

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 12-CR-00261-MSK-01

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. CHRISTOPHER WEAVER,

Defendant.

PLEA AGREEMENT

The United States of America (the government), by and through Mark H. Dubester, Special Trial Attorney, United States Department of Justice, Criminal Division, Fraud Section, and the defendant, Christopher Weaver, personally and by counsel, Edward Pluss, Esq., submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1.

I. AGREEMENT

The plea agreement is submitted pursuant to Fed. R. Crim. P. 11(c)(1)(A) and (B).

Defendant's Obligations:

(1) The Defendant agrees to plead guilty to **Counts 1 and 2** of the Information, charging violations of 18 U.S.C. § 371 (Conspiracy), and 18 U.S.C. § 201 (Bribery) respectively.

(2) The Defendant is aware that 18 U.S.C. § 3742 affords a Defendant the right to appeal the sentence imposed. Understanding this and in exchange for the concessions made by the government in this agreement, the Defendant knowingly and voluntarily waives the right to

Court's Exhibit

appeal any matter in connection with this prosecution, conviction, or sentence unless it meets one of the following three criteria: (1) the sentence imposed is above the maximum penalty provided in the statute of conviction, (2) the Court, after determining the otherwise applicable sentencing guideline range, either departs or varies upwardly, or (3) the Court determines that the offense level is greater than 29 and imposes a sentence based upon that offense level determination.

Except as provided above, the Defendant also knowingly and voluntarily waives the right to appeal the manner in which the sentence is determined on grounds set forth in 18 U.S.C. § 3742.

The Defendant also knowingly and voluntarily waives his right to challenge this prosecution, conviction, or sentence and/or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255. This waiver provision, however, will not prevent the Defendant from seeking relief otherwise available if: (1) there is an explicitly retroactive change in the applicable guidelines or sentencing statute, (2) there is a claim that the Defendant was denied the effective assistance of counsel, or (3) there is a claim of prosecutorial misconduct. Additionally, if the government appeals the sentence imposed by the Court, the Defendant is released from this waiver provision.

(3) Defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the investigation of violations of federal criminal laws involving illegal activity at FOB Fenty, Afghanistan or elsewhere in Afghanistan, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Relevant Proceeding"). The ongoing, full, and truthful cooperation of defendant shall include, but not be limited to:

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

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

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

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

(e) when called upon to do so by the United States in connection with any Relevant Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-02), and obstruction of justice (18 U.S.C. § 1503 et seq.).

(4) The Defendant agrees that the total loss to the United States was more than \$1,000,000 but less than \$2,500,000, for purposes of the Sentencing Guidelines Calculation set forth in Section III of this Agreement.

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

(5) Defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement, any statements, documents, information, testimony, or evidence provided by him, directly or by his agents, to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. Defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Federal Rule of Evidence 410.

Government's Obligations:

(1) The Government agrees not to pursue any additional charges against the Defendant based on conduct known to date. The nonprosecution terms of this paragraph do not

apply to civil or administrative matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence. The defendant understands that this Plea Agreement is binding only upon the Department of Justice, Criminal Division and does not bind the United States Department of Defense, Department of the Army, or any other federal, state, or local entity, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take.

(2) If the United States determines that defendant has provided substantial assistance in any investigation or prosecution, and has otherwise fully complied with all of the terms of this Plea Agreement, it will make a motion, pursuant to U.S.S.G. §5K1.1, advising the sentencing judge of all the relevant facts pertaining to that determination and requesting the Court to sentence defendant in light of the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5). Defendant acknowledges that the decision with respect to whether he has provided substantial assistance in any investigation or prosecution, and has otherwise fully complied with all of the terms of this Plea Agreement is within the sole discretion of the United States. Defendant further agrees that he will not contest or dispute the decision of the United States whether to file a motion for departure or the departure level recommended by the United States, if the United States makes a motion pursuant to U.S.S.G. §5K1.1. It is understood that should the United States determine that defendant has not provided substantial assistance in any investigations or prosecutions, or should the United States determine that defendant has violated any provision of this Plea Agreement, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. §5K1.1, but will not entitle defendant to withdraw his guilty plea.

defendant further understands that whether the United States files a motion pursuant to U.S.S.G. §5K1.1, the sentence to be imposed on him remains within the sole discretion of the Court.

