

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:16cr249
)	
AMERICAN MANAGEMENT)	
SERVICES LLC,)	
Defendant.)	

**JOINT MOTION FOR APPROVAL OF DEFERRED PROSECUTION AGREEMENT
AND EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT**

The United States of America and the defendant American Management Services LLC and its subsidiaries, formerly doing business as Pinnacle, American Management Services East, and American Management Services California (collectively “AMS,” “Pinnacle,” or “the Company”), by their respective attorneys, respectfully move this Court for entry of an Order approving the attached Deferred Prosecution Agreement and to continue all further criminal proceedings, including trial, until further motion by the parties. In support thereof, the parties state as follows:

1. The Speedy Trial Act requires that the trial of a defendant charged in an Information occur within 70 days from the later of the filing of the Information or the date on which the defendant appeared before a judicial officer in the court in which the charge is pending. *See* 18 U.S.C. § 3161(c)(1).

2. The Speedy Trial Act further provides that:

The following periods of delay shall be excluded in computing the time within which an information . . . must be filed, or in computing the time within which the trial of any such offense must commence:

...

Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with

the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

18 U.S.C. § 3161(h)(2).

3. On or about November 16, 2016, the United States and AMS entered into a written Deferred Prosecution Agreement (the “Agreement”), a true, correct, and complete copy of which is attached and incorporated by reference as Exhibit 1.

4. In Paragraph 1 of the Agreement, AMS agreed to waive Indictment and agreed to the filing of a one-count Information in this Court charging it with major fraud against the United States, in violation of 18 U.S.C. § 1031.

5. Pursuant to Paragraphs 2, 4, 5, and 6 of the Agreement, and in light of AMS’s willingness to: (i) admit, accept, and acknowledge responsibility for its actions as detailed in the Statement of Facts attached to the Agreement; (ii) engage in extensive remediation; (iii) continue its cooperation with the United States; (iv) continue its commitment to enhance its internal controls; and (v) pay the monetary penalty referred to in Paragraph 7 of the Agreement, the United States respectfully requests, pursuant to 18 U.S.C. § 3161(h)(2), that this Court approve the Agreement and that the prosecution of AMS be deferred for a period of three years from the date on which the Information is filed.

6. The United States and AMS believe that such a delay and speedy trial exclusion will allow the defendant to demonstrate its good conduct and therefore seek the approval of this Court to delay trial. *See* 18 U.S.C. § 3161(h)(2). The United States and AMS believe that such a delay would serve the ends of justice and would outweigh the best interest of the public and the defendant in a speedy trial. *See* 18 U.S.C. § 3161(h)(7)(A).

7. AMS joins in this motion and expressly waives any and all rights to a speedy trial pursuant to the Sixth Amendment to the U.S. Constitution, 18 U.S.C. § 3161, Fed. R. Crim. P.

48(b), and any applicable Local Rules of the U.S. District Court for the Eastern District of Virginia for the period that the Agreement is in effect.

8. The United States agrees that if AMS fully complies with all its obligations under the Agreement, the United States, within six months of the Agreement's expiration, will move this Court to dismiss with prejudice the Information filed against the defendant.

For all of the reasons stated above, the United States and defendant AMS respectfully request that this Court enter the attached proposed Order approving the Agreement and continuing all further criminal proceedings, including trial, for a period of three years from the date on which the Information is filed, excluding the three years in computing the time within which any trial must be commenced upon the charge contained in the Information filed against AMS pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(2).

Respectfully submitted,

Dana J. Boente
United States Attorney

Andrew Weissmann
Chief, Fraud Section
Criminal Division
United States Department of Justice

By: _____/s/_____
Ryan S. Faulconer
Counsel for the United States
Assistant United States Attorney
U.S. Attorney's Office
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By: _____/s/_____
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Trial Attorney
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I hereby agree that I have consulted with outside counsel and fully understand all of American Management Services LLC's rights with respect to a speedy trial, including the right to begin trial within 70 days of the Information or its first appearance before this Court, as required by Title 18, United States Code, Section 3161(c). I have read this motion for an extension of the speedy trial deadline and carefully reviewed every part of it with outside counsel. I certify that I am the Vice President and General Counsel for American Management Services LLC and that I have been duly authorized by American Management Services LLC to voluntarily agree to this motion on behalf of the Company.

