

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JOHN T. COLI, SR.

No. 17 CR 470

Hon. Rebecca R. Pallmeyer

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant JOHN T. COLI, SR., and his attorney, JOSEPH DUFFY, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The superseding indictment in this case charges defendant with attempted extortion, in violation of Title 18, United States Code, Section 1951 (Count One), receiving a prohibited payment as a union officer, in violation of Title 29, United States Code, Sections 186(b)(1) and 186(d)(2) (Counts Two through Seven), making a false statement, in violation of Title 18, United States Code, Section 1001 (Counts Eight through Ten), and making a false income tax return, in violation of Title 26, United States Code, Section 7206 (Counts Eleven through Thirteen).

3. Defendant has read the charges against him contained in the superseding indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the superseding indictment: Count Two, which charges defendant with receiving a prohibited payment as a union officer, in violation of Title 29, United States Code, Sections 186(b)(1) and 186(d)(2); and Count Eleven, which charges defendant with making a false income tax return, in violation of Title 26, United States Code, Section 7206. In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts Two and Eleven of the superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt, constitute relevant conduct pursuant to Guideline § 1B1.3 and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

a. With respect to Count Two of the superseding indictment:

From in or around 2014 through no later than in or around April 2016, in the Northern District of Illinois, Eastern Division, and elsewhere, the defendant, being an officer and employee of the International Brotherhood of Teamsters and Teamsters Local Union 727, labor organizations which represented and would admit to membership

employees of Company 2, did willfully request, demand, receive and accept a thing of value and a sum of money, namely, quarterly payments totaling approximately \$225,000 in United States currency, payments prohibited by Title 29, United States Code, Section 186(a), from Company 1 and Individual 1, persons acting in the interest of Company 2, an employer of employees employed in an industry affecting commerce, in violation of Title 29, United States Code, Sections 186(b)(1) and 186(d)(2).

Specifically, COLI was the Secretary-Treasurer of Teamsters Local Union 727 (“Local 727”) from no later than in or around 2000 to on or about July 13, 2017. Local 727 was a “labor organization” within the meaning of Title 29, United States Code, and Local 727 represented, sought to represent, and would admit to membership workers engaged in industries affecting interstate commerce. As Secretary-Treasurer, COLI was an officer and employee of Local 727.

Company 2 operated in Chicago, Illinois, and was an employer of employees employed in an industry affecting commerce. From at least in or around 2014 through the time COLI ceased being an officer or employee of Local 727, Local 727 represented and would admit to membership employees of Company 2. During that same period of time, Company 2 was affiliated with Company 1, including by providing services necessary to the operation of Company 1 on the premises occupied by Company 1.

Beginning in or around 2014 and continuing through in or around April 2017, COLI received a total of approximately \$325,000 in United States currency (including a total of approximately \$225,000 between in or around 2014 and in or around April 2016) in

payments of \$25,000 made on a quarterly basis, from Company 1 and Individual 1, who were persons acting in the interest of Company 2.

COLI took various measures to conceal his receipt of these payments. For example, COLI was required, pursuant to the Labor-Management Reporting and Disclosure Act of 1959, as amended, to disclose certain financial transactions and financial interests in an annual form (known as a “Form LM-30 report”) filed with the Office of Labor-Management Standards (“OLMS”). The Form LM-30 report required COLI to disclose any income, payment, or benefit from certain employers and businesses, including the payments COLI received from Company 1 and Individual 1. COLI concealed his receipt of cash payments from Company 1 and Individual 1 from the United States Department of Labor by causing false annual LM-30 reports to be filed with OLMS for fiscal years 2014, 2015, and 2016. Furthermore, COLI caused false federal tax returns to be filed, as described in greater detail below, which failed to report payments received by the defendant from Company 1 and Individual 1. In addition, for the purpose of concealing COLI’s receipt of payments from Company 1 and Individual 1, COLI received these payments in cash, instead of by other means, such as check or wire transfer, and used coded and vague language when communicating about such payments.

