



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA) Criminal No. 5:15-CR-121 (DNH)
v.)
LOUIS MATTHEW BAILLY,) Plea and Cooperation Agreement
Defendant.)

The United States of America, by and through its counsel of record, the United States Attorney for the Northern District of New York, and the Fraud Section, Criminal Division, United States Department of Justice (collectively referred to here as "the United States" or "the government"), and defendant Louis Matthew Bailly (hereinafter "the defendant"), by and through the defendant's counsel of record, Michael Spano, hereby enter into the following plea agreement pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure:

1) **The Defendant's Obligations:**

- a) **Guilty Plea:** The defendant will waive indictment and plead guilty to Count 1 of the information in Case No. 5:15-CR-121 (DNH) charging that the defendant conspired with others to commit an offense against the United States, namely, bribery of a public official, in violation of 18 U.S.C. § 371.
 - b) **Special Assessment:** The defendant will pay an assessment of \$100, pursuant to 18 U.S.C. § 3013. The defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$100, payable to the U.S. District Court, at the time of sentencing.
 - c) **Cooperation:** The defendant will cooperate with the United States in the investigation and prosecution of others, as more fully set out in Paragraph H below.

- d) **Compliance with Other Terms of Agreement:** The defendant will comply in a timely manner with all of the terms of this plea agreement.
- e) **Forfeiture:** Pursuant to 28 U.S.C. § 2461(c) and 18 U.S.C. § 981(a)(1)(C), the defendant will consent to the entry of an order directing forfeiture to the United States as described in the Forfeiture Allegation in the information described above, including the entry of a money judgment against the defendant and will consent to any effort by the government to pursue substitute assets. Specifically, defendant consents to the entry of a money judgment against him in the amount of \$10,000 representing a sum of money constituting, or derived from, proceeds obtained, directly or indirectly, as a result of the offense of conspiracy to commit bribery, in violation of 18 U.S.C. § 371.

2) **The Government's Obligations:**

- a) **Non-prosecution for other offenses:** For so long as the defendant's guilty plea and the sentence remain in effect, the government will not seek other federal criminal charges against the defendant based on conduct described in the Information in Case No 5:15-CR-121 (DNH) and/or in the paragraph of this agreement entitled "Factual Basis for Guilty Plea," occurring before the date on which the defendant signs this agreement. This agreement does not prevent the government from seeking charges based on other conduct.
- b) **Compliance with Other Terms of Agreement:** The government will comply in a timely manner with all of the terms of this plea agreement.

3) **Potential Maximum Penalties:** The defendant understands that the Court can impose the following maximum penalty for the offense to which the defendant agrees to plead guilty, all as set out below:

- a) **Maximum term of imprisonment:** Five (5) years, pursuant to 18 U.S.C. § 371.
- b) **Maximum fine:** \$250,000, pursuant to 18 U.S.C. § 3571(b)(3).
- c) **Supervised release term:** In addition to imposing any other penalty, the sentencing court may require the defendant to serve a term of supervised release of up to 3 years, to begin after imprisonment. 18 U.S.C. § 3583(b)(2). A violation of the conditions of supervised release during that time period may result in the defendant being sentenced to an additional term of imprisonment of up to 2 years. 18 U.S.C. § 3583(e)(3).
- d) **Other adverse consequences:** Other adverse consequences may result from the defendant's guilty plea as further described in paragraph F below.

4) **Elements of Offense:** The defendant understands that the following are the elements of the offense to which the defendant agrees to plead guilty. The defendant admits that the defendant's conduct satisfies each and every one of these elements.

- a) **Conspiracy**
 - i. The conspiracy, agreement, or understanding to bribe a public official, as described in the Information, was formed, reached, or entered into by two or more persons;
 - ii. At some time during the existence or life of the conspiracy, agreement, or understanding, defendant knew the purpose of the agreement;

- iii. With knowledge of the purpose of the conspiracy, agreement, or understanding, defendant then deliberately joined the conspiracy, agreement, or understanding; and
- iv. At some time during the existence or life of the conspiracy, agreement, or understanding, one of its alleged members knowingly performed one of the overt acts charged in the Information and did so in order to further or advance the purpose of the agreement.

b) Bribery

- i. Defendant demanded, sought or received something of value described in the Information;
- ii. Defendant was, at that time, a public official of the United States or was acting on behalf of the United States; and
- iii. Defendant demanded, sought or received the item of value corruptly in return for being influenced in the performance of any official act.