Date: 11/10/16



American Management Services LLC
Defendant

I am outside counsel for the defendant in this case. I have fully explained to the defendant the defendant's right to have trial commence within 70 days of the Information or its first appearance before this Court, as required by Title 18, United States Code, Section 3161(c). Specifically, I have reviewed the terms and conditions of Title 18, United States Code, Section 3161(c), and I have fully explained to the defendant the provisions that may apply in this case. To my knowledge, the defendant's decision to agree to an extension of time to commence trial is an informed and voluntary one.

Date: 11/10/16



Robert S. Mahler
Foster Pepper PLLC

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:16cr249
)	
AMERICAN MANAGEMENT)	
SERVICES LLC,)	
Defendant.)	

DEFERRED PROSECUTION AGREEMENT

Defendant American Management Services LLC and its subsidiaries, formerly doing business as Pinnacle, American Management Services East, and American Management Services California (collectively “AMS,” “Pinnacle,” or “the Company”), by its undersigned representatives, pursuant to authority granted by the Company’s Manager; the United States Attorney’s Office for the Eastern District of Virginia (“EDVA”); and the United States Department of Justice, Criminal Division, Fraud Section (“DoJ-Fraud”) (together EDVA and DoJ-Fraud is the “United States” for purposes of the Agreement), enter into this deferred prosecution agreement (the “Agreement”), the terms and conditions of which are as follows:

Criminal Information and Acceptance of Responsibility

1. The Company acknowledges and agrees that the United States will file the attached one-count Criminal Information in the United States District Court for the Eastern District of Virginia charging the Company with major fraud against the United States, in violation of 18 U.S.C. § 1031. In so doing, the Company: (a) knowingly waives its right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, 18 U.S.C. § 3161, and Fed. R. Crim. P. 48(b); and (b) knowingly waives for purposes of this Agreement and any charges by the United States arising out of the conduct described in the

attached Statement of Facts any objection with respect to venue and consents to the filing of the Criminal Information, as provided under the terms of this Agreement, in the United States District Court for the Eastern District of Virginia.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, employees, and agents as charged in the Information, and as set forth in the Statement of Facts attached hereto as Attachment A and incorporated by reference into this Agreement, and that the allegations described in the Information and the facts described in Attachment A are true and accurate. Should the United States pursue the prosecution that is deferred by this Agreement, the Company stipulates to the admissibility of the Statement of Facts in any proceeding, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the Statement of Facts at any such proceeding.

Term of the Agreement

3. This Agreement is effective for a period beginning on the date on which the Information is filed and ending three years from that date (the “Term”). However, the Company agrees that in the event the United States determines, in its sole discretion, that the Company has knowingly violated any provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed by the United States, in its sole discretion, for up to a total additional time period of one year, without prejudice to the United States’ right to proceed as provided in Paragraphs 13–17 below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period. Conversely, the United States may, in its sole discretion, terminate the Term of the Agreement early.

Relevant Considerations

4. The United States enters into this Agreement based on the individual facts and circumstances presented by this case and the Company. Among the factors considered were the following: (a) the Company's cooperation, including conducting an internal investigation, voluntarily making employees available for interviews, and collecting, analyzing, and organizing voluminous evidence and information for the United States; (b) the Company has engaged in extensive remediation, including payment of an \$84 million civil settlement for related conduct, relinquishment of contractual rights valued by the Company at approximately \$94 million, and an agreement not to seek or perform any future contracts with the U.S. Department of Defense; (c) the Company has committed to continue to enhance its internal controls; and (d) the Company has agreed to continue to cooperate with the United States in any ongoing investigation of the conduct of the Company and its officers, employees, agents, and consultants relating to possible violations under investigation by the United States as provided in Paragraph 5 below.

Future Cooperation and Disclosure Requirements

5. The Company shall cooperate fully with the United States in any and all matters relating to the conduct described in this Agreement and Attachment A. At the request of the United States, the Company shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of the Company, its parent company or its affiliates, or any of its present or former officers, employees, agents, and consultants, or any other party, in any and all matters relating to this Agreement and Attachment A. The Company agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to its activities,

those of its parent company and affiliates, and those of its present and former officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the United States, upon request, any document, record, or other tangible evidence about which the United States may inquire of the Company.

b. Upon request of the United States, the Company shall designate knowledgeable employees, agents or attorneys to provide to the United States the information and materials described in Paragraph 5(a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. The Company shall use its best efforts to make available for interviews or testimony, as requested by the United States, present or former officers, employees, agents and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records or other tangible evidence provided to the United States pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government of such materials as the United States, in its sole discretion, shall deem appropriate.