On or about October 13, 2016, COLI met with Individual 1 at Individual 1’s workplace. Individual 1, at the instruction of law enforcement, advised COLI that the quarterly payments of \$25,000 were being questioned by other executives associated with Company 1, and that Individual 1 might be terminated as a result of the secret payments

made to COLI to date. COLI responded, “We’ll close [Company 1]. We’ll shut it down tomorrow. We’ll shut it down within an hour.” COLI then said, “I will fucking have a picket line up here and everything will stop.” Later in the conversation, COLI suggested Individual 1 should “get rid of” of the chief financial officer of Company 1, and explained: “There’s gonna be time-to-time unique things that are gonna come up that you’re gonna have to deal with . . . you can’t have a fucking rat in a wood pile. You can’t have a whistleblower here.”

Several weeks later, on or about November 8, 2016, Individual 1 called COLI and informed COLI that he had spoken to another executive associated with Company 1, and had told that executive: “John [COLI] made it clear. Strike. Shut us down,” unless COLI continued to receive quarterly payments, and that the other executive had agreed to continuing paying COLI. COLI responded: “Perfect.” COLI acknowledges that absent intervention by law enforcement, the quarterly payments of \$25,000 made to him by Company 1 and Individual 1 would have continued, and that defendant expected to receive approximately four additional \$25,000 quarterly payments prior to retiring as Secretary-Treasurer of Local 727. Therefore, COLI intended to receive approximately \$425,000 in cash payments from Company 1 and Individual 1, who were persons acting in the interest of Company 2.

b. With respect to Count Eleven of the superseding indictment:

On or about April 14, 2015, in the Northern District of Illinois, Eastern Division, COLI willfully made and subscribed, and caused to be made and subscribed, a U.S.

Individual Income Tax Return (Form 1040 with schedules and attachments), for the calendar year 2014, which return was verified by written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter, in that said return reported on Line 22 that the total income was \$476,229, when COLI knew that his total income substantially exceeded that amount, in violation of Title 26, United States Code, Section 7206(1).

Specifically, COLI filed federal Form 1040 tax returns for each of calendar years 2014, 2015, and 2016. In filing those tax returns, defendant knowingly and willfully failed to report as income the cash payments received during those years from Company 1 and Individual 1. In particular, COLI willfully made and subscribed, and caused to be made and subscribed, U.S. Individual Income Tax Returns, respectively, on April 14, 2015, March 28, 2016, and March 23, 2017, which returns he did not believe to be true and correct as to every material matter, in that said returns reported on Line 22 that total income was, respectively, \$476,229, \$414,910, and \$451,135, when COLI knew that his total income substantially exceeded those amounts. The income COLI reported in each year omitted income COLI received from Company 1 and Individual 1. This conduct resulted in a federal tax loss of approximately \$35,000 in 2014, \$35,000 in 2015, and \$35,000 in 2016. The conduct resulted in a total federal tax loss of approximately \$105,000, and a state tax loss of approximately \$12,500, for a total tax loss of approximately \$117,500.

c. COLI acknowledges that, in addition to the conduct described above, between in and around 2012 and in and around 2017, he unlawfully received income and other benefits from various representatives of businesses (the “Union/Fund Vendors”) that dealt with and provided goods and services to Local 727, its affiliated Teamsters labor organization, the Teamsters Joint Council 25, and/or those labor organizations’ employee welfare or pension benefit plans of which the defendant was a Trustee. For example, COLI received from the Union/Fund Vendors, and caused the Union/Fund Vendors to provide, a variety of free benefits to COLI on COLI’s behalf, including but not limited to: (i) payment for meals at various restaurants and fine dining establishments located in Las Vegas, Nevada, and in other cities where various organized labor conventions and meetings were periodically held; (ii) payment for entertainment and other benefits; (iii) provision of free tickets to major league sporting events, including tickets and access to “box” seats for COLI and others at National Football League and Major League Baseball games; (iv) the use of a yacht (together with the two-member crew of such yacht) by COLI and his guests both within the territory of the United States and internationally, including an excursion in and around Italy; (v) the free use of commercial space paid for at a Union/Fund Vendor’s expense; and (vi) periodic cash payments to COLI from Individual 2, which were made to COLI in violation of 18 U.S.C. § 1954 on account of work that was awarded to Individual 2 by employee welfare or pension benefit plans associated with Local 727 during the time defendant was a Trustee of these plans. The defendant concealed his receipt of such income and other benefits

from the United States Department of Labor by, among other things, causing false annual LM-30 reports to be filed with OLMS that omitted this additional income and benefits. The total amount of income and benefits as described above that COLI failed to report to OLMS was in excess of \$100,000. Moreover, COLI's income from these sources was not reported in COLI's personal federal income tax returns in the years in which these benefits were received. The parties agree that, when combined with the payments defendant received from Company 1 and Individual 1 described above, the total value of the payments or other things of value to COLI made in violation of law was more than \$500,000 but less than \$550,000.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty and criminal forfeiture, and are not intended to be a complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crimes and related conduct.

