

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the United States of America, acting through the United States Department of Justice (the United States) on behalf of the National Science Foundation (NSF) Office of Inspector General, the National Endowment of the Arts (NEA) Office of Inspector General, and the National Endowment for the Humanities (NEH) Office of Inspector General, and the WGBH Educational Foundation (WGBH) (hereafter collectively referred to as the Parties), through their authorized representatives.

RECITALS

A. WGBH is a 501(c)(3) corporation headquartered in Boston, Massachusetts, which operates public broadcasting stations and creates educational programming. WGBH has been the recipient of grants from the NSF, NEH, and NEA (collectively, the Federal Grantors) for creating and producing educational programming.

B. Specifically, for the period of WGBH's fiscal years 2003 through 2010, WGBH was awarded more than sixty million dollars in grants from the Federal Grantors, including more than \$54,000,000 from NSF, over \$5,000,000 from NEH, and over \$330,000 from NEA (the Subject Federal Grants).

C. The United States examined records regarding a sampling of the Subject Federal Grants focused on the period 2005 through 2008 (the Examination). Based on the Examination, the United States contends that WGBH, in violation of the award terms, administrative policies and procedures in effect for the Subject Federal Grants, as well as federal regulations codifying applicable uniform administrative requirements and cost principle circulars issued by the Office of Management and Budget (OMB), maintained an accounting system for tracking grant expenditures that permitted mistakes in WGBH's accounting for grant expenditures and

disbursements, or that permitted WGBH to make inaccurate quarterly and other reports to the federal grantors of the actual disbursements made and charged to the Subject Federal Grants during each reporting period. As a result, for the 2005 through 2008 period, WGBH's accounting system was insufficient to ensure, or to permit WGBH to readily demonstrate, that project costs charged to certain of the Subject Federal Grants were reasonable, allowable, and allocable to the Subject Federal Grants. The conduct described above shall be referred to as the "Covered Conduct."

D. The United States contends that the deficiencies constituting the Covered Conduct resulted in overcharges, unsupported expenses, insufficient documentation of expenditures, and inappropriate charges for certain of the Subject Federal Grants. The United States contends that it has certain civil claims against WGBH based on common law or equitable theories of negligent misrepresentation, breach of contract, mistake of fact, and unjust enrichment, as well as for certain injunctive and prospective relief arising from the Covered Conduct. WGBH contends that beginning in 2009, prior to the Examination, it began enhancing its compliance systems, and that they are currently compliant with federal requirements.

E. This Settlement Agreement is neither an admission of liability by WGBH nor a concession by the United States that its claims are not well founded. The Parties agree that no provision of this Settlement Agreement constitutes an admission by any person or entity with respect to any issue of law or fact.

F. In order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

In consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Within thirty (30) business days of the effective date of this Agreement, WGBH shall pay to the United States \$ 300,173.00 (Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Massachusetts.

2. In order to ensure that WGBH continues to bring its accounting systems, policies, training, reporting, and oversight into full compliance with the award terms, administrative policies and procedures governing federal grants, and federal regulations and OMB circulars, WGBH shall implement and adhere to the Compliance Agreement attached hereto as Exhibit A.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon WGBH's full payment of the Settlement Amount, the United States releases WGBH from any civil or administrative monetary claim the United States has for the Covered Conduct, including under the common law theories of negligent misrepresentation, breach of contract, payment by mistake, or unjust enrichment.

4. Notwithstanding the release given in Paragraph 3 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. Any False Claims Act liability;

- d. Any nonmonetary administrative liability, including mandatory and permissive exclusion from federal grant programs;
 - e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
 - f. Any liability based upon obligations created by this Agreement;
- and
- g. Any liability of individuals.

5. WGBH waives and shall not assert any defenses WGBH 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.

6. Nothing in this Paragraph or any other provision of this Agreement constitutes an opinion or 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.

7. WGBH 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 WGBH has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or reexamine WGBH's books and records to determine that expenses

charged to any open federal grants are reasonable, allowable and allocable, and that no unallowable costs have been claimed or charged.

9. 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 17, below.

10. WGBH 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 its 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 WGBH, 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 WGBH was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

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

12. Each Party and signatory to this Agreement represents that it freely and voluntarily entered in to this Agreement without any degree of duress or compulsion.

13. 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 District of Massachusetts. 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.

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

15. The individuals signing this Agreement on behalf of WGBH represent and warrant that they are authorized by WGBH to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacity and that they are authorized to execute this Agreement.

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

17. This Agreement is binding on WGBH's successors, transferees, heirs, and assigns.


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

19. 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.

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

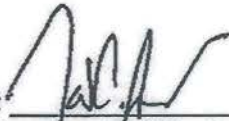
THE UNITED STATES OF AMERICA

DATED: 12/20/2012

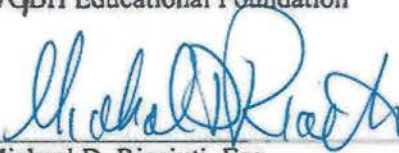
BY: 
Barbara Healy Smith
Assistant United States Attorney
District of Massachusetts

WGBH

DATED: 12/20/12

BY: 
Jonathan C. Abbott
President and Chief Executive Officer
WGBH Educational Foundation

DATED: 12/20/12

BY: 
Michael D. Ricciuti, Esq.
K&L Gates LLP
Counsel for WGBH