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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

14 UNITED STATES OF AMERICA

15 v.

16 RUDOLPH SILVA,

17 Defendant.

) No. CR 14-00002 PJH

) **PLEA AGREEMENT**

18  
19 The United States of America and RUDOLPH SILVA (“defendant”) hereby enter into  
20 the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal  
21 Procedure (“Fed. R. Crim. P.”):

22 RIGHTS OF DEFENDANT

- 23 1. The defendant understands his rights:  
24 (a) to be represented by an attorney;  
25 (b) to be charged by Indictment;  
26 (c) to plead not guilty to any criminal charge brought against him;

27  
28

**FILED**  
JAN - 6 2017  
SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

1 (d) to have a trial by jury, at which he would be presumed not guilty of the  
2 charge and the United States would have to prove every essential element of the charged offense  
3 beyond a reasonable doubt for him to be found guilty;

4 (e) to confront and cross-examine witnesses against him and to subpoena  
5 witnesses in his defense at trial;

6 (f) not to be compelled to incriminate himself;

7 (g) to appeal his conviction, if he is found guilty; and

8 (h) to appeal the imposition of sentence against him.

9 AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

10 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph  
11 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any  
12 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal  
13 under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or § 2255, that challenges the  
14 sentence imposed by the Court if that sentence is consistent with or below the United States  
15 Sentencing Guidelines range stipulated by the parties in Paragraph 8 of this Plea Agreement,  
16 regardless of how the sentence is determined by the Court. This Agreement does not affect the  
17 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this  
18 paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may  
19 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of  
20 counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive  
21 indictment and plead guilty to Count One of the Information filed in this case. Count One of the  
22 Information charges the defendant with participating in a conspiracy to suppress and restrain  
23 competition by rigging bids to obtain selected properties offered at public real estate foreclosure  
24 auctions in Contra Costa County in the Northern District of California (“the selected  
25 properties”), in unreasonable restraint of interstate trade and commerce, in violation of the  
26 Sherman Antitrust Act, 15 U.S.C. § 1, beginning as early as January 2008 and continuing until in  
27 or about January 2011 (the “relevant period”).  
28

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

4                           FACTUAL BASIS FOR OFFENSE CHARGED

5           4.       The defendant agrees that he is guilty of the offense to which he will plead guilty  
6 and agrees that the following facts are true:

7                   (a)       During the relevant period, the defendant participated in a conspiracy to  
8 rig bids in order to obtain the selected properties. The primary purpose of this conspiracy was to  
9 suppress and restrain competition in order to purchase the selected properties at noncompetitive  
10 prices. To carry out their conspiracy, the defendant and his co-conspirators agreed not to  
11 compete to purchase the selected properties, designated which conspirator would win the  
12 selected properties at the public auctions for the group of conspirators, and refrained from or  
13 stopped bidding on the selected properties at the public auctions.

14                   (b)       During the relevant period, the business activities of the defendant and his  
15 co-conspirators were within the flow of, and substantially affected, interstate trade and  
16 commerce. For example, mortgage holders located in states other than California received  
17 proceeds from the public real estate foreclosure auctions that were subject to the bid-rigging  
18 conspiracy.

19                   (c)       During the relevant period, the conspiratorial activities described above  
20 took place in the Northern District of California, and the real estate that was the subject of this  
21 conspiracy was located in this District.

22                   (d)       On or about March 17, 2011, the defendant's company, the Spencer David  
23 Company, Inc., was served with a grand jury subpoena requiring the production of certain  
24 records, documents, and other objects to the federal grand jury sitting in San Francisco on May  
25 10, 2011. After receiving service of the subpoena, the defendant willfully deleted and/or altered  
26 entries in the Spencer David Company's financial records relating to the conduct described  
27 above in Paragraph 4(a)-(b), intending to impair the records' availability for use in an official  
28 proceeding. On or around May 2, 2011, the defendant, as the authorized agent and president of

1 the Spencer David Company, personally produced to the Department of Justice these altered  
2 financial records and certified that they fully complied with the demands of the grand jury  
3 subpoena and that no company documents had been withheld.

4 POSSIBLE MAXIMUM SENTENCE

5 5. The defendant understands that the statutory maximum penalty which may be  
6 imposed against him upon conviction for a violation of Section One of the Sherman Antitrust  
7 Act, 15 U.S.C. § 1, is:

8 (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);  
9 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the  
10 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary  
11 loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b)  
12 and (d)); and

13 (c) a term of supervised release of three (3) years following any term of  
14 imprisonment. If the defendant violates any condition of supervised release, the defendant could  
15 be required to serve up to an additional two (2) years in prison (18 U.S.C. § 3559(a)(3); 18  
16 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,”  
17 “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

18 6. In addition, the defendant understands that:

19 (a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3), the Court may  
20 order him to pay restitution to the victims of the offense; and

21 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the  
22 defendant to pay a \$100 special assessment upon conviction for the charged crime.