(3) Subject to the ongoing, full, and truthful cooperation of defendant described in Paragraph 3 of “Defendant’s Obligations” of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of defendant's cooperation and his commitment to prospective cooperation with the investigations and prosecutions by the United States, all material facts relating to defendant's involvement in the charged offense, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and defendant will not oppose, that sentencing be postponed until his cooperation is fully or substantially completed.

II. ELEMENTS OF THE OFFENSE(S)

The parties agree that the elements of the offense to which this plea is being tendered are as follows:

Count 1 - Conspiracy

The elements of Conspiracy are:

First: the defendant agreed with at least one other person to violate the law.

Second: one of the conspirators engaged in at least one overt act furthering the conspiracy's objective.

Third: the defendant knew the essential objective of the conspiracy.

Fourth: the defendant knowingly and voluntarily participated.

Fifth: there was interdependence among the members of the conspiracy; that is, the members, in some way or manner, intended to act together for their shared mutual benefit within the scope of the conspiracy charged.

§ 2.19, Tenth Cir. Pattern Jury Instructions (2011).

Count 2 - Bribery (Receiving Bribes by a Public Official)

The elements of Bribery (Receiving Bribes by a Public Official) are:

First: the defendant, a public official, directly or indirectly [demanded] [sought] [received] [accepted] [agreed to receive or accept] personally [for another person] [for an entity] something of value; and

Second: the defendant did so intentionally and with an unlawful purpose in return for being [influenced in his performance of an official act] [persuaded to omit an act in violation of his official duty] [persuaded to do an act in violation of his official duty].

§ 2.12, Tenth Cir. Pattern Jury Instructions (2011).

III. STATUTORY PENALTIES

Defendant understands that the statutory maximum penalties which may be imposed against him upon conviction for a violation of 18 U.S.C. § 371 is:

- (a) a term of imprisonment for five (5) years (18 U.S.C. § 371);
- (b) a fine in an amount equal to the greatest of: (1) \$250,000; (2) twice the gross pecuniary gain derived from the crime; or (3) twice the gross pecuniary loss caused to the victims of the crime; and
- (c) a term of supervised release of not more than three years following any term of imprisonment. If defendant violates any condition of supervised release, defendant could be required to serve the entire term of supervised release in prison. 18 U.S.C. §§ 3559(a)(3); 3583(b)(2) and (e)(3); and United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") §5D1.2(a)(2).

Defendant understands that the statutory maximum penalties which may be imposed against him upon conviction for a violation of 18 U.S.C. § 201(b)(2) are:

- (a) a term of imprisonment for fifteen (15) years (18 U.S.C. § 201(b));
- (b) a fine in an amount equal to the greater of \$250,000 or three times the monetary equivalent of the thing of value (18 U.S.C. § 201(b)); and
- (c) a term of supervised release of not more than three years following any term of imprisonment. If defendant violates any condition of supervised release, defendant could be required to serve the entire term of supervised release in prison. 18 U.S.C. §§ 3559(a)(3); 3583(b)(2) and (e)(3); and U.S.S.G. § 5D1.2(a)(2).

In addition, defendant understands that:

- (a) pursuant 18 U.S.C. §§ 3663(a)(3) or 3583(d), the Court shall order him to pay restitution to the victims of the offenses; and
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order defendant to pay a \$200.00 special assessment upon conviction.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, debarment, and sit on a jury.

V. STIPULATION OF FACTS

The parties agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to this plea agreement. That basis is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense[s] of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C.

§3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have stipulated and which are relevant to the Court's guideline computations, to other 18 U.S.C. §3553 factors, or to the Court's overall sentencing decision.