Maximum Statutory Penalties

8. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count Two carries a maximum sentence of 5 years' imprisonment. Count Two also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count Two the judge also may impose a term of supervised release of not more than three years.

b. Count Eleven carries a maximum sentence of 3 years' imprisonment. Count Eleven also carries a maximum fine of \$250,000 or twice the gross gain or loss. Defendant further understands that the Court must order costs of prosecution, estimated not to exceed \$500. Defendant further understands that with respect to Count Eleven, the judge also may impose a term of supervised release of not more than one year.

c. Pursuant to Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

d. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 8 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$500,000, or twice the gross gain or gross loss resulting from the offenses of conviction, whichever is greater, mandatory costs of prosecution, a period of supervised release, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

Sentencing Guidelines Calculations

9. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just

punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2018 Guidelines Manual.

b. **Offense Level Calculations.**

i. Count Two (Prohibited Payments to Union Official).

(1) Pursuant to Guideline § 2E5.1(a)(2), the base offense level is 6, because the payments made were a gratuity.

(2) Pursuant to Guideline § 2E5.1(b)(1), a 2-level increase is the offense level is appropriate because the defendant was a fiduciary of a labor organization.

(3) Pursuant to Guideline § 2E5.1(b)(2), a 12-level increase in the offense level is appropriate because the value of the prohibited payments to the payer was more than \$250,000 but less than \$550,000.

ii. Count Eleven (False Tax Return).

(1) Pursuant to Guideline § 2T1.1(a)(1), § 2T1.1(c)(1)(A), and 2T4.1, the base offense level is calculated with reference to the corresponding tax loss. The tax loss caused by the offense was more than \$100,000, resulting in a base offense level of 16.

(2) Pursuant to Guideline § 2T1.1(b)(1), a 2-level increase to the offense level is appropriate because the defendant failed to report income exceeding \$10,000 in any year from criminal activity.

iii. Grouping. Pursuant to Guideline § 3D1.4, Count Two receives one Unit because it is the Group with the highest offense level. Count Eleven receives one Unit because it is 2 levels less serious. Pursuant to Guideline § 3D1.3, the combined offense level is therefore increased by 2 levels, and the combined offense level is 22.

iv. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy

any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

v. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 19, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 30 to 37 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that

further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Cooperation

11. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and

complete and truthful testimony in any criminal, civil, or administrative proceeding. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

Agreements Relating to Sentencing

12. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant has continued to provide full and truthful cooperation as required by this Agreement, then the government shall move the Court, pursuant to Guideline § 5K1.1, to depart downward from the low end of the applicable guideline range, and shall recommend a sentence that includes a term of imprisonment in the custody of the Bureau of Prisons of 66 percent of the low end of the applicable guideline range. Defendant shall be free to recommend any sentence. Defendant understands that the decision to depart from the applicable guideline range rests solely with the Court.

13. If the government does not move the Court, pursuant to Guideline § 5K1.1, to depart from the applicable guideline range, as set forth above, the preceding paragraph of this Agreement will be inoperative, both parties shall be free to recommend any sentence, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to § 5K1.1. Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Guideline § 5K1.1.

14. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea..

15. Regarding restitution, defendant agrees to pay restitution, arising from the offense conduct set forth above pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3664. Restitution consists of \$105,000 to the Internal Revenue Service, \$12,500 to the State of Illinois, and an amount to be determined as to Company 1 pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3664. The total amount of restitution to the IRS consists of the following amounts, which should be credited to JOHN T. COLI, SR.'s Form 1040:

<u>Tax Year</u>	<u>Amount</u>
2014	\$35,000
2015	\$35,000
2016	\$35,000

16. Defendant understands that the amount of tax loss as calculated by the Internal Revenue Service may exceed the amount of tax due as calculated for restitution in the criminal case. Defendant further understands that the IRS may use the restitution order as a basis for civil assessment pursuant to Title 26, United States Code, Section 6201(a)(4).

