

1 JEANE HAMILTON (CSBN 157834)
2 ALBERT B. SAMBAT (CSBN 236472)
3 DAVID J. WARD (CSBN 239504)
4 CHRISTINA M. WHEELER (CSBN 203395)
5 MANISH KUMAR (CSBN 269493)
6 MICAH L. WYATT (CSBN 267465)
7 U.S. Department of Justice
8 Antitrust Division
9 450 Golden Gate Avenue
10 Box 36046, Room 10-0101
11 San Francisco, CA 94102
12 david.ward@usdoj.gov
13 Telephone: (415) 436-6660

14 Attorneys for the United States

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 UNITED STATES OF AMERICA

No. CR 12-0301 CRB

19 v.

PLEA AGREEMENT

20 LYDIA FONG,

21 Defendant.

22 The United States of America and LYDIA FONG (“defendant”) hereby enter into the
23 following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal
24 Procedure (“Fed. R. Crim. P.”):

25 RIGHTS OF DEFENDANT

- 26 1. The defendant understands her rights:
27 (a) to be represented by an attorney;
28 (b) to be charged by Indictment;

1 (c) to plead not guilty to any criminal charge brought against her;

2 (d) to have a trial by jury, at which she would be presumed not guilty of the
3 charge and the United States would have to prove every essential element of the charged offense
4 beyond a reasonable doubt for her to be found guilty;

5 (e) to confront and cross-examine witnesses against her and to subpoena
6 witnesses in her defense at trial;

7 (f) not to be compelled to incriminate herself;

8 (g) to appeal her conviction, if she is found guilty; and

9 (h) to appeal the imposition of sentence against her.

10 AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

11 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
12 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any
13 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal
14 under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the
15 sentence imposed by the Court if that sentence is consistent with or below the Sentencing
16 Guidelines range stipulated by the parties in Paragraph 9 of this Plea Agreement, regardless of
17 how the sentence is determined by the Court. This agreement does not affect the rights or
18 obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph,
19 however, shall act as a bar to the defendant perfecting any legal remedies she may otherwise
20 have on appeal or collateral attack respecting claims of ineffective assistance of counsel or
21 prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment
22 at arraignment and will plead guilty to a two-count Information to be filed in the United States
23 District Court for the Northern District of California. Count One of the Information charges the
24 defendant with participating in a conspiracy to suppress and restrain competition by rigging bids
25 to obtain selected properties offered at public real estate foreclosure auctions in San Francisco
26 County, in the Northern District of California (“the San Francisco County selected properties”),
27 in unreasonable restraint of interstate trade and commerce, in violation of the Sherman Act, 15
28 U.S.C. § 1, beginning as early as October 2009 and continuing until in or about November 2010

1 (“relevant period”). Count Two of the Information charges the defendant with conspiracy to
2 commit mail fraud in violation of 18 U.S.C. § 1349, in San Francisco County, California, during
3 the relevant period.

4 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
5 the criminal charges described in Paragraph 2 above and will make a factual admission of guilt to
6 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United
7 States agrees that at the arraignment, it will stipulate to the release of the defendant on her
8 personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

9 FACTUAL BASIS FOR CHARGED OFFENSES

10 4. I agree that I am guilty of the offenses to which I will plead guilty, and I agree
11 that the following facts are true:

12 (a) As to Count One of the Information:

13 During the relevant period, the defendant participated in a conspiracy to rig bids to obtain
14 the San Francisco County selected properties. The primary purpose of this conspiracy was to
15 suppress and restrain competition to purchase the San Francisco County selected properties at
16 non-competitive prices. To carry out their conspiracy, the defendant and her co-conspirators
17 agreed not to compete to purchase the San Francisco County selected properties, designated
18 which conspirator would win the San Francisco County selected properties at the public auctions
19 for the group of conspirators, and refrained from or stopped bidding on the San Francisco County
20 selected properties at the public auctions.

21 During the relevant period, the business activities of the defendant and her
22 co-conspirators were within the flow of, and substantially affected, interstate trade and
23 commerce. For example, mortgage holders located in states other than California received
24 proceeds from the public real estate foreclosure auctions that were subject to the bid-rigging
25 conspiracy.

26 During the relevant period, the conspiratorial activities described above took place in the
27 Northern District of California, and the real estate that was the subject of this conspiracy was
28 located in this District.