The parties agree that the date on which relevant conduct began is January 2010.

The parties agree as follows:

(a) From in or about January 2010 until at least in or about June 2010 (the "relevant period"), the United States Department of Defense ("DOD") operated Forward Operating Base ("FOB") Fenty, near Jalalabad, Afghanistan. During the relevant period, defendant was a Sergeant in the United States Army, who served as the Brigade Fuel Non-Commissioned Officer in Charge of the 704th Brigade Support Battalion ("BSB"). Person B, a Specialist in the 704th BSB, was defendant's subordinate. At FOB Fenty, defendant and Person B oversaw the delivery and disbursement of fuel, including the work done by the civilian employees of FLUOR Inc., a military contractor that was responsible for Fuel Systems Operation, which entailed staffing and operating the "fuel point," where fuel was stored and disbursed. As Sergeants in the United States Army, defendant and Person B were public officials within the meaning of 18 U.S.C. § 201(a).

(c) During the relevant period, Jonathan Hightower (“Hightower”), a civilian employee of FLUOR, assigned to FOB Fenty, served as a Petroleum Supply Specialist, responsible for receiving and disbursing fuel for use at FOB Fenty or for transport to other military bases within that geographic vicinity.

(d) Initially, during the relevant period, FOB Fenty received fuel for use solely on the military base. In or about February 2010, however, following attacks at FOB Bostic, FOB Fenty began to receive bulk fuel shipments from Pakistan for distribution to other bases in the vicinity. This fuel was stored in large fuels tanks or bladders on FOB Fenty and, as needed, transported via truck by military contractors to other military bases.

(e) Defendant, assisted by Person B, developed this system of fuel distribution and oversaw when and how much fuel was shipped to other military bases. When another base needed fuel, defendant or Person B notified the military contractor of the need to transport fuel to another base and the military contractor provided a fuel truck — often termed a “jingle truck” — for this purpose. To document the transport of fuel, defendant or Person B generated a Transportation Movement Request (“TMR” or “mission sheet”), which is a military document that authorizes the movement of fuel from FOB Fenty to another location. Defendant or Person B recorded each legitimate mission on a master spreadsheet, created to track the movement of all fuel from FOB Fenty. The identified truck was then filled with fuel at the fuel point, and defendant or Person B gave the corresponding TMR to the driver of the truck, who carried it throughout the fuel transport, and ultimately presented it for verification of delivery at the destination. For

every truck uploaded at the fuel point, FLUOR recorded the date, the truck's identification number, the number of gallons uploaded, and the originator of the request.

(f) In or about March 2010, Person B and Hightower discussed a scheme to facilitate the theft of fuel from FOB Fenty in return for money. The next day, Person B approached the representative of a military contractor, Representative 1, and agreed with him to facilitate his theft of fuel in return for money. Representative 1 gave Person B approximately \$5,000 in cash in return for the theft of the first 5,000 gallon fuel truck. Later that same day, Hightower agreed with Person B and Representative 1 to participate with them in the scheme to steal fuel from FOB Fenty.

(g) After he returned from mid-tour leave, in or about March 2010, defendant joined Hightower and Person B in the scheme to steal fuel from FOB Fenty.

(h) To effect this scheme, defendant or Person B instructed Representative 1 to provide fuel trucks over and above those required for legitimate fuel transportation. Representative 1 provided these additional fuel trucks. Once on FOB Fenty, these additional fuel trucks, along with the legitimate ones, were uploaded with fuel at the fuel point, often by Hightower. Defendant or Person B then created a fraudulent TMR, which purported to authorize the transport of fuel from FOB Fenty to another military base, even though no legitimate fuel transportation was required. Defendant or Person B gave the fraudulent TMRs to the drivers of the additional fuel trucks, who presented these fraudulent TMRs at FOB Fenty's departure checkpoint in order to justify their departure from FOB Fenty with a truckload of fuel. In return for facilitating the theft of this fuel

from FOB Fenty, defendant, Person B, and/or Hightower directly or indirectly received money from Representative 1, which they generally apportioned.

