SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA	:	Criminal No. 06-cr-898
	:	Filed: 9/29/2006
v.	:	Violations: 15 U.S.C. § 1
ANTHONY SPADOLA,	:	18 U.S.C. § 371
	:	26 U.S.C. § 7201
Defendant.	:	

- x

PLEA AGREEMENT

The United States of America and the defendant, Anthony Spadola, hereby enter into the following Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure.

AGREEMENT TO PLEAD GUILTY

1. Anthony Spadola ("Spadola") will waive indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure and plead guilty in the United States District Court for the Southern District of New York to a three-count Information, in the form attached, in which he is charged with (a) one count of violating 15 U.S.C. § 1 in connection with a conspiracy to rig bids and allocate contracts for the sale of telecommunications equipment and services to Mount Sinai School of Medicine and The Mount Sinai Hospital ("Mount Sinai"), from approximately January 2001 through October 2004; (b) one count of violating 18 U.S.C. § 371 in connection with a conspiracy to commit commercial bribery, mail fraud, and to make false and fraudulent statements on

U.S. Income Tax Returns relating to the payment of kickbacks to himself and another individual by vendors of telecommunications equipment and services to Mount Sinai and Spadola issuing false and fraudulent invoices to those vendors so that they could falsely claim the kickback payments as legitimate business expenses on their corporate income tax returns, from approximately January 2001 until approximately September 2003; and (c) one count of violating 26 U.S.C. § 7201 in connection with his evading and defeating a substantial part of the income tax due and owing by him to the United Stated by failing to report as income, and pay the correct tax due and owing on, kickbacks that he received from those vendors, and by improperly claiming business deductions, on his U.S. Individual and Corporate Income Tax Returns for the years 2001 through 2003.

GOVERNMENT'S AGREEMENT

2. If Spadola fully complies with the understandings specified in this Agreement, he will not be further prosecuted criminally by the Antitrust Division of the Department of Justice, and with respect to tax offenses, Spadola will not be further prosecuted criminally by the Tax Division of the Department of Justice, for crimes committed prior to the date of this Agreement arising from the following activity, as specified in the attached Information: (a) any agreement to rig bids or allocate contracts at for telecommunication equipment and services at Mount Sinai; (b) the payment of kickbacks by vendors of telecommunications equipment and services to employees or agents of Mount Sinai; (c) any illegitimate deductions taken by Spadola or any vendor of telecommunications equipment and services to Mount Sinai on federal income tax returns

for the tax years 2000 through 2004; and (d) the failure of any individual who received kickbacks from a vendor of telecommunications equipment and services to Mount Sinai to report those kickbacks as income on his federal tax returns. This Agreement does not provide any protection against prosecution for any crimes except as set forth above. This Paragraph does not apply to civil matters of any kind, any violations of federal securities laws, or crimes of violence.

3. It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than the Antitrust Division and, to the extent set forth above, the Tax Division of the Department of Justice.

POSSIBLE MAXIMUM PENALTIES

4. Spadola understands and agrees that pursuant to 15 U.S.C. § 1 and 18 U.S.C. § 3571, the maximum sentence provided by law to which he is subject for a violation of 15 U.S.C. § 1, a class C felony, is (a) a term of imprisonment of not more than 10 years; (b) a fine of not more than the greater of $1 million, or the greater of twice the gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense; or (c) both such sentences. Spadola also understands that the Court may impose an order of restitution as a condition of probation or supervised release, pursuant to 18 U.S.C. §§ 3563(b)(2) or 3583(d) and USSG § 5E1.1. The Court may also impose a term of supervised release of no more than three years, pursuant to 18 U.S.C. § 3583(b)(1) and USSG § 5D1.2(a)(2). In addition, Spadola understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG § 5E1.3, the Court must impose a special assessment of $100.

5. Spadola understands and agrees that, pursuant to 18 U.S.C. § 371 and 18 U.S.C. § 3571, the maximum sentence provided by law to which he is subject for his violation of 18 U.S.C. § 371, a class D felony, is (a) a term of imprisonment of not more than five years; (b) a fine of not more than the greater of $250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense, together with the cost of prosecution; or (c) both such sentences. Spadola also understands that the Court shall impose an order of restitution, pursuant to 18 USC §§ 3663, 3663A, and 3664. The Court may also impose a term of supervised release of no more than three years, pursuant to 18 U.S.C. § 3583(b)(2) and USSG § 5D1.2(a)(2). In addition, Spadola understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court must impose a special assessment of $100.