6. In addition to the obligations in Paragraph 5, during the Term of the Agreement, should the Company learn of credible evidence or allegations of a violation of U.S. federal law, the Company shall promptly report such evidence or allegations to the Office.

Payment of Monetary Penalty

7. The United States and the Company agree that application of the United States Sentencing Guidelines (“USSG” or “Sentencing Guidelines”) to determine the applicable fine range yields the following analysis:

- a. The 2015 USSG are applicable to this matter.
- b. Offense Level. Based upon USSG § 2B1.1, the total offense level is 20, calculated as follows:

(a)(2) Base Offense Level	6
(b)(1) Loss of more than \$550,000	+14
TOTAL	20
- c. Base Fine. Based upon USSG § 8C2.4(a)(2), the base fine is \$1,015,703 (the pecuniary gain to the Company from the offense)
- d. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 8, calculated as follows:

(a) Base Culpability Score	5
(b)(3) the organization had 1,000 or more employees and an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense	+4

(g)(1) the organization clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct	- 1
TOTAL	<u>8</u>

Calculation of Fine Range:

Base Fine	\$1,015,703
Multipliers	1.60(min)/3.20(max)
Fine Range	\$1,625,124.80 / \$3,240,249.60

The Company agrees to pay a monetary penalty in the amount of \$1,625,124.80 to the United States Treasury within 10 days of the filing of the Information. The Company and the United States agree that this penalty is appropriate given the facts and circumstances of this case, including the nature and extent of the Company’s cooperation, acceptance, and remediation in this matter. The \$1,625,124.80 penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the United States that \$1,625,124.80 is the maximum penalty that may be imposed in any future prosecution, and the United States is not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the United States agrees that under those circumstances, it will recommend to the Court that any amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. The Company acknowledges that no tax deduction may be sought in connection with the payment of any part of this \$1,625,124.80 penalty.

Conditional Release from Liability

8. Subject to Paragraph 13–17, the United States agrees, except as provided herein, that it will not bring any criminal case against the Company relating to any of the conduct described in the Statement of Facts, attached hereto as Attachment A, or the Criminal Information filed

pursuant to this Agreement, or for the conduct that the Company disclosed to the Office prior to the signing of this Agreement. The Office, however, may use any information related to the conduct described in the attached Statement of Facts against the Company: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code.

a. This Agreement does not provide any protection against prosecution for any future conduct by the Company.

b. In addition, this Agreement does not provide any protection against prosecution of any present or former officer, employee, shareholder, agent, consultant, contractor, or subcontractor of the Company for any violations committed by them.

Corporate Compliance Program

9. The Company represents that it will implement a compliance and ethics program designed to prevent and detect violations of federal procurement and other fraud statutes throughout its operations, including those of its affiliates, agents, and joint ventures. Implementation of these policies and procedures shall not be construed in any future enforcement proceeding as providing immunity or amnesty for any crimes not disclosed to the United States as of the date of the signing of this Agreement for which the Company would otherwise be responsible.

10. In order to address any deficiencies in its internal accounting controls, policies, and procedures, the Company represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal accounting controls, policies, and procedures regarding compliance with federal

procurement and other fraud statutes. If necessary and appropriate, the Company will adopt new or modify existing internal controls, policies, and procedures in order to ensure that the Company maintains rigorous compliance program designed to prevent and detect violations of criminal laws prohibiting procurement and other fraud. Upon request, the Company will report to the United States regarding its remediation and implementation of any compliance program and internal controls, policies, and procedures that relate to compliance with federal procurement and other laws prohibiting fraud.

Deferred Prosecution

11. In consideration of: (a) the past and future cooperation of the Company described in Paragraphs 4 and 5 above; (b) the Company's payment of a criminal penalty of \$1,625,124.80; and (c) the Company's implementation and maintenance of remedial measures as described in Paragraphs 9 and 10 above, the United States agrees that any prosecution of the Company for the conduct set forth in the attached Statement of Facts, and for the conduct that the Company disclosed to the United States prior to the signing of this Agreement, be and hereby is deferred for the Term of this Agreement.