(i) As to Count One, from in or about March 2010 until in or about May 2010, defendant, Person B, Hightower, and Representative 1, and others known and unknown knowingly and unlawfully conspired, confederated, and agreed to commit an offense against the United States, namely bribery and defendant and his co-conspirators took overt acts in furtherance of this conspiracy.

(j) As to Count One, after defendant joined the conspiracy, defendant and his co-conspirators facilitated the theft of approximately 90 trucks of fuel from FOB Fenty.

(k) Replacing fuel at FOB Fenty cost the United States approximately on average \$3.50/gallon, and thus, after defendant joined the conspiracy, the loss to the United States occasioned by this criminal conspiracy was at least \$1,575,000.

(l) As to Count Two, from in or about March 2010 until in or about May 2010, defendant, as a public official, knowingly and unlawfully, directly and indirectly, corruptly demanded, sought, received, accepted, and agreed to receive and accept money in return for being influenced in the performance of official acts, and in return for being influenced to commit and aid in committing, and collude in and allow any fraud and make the opportunity for the commission of any fraud on the United States; namely defendant, a public official, corruptly demanded, sought, received, and accepted money from Representative 1 in return for aiding and facilitating the theft of fuel at FOB Fenty.

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. §3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines.

- (a) The November 1, 2011, Guidelines apply;
- (b) Pursuant to U.S.S.G. §3D1.2(d), Counts One and Two group, and the controlling Guideline is U.S.S.G. §2C1.1.
- (c) Pursuant to U.S.S.G. §2C1.1(a)(1), defendant's base offense level is 14;
- (d) The offense involved more than one bribe, and thus a two-level increase is appropriate pursuant to §2C1.1(b)(1);
- (e) The loss to the United States occasioned by the offense was at least more than \$1,000,000 but less than \$2,500,000, and thus a sixteen-level increase is appropriate pursuant to U.S.S.G. §§2C1.1(b)(2) (referencing the Theft Loss table at §2B1.1(b)(1)(I));
- (f) The Total Offense Level is 32.
- (g) The United States does not oppose a two-level reduction in defendant's combined offense level, based upon defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the Court determines defendant's offense level to be 16 or greater prior to the operation of U.S.S.G.

§3E1.1(a), the United States agrees to make a motion under U.S.S.G. §3E1.1(b) for an additional one-level decrease in recognition of the defendant's timely notification of his intention to plead guilty. The United States may oppose any adjustment for acceptance of responsibility if defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, the Department of Justice, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. Assuming the defendant receives the three level adjustments contemplated in this subparagraph, his offense level will be 29.

(g) The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be I (zero points) based on no known criminal history .

(h) The advisory guideline range resulting from these calculations is 87 to 108 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from 87 months (bottom of Category I) to 155 months (top of Category VI). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction. (The projected guideline

range does not account for any reduction in sentence that might occur based on a §5K1.1 Motion for substantial assistance filed by the Government. The Court ultimately will decide whether to grant such a Motion).

Fine. Pursuant to guideline § 5E1.2, assuming the estimated offense level above, the fine range for this offense would be \$ 15,000 to \$ 150,000, plus applicable interest and penalties.

Supervised Release. Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is at least 1 years but not more than 3 years.

Restitution. The Defendant agrees to pay restitution as set forth above in Section I.


The parties understand that although the Court will consider the parties' estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position of any party.


The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. §3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any *18 U.S.C.* §3553 factor.

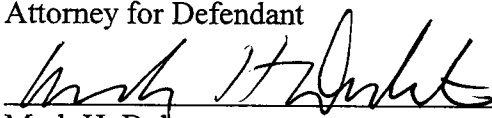
VII. ENTIRE AGREEMENT

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or

implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date: 10/10/12 
Christopher Weaver
Defendant

Date: 10/10/12 
Edward Pluss
Attorney for Defendant

Date: 10/10/12 
Mark H. Dubester
Special Trial Attorney
Department of Justice