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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. 1:14-cr-00002-TMB-LCL
)	
Plaintiff,)	
)	PLEA AGREEMENT
vs.)	
)	
JONATHAN H. SMITH,)	
)	
Defendant.)	
)	

Unless the parties jointly inform the Court in writing of any additional agreements, this document in its entirety contains the terms of the plea agreement between the defendant and the United States. This agreement is limited to the District of Alaska; it does not bind other federal, state, or local prosecuting authorities.

I. TERMS OF AGREEMENT; FEDERAL RULE OF CRIMINAL PROCEDURE 11; WAIVER OF CLAIM FOR ATTORNEY'S FEES AND COSTS

A. TERMS OF AGREEMENT

The defendant agrees to plead guilty to the Indictment in this case charging him with Embezzlement of Union Funds, in violation of 29 U.S.C. § 501(c). The parties agree pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) to recommend that the defendant be sentenced to serve three years of probation and 80 hours of community service. The defendant agrees to pay full restitution to the union in the amount of \$41,770.47, with \$7,500 of the restitution payment being paid at the time of sentencing. The United States further agrees not to prosecute the defendant for any other offense, based upon facts now known, related to the events and circumstances that resulted in the charges contained in the Indictment, as detailed in Section V. The United States agrees to recommend that the defendant receive credit for a two-level reduction for acceptance of responsibility, subject to the defendant otherwise qualifying. Any agreements the parties have on sentencing recommendations and United States Sentencing Commission Guidelines ("U.S.S.G.") applications are set forth in Section III. The defendant will waive all rights to appeal the conviction and sentence imposed under this agreement, and will waive all rights to collaterally attack the conviction and sentence, except on the grounds of ineffective assistance of counsel or the voluntariness of the plea.

B. FEDERAL RULE OF CRIMINAL PROCEDURE 11

Federal Rules of Criminal Procedure 11(c)(1)(A) and 11(c)(1)(B) control this agreement. Therefore, the Court is not bound by any sentencing agreements contained in this plea agreement, and the defendant may not withdraw from this agreement or the guilty plea(s) if the Court rejects the parties' sentencing recommendations at the sentencing hearing.

C. WAIVER OF CLAIM FOR ATTORNEY FEES AND COSTS

Because this is a negotiated resolution of the case, the parties waive any claim for the award of attorney fees and costs from the other party.

II. CHARGES, ELEMENTS, FACTUAL BASIS, STATUTORY PENALTIES, OTHER MATTERS AFFECTING SENTENCE, & FORFEITURE

A. CHARGES

The defendant agrees to enter a plea of guilty to Count 1 of the Indictment charging him with Embezzlement of Union Funds, in violation of 29 U.S.C. § 501(c).

B. ELEMENTS

The elements of Embezzlement of Union Funds, in violation of 29 U.S.C. § 501(c), as charged in this case, are as follows:

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- (1) The defendant was an officer or employee of a labor organization, as defined by sections 3(i) and (j) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 *et. seq.*,
- (2) While so engaged, the defendant embezzled, stole or unlawfully converted to his own use, moneys, funds, property or other assets of the labor organization, and
- (3) The defendant acted knowingly and willfully.

C. FACTUAL BASIS

The defendant Jonathan H. Smith (“Smith”) admits that the allegations against him in Count 1 of the Indictment are true and stipulates that the following minimum factual basis for his plea is true and supports his guilty plea in this case:

Between approximately June 2006 and May 2012, defendant Jonathan H. Smith held the elected position of Financial Secretary for Carpenters Local Union 2247 (“LU 2247”) in Juneau, Alaska, a labor union representing approximately 150 members. During this time, LU 2247 was a labor organization as defined by sections 3(i) and (j) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 *et. seq.*, and was engaged in an industry affecting interstate commerce. LU 2247 was governed by the Constitution of the United Brotherhood of Carpenters and Joiners of America and by the bylaws of the Alaska Regional Council of Carpenters.

As Financial Secretary, Smith was an officer of LU 2247, and responsible for making deposits in the union bank account, paying bills, co-signing checks and managing the day-to-day business of the union. This was an elected unpaid position. During this time period, Smith was also employed by the Alaska Regional Council of Carpenters as business agent from 2004 until 2012, earning an annual salary ranging from \$66,000 to \$93,000. LU 2247 collected dues from union members that it deposited into its union bank account at First National Bank of Alaska to be used for union expenses, such as office space rent, telephone and internet service in Juneau.

