

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**UNITED STATES OF AMERICA**

**v.**

**WILHELM DERMINASSIAN**

\* **Criminal No.: 05-127**

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\* **Filed: 04/21/05**

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\* **Violations: 18 U.S.C. § 201(c)(1)(B)**

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**18 U.S.C. §§ 1343, 1346**

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**PLEA AGREEMENT**

The United States of America and Wilhelm DerMinassian ("Defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

**RIGHTS OF DEFENDANT**

1. The Defendant understands his rights:
  - (a) to be represented by an attorney;
  - (b) to be charged by Indictment;
  - (c) to plead not guilty to any criminal charge brought against him;
  - (d) to have a trial by jury, at which he would be presumed not guilty of the charges and the United States would have to prove every essential element of the charged offenses beyond a reasonable doubt for him to be found guilty;
  - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
  - (f) not to be compelled to incriminate himself;
  - (g) to appeal his convictions, if he is found guilty; and
  - (h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY  
AND WAIVE CERTAIN RIGHTS**

2. The Defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b) - (h) above. The Defendant also knows that he has, and voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Pursuant to Fed. R. Crim. P. 7(b), the Defendant will waive indictment and plead guilty at arraignment to a two-count Information to be filed in the United States District Court for the District of Columbia. The Information will charge the Defendant with one count of defrauding the District of Columbia and its citizens of their intangible right to his honest services as a public official in violation of 18 U.S.C. §§ 1343 and 1346, and one count of seeking and accepting something of personal value while he was a public official, not provided for by law for the proper discharge of his official duty, for an official act to be performed by him in violation of 18 U.S.C. § 201(c)(1)(B).

3. The Defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

**FACTUAL BASIS FOR OFFENSES CHARGED**

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

### General Allegations

(a) From approximately August 2000 through April 2003 the Defendant served as the Associate Director in charge of the Traffic Services Administration, a division of the District of Columbia's Department of Transportation (hereinafter collectively referred to as the "D.C. D.O.T.").

(b) At all times relevant to this Plea Agreement Company A provided traffic engineering services to the D.C. D.O.T. under its \$12.9 million Operational Support contract. Person A-1 was a Project Manager for Company A and was in charge of the day-to-day operations of the Operational Support contract. Person A-2 was a Vice-President for Company A with supervisory authority over Person A-1 and the Operational Support contract.

(c) At all times relevant to this Plea Agreement Company B provided traffic engineering services to the D.C. D.O.T. under its \$17.5 million Integrated Traffic Management System ("I.T.M.S.") contract. Persons B-1 and B-2 were principals, officers and owners of Company B with supervisory authority for its performance of the I.T.M.S. contract.

(d) At all times relevant to this Plea Agreement the Defendant, in his capacity as the Associate Director of the D.C. D.O.T., was responsible for the administration and oversight of both the Operational Support and I.T.M.S. contracts.

### The Scheme to Defraud

(e) From approximately October 2001 through April 2003, in the District of Columbia and elsewhere, the Defendant, together with Company A, through Persons A-1

and A-2, did unlawfully and knowingly devise and participate in a scheme and artifice to deprive the District of Columbia and its citizens of their intangible right to his honest services as a public official, and to have those services performed free from deceit, favoritism, bias, conflict of interest and self-enrichment.

#### Overview of the Scheme

(f) It was part of the scheme detailed in subparagraph (e) that from approximately October 2001 through October 2002 the Defendant solicited and accepted approximately \$20,000 in cash and other items of value from Company A, through Persons A-1 and A-2, in connection with the Operational Support contract, including:

- I. on or about October 2, 2001 the Defendant solicited and accepted \$2,500 in cash;
- ii. on or about October 26, 2001 the Defendant solicited and accepted \$4,400 in cash;
- iii. on or about April 30, 2002 the Defendant solicited and accepted \$300 in cash; and
- iv. on or about September 27, 2002 the Defendant solicited and accepted \$10,544.99 in vehicle repair services.

(g) It was further part of the scheme detailed in subparagraph (e) that the Defendant concealed his receipt of the cash and other items of value detailed in subparagraph (f) by, among other things, insisting in several instances on receiving payments in cash.

(h) It was further part of the scheme detailed in subparagraph (e) that the

Defendant solicited and accepted the cash and other items of value detailed in subparagraph (f) with the intent to be influenced to favor Company A in his oversight and administration of the Operational Support contract, thus depriving the District of Columbia and its citizens of their intangible right to his honest services as a public official.

(I) It was further part of the scheme detailed in subparagraph (e) that from approximately October 2001 through April 2003 the Defendant had an undisclosed and improper conflict of interest in that he failed to report his receipt of the cash and other items of value detailed in subparagraph (f), thus depriving the District of Columbia and its citizens of their intangible right to his honest services as a public official.

(j) It was further part of the scheme detailed in subparagraph (e) that between approximately October 2001 and April 2003 the Defendant, having been influenced by the cash and other items of value detailed in subparagraph (f), took official actions in connection with the Operational Support contract that benefitted the financial interests of Company A, including the recommendation and approval of additional work through non-competitive change orders to the Operational Support contract, thus depriving the District of Columbia and its citizens of their intangible right to his honest services as a public official.