5) Factual Basis for Guilty Plea: The defendant admits the following facts, that those facts demonstrate the defendant's guilt for the offense to which the defendant is pleading guilty, and that there are no facts establishing a viable defense to that offense:

- a) From in or about October 2011 until in or about October 2012, defendant, who was a Staff Sergeant E-6 in the United States Army, worked with the Headquarters and Headquarters Company 10th Sustainment Brigade Troops Battalion at Bagram Airfield ("Bagram") in the Islamic Republic of Afghanistan ("Afghanistan"), and was also designated as a Project Purchasing Officer responsible for the Commander's Emergency Response Program ("CERP") at the Humanitarian Assistance ("HA")

Yard at Bagram until on or about June 30, 2012. As an Army non-commissioned officer and Project Purchasing Officer in the United States Army, defendant was a public official within the meaning of 18 U.S.C. § 201(a)(1).

- b) From in or about August 2012, defendant's residence in the United States was in or near Dexter, New York. Defendant was stationed at Fort Drum in Jefferson County, New York, after he returned from Afghanistan.
- c) At all relevant times, CERP enabled United States military commanders to respond to urgent humanitarian relief requirements in Afghanistan. CERP projects were intended to benefit the local populace in areas such as agriculture, education, health care, and sanitation until larger, more formal reconstruction projects could be initiated.
- d) As a Project Purchasing Officer, defendant was responsible for procuring food and supplies in support of CERP operations of less than \$500,000 and received delegated contracting authority from a contracting officer. The HA Yard at Bagram was used to acquire and store food and supplies for subsequent distribution outside Bagram in support of the CERP. Defendant was responsible for replenishment of the supplies in the Yard. As the Project Purchasing Officer, defendant processed requests to the HA Yard from other units, and kept inventory of the items stored in the HA Yard and what had been shipped out to the field.
- e) When defendant began work at the HA Yard, he received an ethics class regarding accepting money from vendors and knew it was wrong to accept cash and gifts from vendors.

- f) While deployed to Afghanistan, defendant worked closely with, among others, two Afghan contractors (“Co-conspirator #1” and “Co-conspirator #2”) who sought to obtain contracts to replenish supplies in the HA Yard for companies with which they were associated.
- g) In or about late October 2011, defendant replaced the prior Project Purchasing Officer (“PPO #1”). During the transition, PPO #1 showed defendant how to prepare the documentation for the CERP projects. PPO #1 also introduced defendant to Co-conspirator #1 and told defendant if he ever needed anything to contact Co-conspirator #1. PPO #1 told defendant to use Co-conspirator #1 for replenishment contracts, to provide Co-conspirator #1 with the requested number of units, listed unit price and total price and that Co-conspirator #1 would provide defendant with the required three bids. PPO #1 told defendant that was how PPO #1 had done it before. While outside the office at the HA Yard, PPO #1 told defendant he had gotten \$20,000 from Co-conspirator #1 while he was at Bagram.
- h) In or about late November 2011 through in or about early December 2011, defendant discussed with Co-conspirator #1 an upcoming flour replenishment contract, told Co-conspirator #1 that he needed three bids, and provided Co-conspirator #1 the cost to the government, which allowed Co-conspirator to propose a bid below that cost. Days later, Co-conspirator #1 brought three bids to defendant, including one for his own company for \$175,500 which, being the lowest bid, won the replenishment contract on or about December 15, 2011.
- i) In or about the middle of December 2011, after the flour contract was awarded, defendant received \$5,000 from Co-conspirator #1 at Bagram. The two men met in

Co-conspirator #1's truck and Co-conspirator #1 handed defendant fifty \$100 bills. Co-conspirator #1 told defendant this was part of the profit from the flour replenishment contract. Defendant put the bills in his pocket and subsequently used this money for personal purposes both in Afghanistan and the United States for himself and others. Defendant took the money even though he knew he should not.