23 SENTENCING GUIDELINES

24 7. The defendant understands that the Sentencing Guidelines are advisory, not  
25 mandatory, but that the Court must consider, in determining and imposing sentence, the  
26 Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater  
27 punishment than the Manual in effect on the last date that the offense of conviction was  
28 committed, in which case the Court must consider the Guidelines Manual in effect on the last

1 date that the offense of conviction was committed. The Court must also consider the other  
 2 factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant  
 3 understands that the Guidelines determinations will be made by the Court by a preponderance-  
 4 of-the-evidence standard. The defendant understands that although the Court is not ultimately  
 5 bound to impose a sentence within the applicable Guidelines range, its sentence must be  
 6 reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.  
 7 § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating  
 8 information that the defendant provides to the United States pursuant to this Plea Agreement will  
 9 not be used to increase the volume of affected commerce attributable to the defendant or in  
 10 determining the defendant’s applicable Guidelines range, except to the extent provided in  
 11 U.S.S.G. §1B1.8(b).

12 SENTENCING AGREEMENT

13 8. The United States and the defendant agree that the following Sentencing  
 14 Guidelines apply for Count One (15 U.S.C. § 1):

15	(a)	Base Offense Level, U.S.S.G. §2R1.1(a):	12
16			
17	(b)	Conduct involved agreement to submit noncompetitive bids, U.S.S.G. §2R1.1(b)(1):	+1
18			
19	(c)	Volume of commerce (stipulated to be \$4,063,024), U.S.S.G. §2R1.1(b)(2)(A):	+2
20			
21	(d)	Obstruction or Impeding the Administration of Justice, U.S.S.G. §3C1.1:	+2
22			
		Total:	17
23			
24		Fine calculated as one to five percent of the volume of commerce (stipulated to be \$4,063,024), but not less than \$20,000, U.S.S.G. §2R1.1(c)(1):	\$40,630 to \$203,151
25			

26 9. The United States agrees that it will make a motion, pursuant to U.S.S.G. §3E1.1,  
 27 for a downward adjustment of three levels for acceptance of responsibility due to the defendant’s  
 28 timely notification of his intention to enter a guilty plea. Therefore, the total Guidelines

1 calculations result in an adjusted offense level of 14, for a jail term of 15 to 21 months and a fine  
2 of \$40,630 to \$203,151. The United States agrees to recommend a fine between \$6,000 and  
3 \$60,000.

4 10. The defendant understands that the Court will order him to pay a special  
5 assessment of \$100 pursuant to 18 U.S.C. § 3013(a)(2)(A), in addition to any fine imposed. The  
6 parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree,  
7 not adequately taken into consideration by the U.S. Sentencing Commission in formulating the  
8 Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0.

9 11. The government and the defendant agree to recommend that the Court order the  
10 defendant to pay restitution in the amount of \$23,576.75 pursuant to U.S.S.G. §5E1.1(a). The  
11 defendant understands that this Plea Agreement is voidable by the government if he fails to pay  
12 the restitution as ordered by the Court. The defendant further agrees that he will not seek to  
13 discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

14 12. The United States and the defendant are not aware of any information that would  
15 affect the defendant's Criminal History Category. If no other information were discovered, the  
16 defendant's Criminal History Category would be I. The parties understand that the defendant's  
17 Criminal History Category is determined by the Court.

18 13. The defendant understands that the sentence to be imposed on him is within the  
19 sole discretion of the sentencing judge. The United States cannot and does not make any  
20 promises or representations as to what sentence the defendant will receive. The United States  
21 will inform the Probation Office and the Court of (a) this Agreement, (b) the nature and extent of  
22 the defendant's activities in this case and all other activities of the defendant that the United  
23 States deems relevant to sentencing, and (c) the nature and extent of the defendant's cooperation  
24 with the United States. In so doing, the United States may use any information it deems relevant,  
25 including information provided by the defendant both prior and subsequent to the signing of this  
26 Agreement. The United States reserves the right to make any statement to the Court or the  
27 Probation Office concerning the nature of the criminal violation charged in the Information, the  
28 participation of the defendant therein, and any other facts or circumstances that it deems relevant.

1 The United States also reserves the right to comment on or to correct any representation made by  
2 or on behalf of the defendant and to supply any other information that the Court may require.

3 14. If the United States determines that the defendant has provided substantial  
4 assistance in any Federal Proceeding, as defined in Paragraph 17 of this Plea Agreement, and has  
5 otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion,  
6 pursuant to U.S.S.G. §5K1.1, advising the sentencing judge of all relevant facts pertaining to that  
7 determination and requesting the Court to sentence the defendant in light of the factors set forth  
8 in U.S.S.G. §5K1.1(a)(1)-(5). The defendant acknowledges that the decision whether he has  
9 provided substantial assistance in any Federal Proceeding and has otherwise complied with the  
10 terms of this Plea Agreement is within the sole discretion of the United States. It is understood  
11 that, should the United States determine that the defendant has not provided substantial  
12 assistance in any Federal Proceeding, or should the United States determine that the defendant  
13 has violated any provision of this Plea Agreement, such a determination will release the United  
14 States from any obligation to file a motion pursuant to U.S.S.G. §5K1.1, but will not entitle the  
15 defendant to withdraw his guilty plea once it has been entered. The defendant further  
16 understands that, whether or not the United States files a motion pursuant to U.S.S.G. §5K1.1,  
17 the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

18 15. Subject to the full, truthful, and continuing cooperation of the defendant, as  
19 defined in Paragraph 17 of this Plea Agreement, and prior to sentencing in this case, the United  
20 States will fully advise the Court and the Probation Office of the fact, manner, and extent of the  
21 defendant's cooperation and his commitment to prospective cooperation with the United States'  
22 investigation and prosecutions, all material facts relating to the defendant's involvement in the  
23 charged offense, and all other relevant conduct. To enable the Court to have the benefit of all  
24 relevant sentencing information, the United States may request, and the defendant will not  
25 oppose, that sentencing be postponed until the defendant's cooperation is complete.