(k) It was further part of the scheme detailed in subparagraph (e) that between approximately October 2001 and April 2003 the Defendant, having been influenced by the receipt of the cash and other items of value detailed in subparagraph (f), and having failed to disclose the conflict of interest arising therefrom, recommended and approved three

separate change orders to the Operational Support contract, worth a total of \$5,655,871.

(l) It was further part of the scheme detailed in subparagraph (e) that from approximately October 2001 through April 2003 the Defendant intentionally deceived the District of Columbia and its citizens into believing that his official acts in connection with the Operational Support contract were free from the taint of favoritism, bias, conflict of interest and self-enrichment, when in fact he did have an undisclosed conflict of interest and had been influenced by his receipt of the cash and other items of value detailed in subparagraph (f).

#### Use of the Interstate Wires in Furtherance of the Scheme

(m) For the purpose of executing the scheme and artifice to defraud detailed in subparagraph (e), on or about October 22, 2001 the Defendant caused Person A-1, who was in his office in Washington, D.C., to telephone Person A-3, who was in Annapolis, Maryland, which resulted in Person A-3 withdrawing cash from a bank account, \$4,400 of which Person A-1 later gave to the Defendant on or about October 26, 2001, such use of the interstate wires being foreseeable to the Defendant.

#### Receipt of a Gratuity

(n) On or about October 18, 2002 the Defendant sought to have Company B, through Person B-2, provide him with an item of personal value, to wit, to pay a \$1,348.91 hotel bill on the Defendant's behalf, thus enabling the Defendant to make personal use of, and benefit from, a monetary travel advance previously issued to him by the District of Columbia.

(o) On or about October 18, 2002 Company B, through Person B-2 after

consultation with Person B-1, paid the Defendant's hotel bill detailed in subparagraph (n).

(p) The Defendant's acceptance of the item of personal value detailed in subparagraphs (n) and (o) was not provided for by law for the proper discharge of the Defendant's official duty.

(q) The Defendant, a public official, sought and accepted the item of personal value detailed in subparagraphs (n) and (o) for an official act to be performed by the Defendant, to wit, favorable treatment of Company B by the Defendant in his future administration and oversight of the I.T.M.S. contract.

### **POSSIBLE MAXIMUM SENTENCES**

5. The Defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 201(c)(1)(B) is:

(a) a term of imprisonment for two (2) years (18 U.S.C. § 201(c)(1)(B));

(b) a fine in an amount equal to the greatest of (1) \$250,000, (2) twice the gross pecuniary gain derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime (18 U.S.C. § 201(c); 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of one (1) year following any term of imprisonment. If the Defendant violates any condition of supervised release, the Defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") § 5D1.2(a)(3)).

6. The Defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1343 is:

- (a) a term of imprisonment for five (5) years (18 U.S.C. § 1343<sup>1</sup>);
- (b) a fine in an amount equal to the greatest of (1) \$250,000, (2) twice the gross pecuniary gain derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime (18 U.S.C. § 1343; 18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of three (3) years following any term of imprisonment. If the Defendant violates any condition of supervised release, the Defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3559(a)(4); 18 U.S.C. § 3583(b)(2) and (e)(3); and U.S.S.G. § 5D1.2(a)(2)).

7. In addition, the Defendant understands that:

- (a) pursuant to 18 U.S.C. § 3584, the Court may order him to serve sentences imposed for multiple convictions consecutively;
- (b) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution to the victims of the offenses; and
- (c) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the Defendant to pay a \$100.00 special assessment upon conviction for each of the charged crimes.

### **SENTENCING GUIDELINES**

8. The Defendant understands that the Sentencing Guidelines are advisory, not

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<sup>1</sup>18 U.S.C. § 1343 was amended on July 30, 2002 to increase the maximum imprisonment for wire fraud to twenty (20) years. Because the use of the interstate wires caused by the Defendant occurred in 2001, application of the 2002 amendment would violate the ex post facto clause of the United States Constitution. ART. I, § 10. However, the Guidelines calculations included in Paragraph 8 were not affected by the amendment, and, moreover, calculating the Defendant's sentence under the Guidelines in effect in October 2001 results in the same sentence as calculating his sentence under the Guidelines currently in effect.



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 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 advisory Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

### **SENTENCING AGREEMENT**

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the Defendant to serve thirty (30) months incarceration and to pay to the United States a criminal fine of \$50,000, both of which are within the applicable advisory Guidelines range as more specifically set forth below in subparagraph (a), and to make restitution to the District of Columbia in the amount of \$50,000, the restitution being payable in full before the fifteenth (15<sup>th</sup>) day after the date of judgment. The criminal fine shall be payable in accordance with a schedule to be set by the Court at sentencing, but in no case shall extend beyond the period of supervised release imposed by the Court. The parties agree that there exists no aggravating or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the

recommended sentence set forth in this Plea Agreement is reasonable.