12. The United States further agrees that if the Company fully complies with all of its obligations under this Agreement, the Office will not continue the criminal prosecution against the Company described in Paragraph 1 and, at the conclusion of the Term, this Agreement shall expire. Within six months of the Agreement's expiration, the United States shall seek dismissal with prejudice of the criminal Information filed against the Company described in Paragraph 1, and agrees not to file charges in the future against the Company based on the conduct described in this Agreement and Attachment A.

Breach of the Agreement

13. If, during the Term of this Agreement, the Company (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information; (c) fails to cooperate as set forth in Paragraphs 5 and 6 of this Agreement; (d) fails to implement a compliance program as set forth in Paragraphs 9 and 10 of this Agreement; or (e) otherwise fails specifically to perform or to fulfill completely each of the Company's obligations under the Agreement, regardless of whether the United States becomes aware of such a breach after the Term of the Agreement is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the United States has knowledge, including, but not limited to, the charges in the Information described in Paragraph 1, which may be pursued by the United States in the United States District Court for the District of Virginia or any other appropriate venue. Any such prosecution may be premised on information provided by the Company. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the United States prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the date upon which the United States is made aware of the violation.

14. In the event the United States determines that the Company has breached this Agreement, the United States agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. Within 30 days of receipt of such notice, the Company shall have the opportunity to respond to the United States in writing to explain the nature and circumstances of the alleged breach, as well as the actions the Company has taken to address and remediate the situation, or demonstrate that no breach occurred. The United States will consider such a response in determining whether to pursue prosecution of the Company.

15. In the event that the Office determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to the Office or to the Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the United States against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Fed. R. Crim. P. 11(f), Fed. R. Evid. 410, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the United States.

16. The Company acknowledges that the United States has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company

breaches this Agreement and this matter proceeds to judgment. The Company further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

17. Within 30 days after the expiration of the period of deferred prosecution specified in this Agreement, the Company, by its Vice President and General Counsel, will certify to the United States that the Company has met its disclosure obligations pursuant to Paragraph 6 of this Agreement. Such certification will be deemed a material statement and representation by the Company to the executive branch of the United States for purposes of 18 U.S.C. § 1001, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

Sale, Merger, or Other Change in Corporate Form of Company

18. Except as may otherwise be agreed by the parties hereto in connection with a particular transaction, the Company agrees that in the event that, during the Term of the Agreement, it undertakes any change in corporate form, including if it sells, merges, or transfers a substantial portion of its business operations as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The Company shall obtain approval from the United States at least 30 days prior to undertaking any such sale, merger, transfer, or other change in corporate form, including dissolution, in order to give the United States an opportunity to determine if such change in corporate form would impact the terms or obligations of the Agreement.

Public Statements by Company

19. The Company expressly agrees that it shall not, through present or future attorneys, officers, employees, agents or any other person authorized to speak for the Company make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure rights of the Company described below, constitute a breach of this Agreement, and the Company thereafter shall be subject to prosecution as set forth in Paragraphs 13–17 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to the Company for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the United States. If the United States determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the United States shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. The Company shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, employee, or agent of the Company in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

20. The Company agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Company shall first consult with the United States to determine (a) whether the text of the

release or proposed statements at the press conference are true and accurate with respect to matters between the United States and the Company; and (b) whether the United States has any objection to the release.

21. The Office agrees, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of the Company's cooperation and remediation. By agreeing to provide this information to such authorities, the United States is not agreeing to advocate on behalf of the Company, but rather is agreeing to provide facts to be evaluated independently by such authorities.

Limitations on Binding Effect of Agreement

22. This Agreement is binding on the Company, EDVA, and DoJ-Fraud but specifically does not bind any other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the EDVA and DoJ-Fraud will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

Notice

23. Any notice to the Office under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Assistant United States Attorney Ryan S. Faulconer, United States Attorney's Office for the Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Robert S. Mahler, Foster

Pepper PLLC, 1111 3rd Avenue, Suite 3000, Seattle, Washington 98101. Notice shall be effective upon actual receipt by the United States or the Company.

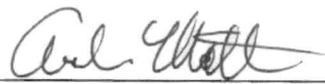
Complete Agreement

24. This Agreement sets forth all the terms of the agreement between the Company and the United States. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the United States, the attorneys for the Company and a duly authorized representative of the Company.