26 16. The United States and the defendant understand that the Court retains complete  
27 discretion to accept or reject either party's sentencing recommendation. The defendant  
28 understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a

1 sentence consistent with either party's sentencing recommendation, he nevertheless has no right  
2 to withdraw his plea of guilty.

3 DEFENDANT'S COOPERATION

4 17. The defendant will cooperate fully and truthfully with the United States in the  
5 prosecution of this case, the current federal investigation of violations of federal antitrust and  
6 related criminal laws involving the purchase of properties at public real estate foreclosure  
7 auctions in the Northern District of California, any other federal investigation resulting  
8 therefrom, and any litigation or other proceedings arising or resulting from any such  
9 investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full,  
10 and truthful cooperation of the defendant shall include, but not be limited to:

11 (a) producing all documents, including claimed personal documents, and  
12 other materials, wherever located, not protected under the attorney-client privilege or the work-  
13 product doctrine in the possession, custody, or control of the defendant, that are requested by  
14 attorneys and agents of the United States in connection with any Federal Proceeding;

15 (b) making himself available for interviews, not at the expense of the United  
16 States, upon the request of attorneys and agents of the United States in connection with any  
17 Federal Proceeding;

18 (c) responding fully and truthfully to all inquiries of the United States in  
19 connection with any Federal Proceeding, without falsely implicating any person or intentionally  
20 withholding any information, subject to the penalties of making a false statement or declaration  
21 (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or conspiracy to  
22 commit such offenses;

23 (d) otherwise voluntarily providing the United States with any material or  
24 information not requested in (a) - (c) of this paragraph and not protected under the attorney-client  
25 privilege or work-product doctrine that he may have that is related to any Federal Proceeding;  
26 and

27 (e) when called upon to do so by the United States in connection with any  
28 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully,



1 and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement  
2 or declaration in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C.  
3 §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

4 GOVERNMENT'S AGREEMENT

5 18. Subject to the full, truthful, and continuing cooperation of the defendant, as  
6 defined in Paragraph 17 of this Plea Agreement, and upon the Court's acceptance of the guilty  
7 plea called for by this Plea Agreement and the imposition of sentence, the United States agrees  
8 that it will not bring further criminal charges against the defendant for any act or offense  
9 committed before the date of signature of this Plea Agreement that was undertaken in furtherance  
10 of an antitrust conspiracy or in violation of any related criminal law involving the purchase of  
11 properties at public real estate foreclosure auctions in the Northern District of California  
12 ("Relevant Offenses"). The nonprosecution terms of this paragraph do not apply to (a) any acts  
13 of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or  
14 declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*),  
15 contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses, except for the conduct  
16 described in paragraph 4(d) above (to which the nonprosecution terms of this paragraph do  
17 apply); (b) civil matters of any kind; (c) any violation of the federal tax or securities laws or  
18 conspiracy to commit such offenses; or (d) any crime of violence.

19 19. The defendant understands that he may be subject to administrative action by  
20 federal or state agencies other than the United States Department of Justice, Antitrust Division,  
21 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in  
22 no way controls whatever action, if any, other agencies may take. However, the United States  
23 agrees that, if requested, it will advise the appropriate officials of any governmental agency  
24 considering such administrative action of the fact, manner, and extent of the cooperation of the  
25 defendant as a matter for that agency to consider before determining what administrative action,  
26 if any, to take.



1 Relevant Offense, the statute of limitations period for such offense will be tolled for the period  
2 between the date of signature of this Plea Agreement and six (6) months after the date the United  
3 States gave notice of its intent to void its obligations under this Plea Agreement.

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

11 ENTIRETY OF AGREEMENT

12 24. This Plea Agreement constitutes the entire agreement between the United States  
13 and the defendant concerning the disposition of the criminal charges in this case and supersedes  
14 and replaces in its entirety any prior plea agreement between the parties concerning the  
15 disposition of the criminal charges in this case. This Plea Agreement cannot be modified except  
16 in writing, signed by the United States and the defendant.

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

20 26. A facsimile or PDF signature will be deemed an original signature for the purpose  
21 of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of  
22 executing this Plea Agreement.



RUDOLPH SILVA  
Defendant

Dated: JAN 6, 2017



DAVINA PUJARI  
Counsel for Defendant Rudolph Silva

Dated: 1/6/17



ALBERT B. SAMBAT  
MICHAEL A. RABKIN  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division

Dated: 1/6/2017

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