1 (b) As to Count Two of the Information:

2 During the relevant period, the defendant and her co-conspirators willfully and
3 knowingly agreed to devise and intended to devise and to participate in a scheme and artifice to
4 defraud mortgage holders, other holders of debt secured by the selected properties, and in some
5 cases, the defaulting homeowners (collectively, "beneficiaries"), and to obtain money and
6 property from them by means of materially false and fraudulent pretenses, representations, and
7 promises. The objects of the conspiracy were to fraudulently acquire title to the San Francisco
8 County selected properties, to make and receive payoffs, and to divert money to conspirators that
9 would have gone to the beneficiaries. Among other things, the defendant and her co-conspirators
10 executed a deceptive scheme by negotiating payoffs with one or more conspirators not to
11 compete; in some instances, falsely participating in foreclosure auctions to create the appearance
12 that they were bidding competitively when, in fact, they were not; purchasing the selected
13 properties at public auctions at suppressed prices; paying conspirators monies that otherwise
14 would have gone to the beneficiaries; taking steps to conceal the fact that monies were diverted
15 from the beneficiaries to the conspirators; making and causing to be made materially false and
16 misleading statements on records of public auctions that trustees relied upon to distribute
17 proceeds from the public auction to the beneficiaries and convey title to properties sold at the
18 public auction; and causing the suppressed purchase price to be reported and paid to the
19 beneficiaries.

20 The defendant and others, for the purpose of executing the conspiracy described above
21 and attempting to do so, knowingly used and caused to be used the United States Postal Service
22 and private or commercial interstate carriers. For example, trustees used the United States mail
23 and private or commercial interstate carriers to transmit Trustee's Deeds Upon Sale and other
24 title documents to participants in the conspiracy. These mailings were foreseeable to the
25 defendant in the ordinary course of business.

26 During the relevant period, the real estate that was the subject of this conspiracy was
27 located in the Northern District of California.

POSSIBLE MAXIMUM SENTENCE

1
2 5. The defendant understands that the statutory maximum penalty that may be
3 imposed against her upon conviction for a violation of Count One, 15 U.S.C. § 1, is:

4 (a) a term of imprisonment for ten years (15 U.S.C. § 1);
5 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the
6 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary
7 loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b)
8 and (d)); and

9 (c) a term of supervised release of not more than three years following any
10 term of imprisonment. If the defendant violates any condition of supervised release, the
11 defendant could be required to serve up to an additional two years in prison (18 U.S.C.
12 § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines
13 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2)).

14 6. The defendant understands that the statutory maximum penalty that may be
15 imposed against her upon conviction for a violation of Count Two, 18 U.S.C. § 1349, is:

16 (a) a term of imprisonment for thirty years (18 U.S.C. § 1349);
17 (b) a fine of not more than \$1 million; and
18 (c) a term of supervised release of not more than five years following any
19 term of imprisonment. If the defendant violates any condition of supervised release, the
20 defendant could be required to serve up to an additional three years in prison (18 U.S.C.
21 § 3559(a)(2); 18 U.S.C. § 3583(b)(1) and (e)(3); and U.S.S.G. § 5D1.2(a)(1)).

22 7. In addition, the defendant understands that:

23 (a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3663(a)(3), the Court may
24 order her to pay restitution to the victims of the offense; and
25 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the
26 defendant to pay a \$100 special assessment upon conviction for each charged crime, totaling
27 \$200.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance-of-the-evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce or loss attributable to the defendant or in determining the defendant’s applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

9. The United States and the defendant agree that the following Sentencing Guidelines apply:

(a)	<u>Count One (15 U.S.C. § 1):</u>	
	i. Base Offense Level, U.S.S.G. § 2R1.1(a):	12
	ii. Conduct involved agreement to submit non-competitive bids, U.S.S.G. § 2R1.1(b)(1):	+1
	iii. Volume of Commerce (Stipulated to be \$1,785,211) U.S.S.G. § 2R1.1(b)(2):	+2
	Total:	15
	Fine calculated as one to five percent of the volume of commerce, but not less than \$20,000, U.S.S.G. § 2R1.1(c)(1):	\$20,000 to \$89,260

//

//

1	(b)	<u>Count Two (18 U.S.C. § 1349):</u>	
2	i.	Base Offense Level, U.S.S.G. § 2X1.1(a)	
3		(incorporates base offense level from Guideline	
4		for substantive offense, U.S.S.G. § 2B1.1(a)(1))	7
5	ii.	Adjustments, U.S.S.G. § 2X1.1(a)	
6		(incorporates adjustments from Guideline for	
7		substantive offense)	
8	a.	Loss > \$30,000, U.S.S.G. § 2B1.1(b)(1)(D):	+6
9		Total:	13
10		Fine, U.S.S.G. § 5E1.2(c)(3):	\$3,000 to \$30,000

Count One groups with Count Two under U.S.S.G. § 3D1.2(b). According to U.S.S.G. § 3D1.3(a), the combined offense level is the highest offense level between these two subgroups. Therefore, the offense level to be applied is the offense level for the subgroup consisting of Count One, which results in a combined offense level of 15.

