

AGREEMENT BETWEEN CRIHB AND THE UNITED STATES

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Department of Health and Human Services (“HHS”) the Substance Abuse and Mental Health Administration (“SAMHSA”) and the Office of Inspector General of HHS (“OIG-HHS”) (collectively the “United States”), and the California Rural Indian Health Board, Inc. (“CRIHB”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. CRIHB is a private nonprofit corporation based in Sacramento, California. It enables the provision of health care to member Tribes in California. In 2004, CRIHB was awarded the SAMHSA Access to Recovery (“ATR-1”) Grant Number 1 H79 TI 16840. ATR-1 was in effect from August 3, 2004, to April 30, 2008.

B. On July 31, 2012, the United States filed a Complaint in the United States District Court for the Northern District of California captioned *United States v. California Rural Indian Health Care Board*, CV 12-4024 (LB) (EDL) (the “Civil Action”).

C. The United States contends that CRIHB submitted or caused to be submitted claims for ATR-1 payments to SAMHSA in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733 (2008), and common law.

D. The United States contends that it has certain civil claims and administrative monetary claims against CRIHB arising from CRIHB’s submission of false and fraudulent claims for payment under the ATR-1 program administered by SAMHSA. In particular the United States contends that CRIHB did not require substance abuse screening and assessment of

recovery support services (RSS) clients, and charged ineligible RSS expenses to ATR-1. This conduct, and all other allegations specified in the Civil Action is referred to below as the "Covered Conduct."

E. CRIHB denies the contentions of the United States as set forth above. This Agreement is neither an admission of liability by CRIHB nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation or administrative proceedings regarding the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. CRIHB shall pay to the United States the sum of \$532,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions provided by the United States Attorney's Office for the Northern District of California, as follows:

a. Within ten (10) days after the Effective Date of this Agreement, as defined in paragraph 26 below, CRIHB will make a payment to the United States in the amount of \$352,000 ("Lump Sum").

b. Over a period of three (3) years, CRIHB will pay the remaining \$177,300 ("Outstanding Balance"), together with accrued interest accruing at the rate of 1.5 % per annum ("Installment Payments"), from the Effective Date of this Agreement until the Outstanding Balance, including accrued interest in the amount of \$2,025, has been paid in full. The Installment Payments will be made according to the following payment schedule:

(i) \$59,775, in principal plus accrued interest of \$225.00 on or before July 1, 2013. The total Installment Payment will be \$60,000.00.

(ii) \$59,100, in principal plus accrued interest of \$900 on or before July 1, 2014. The total Installment Payment due is \$60,000; and

\$59,100 in principal, plus accrued interest of \$900 on or before July 1, 2015. The total Installment Payment due is \$60,000. At the time CRIHB makes each of the three Installment Payments pursuant to this Paragraph, CRIHB shall execute a Declaration in the form set forth in Addendum B hereto. CRIHB will mail the executed Addendum B with original signature to Christine Chen, Director of Grants Management, SAMHSA Office of Financial Resources, 1 Choke Cherry Road, Room 7-1091, Rockville, MD 20857.

2. In the event that CRIHB fails to pay any and all of the payments (including both fixed and installment components) owed pursuant to this Agreement within 15 calendar days of the due date, CRIHB shall be in "Default" of this Agreement. Furthermore, in the event of Default,

a. any dismissals as to CRIHB shall, at the United States' option, be null and void, and the Settlement Amount referenced in Paragraph 1 above, less any payments already made, shall become immediately due and payable and shall bear interest at the Medicare interest rate (per 42 C.F.R. part 405.378) as of the date of Default until payment of the Settlement Amount is made in full.

b. the United States may at its option: (1) rescind its release; (2) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing to CRIHB

by any department, agency, or agent of the United States or Participating States at the time of Default; (3) reinstitute an action or actions against CRIHB in this Court; and (4) CRIHB agrees not to contest any draw, offset, or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any court.

c. CRIHB agrees to pay the United States all reasonable costs of collection and enforcement of this Agreement, including attorneys' fees and expenses. In the event the United States reinstates an action under this Paragraph, CRIHB expressly agrees not to plead, argue, or otherwise raise any defense under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims, which: (a) are filed by the United States within 90 calendar days of written notification to CRIHB that this Agreement has been made a nullity, and (b) relates to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