AGREED:

FOR AMERICAN MANAGEMENT SERVICES LLC:

Date: 11/10/16

By: 
Andrew Mathews
American Management Services LLC

Date: 11/10/16

By: 
Robert S. Mahler
Foster Pepper PLLC

FOR THE UNITED STATES:

Dana J. Boente
United States Attorney

Andrew Weissmann
Chief, Fraud Section
Criminal Division
United States Department of Justice

Date: 11/16/16

By: 
Ryan S. Faulconer
Assistant United States Attorney

Date: 11/16/16

By:  FOR JENNIFER BALLANTYNE
Jennifer G. Ballantyne
Trial Attorney

COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for American Management Services LLC (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Manager of the Company. I have advised and caused outside counsel for the Company to advise the Manager fully of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Vice President and General Counsel for the Company and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company.

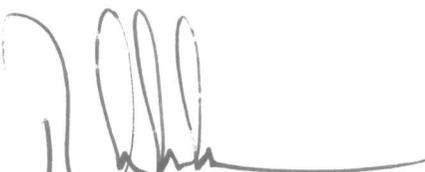
Date: 11/10/16

American Management Services LLC
By: 
Andrew Mathews
Vice President & General Counsel

CERTIFICATE OF COUNSEL

I am counsel for American Management Services LLC (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Company Manager. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of this Agreement with the Manager and the Vice President and General Counsel of the Company. I have fully advised them of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To my knowledge, the decision of the Company to enter into this Agreement, based on the authorization of the Manager, is an informed and voluntary one.

Date: 11/10/16

By: 
Robert S. Mahler
Foster Pepper PLLC
Counsel for American Management Services LLC

ATTACHMENT A

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the deferred prosecution agreement (the “Agreement”) between the United States Attorney’s Office for the Eastern District of Virginia (“EDVA”); the United States Department of Justice, Criminal Division, Fraud Section (“DoJ-Fraud”) (together EDVA and DoJ-Fraud is the “United States” for purposes of the Agreement); and American Management Services LLC (“AMS”), formerly doing business as Pinnacle, American Management Services East, and American Management Services California (collectively “AMS,” “Pinnacle,” or “the Company”). The parties agree and stipulate that the following information is true and accurate. As set forth in paragraph 2 of the Agreement, AMS admits, accepts, and acknowledges that it is responsible for the acts of its officers, employees, and agents as set forth below. Should the United States pursue the prosecution that is deferred by this Agreement, AMS agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding. If this matter were to proceed to trial, the parties agree that the United States would prove beyond a reasonable doubt, by admissible evidence, the facts below and the allegations set forth in the criminal information attached to this Agreement. This evidence would establish the following:

I. Background

1. In 1996, Congress established the Military Housing Privatization Initiative (the “Initiative”) to help the U. S. military improve the condition of housing provided to members of the armed forces. The Office of the Secretary of Defense, an office within the United States Department of Defense, delegated the Initiative to each branch of the armed forces and authorized

them to select, through a competitive bidding process, private developers with which to contract in order to lease, maintain, and operate housing for service members and their families.

2. Beginning in or about 2003, the United States, acting by and through the Secretary of the Army (the “Army”), entered into a series of contracts, subcontracts, and other agreements for the procurement of property and services as part of the Initiative with AMS, a Seattle-based property management company, and Clark Realty Capital LLC (“Clark”), a Virginia-based construction and real estate management company, as well as various affiliates and subsidiaries of AMS and Clark. The Army entered into the contracts, subcontracts, and other agreements for the procurement of property and services for the purpose of developing and operating family housing portfolios and related facilities at various Army bases (collectively, the “military properties”), including Fort Belvoir, located within the Eastern District of Virginia; Fort Benning, located in Georgia; Fort Irwin, located in California; and the Presidio at Monterey, located in California.

3. One of the contracts relating to Fort Belvoir was a U.S. government prime contract with Clark Pinnacle Family Communities LLC, a joint AMS-Clark entity, effective on or about December 1, 2003. Pursuant to that prime contract, the Army and Clark Pinnacle Belvoir LLC, another joint AMS-Clark entity, formed Belvoir Land LLC for the purpose of the Army leasing the Fort Belvoir property at issue to Belvoir Land LLC. Clark Pinnacle Belvoir LLC was a 51 percent owner of Belvoir Land LLC, and the Army was a 49 percent owner of Belvoir Land LLC. Belvoir Land LLC, in turn, subleased the Fort Belvoir property at issue to Fort Belvoir Residential Communities LLC, a separate entity created by Clark Pinnacle Belvoir LLC and an affiliated entity. The value of the various contracts, subcontracts, leases, and other procurements for property or services, and the constituent parts thereof, exceeded \$1 million in value with respect to Fort Belvoir and each of the other military properties.