- j) In or about February 2012, defendant again told Co-conspirator #1 that there was an upcoming replenishment contract. Defendant told Co-conspirator #1 that he needed three bids and provided Co-conspirator #1 with the government's estimated cost. Co-conspirator #1 provided defendant with three bids. The contract was awarded on or about February 27, 2012, for \$217,680, for footwear and food.
- k) After the second replenishment contract had been awarded, defendant again received \$5,000 from Co-conspirator #1 at Bagram. The two men met in Co-conspirator #1's truck and Co-conspirator #1 handed defendant fifty \$100 bills. Co-conspirator #1 told defendant this was part of the profit from the replenishment contract. Defendant used this money for personal purposes both in Afghanistan and the United States.
- l) Between in or about late 2011 and early 2012, Co-conspirator #1 provided a number of other things of value to defendant including jewelry, blankets, a Disney DVD collection set, ten cellular phone cards, a cellular phone, and an iPhone. These items were valued at a total of less than \$1,000. Defendant used the cellular phone cards and iPhones in Afghanistan, and either sent or took back the other items to the United States.
- m) In or about early March 2012, Co-conspirator #2 asked to speak with defendant. The two men went inside a trailer at Bagram. There, Co-conspirator #2 gave defendant

five \$100 bills to ensure that Co-conspirator #2 would get the next replenishment contract. Defendant took the money, and used the money for personal expenses. Defendant said, however, that he returned \$500 to Co-conspirator #2 about a month or two later saying he knew it was wrong to take it.

- n) At or about the time defendant spoke with Co-conspirator #2, as discussed immediately above, defendant did an inventory of what the HA Yard needed for replenishment and told Co-conspirator #2 that defendant needed three quotes from three companies, as well as the price the government was seeking. Thereafter, Co-conspirator #2 brought three quotes to defendant.
- o) On or about March 5, 2012, Co-conspirator #2's company was awarded the replenishment contract valued at \$226,800 to supply clothing and sugar to the HA Yard.
- p) In or about late 2011 and early 2012, Co-conspirator #2 provided other things of value to defendant including a drawing of defendant's daughter on a large piece of wood, a gold ring for defendant's wife, jewelry, two elastic bracelets, and about four prepaid cellular phones. These items were valued at a total of less than \$1,000. Defendant kept the picture in Afghanistan and either sent or took the other items back to the United States. Co-conspirator #2 gave these items to defendant so that defendant would do more business with him than any other vendor on the replenishment contracts.
- q) On or about June 30, 2012, law enforcement agents searched the HA Yard. After that date, defendant no longer worked at the HA Yard.

- r) Between on or about June 30, 2012, and on or about October 8, 2012, defendant was interviewed by law enforcement agents on three occasions about these matters. In conjunction with those interviews, defendant has returned most of the physical items he received from Co-conspirators #1 and #2.
- s) During the course of the conspiracy, otherwise than as provided by law for the proper discharge of official duty, defendant, a public official, knowingly and unlawfully sought, received and accepted illegal bribes in return for defendant being influenced in the performance of official acts, that is, the issuance of replenishment contracts at the HA Yard in Afghanistan. Venue is proper in the Northern District of New York pursuant to 18 U.S.C. § 3238.

6) **Sentencing Stipulations:**

- a) The government and the defendant understand and agree to the following applicable United States Sentencing Guidelines (“U.S.S.G.”) consideration and factors, which the parties agree provide a fair, just, and reasonable resolution of this matter:
 - i. The November 1, 2011, edition of the U.S.S.G. applies;
 - ii. The applicable U.S.S.G. provision for conspiracy is §2X1.1(a), which, under the facts of this matter, refers back to the provision for the substantive offense, bribery, §2C1.1;
 - iii. Because defendant was a public official, the base offense level under U.S.S.G. §2C1.1(a)(1) is 14;
 - iv. In that there was more than one bribe, there is an increase by 2 levels under U.S.S.G. §2C1.1(b)(1);

