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U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUN 2 2 2009
CLERK, U.S. DISTRICT COURT
By _____
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 3:07-CR-289-M
	§	**ECF**
BRIAN L. POTASHNIK (04)	§	

PLEA AGREEMENT

Brian L. Potashnik ("Potashnik"), the defendant, and the United States of America (the government), agree as follows:

1. **Rights of the defendant:** Potashnik understands that he has the right:

   a. to plead not guilty;

   b. to have a trial by jury;

   c. to have his guilt proven beyond a reasonable doubt;

   d. to confront and cross-examine witnesses and to call witnesses in his defense; and

   e. against compelled self-incrimination.

2. **Waiver of rights and plea of guilty:** Potashnik waives these rights and pleads guilty to the offense alleged in Count 10 of the indictment, charging a violation of 18 U.S.C. § 371 (18 U.S.C. § 666(a)(2)), that is, conspiracy to corruptly provide a thing of value to reward a public official concerning a local government receiving federal benefits. Potashnik understands the nature and elements of the crime to which he is pleading guilty, and agrees that the factual resume he has signed is true and will be submitted as evidence.

GOVERNMENT
EXHIBIT
5395
3:07-CR-289-M

3. **Sentence:** The maximum penalties the Court can impose includes:

a imprisonment for a period not to exceed 5 years;

b. a fine not to exceed $250,000, or twice the pecuniary gain to the defendant or loss to the victim(s);

c. a mandatory term of supervised release of not more than 3 years, which may follow any term of imprisonment;

d. a mandatory special assessment of $100.00;

e. restitution to victims or to the community, which may be mandatory under the law, and which Potashnik agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone; and

f. costs of incarceration and supervision.

4. **Court's sentencing discretion and role of the Guidelines:** Pursuant to Rule 11(c)(1)(C), FED. R. CRIM. P., the parties agree that the maximum term of imprisonment in this case would be based upon a total offense level of 20, and that the Court may depart downward from this range within the Court's discretion. The parties also agree that no restitution or forfeiture results from this specific plea. If the Court accepts this plea agreement, this provision is binding on the Court. Other than the agreed total offense level, the Court remains free to determine the sentence it deems appropriate at or below the agreed total offense level, under the advisory United States Sentencing Guidelines.

5. **Rejection of agreement.** Pursuant to Rule 11(c)(5), FED. R. CRIM. P., if the Court rejects this plea agreement, Potashnik will be allowed to withdraw his guilty plea. If Potashnik declines to withdraw his guilty plea, the disposition of the case may be less favorable than that contemplated by this agreement.

6. **Defendant's cooperation:** Potashnik shall give truthful and complete information and/or testimony concerning his participation in the offense of conviction. Upon demand, Potashnik shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding his capacity to satisfy any fines or restitution.

7. **Government's agreement:** The government will not bring any additional charges against Potashnik based upon the conduct underlying and related to Potashnik's plea of guilty, and any other offenses known to the government. The government will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. The government will dismiss, after sentencing, the remaining charges, including the forfeiture allegations (18 U.S.C. § 981), in the indictment against Potashnik. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local prosecuting authorities, nor does it prohibit any civil or administrative proceeding against Potashnik or any property, but the U.S. Attorney will not take such action nor is it aware of any other office or agency which plans such action.

8. **Violation of agreement:** Potashnik understands that if he violates any provision of this agreement, or if his guilty plea is vacated or withdrawn, the government will be free from any obligations of the agreement and free to prosecute him for all offenses of which it has knowledge. If this happens, Potashnik waives any objections based upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, Potashnik also waives objection to the use against

him of any information or statements he has provided to the government, and any resulting leads.

9. **Voluntary plea:** This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

10. **Waiver of right to appeal or otherwise challenge sentence**: Potashnik waives his rights, conferred by 28 U.S.C.§ 1291 and 18 U.S.C. § 3742, to appeal from his conviction and sentence. He further waives his right to contest his conviction and sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. Potashnik, however, reserves the right to bring (a) a direct appeal of (i) a sentence exceeding the statutory maximum punishment, (ii) an arithmetic error at sentencing, and (b) to challenge the voluntariness of his guilty plea or this waiver, and (c) a claim of ineffective assistance of counsel.

11. **Representation of counsel:** Potashnik has thoroughly reviewed all legal and factual aspects of this case with his lawyer and is fully satisfied with that lawyer's legal representation. Potashnik has received from his lawyer explanations satisfactory to him concerning each paragraph of this plea agreement, each of his rights affected by this agreement, and the alternatives available to him other than entering into this agreement Potashnik concedes that he is guilty, and after conferring with his lawyer, Potashnik has concluded that it is in his best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

12. **Entirety of agreement:** This document, the Supplement that the government may file, and any additional statements made at the plea colloquy, constitute a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties.

AGREED TO AND SIGNED this 26th day of June, 2009.

JAMES T. JACKS
ACTING UNITED STATES ATTORNEY

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CHAD MEACHAM
Criminal Chief

BRIAN L. POTASHNIK
Defendant

STEPHEN JONES
Attorney for Defendant

ABBE LOWELL
Attorney for Defendant

I have read this Plea Agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.

Brian l. Potashnik
Defendant

6/21/09
Date

I am the defendant's counsel. I have carefully reviewed every part of this Plea Agreement with the defendant. To my knowledge and belief, my client's decision to enter into this Plea Agreement is an informed and voluntary one.

Stephen Jones
Attorney for Defendant

6/21/09
Date

Abbe Lowell
Attorney for Defendant

6/21/09
Date