6. Spadola understands and agrees that, pursuant to 26 U.S.C. § 7201 and 18 U.S.C. § 3571, the maximum sentence provided by law to which he is subject for his violation of 26 U.S.C. § 7201(1), a class D felony, is (a) a term of imprisonment of not more than five years; (b) a fine of not more than the greater of $100,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense; or (c) both such sentences; together with (d) the costs of prosecution. Spadola understands that the Court may impose an order of restitution to the Internal Revenue Service as a condition of probation or supervised release, pursuant to 18 U.S.C. §§ 3563(b)(2) or 3583(d) and USSG § 5E1.1. The Court may also impose a term of supervised release of no more than three years, pursuant to 18 U.S.C. § 3583(b)(2) and

USSG § 5D1.2(a)(2). In addition, Spadola understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court must impose a special assessment of $100.

SENTENCING GUIDELINES

7. Spadola understands that United States Sentencing Guidelines ("Sentencing Guidelines") are advisory, not mandatory, but that the Court must consider the Sentencing 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 a reasonable sentence. Spadola understands that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Spadola understands that although the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, its sentence must be reasonable based upon considerations of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

8. The United States and Spadola agree and stipulate that pursuant to USSG § 1B1.11(b)(1), the Sentencing Guidelines (Nov. 2003), the version in effect at the time of the offenses, should be applied because the application of a later version (now the Nov. 2005 edition) would lead to a higher adjusted offense level.

9. The United States and Spadola acknowledge that they cannot agree on whether Spadola should receive an adjustment for his role in the offense, pursuant to USSG § 3B1.1. The United States contends that Spadola should receive a three-level adjustment, pursuant to USSG § 3B1.1(b), while Spadola contends that he should not receive any adjustment under USSG § 3B1.1. As a result, the parties cannot now agree on

the offense level at which Spadola should be sentenced, but acknowledge that the combined adjusted offense level applicable to the offenses charged in the attached Information should be either level 23 (46-57 months) or level 20 (33-41 months), depending upon whether the Court applies an adjustment pursuant to USSG § 3B1.1(b). Furthermore, the parties can agree and hereby stipulate to the following:

(a) Before any adjustment for role in the offense, pursuant to USSG § 3B1.1, the adjusted offense level for the conspiracy charged in Count One of the Information is level 15 (base level of 10 pursuant to USSG § 2R1.1, plus one level pursuant to USSG § 2R1.1(b)(1) (agreement to refrain from submitting competitive bids), plus 2 levels pursuant to USSG § 2R1.1(b)(2)(B) (volume of commerce between $1 million and $2.5 million), plus 2 levels pursuant to USSG § 3B1.3 (abuse of position of trust));

(b) In accord with the directives of the Second Circuit in United States v. Fitzgerald, 232 F.3d 315 (2d Cir. 2000), and United States v. Petrillo, 237 F.3d 119 (2d Cir. 2000), USSG §§ 3D1.2(d) and 3D1.3(b) require that the offenses charged in Counts Two and Three (fraud and tax offenses) be grouped and the losses aggregated, and that the offense level for the combined fraud/tax group is the higher of the offense level determined from the instructions in Chapter 2, Part B (Offenses Involving Theft, Fraud Or Deceit) or Chapter 2, Part T (Offenses Involving Taxation) and all appropriate adjustments;

(c) The combined loss from the fraud and tax offenses is approximately $242,966, the sum of the fraud offense (approximately $153,993 in kickback payments received) and the loss from the tax offense (approximately $88,973 in unpaid federal and state income taxes, all of which have been calculated in accordance with USSG § 2T1.1(c)(1)(A) and are based, when available, on Spadola's and his co-conspirator's actual marginal tax rates));

(d) Before any adjustment for role in the offense, pursuant to USSG § 3B1.1, the offense level for the fraud/tax group calculated according to the instructions in Part B is, level 22 (base level of 8, pursuant to USSG § 2B4.1(a); plus 12 levels, pursuant to § 2B1.1(b)(1)(G) (loss of more than $200,000 but less than $400,000); plus 2 levels, pursuant to USSG § 3B1.3 (abuse of a position of trust));

(e) Before any adjustment for role in the offense, pursuant to USSG § 3B1.1, the offense level for the fraud/tax group calculated according to the instructions in Part T is level 22 (offense level of 18, pursuant to USSG §§ 2T1.1(a)(1) and 2T4.1(G) (Tax Table) (loss of more than $200,000 but less than $400,000); plus 2 levels, pursuant to USSG § 2T1.1(b)(1) (failure to report more than $10,000 from criminal activity); plus 2 levels, pursuant to USSG § 3B1.3 (abuse of a position of trust));

(f) The antitrust offense does not involve substantially the same harm as the fraud and tax offenses, nor is it of the same general type as the fraud and tax offenses. Therefore, pursuant to USSG § 3D1.2, the antitrust offense is not grouped with the fraud and tax offenses charged in Counts Two and Three;

(g) Before any adjustment for role in the offense, pursuant to USSG § 3B1.1, the fraud/tax group, with an offense level of 22 (under both Part B and Part T instructions), is 5 to 8 levels more serious than the antitrust offense, with an offense level of 15, and thus, pursuant to USSG § 3D1.4(b), counts as a ½ Unit. Because there are 1 ½ Units, 1 offense level is added to the fraud/tax group offense level, yielding a combined offense level of 23; and

(h) Before any adjustment for role in the offense, pursuant to USSG § 3B1.1, assuming Spadola clearly demonstrates acceptance of responsibility, to the satisfaction of the government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to USSG § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional 1-level reduction is warranted, pursuant to USSG § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

10. The United States and Spadola agree and stipulate that the volume of commerce attributable to Spadola under USSG § 2R1.1(b)(2) is $2,089,000.