10. The United States agrees that it will make a motion, pursuant to U.S.S.G. § 3E1.1, for a downward adjustment of two levels for acceptance of responsibility due to the defendant's timely notification of her intention to enter a guilty plea. Therefore, the ultimate Guidelines calculations result in an adjusted offense level of 13, for a jail term of 12 to 18 months and a fine of \$20,000 to \$89,260.

11. The defendant understands that the Court will order her to pay a special assessment of \$100 per count (\$200 total) pursuant to 18 U.S.C. § 3013(a)(2)(A), in addition to any fine imposed. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0.

12. The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of certain offenses. The government and the defendant agree to recommend that the Court order the defendant to pay restitution in the amount of \$12,000 pursuant to U.S.S.G. § 5E1.1(a). The defendant understands that this Plea Agreement is voidable by the government

1 if she fails to pay the restitution as ordered by the Court. The defendant further agrees that she
2 will not seek to discharge any restitution obligation or any part of such obligation in any
3 bankruptcy proceeding.

4 13. The United States and the defendant are not aware of any information that would
5 affect the defendant's Criminal History Category. If no other information were discovered, the
6 defendant's Criminal History Category would be I. The parties understand that the defendant's
7 Criminal History Category is determined by the Court.

8 14. The defendant understands that the sentence to be imposed on her is within the
9 sole discretion of the sentencing judge. The United States cannot and does not make any
10 promises or representations as to what sentence the defendant will receive. However, the United
11 States will inform the Probation Office and the Court of (a) this agreement; (b) the nature and
12 extent of the defendant's activities in this case and all other activities of the defendant that the
13 United States deems relevant to sentencing; and (c) the nature and extent of the defendant's
14 cooperation with the United States. In so doing, the United States may use any information it
15 deems relevant, including information provided by the defendant both prior and subsequent to
16 the signing of this agreement. The United States reserves the right to make any statement to the
17 Court or the Probation Office concerning the nature of the criminal violations charged in the
18 attached Information, the participation of the defendant therein, and any other facts or
19 circumstances that it deems relevant. The United States also reserves the right to comment on or
20 to correct any representation made by or on behalf of the defendant and to supply any other
21 information that the Court may require.

22 15. If the United States determines that the defendant has provided substantial
23 assistance in any Federal Proceeding, as defined in Paragraph 18 of this Plea Agreement, and has
24 otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion,
25 pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to
26 that determination and requesting the Court to sentence the defendant in light of the factors set
27 forth in U.S.S.G. § 5K1.1(a)(1)-(5). The defendant acknowledges that the decision whether she
28 has provided substantial assistance in any Federal Proceeding and has otherwise complied with

1 the terms of this Plea Agreement is within the sole discretion of the United States. It is
2 understood that, should the United States determine that the defendant has not provided
3 substantial assistance in any Federal Proceeding, or should the United States determine that the
4 defendant has violated any provision of this Plea Agreement, such a determination will release
5 the United States from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not
6 entitle the defendant to withdraw her guilty plea once it has been entered. The defendant further
7 understands that, whether or not the United States files a motion pursuant to U.S.S.G. § 5K1.1,
8 the sentence to be imposed on her remains within the sole discretion of the sentencing judge.

9 16. Subject to the ongoing, full, and truthful cooperation of the defendant described in
10 Paragraph 18 of this Plea Agreement, and before sentencing in the case, the United States will
11 fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's
12 cooperation and her commitment to prospective cooperation with the United States' investigation
13 and prosecutions, all material facts relating to the defendant's involvement in the charged
14 offenses, and all other relevant conduct. To enable the Court to have the benefit of all relevant
15 sentencing information, the United States may request, and the defendant will not oppose, that
16 sentencing be postponed until her cooperation is complete.

