November 30, 2000; and January 1, 2001, to December 31, 2002); and

WHEREAS, the United States has also filed a Complaint against the Oglala Sioux Tribe in United States District Court, District of South Dakota, Western

Division, Civil Action No. 10-5087, pursuant to 28 U.S.C. § 1345 to collect unappealed audit disallowances related to the Substance Abuse and Mental Health Services Administration Grants 1H79T112133-01, 0-2, and 0-3 under the Consolidated Knowledge Development and Application Program (KD&A) for the grant periods from September 1999 through September 2002 which were used to operate the Flowering Tree Program; and

WHEREAS, the United States and the Oglala Sioux Tribe agree that this Stipulation for Compromise Settlement ("Settlement Agreement") shall apply in all three cases. This settlement has been negotiated by the Parties in good faith; settlement of this matter will avoid prolonged and complicated litigation in three cases between the Parties; and this settlement is fair, reasonable, and in the public interest.

THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1331 and 1345. This Court also has personal jurisdiction over the Oglala Sioux Tribe. The Oglala Sioux Tribe consents to and shall not challenge the enforcement of this Settlement Agreement.

III. PARTIES BOUND

2. This Settlement Agreement is binding upon the United States and upon the Oglala Sioux Tribe and the Oglala Sioux Tribe's successors and assigns. Any change in the Oglala Sioux Tribe's political leadership, corporate ownership, or legal status shall in no way alter responsibilities of the Oglala

Sioux Tribe under this Settlement Agreement.

IV. DEFINITIONS

3. Unless otherwise expressly defined herein, terms used in this Settlement Agreement shall be defined as such:

- A. "Settlement Agreement" shall mean this Settlement Agreement.
- B. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
- C. "Effective Date" shall be the date this Settlement Agreement is filed with the Court.
- D. "HHS" or "Health and Human Services" shall mean the United States Department of Health and Human Services and any successor departments, agencies, or instrumentalities of the United States.
- E. "Paragraph" shall mean a portion of this Settlement Agreement identified by an arabic numeral or an upper or lower case letter.
- F. "Parties" shall mean the United States and Oglala Sioux Tribe.
- G. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- H. "Oglala Sioux Tribe" shall mean the Oglala Sioux Tribe and any legal entities operating or conducting business as the Oglala Sioux Tribe for which the Oglala Sioux Tribe has received federal funds, federal grants, or federal awards, its current and future officers, employees, agents, or other persons under its direction, and its successors or assigns.
- I. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.
- J. "Complaints" shall mean the Complaints filed as Civil Nos. 09-5045, 10-5087, and 10-5088 against the Oglala Sioux Tribe for unappealed audit disallowances.

V. STATEMENT OF PURPOSE

4. By entering this Settlement Agreement, the mutual objective of the Parties is for the Oglala Sioux Tribe to address its alleged liability for audit disallowances as set out in the Complaints and to establish certified and reliable accounting systems to assure future compliance with accounting and audit requirements for all federal grants by the Oglala Sioux Tribe for a period of five years from the Effective Date.

VI. NO ADMISSION OF LIABILITY

5. By entering into this Settlement Agreement, the Oglala Sioux Tribe does not admit any liability to the United States arising out of the transactions or occurrences alleged by the United States in its Complaints. The mutual objective of the Parties is for the Oglala Sioux Tribe to address its alleged liability for audit disallowances as set out in the Complaints and to establish certified and reliable accounting systems to assure future compliance with accounting and audit requirements for all federal grants received by the Oglala Sioux Tribe for a period of five (5) years from the Effective Date.

VII. TERMS OF THIS SETTLEMENT

6. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above captioned actions under the terms and conditions set forth in this Settlement Agreement.

7. This Settlement Agreement is not, is in no way intended to be, and

should not be construed as, an admission of liability or fault on the part of the Oglala Sioux Tribe, its agents, servants, or employees, and the Oglala Sioux Tribe has specifically denied that it is liable to the United States. This settlement is entered into by all parties for the purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

8. As consideration for this settlement, the Oglala Sioux Tribe will do the following things:

- A. The Oglala Sioux Tribe will have its accounting system certified by a duly licensed independent certified public accountant experienced in federal accounting requirements and Generally Accepted Accounting Principles within six months of the Effective Date of this agreement. That certification report will be presented by the Accountant to the United States Attorney or his or her designee and the Department of Health and Human Services and any other federal agency that requests that certification. The Oglala Sioux Tribe must demonstrate to that accountant, the United States, and the Department of Health and Human Services and any other federal agency that so requests, that its current payroll and fringe accounting system meets all federal requirements contained in the applicable Office of Management and Budget Circular and federal regulations for each federal grant, federal funds, or federal award as required by the granting agency. Once this system is certified, the Oglala Sioux Tribe agrees not to make any changes to those accounting procedures unless doing so would not violate federal standards for the particular grant and would not violate Generally Accepted Accounting Principles.
- B. The Oglala Sioux Tribe shall keep a separate set of fund accounts in accordance with Generally Accepted Accounting Principles for each federal grant or contract. The Tribe will not commingle federal grant or contract funds unless specifically authorized to do so by the granting agency and applicable law. Each of the above referenced fund accounts shall be reviewed by the Tribe's auditor as a part of the Tribe's annual audit and the auditor's findings shall be noted in the audit itself. This annual audit shall be performed in full

