

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	No. 06 C 7076
	)	
v.	)	
NATIONAL TRAINING AND	)	Judge St. Eve
INFORMATION CENTER,	)	
	)	
Defendant.	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into between the United States of America (the “United States”) and the National Training and Information Center, (“NTIC”), through their authorized representatives. The parties agree as follows:

1. NTIC is an Illinois corporation that applied for and received grants funds in 2000, 2001, and 2002, pursuant to Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3701 *et seq.*, from the Department of Justice (“DOJ”), through its Office of Justice Programs, to operate a Community Justice Empowerment Project in specific communities.

2. The United States contends that it has certain civil claims, as specified in paragraph 7, below, against NTIC for engaging in the following conduct: From July 1, 2000, through December 31, 2002, NTIC improperly claimed and received disbursements of DOJ grant monies for the costs it incurred for the purpose of lobbying members of Congress and employees of members of Congress for the award of future federal grants to NTIC. NTIC hosted four mandatory national training conferences, *i.e.*, July 17-19, 2000; July 16-18, 2001; April 21-24, 2002; and September 23-24, 2002; in Washington, D.C., during which NTIC spent \$207,131 in federal grant funds for transportation, food, and lodging expenses for NTIC personnel and sub-grantee staff and leaders.

Pursuant to the common rule on lobbying, codified in 28 CFR Part 69, no federal appropriated funds may be expended to pay any person for influencing or attempting to influence a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with the grant. Further, NTIC's use of federal grant funds to pay for the lobbying expenses of its employees and certain of its sub-grantees was in violation of the special conditions of the grant and the grant supplements, and was neither reasonable nor allocable to the grant and the supplements. The foregoing conduct is hereinafter referred to as the "Covered Conduct".

3. The United States also contends that it has certain administrative claims against NTIC for engaging in the Covered Conduct.

4. This Agreement is neither an admission of liability by NTIC nor a concession by the United States that its claims are not well founded.

5. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the parties reach a full and final settlement pursuant to the Terms and Conditions below.

6. NTIC agrees to pay to the United States five hundred fifty thousand dollars (\$550,000) (the "Settlement Amount"). NTIC agrees to pay the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney's Office for the Northern District of Illinois. NTIC agrees to make this electronic funds transfer no later than ten (10) business days after the effective date of this Agreement.

7. Subject to the exceptions in paragraph 9 below (concerning excluded claims), in consideration of the obligations of NTIC in this Agreement, conditioned upon NTIC's full payment of the Settlement Amount, and subject to paragraph 15, below (concerning bankruptcy proceedings

commenced within 91 days of the effective date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release NTIC from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud. No individuals are released by this Agreement.

8. In consideration of the obligations of NTIC in this Agreement, conditioned upon NTIC's full payment of the Settlement Amount, and subject to paragraph 15, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the Office of Justice Programs agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking to remedy questioned costs relating to the Covered Conduct.

9. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including NTIC) are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code).
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of NTIC) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual); are indicted, charged, or convicted; or who enter into a plea agreement related to the Covered Conduct.

10. NTIC waives and shall not assert any defenses NTIC may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. NTIC fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that NTIC has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. NTIC agrees to the following:

- a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47 and 2 C.F.R. § 230, Appendix B, paragraph 10) incurred by or on behalf of NTIC, and its present or former officers, directors, employees, shareholders, and agents in connection with:
- (1) the matters covered by this Agreement;
  - (2) the United States' audit and civil and any criminal investigations of the matters covered by this Agreement;
  - (3) NTIC's investigation, defense, and corrective actions undertaken in response to the United States' audit and civil and criminal investigations in connection with the matters covered by this Agreement (including attorney's fees);
  - (4) the negotiation and performance of this Agreement and any Plea Agreement;
  - (5) the payment NTIC makes to the United States pursuant to this Agreement, including costs and attorneys fees, are "Unallowable Costs" for government contracting and Federal grant purposes (hereinafter referred to as "Unallowable Costs").
- b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by NTIC, and NTIC shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, NTIC further agrees that within 90 days of the effective date of this Agreement it shall identify any unallowable costs (as defined in this paragraph) included in payments previously sought or obtained by NTIC or any of its subsidiaries or affiliates from the United States. The report shall be in writing and provided to the Office of Justice Programs. NTIC agrees that the United States, at a minimum, shall be entitled to recoup from NTIC any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs in any such payments. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by NTIC or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by NTIC, or the effect of any such Unallowable Costs on the amount of such payments.
- d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine NTIC's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

13. This Agreement is intended to be for the benefit of the parties only. The parties do not release any claims against any other person or entity.

14. NTIC warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to NTIC, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which NTIC was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

15. If within 91 days of the effective date of this Agreement or of any payment made under this Agreement, NTIC commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of NTIC's debts, or seeking to adjudicate NTIC as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for NTIC or for all or any substantial part of NTIC's assets, NTIC agrees as follows:

- a. NTIC's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and NTIC shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) NTIC's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) NTIC was insolvent at the time this Agreement was entered into, or became insolvent as a result

of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to NTIC.

- b. If NTIC's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against NTIC for the claims that would otherwise be covered by the releases provided in paragraphs 7 - 8, above. NTIC agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph, and NTIC shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) NTIC shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 90 calendar days of written notification to NTIC that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on May 20, 2009 ; and (iii) the United States has a valid claim against NTIC in the amount of \$1,102,600.90, and the United States may pursue its claim in the



case, action, or proceeding referenced in the first clause of this paragraph, as well as in any other case, action, or proceeding.

- c. NTIC acknowledges that its agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. Upon receipt of the Settlement Amount, as described in paragraph 1 above, the United States shall promptly sign and file in this civil action a stipulation of dismissal with prejudice pursuant to the terms of the Agreement.

17. Except as expressly provided to the contrary in this Agreement, each party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. NTIC represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. This Agreement is governed by the laws of the United States. The parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this Agreement is the United States District Court for the Northern District of Illinois.

20. For purposes of construction, this Agreement shall be deemed to have been drafted by all parties to this Agreement and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

21. This Agreement constitutes the complete agreement between the parties. This Agreement may not be amended except by written consent of the parties.

22. The individuals signing this Agreement on behalf of NTIC represent and warrant that they are authorized by NTIC to execute this Agreement. The United States signatories represent that

they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

24. This Agreement is binding on NTIC's successors, transferees, heirs, and assigns.

25. This is a publicly available document, and NTIC waives any claim that this document along with any information contained herein is subject to the Privacy Act of 1974, 5 U.S.C. § 552a.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
LAURIE O. ROBINSON  
Acting Assistant Attorney General  
Office of Justice Programs  
United States Department of Justice

DATED: \_\_\_\_\_

PATRICK J. FITZGERALD  
United States Attorney

By: \_\_\_\_\_  
MICHELE M. FOX  
Assistant United States Attorney  
Northern District of Illinois  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 886-9085

NATIONAL TRAINING AND INFORMATION CENTER- DEFENDANT

DATED:\_\_\_\_\_

By:\_\_\_\_\_

National Training and Information Center  
810 North Milwaukee Avenue  
Chicago, Illinois

DATED:\_\_\_\_\_

By: \_\_\_\_\_

MICHAEL PERSON  
Counsel for National Training  
and Information Center  
Depres, Schwartz & Geoghegan  
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