4. As part of the Initiative and the other contractual arrangements referenced above, the Army, AMS, and Clark, through their affiliates and various special purpose entities, entered into a property management agreement (“PMA”) for an AMS-affiliated entity to provide property management services to each of the military properties. Each PMA detailed the responsibilities of AMS as well as the manner in which AMS was to be compensated. One of AMS’s responsibilities under the PMAs was to obtain property and general liability insurance for the military properties it managed. Under the PMAs, the sole compensation to which AMS’s property management affiliate was entitled for fulfilling its responsibility to obtain property and general liability insurance was the compensation expressly provided in the PMAs.

5. Prior to entering into the PMAs, AMS had established a Master Insurance Program (“MIP”), which it used to obtain insurance coverage for properties owned in whole or in part by AMS’s principals, John Goodman and Stan Harrelson, as well as other properties owned by third parties but managed by AMS or its wholly owned subsidiaries. For each year of the program, AMS or an affiliate would obtain the relevant insurance policies, on which AMS (or the affiliate) would be the first named insured, and all of the MIP participants would be additional named insureds. This structure enabled AMS to obtain attractive pricing for all of its properties in its MIP, but AMS also carried additional risk insofar it was the first named insured on the policies. AMS had two goals for the MIP: making a profit for AMS and attracting property management business through offering competitive insurance rates. From the inception of each PMA until the 2012 renewal year, AMS included the military properties in its MIP for the purpose of satisfying its AMS affiliates’ obligations under the PMAs to obtain property and general liability insurance.

6. Pursuant to the various contracts, subcontracts, leases, and other procurements for property and services as part of the Initiative, excess funds not spent on costs under the PMAs

were obligated to be used by Clark and its affiliates to renovate and construct new housing at the various military properties. As such, any fees obtained by AMS to which it was not entitled under the PMAs reduced the amount of capital available to renovate and construct new housing at the military properties.

II. Criminal Conduct: AMS's Fraudulent Receipt of a Risk Management Fee

7. From in or about 2004 through in or about 2011, as detailed in greater detail below, AMS knowingly executed a scheme and artifice to defraud the United States and to obtain money and property from Clark, the United States, and the various joint AMS-Clark entities referenced above by means of materially false and fraudulent pretenses, representations, and promises. Specifically, from the inception of each PMA through the 2010 renewal year, AMS fraudulently obtained a separate, undisclosed "risk management fee" from the insurance broker who helped administer the MIP for AMS. AMS failed to disclose to the United States, Clark, or their affiliates that AMS was receiving this additional fee for its administration of the MIP in addition to the fees already paid to AMS under the PMAs. In total, as set forth below, AMS fraudulently obtained approximately \$1,015,703 in such fees that were derived from the premiums paid by the various military properties for property and general liability insurance.

8. In or about 2004, David Krull, then AMS's general counsel, informed Goodman and Harrelson that collecting a risk management fee from the military properties would require written authorization from Clark and/or the Army. Notwithstanding this knowledge, AMS never obtained such written authorization from Clark or the Army before AMS began collecting a risk management fee from the premiums paid by the military properties for insurance provided through the MIP.

9. For the renewal of property and general liability insurance for the military properties each year, AMS sent Clark and the Army invoices setting forth the amount owed for insurance. From the initial renewal in or about 2004 through in or about 2010, these invoices did not identify and disclose that AMS would recoup part of the total insurance charge through a risk management fee provided as part of the MIP, nor did the invoices disclose the amount of that risk management fee. These invoices were transmitted to Clark using email, including emails to the Eastern District of Virginia for purposes of the Fort Belvoir invoices. The invoices contained statements as follows:

- a. The 2004 invoices, sent on or about April 5, 2004, and covering the period from April 10, 2004, to April 10, 2005, listed only a total insurance premium due, with no reference to a risk management fee.
- b. The 2005 invoices, sent on or about March 31, 2005, and covering the period from April 10, 2005, to April 10, 2006, were in substantially the same format as the 2004 invoices.
- c. The 2006 invoices, sent on or about March 28, 2006, and covering the period from April 10, 2006, to April 10, 2007, listed a total insurance premium due, with subtotals for each line of insurance included. These invoices contained no reference to a risk management fee.
- d. The 2007 invoices, sent on or about April 5, 2007, and covering the period from April 10, 2007, to April 10, 2008, listed a total insurance premium due, with subtotals for each line of insurance included. These invoices contained a disclaimer that the total premium included “taxes and fees by line of coverage” but did not disclose the existence or amount of the risk management fee.
- e. The 2008 invoices, sent on or about March 21, 2008, and covering the period from April 10, 2008, to April 10, 2009, listed a total insurance premium due, with subtotals for each line of insurance included. These invoices defined the total amount due as the “Total Cost, Taxes, and Fees,” but did not disclose the existence or amount of the risk management fee.

- f. The 2009 invoices, sent in corrected form on or about April 13, 2009, and covering the period from April 10, 2009, to April 10, 2010, were in substantially the same format as the 2008 invoices.
- g. The 2010 invoices, sent on or about April 6, 2010, and covering the period from April 10, 2010, to April 10, 2011, were in substantially the same format as the 2008 invoices.

10. On or about April 14, 2004, in response to an email from Clark requesting details as to the underlying basis for the charges appearing on the 2004 invoices, Harrelson sent Clark an email with an attached spreadsheet detailing the components of the military properties' insurance costs. This spreadsheet did not disclose—and thus concealed—the amount and existence of the risk management fee.

11. On or about March 20, 2005, AMS's insurance broker emailed Krull two versions of a spreadsheet detailing the components of the military properties' insurance costs. The insurance broker's email stated that it was transmitting one version for AMS and a "cleaned up" version I would propose sending to" Clark. The "cleaned up" version of the spreadsheet sent to Clark concealed the existence and amount of the risk management fee.

12. On or about April 5, 2006, AMS's insurance broker emailed Clark a spreadsheet detailing the components of the military properties' insurance costs. This spreadsheet again concealed the existence and amount of the risk management fee.

13. Although the risk management fee was designed both to provide profit and to help AMS recover its costs in administering the MIP, neither AMS nor its broker engaged in any detailed accounting or analysis of those costs. Instead, AMS and its broker allocated the risk management fee for the purpose of ensuring that it would provide a profit to AMS. For example, in or about February 2008, AMS's broker emailed AMS (including Krull, then AMS's general counsel) and indicated that the total risk management fee for the MIP for the prior year had been

\$800,000. In response to the broker's inquiry of what amount should be allocated for the 2008 renewal, Krull joked in his email response that they should use "1.3 mil this year" because his new co-worker, copied on the email, "is more expensive [sic]."

14. On or about March 18, 2008, in response to an email conversation between AMS's insurance broker and Clark regarding the propriety of the amount of the fees that were included in the premiums paid by the military properties, Krull sent an email to the insurance broker and Clark about a risk management fee included in the cost (which had not been disclosed in any manner until 2008) and stated that it represented "identical services that would be provided by any other broker or servicing company." One of AMS's brokers then forwarded Krull's email internally to a fellow broker employee, who responded, "Nice! It still sounds like we are getting the [risk management fee] which we are not. ?? [sic]"

15. From in or about 2004 through in or about 2011, AMS fraudulently obtained the following amounts in risk management fees derived from the premiums paid by the military properties as part of the MIP:

Renewal Year	Amount of Risk Management Fee
2004	\$71,843
2005	\$54,422
2006	\$64,796
2007	\$202,879
2008	\$180,926
2009	\$230,867
2010	\$209,970

Total	\$1,015,703
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16. The renewal invoices sent to Clark and the Army on or about April 8, 2011, included the risk management fee as a component of the total insurance premium, set forth the amount of the fee charged to each of the military properties, and disclosed for the first time that the fee was paid to AMS. The renewal invoices sent to Clark and the Army on or about April 2, 2012, similarly included the risk management fee as a component of the total insurance premium and detailed the amount charged. After the 2012 renewal year, the military properties were no longer a part of the MIP.