11. The United States and Spadola agree and stipulate that the fine range for Spadola for the offenses charged in the Information is from $20,890 to $104,450, pursuant to USSG § 2R1.1(c)(1) and 5E1.2(b).

12. The United States further agrees that a sentence range of 46 to 57 months, based on an combined adjusted offense level of 23, (the Government's Stipulated Guidelines Range), would constitute a reasonable sentence in light of all the factors set forth in Title 18, U.S.C. § 3553(a). In addition, it will not seek a sentence above this range, suggest that the Probation Department consider a sentence above of this range, or suggest that the Court sua sponte consider a sentence above of this range, based on factors to be considered in imposing a sentence pursuant to Title 18, U.S.C. § 3553(a).

13. Spadola further agrees that a sentence range of 33 to 41 months, based on an combined adjusted offense level of 20 (Spadola's Stipulated Guidelines Range), would constitute a reasonable sentence in light of all the factors set forth in Title 18, U.S.C. § 3553(a). In addition, he will not seek a sentence below this range, suggest that the Probation Department consider a sentence below of this range, or suggest that the Court sua sponte consider a sentence below of this range, based on factors to be considered in imposing a sentence pursuant to Title 18, U.S.C. § 3553(a).

14. Except as provided in any written Proffer Agreement(s) that may have been entered into between the Antitrust Division and the defendant, nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Ranges (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, U.S.C. § 3553(a); (iii) to seek an appropriately adjusted

Sentencing range if it is determined based upon new information that the defendant's criminal history category is other than Category I. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, see U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, see U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should the defendant move to withdraw his guilty plea once it is entered, or should it be determined that the defendant has either (i) engaged in conduct, unknown to the Antitrust Division of the Department of Justice at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this agreement.

15. It is understood that pursuant to Sentencing Guidelines § 6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulations, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the Stipulated Guidelines Ranges, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

16. Spadola understands that the sentence to be imposed on him is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. Spadola acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory

maximum sentence. The United States cannot, and does not, make any promise or representation as to what sentence Spadola will receive. Moreover, Spadola understands he will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside either the Government's Stipulated Guidelines Range or Spadola's Stipulated Guidelines Range set forth above.

17. The United States and Spadola agree that (i) Spadola will not appeal or otherwise litigate under 28 U.S.C. § 2255 and/or 2241, any sentence within or below Spadola's Stipulated Guidelines Range as set forth in this Agreement, and (ii) that the United States will not appeal any sentence within or above the Government's Stipulated Guidelines Range as set forth above. This provision is binding on the parties even if the Court employs a Sentencing Guidelines analysis different from that set forth in this Agreement. Furthermore, it is agreed that any appeal regarding the sentence of Spadola that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulations.

18. Spadola understands that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of sentence.

19. Spadola agrees to waive any objection or defense he may have based on the United States joining in a single count the three distinct and separate instances of tax evasion charged in Count Three of the Information. Spadola understands that this waiver

is knowingly and voluntarily made after fully conferring with, and on the advice of, his counsel, and are made for his own benefit.

20. Spadola understands and agrees that should the conviction following defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

REPRESENTATION BY COUNSEL

21. Spadola has been represented by counsel and is fully satisfied that his attorney has provided competent legal representation. Spadola has thoroughly reviewed this Agreement and acknowledges that counsel has advised him of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

VOLUNTARY PLEA

22. The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either

on direct appeal or collaterally, on the ground that the United States has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to Giglio v. United States, 405 U.S. 150 (1972), that have not already been produced as of the date of the signing of this Agreement.

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

ENTIRETY OF AGREEMENT

24. This Agreement constitutes the entire agreement between the United States and Spadola concerning the disposition of the charges contained in the attached Information. The United States has made no other promises to or agreements with Spadola. This Agreement cannot be modified other than in a writing signed by the parties.

Dated: 9/29/2006

/s/_____
ANTHONY SPADOLA

/s/_____
REBECCA MEIKLEJOHN

/s/_____
WILLIAM SANDBACK, ESQ.
Counsel for Anthony Spadola

/s/_____
ELIZABETH PREWITT

Attorneys, Department of Justice
Antitrust Division
26 Federal Plaza, Room 3630
New York, NY 10278
Phone: (212) 264-4886