3. Subject to the exceptions in Paragraph 6 below (concerning excluded claims), upon receipt of CRIHB's full payment of the Settlement Amount, and subject to Paragraph 17, below (concerning bankruptcy proceedings), the United States releases CRIHB, its officers, agents, employees, and servants, from any civil or administrative monetary claim the United States has for the Covered Conduct, under the False Claims Act, 31 U.S.C. §§ 3729-3733 (2008); the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and the common law theories of recoupment of payment by mistake, breach of contract, and unjust enrichment.

4. However, until the United States' release becomes effective, this Agreement is a temporary covenant not to sue CRIHB for any civil or administrative monetary claim pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733 (2008); the Civil Monetary Penalties Law, 42

U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and the common law theories of recoupment of payment by mistake, breach of contract, and unjust enrichment for the Covered Conduct. The covenant will mature into a release upon full and timely payment of the Settlement Amount, Lump Sum, and Installment Payments, specified in Paragraph 1, above. The covenant will expire in the event of Default, as defined in Paragraph 2, above.

5. CRIHB shall comply with the all conditions set forth in the Administrative Conditions Agreement stated in Addendum A and Addendum B hereto. The conditions set for in the Addendums are part of the Agreement and are incorporated by reference herein.

6. Notwithstanding the releases given in Paragraph 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any 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 mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and
- e. Any liability based upon obligations created by this Agreement.

7. CRIHB waives and shall not assert any defenses CRIHB may have to any criminal prosecution or administrative action (except as defined in Addendum A hereto) 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 (except as defined in Addendum A hereto). 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.

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

9. During the course of negotiations of this Agreement, up to and including January 11, 2013, CRIHB has provided sworn financial disclosure statements ("Financial Statements") to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. CRIHB warrants that the Financial Statements are complete, accurate, and current up to and including the date of Effective date of this Agreement. If the United States learns of asset(s) in which CRIHB had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any nondisclosure or misrepresentation by CRIHB on, or in connection with the Financial Statements, and if such nondisclosure or misrepresentation increases the estimated unrestricted net assets set forth in the Financial Statements by \$53,000 (10% of the Settlement Amount) or more, the United States may at its option pursue relief under this Paragraph as follows: (a)

rescind this Agreement and file suit, or reinstate suit, based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of unrestricted net assets of CRIHB previously undisclosed. CRIHB agrees not to contest any collection action undertaken by the United States pursuant to this provision, and shall immediately pay to the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

10. In the event that the United States, pursuant to Paragraph 9 above (concerning disclosure of assets), opts to rescind this Agreement, CRIHB agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 90 calendar days of written notification to CRIHB that this Agreement has been rescinded; and (b) relate to the Covered Conduct, except to the extent these defenses were available on November 18, 2011, the effective date of the initial Tolling Agreement.

11. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor, SAMHSA, any other Federal Agency, Program, agent or payer, or any state payer, related to the Covered Conduct; and CRIHB agrees not to resubmit to any Medicare contractor SAMHSA, any other Federal Agency, Program, agent or payer, or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

12. CRIHB agrees to the following:

(a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; in the Uniform Administrative Requirements for Awards and

Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations, 45 C.F.R. Part 74, OMB Circular A-122-Cost Principles for Non-Profit Organizations; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of CRIHB, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement, except as provided in Addendum A hereto;
- (2) the United States' audits and civil investigation of the matters covered by this Agreement;
- (3) CRIHB's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement, except as provided in Addendum A hereto;
- (5) the payment CRIHB makes to the United States pursuant to this Agreement.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by CRIHB, and CRIHB shall not charge such Unallowable Costs directly or indirectly to any grant or contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by CRIHB or any of its subsidiaries or

affiliates to SAMHSA, the Indian Health Service, Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: CRIHB further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, Medicaid and FEHBP fiscal agents, SAMHSA grant managers, and Indian Health Service contracting officers any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by CRIHB or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. CRIHB agrees that the United States, at a minimum, shall be entitled to recoup from CRIHB any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine CRIHB's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

Any payments due after the adjustments have been made 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 CRIHB or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this

Paragraph) on CRIHB or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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, except to the extent provided for in Paragraph 14 (waiver for beneficiaries/clients paragraph), below.