In 2006, after obtaining the position of LU 2247 Financial Secretary, Smith applied for and obtained an ATM/debit card for the LU2247 checking account at First National Bank of Alaska. Smith was not authorized by the union to use the ATM/debit card, or to use any union money, to pay for personal expenses, and he was the only person who has access to the union ATM/debit card. Beginning in approximately April of 2007 and continuing until May 2012, Smith improperly used the ATM/debit card and the union check book to steal money from LU 2247. Smith used the ATM/Debit card and union checks to make cash withdrawals and to use union money to pay for personal expenditures including personal travel, meals at restaurants, purchasing alcohol, eating and drinking at bars and to buy consumer goods throughout Alaska and elsewhere in the country.

Smith also withdrew thousands of dollars in union funds from the Union First National Bank of Alaska account that he used to gamble at several casinos in Las Vegas and Washington State. He was not authorized to make any of these non-union purchases and cash withdrawals. In total, Smith knowingly and willfully embezzled, stole and illegally converted union funds to his own personal use in a total amount of \$41,770.47.

D. STATUTORY PENALTIES AND OTHER MATTERS AFFECTING SENTENCE

1. Statutory Penalties

The statutory maximum sentence for the crime to which the defendant is pleading guilty, as charged in this case, is as follows:

- (1) 5 years in prison;
- (2) a \$250,000 fine;
- (3) a \$100 mandatory special assessment; and
- (4) a three year term of supervised release.

2. Other Matters Affecting Sentence

a. Conditions affecting the defendant's sentence

The following conditions may also apply and affect the defendant's sentence:

- 1) pursuant to Comment 7 of U.S.S.G. § 5E1.2, the Court may impose an additional fine to pay the costs to the government of any imprisonment and supervised release

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term; 2) pursuant to 18 U.S.C. § 3612(f), unless otherwise ordered, if the Court imposes a fine of more than \$2,500, interest will be charged on the balance not paid within 15 days after the judgment date; 3) upon violating any condition of supervised release, a further term of imprisonment equal to the period of the supervised release may be imposed, with no credit for the time already spent on supervised release; 4) the Court may order the defendant to pay restitution pursuant to 18 U.S.C. § 3663 and U.S.S.G. § 5E1.1.

b. Payment of Special Assessment

The defendant agrees to pay the entire special assessment in this case on the day the Court imposes the sentence. All payments will be by check or money order, and are to be delivered to the Clerk of Court, United States District Court, 222 W. 7th Avenue, #4, Room 229, Anchorage, Alaska 99513-7564.

c. Consequences of Felony Conviction

Any person convicted of a federal felony offense may lose or be denied federal benefits including any grants, loans, licenses, food stamps, welfare or other forms of public assistance, as well as the right to own or possess any firearms, the right to vote, the right to hold public office, and the right to sit on a jury. If applicable, any defendant who is not a United States citizen, may be subject to deportation from the United States following conviction for a criminal offense and

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will not be permitted to return unless the defendant specifically receives the prior approval of the United States Attorney General.

E. FORFEITURE

The parties have no agreement regarding forfeiture.

F. FINE

The parties have no agreement regarding payment of a fine.

G. RESTITUTION

The defendant agrees to pay full restitution in the amount of \$41,770.47, including agreeing to make a partial payment equaling \$7,500.00 at the time of sentencing in this case.

H. ULTIMATE SENTENCE

The parties have no agreement about the ultimate sentence that the defendant will receive, and the defendant understands and acknowledges that no one has promised or guaranteed what sentence the Court will impose.

**III. ADVISORY UNITED STATES SENTENCING GUIDELINES;
GUIDELINE APPLICATION AGREEMENTS; SENTENCING
RECOMMENDATIONS**

A. ADVISORY UNITED STATES SENTENCING GUIDELINES

The Court must consult the advisory United States Sentencing Commission Guidelines (“U.S.S.G.” or “Guidelines”), as well as the factors set forth in 18 U.S.C. § 3553(a), when considering the sentence to impose. The U.S.S.G. do

not establish the statutory maximum or minimum sentence applicable to the offense to which the defendant is pleading guilty. The U.S.S.G. is not mandatory, and the Court is not bound to impose a sentence recommended by the U.S.S.G.

B. GUIDELINES APPLICATIONS

Acceptance of Responsibility

Subject to the defendant satisfying the criteria set out in U.S.S.G. § 3E1.1 and the applicable application notes, the United States agrees to recommend the defendant for a two-level downward adjustment for acceptance of responsibility, and, if U.S.S.G. § 3E1.1(b) applies, to move for the additional one level adjustment for acceptance of responsibility. If, at any time prior to imposition of the sentence, the defendant fails to fully satisfy the criteria set out in U.S.S.G. § 3E1.1, or acts in a manner inconsistent with acceptance of responsibility, the United States will not make, or if already made, will withdraw, this recommendation and motion.