- v. The value of the bribes received totaled more than \$10,000, but was not more than \$30,000. Therefore, a four-level increase is appropriate pursuant to U.S.S.G. §§2C1.1(b)(2) and 2B1.1(b)(1)(C); and
 - vi. The total offense level is 20.
- b) The government will recommend a 2-level downward adjustment to the applicable federal sentencing guidelines offense level pursuant to U.S.S.G. §3E1.1(a) if (i) through the time of sentencing, the government is convinced that the defendant has demonstrated “acceptance of responsibility” for the offense(s) to which the defendant is pleading guilty; and (ii) the government does not determine that the defendant, after signing this agreement, committed any other federal, state, or local crimes, or engaged in conduct that constitutes “obstruction of justice,” as defined in U.S.S.G. §3C1.1.
 - c) The government will move for a 1-level downward adjustment to the applicable federal sentencing guidelines offense level pursuant to U.S.S.G. §3E1.1(b) if the government is convinced that the defendant has accepted responsibility within the meaning of U.S.S.G. §3E1.1(a) and further assisted authorities in the investigation or prosecution of the defendant’s own misconduct by timely notifying authorities of the defendant’s intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, and the defendant otherwise qualifies for such adjustment by having a combined offense level of 16 before receipt of any acceptance of responsibility adjustment under U.S.S.G. §3E1.1(a).

d) Assuming that the defendant receives credit for acceptance of responsibility, under the calculations above, the adjusted offense level is 17. Under a Criminal History Category of I, which the parties believe is applicable for defendant, the U.S.S.G. sentencing range is 24-30 months in Zone D. The applicable fine level under the Fine Table is \$5,000 to \$50,000.

7) **Waiver of Rights to Appeal and Collateral Attack:** The defendant waives (gives up) any and all rights, including those conferred by 18 U.S.C. § 3742 and/or 28 U.S.C. §§ 2241 and 2255, to appeal and/or to collaterally attack:

- a) The conviction resulting from the defendant's guilty plea;
- b) Any sentence to a term of imprisonment of 41 months or less;
- c) Any sentence to a fine within the maximum permitted by law;
- d) Any sentence to a term of supervised release within the maximum permitted by law;
- e) Any order of forfeiture or restitution imposed by the Court that is consistent with governing law and is not contrary to the terms of this agreement.

Nothing in this appeal waiver is meant to be or should be construed as a representation of or agreement concerning the appropriate sentence in this case.

A. **Right to Counsel:** The defendant has a right to assistance of counsel in connection with settlement of this case and understands that right. Defense counsel has advised the defendant of the nature of the charges to which the defendant is agreeing to plead guilty and the range of possible sentences.

B. **Waiver of Trial-Related Rights:** The defendant has the following additional constitutional rights in connection with the charges in this case: (i) to be presumed

innocent until proven guilty beyond a reasonable doubt; (ii) to plead not guilty; (iii) to trial by jury; (iv) to confront, cross-examine, and compel the attendance of witnesses at trial; (v) to present defense evidence; and (vi) to remain silent and be protected against compelled self-incrimination. The defendant understands that by pleading guilty, the defendant waives (gives up) these rights.

C. **Court Not Bound by Plea Agreement:** This plea agreement is made pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure. The Court is neither a party to, nor bound by this Plea Agreement. The Court may accept or reject this Plea Agreement or defer a decision until it has considered the Presentence Investigation Report prepared by the United States Probation Office. If the Court rejects the provisions of this agreement permitting the defendant to plead guilty to certain charges in satisfaction of other charges, the Court will permit the defendant to withdraw the plea of guilty before sentencing, pursuant to Fed. R. Crim. P. 11(c)(5) & (d).

D. **Court Not Bound by Agreed-Upon Recommendations, Stipulations, and Requests:** If this agreement contains any provisions under Fed. R. Crim. P. 11(c)(1)(B) by which the government agrees to recommend, stipulates, or agrees not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the federal sentencing guidelines, or a policy statement, or sentencing factor does or does not apply, such a recommendation, stipulation, or request does not bind the Court, which may make independent factual findings by a preponderance of the evidence and may reject such recommendations, requests, and stipulations between the parties. If the Court rejects one or more recommendations, stipulations, or requests, the defendant is not entitled to withdraw the defendant's plea of guilty and is not released from the

obligations described in this agreement. Under such circumstances, the government reserves the right to support and defend, in connection with any post-sentencing proceedings, any decision the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations, stipulations, or requests set out in this agreement.