(a) The United States and the Defendant agree that this sentence is within the applicable advisory Guidelines range prescribed for these offenses as follows:

(I) the two counts of the Information are appropriately grouped pursuant to U.S.S.G. § 3D1.2(b) with the wire fraud count producing the highest offense level for purposes of U.S.S.G. § 3D1.3(a));

(ii) the Defendant has a criminal history category level of one (1);

(iii) the base offense level for an honest services wire fraud offense where the Defendant was a public official is fourteen (14) (U.S.S.G. § 2C1.1(a));

(iv) the Defendant was, at the time of each offense, a public official holding a high-level decision-making position which results in an increase of four (4) levels (U.S.S.G. § 2C1.1(b)(3));

(v) the Defendant was a leader in the criminal activity which results in an additional increase of two (2) levels (U.S.S.G. § 3B1.1(c)), for an adjusted offense level of twenty (20); and

(vi) the Defendant's acceptance of responsibility for his offenses provides for a decrease of three (3) levels (USSG § 3E1.1(b)) resulting in a final adjusted offense level of seventeen (17), which provides for a range of incarceration of between twenty-four (24) and thirty (30) months.

(b) The Defendant understands that the Court will order him to pay a \$100 special assessment for each offense pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

10. The United States agrees that at the arraignment, it will stipulate to the release of the Defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case, provided that the Defendant will surrender his passport at the arraignment. The United States acknowledges that the Defendant will request that the Court allow him to surrender himself to the Bureau of Prisons after sentencing and that the Court recommend to the Bureau of Prisons that the Defendant be assigned to serve his term of incarceration at FPC Cumberland. The United States has no objection to either request.

11. Subject to the ongoing, full, and truthful cooperation of the Defendant described in Paragraph 13 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the Defendant's cooperation and his commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the Defendant's involvement in the charged offenses, and all other relevant conduct.

12. The United States and the Defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the Defendant agree that this Plea Agreement, except for Paragraph 12(b) below, shall be rendered void. Neither party may withdraw from this Plea Agreement, however, based on the Court's decision on the issue of self-surrender or the type or location of the correctional facility to which the Defendant is assigned to serve his sentence.

(b) If the Court does not accept the recommended sentence, the Defendant will be

free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the Defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the Defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the Defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for all Relevant Offenses, as defined in Paragraph 14 below, will be tolled for the period between the date of the signing of the Plea Agreement and the date the Defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

#### **DEFENDANT'S COOPERATION**

13. The Defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal wire fraud, gratuity and related criminal laws involving the provision of traffic engineering services to the D.C. D.O.T., any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the Defendant shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, in the possession, custody, or control of the Defendant, requested by attorneys

and agents of the United States;

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

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

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

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

#### **GOVERNMENT'S AGREEMENT**

14. Subject to the full, truthful, and continuing cooperation of the Defendant, as described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States will not bring further criminal charges against the Defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of the Defendant's scheme to defraud the District of Columbia and its citizens of their intangible right to

his honest services as a public official or his receipt of items of personal value for official actions to be taken by him (“Relevant Offenses”). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

### **REPRESENTATION BY COUNSEL**

15. The Defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney’s legal representation. The Defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the Defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the Defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

### **VOLUNTARY PLEA**

16. The Defendant’s decision to enter into this Plea 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 Plea Agreement. The United States has made no promises or representations to the Defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

### **VIOLATION OF PLEA AGREEMENT**

17. The Defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the Defendant has failed to provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has

otherwise violated any provision of this Plea Agreement, the United States will notify the Defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the Defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The Defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the Defendant for any Relevant Offenses, the statute of limitations period for such offenses will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

18. The Defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on the Defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the Defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

#### **ENTIRETY OF AGREEMENT**

19. This Plea Agreement constitutes the entire agreement between the United States and the Defendant concerning the disposition of the criminal charges in this case. This Plea

Agreement cannot be modified except in writing, signed by the United States and the Defendant.

20. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

Respectfully submitted,

\_\_\_\_\_/s/  
PETER H. GOLDBERG  
Senior Trial Attorney  
U.S. Department of Justice  
Antitrust Division  
1401 H Street, NW, Suite 3700  
Washington, D.C. 20530  
(202) 307-5784

DATED: 04/20/05

\_\_\_\_\_/s/  
JOHN SCHMOLL  
Senior Trial Attorney  
U.S. Department of Justice  
Antitrust Division  
1401 H Street, NW, Suite 3700  
Washington, D.C. 20530  
(202) 307-5780

DATED: 04/20/05



I have read this Plea Agreement and carefully reviewed every part of it with my attorney. Specifically, I have reviewed Paragraphs 4 and 9 with my attorney, and I do not wish to change any part of it. I understand this Plea Agreement, and I voluntarily agree to it. I am completely satisfied with the representation of my attorney.

\_\_\_\_\_/s/\_\_\_\_\_  
WILHELM DERMINASSIAN  
Defendant

DATED: 04/21/05

I am Mr. DerMinassian's attorney. I have carefully reviewed every part of this Plea Agreement with him. To my knowledge, his decision to enter into this Plea Agreement is an informed and voluntary one.

\_\_\_\_\_/s/\_\_\_\_\_  
MARK E. SCHAMEL  
Counsel for WILHELM DERMINASSIAN

DATED: 04/21/05