C. SENTENCING RECOMMENDATIONS

The United States Probation Office will prepare the defendant's pre-sentence report which will include a recommended calculation of the defendant's sentence range under the U.S.S.G. Both the United States and the defendant will have the opportunity to argue in support of, or in opposition to, the Guidelines sentence range calculation that the U.S.P.O. recommends, as well as present evidence in support of their respective sentencing arguments. The parties agree to recommend a sentence

of three years of probation and 80 hours of community service, and believe that this sentence is appropriate based on the stipulated facts set forth in Section II C, the applicable statutory penalty sections, the advisory U.S.S.G., and the sentencing factors set forth in 18 U.S.C. § 3553. The Court is not bound by this recommendation and may impose any sentence up to the statutory maximum.

IV. WAIVER OF TRIAL, APPELLATE RIGHTS, & COLLATERAL ATTACK RIGHTS

A. TRIAL RIGHTS

Being aware of the following, the defendant waives these trial rights:

1. If pleading to an Information, the right to have the charges presented to the grand jury prior to entering the guilty plea;
2. The right to a speedy and public trial by jury on the factual issues establishing guilt or any fact affecting the mandatory minimum and statutory penalties, and any issue affecting any interest in any assets subject to forfeiture;
3. The right to object to the composition of the grand or trial jury;
4. The right to plead not guilty or to persist in that plea if it has already been made;
5. The right to be presumed innocent and not to suffer any criminal penalty unless and until the defendant's guilt is established beyond a reasonable doubt;

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6. The right to be represented by counsel at trial and if necessary to have a counsel appointed at public expense to represent the defendant at trial – the defendant is not waiving the right to have counsel continue to represent the defendant during the sentencing phase of this case;

7. The right to confront and cross examine witnesses against the defendant, and the right to subpoena witnesses to appear in the defendant's behalf;

8. The right to remain silent at trial, with such silence not to be used against the defendant, and the right to testify in the defendant's own behalf;

9. The right to contest the validity of any searches conducted on the defendant's property or person; and

10. The right to appeal the defendant's conviction and sentence.

B. APPELLATE RIGHTS

The defendant waives the right to appeal the conviction resulting from the entry of guilty plea to the charges set forth in this agreement. The defendant further agrees that if the Court imposes a sentence that does not exceed the statutory maximum penalties, as set forth in Section II D above, the defendant waives, without exception, the right to appeal on all grounds contained in 18 U.S.C. § 3742, the sentence the Court imposes, including forfeiture, terms/conditions of probation or supervised release, and any fines or restitution.

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C. COLLATERAL ATTACK RIGHTS

The defendant waives all rights to collaterally attack the resulting conviction and/or sentence, including forfeiture, terms/conditions of probation or supervised release, and any fines or restitution that the Court imposes. The only exceptions to this collateral attack waiver include: (1) any challenge to the conviction or sentence alleging ineffective assistance of counsel – based on information not now known to the defendant and which, in the exercise of reasonable diligence, could not be known by the defendant at the time the Court imposes sentence; and (2) a challenge to the voluntariness of the defendant's guilty plea.

D. RULE 410 WAIVER

The defendant agrees that by signing this agreement he is admitting to the facts in the Factual Basis portion of this agreement. He further agrees that if he withdraws his guilty plea prior to sentencing, or at any time after the Court accepts the plea agreement and sentences him consistent with its terms, he agrees the facts that he admits in the Factual Basis portion of this agreement shall be admitted as stipulations in any trial or sentencing that may follow. The foregoing provision acts as a modification, and express waiver, of Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11.

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V. ADDITIONAL AGREEMENTS BY THE UNITED STATES

In exchange for the defendant's guilty plea and the Court's acceptance of the defendant's plea and the terms of this agreement, the United States agrees that it will not prosecute the defendant further for any other offense, now known, arising out of the subject of the investigation related to the charges brought in the indictment in this case and the defendant's admissions set forth in Section II C. Provided, however, if the defendant's guilty plea is rejected, withdrawn, vacated, reversed, or set aside, or if the defendant's sentence or conviction is vacated, reversed, set aside, or modified, at any time, in any proceeding, for any reason, the United States will be free to prosecute the defendant on all charges arising out of the investigation of this case, including any charges dismissed pursuant to the terms of this agreement, which charges will be automatically reinstated as well as for perjury and false statements.

VI. ADEQUACY OF THE AGREEMENT

Pursuant to Local Criminal Rule 11.2 (d)(7) and (8), this plea agreement is appropriate in that it conforms with the sentencing goals that would otherwise be applicable to the defendant's case if the defendant had gone to trial and had been convicted on all counts in the charging instrument.