E. Sentencing:

- a. Maximum terms of imprisonment:** The defendant understands that the Court has discretion to impose a sentence within the statutory maximum sentence set out in this agreement.
- b. Sentencing guidelines:**
 - i. The actual sentence to be imposed upon the defendant is within the discretion of the sentencing Court, subject to the statutory maximum penalty, as described above, and the provisions of the Sentencing Reform Act and the United States Sentencing Guidelines promulgated thereunder. While the Court is not bound to impose a sentence within the applicable sentencing guidelines range, it must take into account the sentencing guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a).
 - ii. Any estimate of the defendant's offense level, criminal history category, and sentencing guidelines range provided before sentencing is not binding on the Probation Office or the Court. Until the Probation Office has fully investigated the defendant's criminal history, it is not possible to predict with certainty the defendant's criminal history category and, in some cases, the defendant's offense level.

- iii. Under certain circumstances, the defendant's criminal history may affect the defendant's offense level under the federal sentencing guidelines. If the presentence investigation reveals that the defendant's criminal history may support an offense level different than an offense level stipulated in this agreement, the parties are not bound by any such stipulation as to the defendant's offense level and may advocate with respect to how the defendant's criminal history affects the offense level.
- c. **Factual findings:** The defendant understands that the sentencing Court may make factual findings with respect to any and all sentencing factors and issues, including those referenced in the United States Sentencing Guidelines, whether or not such factors or issues have been admitted by the defendant or stipulated by the parties. In making those findings by a preponderance of the evidence, the Court may consider any reliable evidence, including hearsay. The defendant understands that the sentence imposed may be determined based upon such judicial fact-finding.
- d. **Use of the Defendant's Statements:** The defendant understands that the sentencing court may consider any statement that the defendant has made or makes in this Plea Agreement, during the guilty plea, to the Probation Office, and at sentencing when imposing sentence. In addition the government may be able to use the defendant's statements in this agreement and at the guilty plea and at sentencing in any criminal, civil, or administrative proceeding. For example, if the defendant fails to enter a guilty plea (as required by this agreement) or the defendant's guilty plea is later withdrawn or vacated for any reason other than the

Court's rejection of this Plea Agreement under Fed. R. Crim. P. 11(c)(5), the government may introduce the defendant's statements into evidence in any prosecution. If, however, the Court rejects this Plea Agreement under Fed. R. Crim. P. 11(c)(5), and the defendant withdraws the guilty plea pursuant to Fed. R. Crim. P. 11(d)(2)(A), the government will not be permitted to use any of the defendant's statements in this Plea Agreement. To the extent that Rule 11(f) of the Federal Rules of Criminal Procedure and/or Rule 410 of the Federal Rules of Evidence are inconsistent with this paragraph, the defendant waives (gives up) any protections under those rules.

- e. **Government's Discretion to Recommend a Sentence:** Unless a stipulation in this agreement explicitly limits the government's discretion with respect to its recommendations at sentencing, this agreement does not prevent the government from urging the sentencing Court to find that a particular offense level, criminal history category, ground for departure, or guidelines range applies; from recommending a specific sentence within the applicable guidelines range as determined by the Court or as urged by the government; or, if the government deems appropriate, recommending that the Court impose a sentence above the applicable guidelines range.
- f. **Sentencing-Related Information:** The government has the right to advise the sentencing Court and the Probation Office of any information, in aggravation or mitigation of sentencing, whether or not encompassed within the count to which the defendant has agreed to plead guilty, subject only to the limitation described in U.S.S.G. §1B1.8. No stipulation in this plea agreement limits the obligations

of both parties to ensure that the sentencing Court has all information pertinent to its determination of an appropriate sentence. The parties may provide any factual information relevant to sentencing to the Probation Office and/or to the Court, without limitation, before or after the completion of the Presentence Investigation Report. The parties agree that the submission of such information shall not be deemed "advocacy" in violation of any stipulation in this plea agreement.

- g. **Supervised Release Term and Conditions:** If the defendant is placed on supervised release, under some circumstances, including the defendant's violation of one or more supervised release conditions, the Court may extend the term of supervised release, and may modify, reduce, or enlarge the conditions of such release.