17. Restitution shall be due immediately after judgment is entered, and is subject to immediate enforcement in full by the United States. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

18. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

19. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

20. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the superseding indictment, as well as the indictment as to defendant.

Forfeiture

21. Defendant understands that by pleading guilty, he will subject to forfeiture to the United States all right, title, and interest that he has in any property constituting or derived from proceeds obtained, directly or indirectly, as a result of the offense.

22. Defendant agrees to forfeiture of the following specific property to the United States: \$25,000 seized from the defendant on or about April 4, 2017. In doing so, the defendant admits that the property described above represents proceeds defendant

obtained as a result of the offense as alleged in the superseding indictment. Defendant consents to the immediate entry of a preliminary order of forfeiture as to this specific property, thereby extinguishing any right, title, or interest defendant has in it. If any of the specific property is not yet in the custody of the United States, defendant agrees to seizure of that property so that it may be disposed of according to law.

23. Defendant agrees to the entry of a personal money judgment in the amount of \$300,000, which represents proceeds traceable to the offense. Defendant consents to the immediate entry of a preliminary order of forfeiture setting forth the amount of the personal money judgment he will be ordered to pay.

24. Defendant admits that because the directly forfeitable property, other than the specific property noted above, is no longer available for forfeiture as described in Title 21, United States Code, Section 853(p)(1), the United States is entitled to seek forfeiture of any other property of defendant, up to the value of the personal money judgment, as substitute assets pursuant to Title 21, United States Code, Section 853(p)(2).

25. Defendant understands that forfeiture shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment, provided that any restitution to Company 1 shall be credited towards the outstanding forfeiture judgment.

26. Defendant agrees to waive all constitutional, statutory, and equitable challenges in any manner, including but not limited to direct appeal or a motion brought under Title 28, United States Code, Section 2255, to any forfeiture carried out in

accordance with this agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of counsel.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

27. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 17 CR 470.

28. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

29. Defendant understands that nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from defendant and his spouse. Defendant understands that the amount of tax as calculated by the IRS may exceed the amount of tax due as calculated for the criminal case.

Waiver of Rights

30. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the superseding indictment separately.

The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to

appeal his conviction and the sentence imposed. Acknowledging this, if the government makes a motion at sentencing for a downward departure pursuant to Guideline § 5K1.1, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Agreement. In addition, if the government makes a motion at sentencing for a downward departure pursuant to Guideline § 5K1.1, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of counsel, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

31. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

32. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing, including the nature and extent of defendant's cooperation.

33. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

34. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income

tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

35. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

36. Defendant agrees to cooperate with the Internal Revenue Service in any tax examination or audit of defendant and his spouse which directly or indirectly relates to or arises out of the course of conduct that defendant has acknowledged in this Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records that the IRS may request.

37. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's

solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant and his spouse. Nothing in this paragraph or the preceding paragraph precludes defendant and his spouse from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

38. Defendant understands that pursuant to Title 29, United States Code, Sections 504 and 1111, his conviction in this case will prohibit him from serving or being permitted to serve in certain offices, positions, and capacities relating to labor organizations, employee benefit plans, and other entities, as described in Title 29, United States Code, Sections 504 and 1111, for the period of thirteen years after conviction or after the end of any incarceration, whichever is later, unless the Court, pursuant to the Sentencing Guidelines and policy statements under Title 28, United States Code, Section 994(a), determines that defendant's direct or indirect service with or to a labor organization or employee benefit plan would not be contrary to the purposes of Title 29, United States Code, Sections 504 and 1111. Defendant further understands that if he

violates this prohibition, he may be punished by imprisonment for up to five years and a fine of up to \$250,000.

39. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

40. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

41. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph,

notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

42. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

43. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

44. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

JOHN R. LAUSCH, JR.
United States Attorney

JOHN T. COLI, SR.
Defendant

AMARJEET S. BHACHU
Assistant United States Attorney

JOSEPH DUFFY
Attorney for Defendant