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VII. THE DEFENDANT'S ACCEPTANCE OF THE TERMS OF THIS PLEA AGREEMENT

I, Jonathan H. Smith, the defendant, affirm this document contains all of the agreements made between me, with the assistance of my attorney, and the United States, regarding my plea. There are no other promises, assurances, or agreements that the United States has made or entered into with me that have affected my decision to enter any guilty plea or to enter into this agreement. If there are any additional promises, assurances, or agreements, the United States and I will jointly inform the Court in writing before I enter my guilty plea.

I understand that no one, including my attorney, can guarantee the outcome of my case or what sentence the Court may impose if I plead guilty. If anyone, including my attorney, has done or said anything other than what is contained in this agreement, I will inform the Court when I stand before it to enter my plea.

I enter into this agreement understanding and agreeing that the conditions set forth herein are obligatory and material to this agreement and that any failure on my part to fulfill these obligations would constitute a material breach of this agreement. If I breach this agreement, I agree that the United States, in its sole discretion, may withdraw from this agreement and may reinstate prosecution against me on any charges arising out of the investigation in this matter. If my compliance with the terms of this plea agreement becomes an issue, the Court will determine whether or

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not I have violated the terms of this agreement at an appropriate hearing, during which I agree any of my disclosures will be admissible. I understand that the government's burden to prove a breach will be by a preponderance of the evidence.

I understand that the Court will ask me under an oath to answer questions about the offense to which I am pleading guilty and my understanding of this plea agreement. I understand that I may be prosecuted if I make false statements or give false answers and may suffer other consequences set forth in this agreement.

I have read this plea agreement carefully and understand it thoroughly. I know of no reason why the Court should find me incompetent to enter into this agreement or to enter my plea. I enter into this agreement knowingly and voluntarily. I understand that anything I discuss with my attorney is privileged and confidential, and cannot be revealed without my permission. Knowing this, I agree that this document will be filed with the Court.

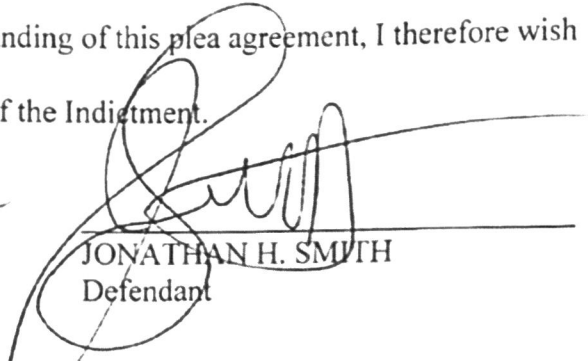
I am fully satisfied with the representation given me by my attorney and I am prepared to repeat this statement at the time I stand before the Court and enter my guilty plea. My attorney and I have discussed all possible defenses to the charges to which I am pleading guilty. My attorney has investigated my case and followed up on any information and issues I have raised to my satisfaction. My attorney has taken the time to fully explain the legal and factual issues involved in my case to my

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satisfaction. We have discussed the statutes applicable to my offense and sentence, as well as the possible effect the U.S.S.G. may have on my sentence.

Based on my complete understanding of this plea agreement, I therefore wish to enter a plea of guilty to count one of the Indictment.

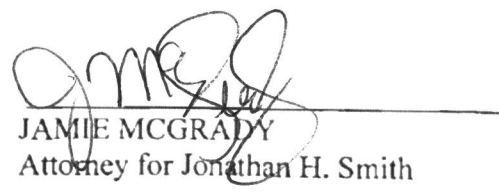
DATED: 8-8-14



JONATHAN H. SMITH
Defendant

As counsel for the defendant, I have discussed all formal plea offers and the terms of this plea agreement with the defendant, have fully explained the charge to which the defendant is pleading guilty and the necessary elements, all possible defenses, and the consequences of a guilty plea to a felony. Based on these discussions, I have no reason to doubt that the defendant is knowingly and voluntarily entering into this agreement and entering a plea of guilty. I know of no reason to question the defendant's competency to make these decisions. If, prior to the imposition of sentence, I become aware of any reason to question the defendant's competency to enter into this plea agreement or to enter a plea of guilty, I will immediately inform the Court.

DATED: 8/8/14

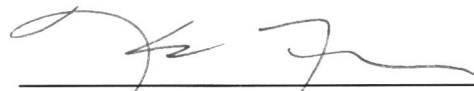


JAMIE MCGRADY
Attorney for Jonathan H. Smith

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On behalf of the United States, the following accept the defendant's offer to plead guilty under the terms of this plea agreement.

DATED: 8/11/14



KEVIN R. FELDIS
Assistant U.S. Attorney

DATED: 8/11/14



KAREN L. LOEFFLER
United States Attorney