compliance with all applicable federal standards and requirements. For each federal grant or contract, the Oglala Sioux Tribe will designate a financial point of contact and a programmatic point of contact who are directly authorized to provide information in response to inquiries from that federal agency regarding the Tribe's use of, or accounting for, those specific contract and grant funds. The Tribe also designates its Tribal President as an overall point of contract for each federal agency which provides grant or contract funds to the Oglala Sioux Tribe and authorizes its President or his or her designee, to provide all information in response to inquiries from federal agency officials and to resolve any questions which cannot be or are not fully addressed by the program's financial and programmatic point of contact. Further, The Oglala Sioux Tribe agrees to promptly update the designated point of contact in the event the point of contact changes.

Nothing in this subsection shall, however, prohibit funding from one or more federal agencies from being used to match funding from another agency "[e]xcept as provided by federal statute, a cost sharing or matching requirement may not be met by cost borne by another federal grant." as addressed in 45 C.F.R. 92.24(b)(1).

- C. The Oglala Sioux Tribe further agrees to comply with the organizational audit requirements of OMB Circular A-133 Revised, Audits of States, Local Governments, and Non-Profit Organizations, and further understands and agrees that funds may be withheld or other related requirements may be imposed, including the liquidated damages provision contained herein, if outstanding questioned costs contained in the annual audit are not satisfactorily and promptly addressed.
- D. The Oglala Sioux Tribe will also comply with the following:
 - 1. All applicable regulations and OMB Circulars, including 45 C.F.R. Part 92, and OMB Circulars A-87 and A-133;
 - 2. Any terms, conditions, special conditions, and requirements imposed by the grantor agency or federal agency awarding the federal grant, federal funds, or federal awards.

- E. Each time it runs its payroll, the Oglala Sioux Tribe will charge out to the salary and fringe account of each federal contract or grant the allowable amount of salary and fringe benefits actually paid to employees of that program for that pay period. This will ensure that each of the tribal programs' payroll and fringe accounts operate on an accrual basis and that no tribally operated federal program is charged for payroll or fringe benefits in excess of the amount properly paid out.
- F. The Oglala Sioux Tribe will conduct an annual audit in accordance with OMB Circular A-133 Revised, Audits of States, Local Governments, and Non-Profit Organizations, and file a copy with the Federal Audit Clearinghouse in accordance with OMB Circular A-133 Revised and also provide a copy to the United States Attorney or his or her designee at the same time said audit is forwarded to the Federal Audit Clearinghouse.
- G. The Oglala Sioux Tribe shall in addition to providing its annual audit to the Federal Audit Clearinghouse as required under Section C, and to any other federal agency to which the Oglala Sioux Tribe is required by law to provide a copy of its annual audit, shall also provide a copy of its annual audit to any other federal agency from which it receives funding that requests a copy of the audit in writing.
- H. If a federal agency questions the use of any federal funds, received by the Tribe on or after January 1, 2011, as a result of a finding in a tribal audit submitted by the Tribe to the Federal Audit Clearinghouse, then the Tribe shall resolve for that agency all of the costs that the agency questions as soon as possible, but no later than within two (2) years of the date that the Federal Audit Clearinghouse received that audit. Failure of the Oglala Sioux Tribe to resolve all questioned costs in compliance with this two year requirement shall constitute a material breach of the Settlement Agreement and require payment as set forth in Section VIII, Breach of Settlement Agreement, as contained herein.

VIII. BREACH OF SETTLEMENT AGREEMENT

- 9. The Oglala Sioux Tribe's failure to abide by the requirements of Section VII (8)(H) for each federal program, federal award, and federal grant

awarded to the Oglala Sioux Tribe for fiscal years 2011, 2012, 2013, 2014 and 2015 shall be considered a material breach of this Settlement Agreement for which the Oglala Sioux Tribe shall pay liquidated damages in favor of the United States in the amount of Eight Hundred Eight Thousand, Nine Hundred Seventeen Dollars (\$808,917.00). This is the principal amount of the debt sought in the current actions filed against the Oglala Sioux Tribe, and the Oglala Sioux Tribe hereby covenants and agrees to pay said amount to the United States of America within sixty (60) days of notification by the United States Attorney's Office of a material breach of this agreement. The Oglala Sioux Tribe also hereby consents that in the event the amount of liquidated damages is not paid within 60 days as required in this paragraph, the Oglala Sioux Tribe hereby confesses judgment in said amount and consents that a judgment in the amount of \$808,917 may be entered without further notice to the Oglala Sioux Tribe. The Oglala Sioux Tribe shall be required to resolve questioned costs with the respective federal agency which is the source of the federal funds, federal awards, or federal grants resulting in the questioned costs as set forth in paragraph VII (8)(H).

IX. COSTS, FEES AND EXPENSES

10. It is also agreed, by and among the Parties, that the respective Parties will each bear their own costs, fees, and expenses.