17. In or about August 2015, as part of broader civil litigation between Clark, AMS, and their various affiliates that included Clark's claims that AMS fraudulently obtained a risk management fee from the military properties through the MIP, AMS, Goodman, and Harrelson agreed to a settlement of \$84 million to be paid to Clark. The Army was a signatory to the settlement agreement. In the settlement, AMS, Goodman, and Harrelson further agreed to release all of their rights pursuant to the various PMAs (valued by AMS experts at approximately \$94 million) and not to engage in any property management of military housing or other work for the Department of Defense. Subsequent to signing the settlement agreement, AMS paid its \$84 million obligation in full.

III. Conclusion

18. AMS's actions in furtherance of the offense charged in this case, including but not limited to the acts described above, were done willfully, knowingly, and with the specific intent to violate the law, and not because of accident, mistake, or other innocent reason.

19. The foregoing statement of facts is a summary of the principal facts that constitute the legal elements of the offense of major fraud against the United States. This summary does not describe all of the evidence that the United States would present at trial or all of the relevant conduct that would be used to determine AMS's sentence or fine under the Sentencing Guidelines. AMS acknowledges that the foregoing statement of facts does not describe all of AMS's conduct relating to the offense charged in this case.

ATTACHMENT B

CERTIFICATE OF CORPORATE AUTHORIZATIONS

WHEREAS, American Management Services LLC (the “Company”) has been engaged in discussions with the United States Attorney’s Office for the Eastern District of Virginia and the United States Department of Justice, Criminal Division, Fraud Section (collectively, the “United States”) regarding issues arising in relation to major fraud against the United States; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a certain agreement with the United States; and

WHEREAS, the Company’s Vice President and General Counsel, Andrew Mathews, together with outside counsel for the Company, have advised the Manager of the Company of its rights, possible defenses, the Sentencing Guidelines’ provisions, and the consequences of entering into such agreement with the United States;

Therefore, the Manager has AUTHORIZED that:

1. The Company (a) acknowledges the filing of the one-count Information charging the Company with major fraud against the United States, in violation of 18 U.S.C. § 1031; (b) waives indictment on such charges and enters into a deferred prosecution agreement with the United States; and (c) agrees to accept a monetary penalty against Company totaling \$1,625,124.80, and to pay such penalty to the United States Treasury with respect to the conduct described in the Information;

2. The Company accepts the terms and conditions of this Agreement, including but not limited to (a) a knowing waiver of its rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, 18 U.S.C. § 3161, and Fed. R. Crim. P. 48(b); and (b) a knowing waiver for purposes of this Agreement and any charges by the United States arising out of the

conduct described in the attached Statement of Facts of any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Eastern District of Virginia; and (c) a knowing waiver of any defenses based on the statute of limitations for any prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the United States prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement;

3. The Vice President and General Counsel of Company, Andrew Mathews, is hereby authorized, empowered and directed, on behalf of the Company, to execute the Deferred Prosecution Agreement substantially in such form as reviewed by the Manager with such changes as the Vice President and General Counsel of Company, Andrew Mathews, may approve;

4. The Vice President and General Counsel of Company, Andrew Mathews, is hereby authorized, empowered and directed to take any and all actions as may be necessary or appropriate and to approve the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions; and

5. All of the actions of the Vice President and General Counsel of Company, Andrew Mathews, which actions would have been authorized by the foregoing authorizations except that such actions were taken prior to the adoption of such authorizations, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.

Date: 11/10/16

By: 
Manager
American Management Services LLC

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:16cr249
)	
AMERICAN MANAGEMENT)	
SERVICES LLC,)	
Defendant.)	

ORDER

Upon the motion of the United States of America and the defendant American Management Services LLC and its subsidiaries, formerly doing business as Pinnacle, American Management Services East, and American Management Services California (collectively “AMS”), by their respective attorneys, and finding in accordance with 18 U.S.C. § 3161 that the ends of justice in granting the extension of the speedy trial deadline outweigh the best interests of the public and the defendant in a speedy trial,

It is hereby ORDERED that all further criminal proceedings in this matter, including trial, be continued until further motion by the parties; and

It is further ORDERED that this Court approves the exclusion from the computation of time in which a trial must be commenced under the Speedy Trial Act the period of delay between entry of this Order and any trial in this matter, should one occur, because the Court finds that the written agreement signed by the United States and defendant American Management Services LLC, and their counsel, will allow the defendant to demonstrate its good conduct.

December __, 2016
Alexandria, Virginia

Hon. Claude M. Hilton
United States District Judge