14. CRIHB agrees that it waives and shall not seek payment for any of the billings covered by this Agreement from any SAMHSA/ATR clients, health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

15. CRIHB 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 CRIHB, 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 CRIHB was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, CRIHB 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 CRIHB's debts, or seeking to adjudicate CRIHB as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for CRIHB or for all or any substantial part of CRIHB's assets, CRIHB agrees as follows:

a. CRIHB's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and CRIHB shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) CRIHB's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) CRIHB 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 CRIHB.

b. If CRIHB'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 covenant not to sue and/or releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against CRIHB for the claims that would otherwise be covered by the covenant not to sue and/or releases provided in Paragraph 3 above. CRIHB 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 CRIHB shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) CRIHB 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 91 calendar days of written notification to CRIHB that the covenant not to sue and/or releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on November 18, 2011, the effective date of the first Tolling Agreement; and (iii) the United States has a valid claim against CRIHB in the amount of \$9,960,000, 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. CRIHB acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

17. Upon receipt of the Lump Sum payment described in Paragraph 1, above, the United States shall promptly sign and file a Dismissal of the Civil Action pursuant to Rule 41(a)(1). The United States will dismiss with prejudice the claims concerning the "Covered Conduct" defined in this Agreement.

18. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

20. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of California. For purposes of construing this Agreement, 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 undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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 CRIHB's successors, transferees, heirs, and assigns.

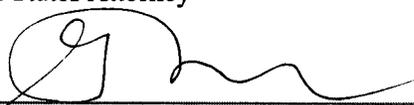
25. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA

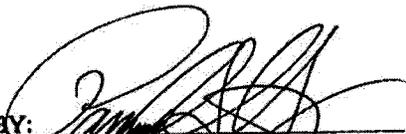
MELINDA HAAG
United States Attorney

DATED: 4/29/13

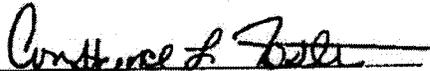
BY: 
GIOCONDA R. MOLINARI
DOUGLAS K. CHANG
Assistant United States Attorneys

U.S Dept. of Health and Human Services,
Substance Abuse and Mental Health Services
Administration

DATED: APR 26 2013

BY: 
PAMELA S. HYDE, J.D., Administrator
Substance Abuse and Mental Health, Care
Services Administration

DATED: 04/25/13

BY: 
Constance L. Foster, Senior Attorney
Public Health and Science Branch
Public Health Division
Attorneys for HHS-SAMHSA

United States Department of Health and Human
Services Office of Counsel to the Inspector General

DATED:

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs

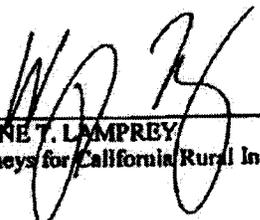
CALIFORNIA RURAL INDIAN HEALTH BOARD, INC.

DATED: 04/22/2013

BY: 
JAMES A. CROUCH
Executive Director

GOODIN, MACBRIDE, SQUIER, DAY &
LAMPREY,
LLP

DATED: 04/22/2013

BY: 
WAYNE T. LAMPREY
Attorneys for California Rural Indian Health Board,
Inc.

DATED:

BY: _____
PAMELA S. HYDE, J.D., Administrator
Substance Abuse and Mental Health Care
Services Administration

DATED:

BY: _____
Constance L. Foster, Senior Attorney
Public Health and Science Branch
Public Health Division
Attorneys for HHS-SAMHSA

United States Department of Health and Human
Services Office of Counsel to the Inspector General

DATED: 4/26/13

BY: Robert K. Deconti
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs

CALIFORNIA RURAL INDIAN HEALTH BOARD, INC.

DATED:

BY: _____
JAMES A. CROUCH
Executive Director

GOODIN, MACBRIDE, SQUERI, DAY &
LAMPREY,
LLP

DATED:

BY: _____
WAYNE T. LAMPREY
Attorneys for California Rural Indian Health Board,
Inc.