F. **Other Adverse Consequences:** The following are some examples of the adverse consequences of pleading guilty other than the sentence imposed by the Court, along with any judicial order of forfeiture and/or restitution:

- a. Conviction of a felony may result in the loss of civil rights, including, but not limited to, the right to vote and the right to possess firearms.
- b. If the defendant is not a United States citizen, such conviction may result in deportation or removal from the United States, and may bar readmission to the United States if the defendant leaves the country. Under federal law, removal or deportation may be an almost certain consequence of a conviction for a broad range of federal offenses, including, but not limited to, aggravated felonies, as defined in 8 U.S.C. § 1101(a)(43), and crimes of moral turpitude, which includes crimes involving fraud. Removal and other immigration consequences are the

subject of a separate proceeding. No one, including the defendant's attorney and the Court, can predict with certainty the effect of the conviction resulting from this agreement on the defendant's immigration status. The defendant understands this uncertainty and nonetheless wishes to plead guilty regardless of any immigration consequences that the guilty plea may entail, even if the consequence is the defendant's automatic removal from the United States.

- c. A felony conviction may adversely affect the defendant's ability to hold certain professional licenses and may impair the defendant's ability to do business with federal, state, and local governments or to receive benefits from such governments.

There may be other adverse consequences as well, some of them unforeseeable. It may be difficult or impossible to predict all of the adverse consequences of the defendant's guilty plea. The defendant agrees that any resulting adverse consequences, whether or not foreseen or foreseeable, will not provide a basis for withdrawing from the guilty plea described in this agreement or otherwise challenging the resulting conviction and sentence.

G. **Forfeiture:** The defendant agrees to forfeiture of assets. The defendant agrees to the following terms and conditions:

- a. The defendant hereby forfeits, to the United States, all right, title, and interest of any nature in any and all assets that are subject to forfeiture, including substitute assets, as set forth above, whether those assets are in the possession or control of the defendant, a nominee, or some other third party.

- b. The defendant consents to the entry of an order of forfeiture of the assets described above.
- c. The defendant is aware that pursuant to Fed. R. Crim. P. 32.2(b)(4)(A), a preliminary order of forfeiture becomes final as to a given defendant at sentencing or at any time before sentencing if the defendant consents. The defendant consents that the preliminary order of forfeiture in this case shall become final as to the defendant before sentencing, as of the date the preliminary order of forfeiture is entered by the Court. The defendant understands that upon entry of the preliminary order of forfeiture, the government will address any potential third party claims pursuant to Rule 32.2(c), as necessary, and otherwise seek to finalize the forfeiture.
- d. Forfeiture of the defendant's assets will not satisfy all of, or any portion of, a fine, restitution, or other monetary penalty that the Court may impose upon the defendant in addition to forfeiture. Satisfaction of all of, or any portion of, any restitution, fine, or other penalty that the Court may impose upon the defendant in addition to forfeiture will not satisfy all of, or any portion of, any forfeiture judgment ordered by the Court.
- e. In the event that any successful claim is made, by any third party, to the assets described above, the defendant agrees to forfeit substitute assets equal in value to the assets transferred to any such third party. The defendant agrees that forfeiture of substitute assets shall not be deemed an alteration of the defendant's sentence.
- f. The defendant agrees to cooperate with the United States by taking whatever steps are necessary to pass clear title to the United States of any forfeitable assets,

including but not limited to, surrendering title; completing any documents or legal proceedings required to transfer assets to the United States; and taking necessary steps to ensure that assets subject to forfeiture are not sold, disbursed, expended, destroyed, damaged, hidden or otherwise made unavailable for forfeiture or removed beyond the jurisdiction of the Court.

- g. The defendant waives the right to a jury trial on the forfeiture of assets. The defendant waives all constitutional, legal, and equitable defenses to the forfeiture of assets, as provided by this agreement, in any proceeding, including but not limited to any jeopardy defense or claim of double jeopardy or any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of an excessive fine. The defendant further waives the requirement of Fed. R. Crim. P. 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Fed. R. Crim. P. 11(b)(1)(J), at the time his guilty plea is accepted.
- h. The defendant acknowledges that the government may institute civil or administrative proceedings against any or all of the defendant's forfeitable assets, including, but not limited to substitute assets and any forfeitable assets not identified by the defendant, and agrees not to contest any such forfeiture proceedings.