X. RESERVATION OF RIGHTS BY THE UNITED STATES
AND THE OGLALA SIOUX TRIBE

11. Both the United States and the Oglala Sioux Tribe reserve, and this

Settlement Agreement is without prejudice to, all rights which are not expressly limited by the terms and conditions of this Settlement Agreement.

Notwithstanding any other provisions of this Settlement Agreement, the United States reserves all rights against the Oglala Sioux Tribe with respect to:

- A. The enforcement and collection of any other federal grant disallowances for noncompliance with the accounting and auditing requirements established as a condition of the grant.
- B. Any other administrative, civil, or criminal action where deemed necessary regarding future audit disallowances or fraud referrals.

XI. EFFECT OF SETTLEMENT

12. Nothing in this Settlement Agreement shall be construed to create any rights in, nor grant any cause of action to, any person not a Party to this Settlement Agreement. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law.

XII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

13. If the Oglala Sioux Tribe does not comply with the obligations set forth in this Settlement Agreement, the Oglala Sioux Tribe shall be in material breach of this Settlement Agreement, and the United States shall be entitled to immediately collect liquidated damages from the Oglala Sioux Tribe as set forth herein and to take any steps legally authorized to address the audit disallowances which are the subject of the Complaints.

14. If the United States brings and prevails in any action to enforce this

Settlement Agreement, or an action to collect the monies which are the subject of the various Complaints, which are brought solely as a result of the Tribe's material breach of this Settlement Agreement, or to seek liquidated damages in accordance with this Settlement Agreement, the Oglala Sioux Tribe shall reimburse the United States for all costs of such action, including but not limited to costs and reasonable attorney's fees.

XIII. MODIFICATION

15. Any modifications shall be made to this Settlement Agreement in writing by the attorneys for both Parties.

16. Nothing in this Settlement Agreement shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Settlement Agreement.

XIV. NOTICES AND SUBMISSIONS

17. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Settlement Agreement with respect to the United States and the Oglala Sioux Tribe, respectively.

18. The Parties agree that this Settlement Agreement, including all the terms and conditions and Exhibit 1 attached hereto, may be made public in their

entirety, and the Oglala Sioux Tribe expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

XV. RETENTION OF JURISDICTION

19. The United States District Court, District of South Dakota, Western Division, shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Settlement Agreement.

XVI. INTEGRATION

20. This Settlement Agreement constitutes the final, complete, and exclusive understanding between the Parties with respect to the compromise settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

21. If for any reason this Court should decline to approve this Settlement Agreement in the form presented, this Settlement Agreement is voidable at the sole discretion of any party, and the terms of the Settlement Agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

22. The undersigned representatives of the Parties signing this Settlement Agreement warrant and represent that they possess full authority to bind the Party on whose behalf they are signing to the terms of the settlement. In the event that the Oglala Sioux Tribe needs the approval of the Tribal Council, the Tribe must obtain such approval in a timely manner - time being of the

essence. The Oglala Sioux Tribe further agrees that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner. In the event the Oglala Sioux Tribe fails to obtain such Tribal Council approval, the entire Settlement Agreement is null and void.

23. It is contemplated that this Settlement Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

As to the United States:

Diana Ryan
Civil Chief - Assistant U.S. Attorney
U.S. Attorney's Office
PO Box 2638
Sioux Falls, SD 57101-2638

As to the Oglala Sioux Tribe:

Mario Gonzalez
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522 7th Street, Suite 202
Rapid City, SD 57701

Patricia Marks, Esq.
Fredericks, Peebles & Morgan
1301 Connecticut Ave N.W. Ste 450
Washington, D.C. 20036
Phone 202-450-4887
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24. The Oglala Sioux Tribe shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by registered/return receipt U.S. mail on its behalf with respect to all matters arising under or relating to this Settlement Agreement. The Oglala Sioux Tribe hereby agrees to accept service in that manner and to waive the

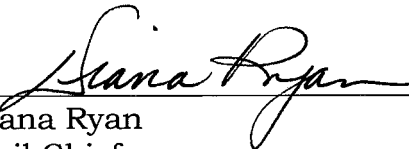
formal service requirements, other than those related to time, set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Oglala Sioux Tribe's agent is deemed authorized to accept service until such time as the Oglala Sioux Tribe identifies a successor agent by filing a Notice of Substitution with the Court which includes the name, address, and phone number of the new agent.

XVIII. FINAL JUDGMENT

25. Upon approval and entry of this Settlement Agreement by the Court, this case should be dismissed without prejudice, to be reopened only in the event that there is a breach of the settlement agreement.

BRENDAN V. JOHNSON
United States Attorney

Date: 9/22/11



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FOR THE OGLALA SIOUX TRIBE

Date: 9-20-11

By: 

Mario Gonzalez
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FOR THE OGLALA SIOUX TRIBE

Date: 9-20-11

By: Patricia Marks by Mario Gonzalez
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The name and address of an agent who is authorized to accept service of process by mail on behalf of the Oglala Sioux Tribe with respect to all matters arising under or relating to this Settlement Agreement is:

Mario Gonzalez
Attorney at Law
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