17 17. The United States and the defendant understand that the Court retains complete
18 discretion to accept or reject either party's sentencing recommendation. The defendant
19 understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a
20 sentence consistent with either party's sentencing recommendation, she nevertheless has no right
21 to withdraw her plea of guilty.

22 DEFENDANT'S COOPERATION

23 18. The defendant will cooperate fully and truthfully with the United States in the
24 prosecution of this case, the conduct of the current federal investigation of violations of federal
25 antitrust and related criminal laws involving the purchase of properties at public real estate
26 foreclosure auctions in the Northern District of California, any other federal investigation
27 resulting therefrom, and any litigation or other proceedings arising or resulting from any such
28

1 investigation to which the United States is a party (“Federal Proceeding”). The ongoing, full,
2 and truthful cooperation of the defendant shall include, but not be limited to:

3 (a) producing all non-privileged documents, including claimed personal
4 documents, and other materials, wherever located, in the possession, custody, or control of the
5 defendant, requested by attorneys and agents of the United States;

6 (b) making herself available for interviews, not at the expense of the United
7 States, upon the request of attorneys and agents of the United States;

8 (c) responding fully and truthfully to all inquiries of the United States in
9 connection with any Federal Proceeding, without falsely implicating any person or intentionally
10 withholding any information, subject to the penalties of making false statements (18 U.S.C.
11 § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

12 (d) otherwise voluntarily providing the United States with any non-privileged
13 material or information, not requested in (a)-(c) of this paragraph, that she may have that is
14 related to any Federal Proceeding; and

15 (e) when called upon to do so by the United States in connection with any
16 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully,
17 and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or
18 declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C.
19 §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

20 GOVERNMENT’S AGREEMENT

21 19. Subject to the full, truthful, and continuing cooperation of the defendant described
22 in Paragraph 18 of this Plea Agreement, and upon the Court’s acceptance of the guilty plea
23 called for by this Plea Agreement and the imposition of sentence, the United States will not bring
24 further criminal charges against the defendant for any act or offense committed before the date of
25 this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy or in violation
26 of any related criminal law involving the purchase of properties at public real estate foreclosure
27 auctions in the Northern District of California (“Relevant Offenses”). The non-prosecution
28

1 terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal
2 tax or securities laws, or to any crime of violence.

3 20. The defendant understands that she may be subject to administrative action by
4 federal or state agencies other than the United States Department of Justice, Antitrust Division,
5 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
6 no way controls whatever action, if any, other agencies may take. However, the United States
7 agrees that, if requested, it will advise the appropriate officials of any governmental agency
8 considering such administrative action of the fact, manner, and extent of the cooperation of the
9 defendant as a matter for that agency to consider before determining what administrative action,
10 if any, to take.

11 REPRESENTATION BY COUNSEL

12 21. The defendant has reviewed all legal and factual aspects of this case with her
13 attorney and is fully satisfied with her attorney's legal representation. The defendant has
14 thoroughly reviewed this Plea Agreement with her attorney and has received satisfactory
15 explanations from her attorney concerning each paragraph of this Plea Agreement and
16 alternatives available to the defendant other than entering into this Plea Agreement. After
17 conferring with her attorney and considering all available alternatives, the defendant has made a
18 knowing and voluntary decision to enter into this Plea Agreement.

19 VOLUNTARY PLEA

20 22. The defendant's decision to enter into this Plea Agreement and to tender a plea of
21 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
22 or representations other than the representations contained in this Plea Agreement. The United
23 States has made no promises or representations to the defendant as to whether the Court will
24 accept or reject the recommendations contained within this Plea Agreement.

25 VIOLATION OF PLEA AGREEMENT

26 23. The defendant agrees that, should the United States determine in good faith,
27 during the period that any Federal Proceeding is pending, that the defendant has failed to provide
28 full and truthful cooperation, as described in Paragraph 18 of this Plea Agreement, or has

27. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

LYDIA FONG
Defendant

Dated: 6/19/12

MICHAEL GAINES
Counsel for Defendant Lydia Fong
Law Offices of Michael Gaines
255 Kansas St., No. 340
San Francisco, CA 94103

Dated: 6/19/12

DAVID J. WARD
JEANE HAMILTON
ALBERT B. SAMBAT
CHRISTINA M. WHEELER
MANISH KUMAR
MICAHA L. WYATT
Trial Attorneys
U.S. Department of Justice
Antitrust Division

Dated: 6/20/12