- i. The defendant acknowledges joint and several liability for the amount of any money judgment set forth above.
- j. In the event the government determines that the defendant has breached any condition of this plea agreement, none of the forfeited property shall be returned to the defendant, nor shall the defendant assert any claim to the forfeited property. The defendant shall not reacquire any forfeited property, directly or indirectly, through family members, nominees, friends, or associates.
- k. Defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive him, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including any agreed money judgment amount, is collected in full.

H. Cooperation: If the defendant has agreed in writing to cooperate with the government, the following terms and conditions apply:

- a. The defendant will cooperate fully with the government and law enforcement agencies that the government designates, in any manner requested, in any criminal investigation.
- b. The defendant will truthfully disclose all information with respect to the activities of the defendant and others about all matters in which the government and law enforcement agencies designated by the government may inquire.

- c. The defendant will testify truthfully and completely before the grand jury and/or at any trial or other proceeding with respect to any matters about which the defendant may be questioned.
- d. The defendant will, at all times, give complete, truthful, and accurate information and testimony. The defendant will not attempt to protect any person who has been involved in criminal activity, nor will the defendant falsely implicate anyone in criminal activity. The defendant will not minimize, exaggerate, or conceal the criminal conduct of the defendant or any other person.
- e. The defendant will not reveal the defendant's cooperation or any information with respect to any related investigation or prosecution to anyone other than the defendant's attorney, without the prior consent of the government.
- f. The defendant is entitled to have an attorney present at any session during which the defendant provides testimony, information, or other cooperation to the government or any designated law enforcement agency pursuant to this agreement. The defendant and counsel hereby waives the right to have an attorney present at such sessions unless and until the defendant or the defendant's attorney informs the Trial Attorney or designated law enforcement agent that the attorney's presence is desired.
- g. The defendant consents to adjournments of sentencing pending the completion of the defendant's cooperation, as determined to be necessary by the government.
- h. The defendant will not violate any federal, state, or local law or condition of release or supervision imposed by the Court between the time the defendant signs this agreement and the date of sentencing.

- i. Any self-incriminating statements the defendant makes while cooperating pursuant to this agreement may not be introduced by the government in its case-in-chief against the defendant in a further criminal prosecution except in (i) a prosecution for perjury, making a false statement, or obstruction of justice; (ii) a prosecution for any crime of violence or act of terrorism; or (iii) any prosecution of the defendant permitted under this agreement as a result of the defendant's failure to comply with the terms of this plea agreement. Further, such self-incriminating information will not be used in determining the applicable Sentencing Guidelines range, pursuant to U.S.S.G. §1B1.8.
- j. At or before sentencing, the government will advise the Court of the nature and extent of the cooperation and assistance provided by the defendant pursuant to this Agreement. If the government determines, in its sole discretion, that the defendant has provided "substantial assistance" in the investigation or prosecution of one or more other persons who have committed offenses, it may, in its sole discretion, credit the defendant in moving for a downward departure pursuant to U.S.S.G. §5K1.1. However, the government does not promise or guarantee that it will make such a motion for departure. Whether and how to credit any proffered cooperation and assistance is within the sole discretion of the government.
- k. In deciding whether the defendant has provided "substantial assistance" warranting a motion for a downward departure under U.S.S.G. §5K1.1, the government may consider any fact that, in its sole discretion, it deems relevant, including facts known at the time of the execution of this plea agreement.

- l. However, the decision of the government whether to make a motion for a downward departure will not be affected in any way by a grand jury's decision whether to return an indictment or a jury's verdict at trial. Thus, the defendant will not be rewarded in any way for a grand jury's decision to return an indictment or a trial jury's decision to return a guilty verdict. Similarly, the defendant will not be denied the benefit of such motion(s) merely because a grand jury decides not to return an indictment or a trial jury decides not to return a guilty verdict or cannot return any verdict.
 - m. If the sentencing of the defendant is conducted before the defendant has, in the judgment of the government, completed cooperation, the government may, in its sole discretion, decline to make a motion for a downward departure and defer its determination as to whether the defendant has provided "substantial assistance" warranting a motion for a downward departure under Fed. R. Crim. P. 35(b) for up to one year after sentencing.
 - n. Should the government decide to make a motion for downward departure pursuant to U.S.S.G. §5K1.1, its recommendation as to the extent of such a departure is a matter within the sole discretion of the government.
 - o. Even if a motion for departure is made by the government, based upon the defendant's perceived "substantial assistance," the final decision as to how much, if any, reduction in sentence is warranted because of that assistance rests solely with the sentencing Court.
- l. **Determination of Financial Condition and Payment of Interest and Penalties:**

- a. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees fully to disclose all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party.
- b. The defendant will promptly submit a complete, accurate, and truthful financial statement to the government, in a form it provides and as it directs.
- c. The defendant authorizes the government to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.
- d. Interest and penalties may accrue, as a matter of law, on any unpaid financial obligation imposed as part of the defendant's sentence, from as early as the date of sentencing.

J. Remedies for Breach:

- a. Should the government determine that the defendant, after the date the defendant has signed this plea agreement, (i) has committed any further crime or violated any condition of release or supervision imposed by the Court (whether or not charged); (ii) has given false, incomplete, or misleading testimony or information; (iii) has moved to withdraw the defendant's guilty plea for reasons other than those described in this agreement; or (iv) otherwise has breached any term or condition of this plea agreement, or supplemental agreements with the government, the government will have the right, in its sole discretion, to void this agreement, in whole or in part. In the event of such breach, the defendant will

remain obligated to plead guilty and otherwise comply with the terms of this agreement and will not be permitted to withdraw the defendant's guilty plea under this agreement. The defendant will be subject to prosecution for any federal criminal violation of which the government has knowledge, including but not limited to charges that the government has agreed not to prosecute under this agreement.

- b. If the defendant breaches this agreement, the government will have the following remedies, among others, available to it:
 - i. To bring prosecution for any federal criminal offenses dismissed or not prosecuted under this agreement. The defendant waives (gives up) any defense or objection to the commencement of any such prosecution that is not time-barred by the applicable statute of limitations as of the date on which the defendant signed this plea agreement, notwithstanding the expiration of the statute of limitations between the signing of the agreement and the commencement of any such prosecution.
 - ii. In connection with any such prosecution, any information, statement, and testimony provided by the defendant, and all leads derived therefrom, may be used against the defendant, without limitation and without regard to any rights the defendant may have under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.
 - iii. To utilize any information, statement, or testimony provided by the defendant in any proceeding, including at sentencing, notwithstanding U.S.S.G. §1B1.8;

- iv. To advocate if, and how, any particular adjustment or specific offense characteristic affects the applicable Sentencing Guidelines range without regard to any contrary stipulations contained in this agreement;
- v. To refrain from making any sentencing-related motion favorable to the defendant without regard to any provision in this agreement obligating the government to consider making or make such motion upon fulfillment of certain conditions;
- vi. To urge the sentencing Court to take the defendant's breach into account when imposing sentence;
- vii. To recommend any sentence the government deems appropriate, even if such recommendation is at odds with any stipulation in this agreement.

K. **Limitations:** This agreement does not bind any other federal, state, or local prosecuting authorities. Furthermore, this agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant, including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability, proceedings relating to the forfeiture of assets, and any proceedings relating to the immigration status of the defendant.

L. **Agreement Must be Signed; Modifications Must be Written or on the Record:** This agreement, to become effective, must be signed by all of the parties listed below. No promises, agreements, terms, or conditions other than those set forth in this plea agreement will be effective unless memorialized in writing and signed by all parties or confirmed on the record before the Court.

M. Agreement to Plead Guilty Voluntary: The defendant acknowledges reading each of the provisions of this plea agreement with the assistance of counsel and understands its provisions. The defendant further acknowledges that the defendant's agreement to plead guilty is voluntary and did not result from any force, threat, or promises (other than the promises in this plea agreement and any written supplemental agreements or amendments).

RICHARD S. HARTUNIAN
United States Attorney
Northern District of New York

Carl S. S.

Carl G. Eurenus
Assistant United States Attorney
Bar Roll No. 511746

6/4/15

Date

ANDREW WEISSMANN
Chief, Fraud Section
Criminal Division
United States Department of Justice

Daniel P. Butler

Daniel P. Butler
Trial Attorney, Fraud Section
Bar Roll No. 519354

June 4, 2015

Date

Louis M. Bailly

Louis Matthew Bailly
Defendant

4 JUN 15

Date

Michael Spano

Michael Spano
Attorney for Defendant
Bar Roll No. 508163

6/4/15

Date