UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 04 CR 921-1
	)	
DONALD TOMCZAK	)	Judge Samuel Der-Yeghiayan

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, DONALD TOMCZAK, and his attorneys, PATRICK TUITE and PATRICK COTTER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 19, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 04 CR 921-1.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is 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.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, DONALD TOMCZAK, and his attorneys, PATRICK TUITE and PATRICK COTTER, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the superseding indictment (the "indictment") in this case with: racketeering conspiracy in violation of Title 18, United States Code, Section 1962(d) (Count One); participating in a mail fraud scheme in violation of Title 18, United States Code, Sections 1341, 1346 and 2 (Counts Two, Three, Four, Five, Six, Seven, Eight and Ten); committing bribery related offenses in violation of Title 18, United States Code, Section 666(a)(1)(B) (Count Eleven); obstructing justice in violation of Title 18, United States Code, Section 1503(a) and 2 (Count Fourteen); obstructing justice in violation of Title 18, United States Code, Section 1512(b)(3) and 2 (Count Fifteen); and filing false tax returns in violation of Title 26, United States Code, Section 7206(1)(Counts Twenty Four, Twenty Five, Twenty Six and Twenty Seven).

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

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

4. Defendant will enter a voluntary plea of guilty to Counts One and Twenty Six of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Twenty Six of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt as to the counts of conviction, relevant conduct, a stipulated offense and the forfeiture of property as set forth in paragraph 21:

Background

______Defendant Donald Tomczak began working for the City of Chicago (the "City") in or about 1958. Beginning no later than 1989 and continuing through at least late 2003, defendant was a full-time salaried employee of the City. Beginning in approximately December 1989 and continuing

through at least late 2003, defendant was the First Deputy Commissioner of the Department of Water and held that title until his retirement effective January 2004. In or about January 2003, the Department of Water merged with the Department of Sewer and became the Department of Water Management (hereinafter the pre-merger and post-merger Department of Water will be referred to as the “Department”).

For all relevant periods, the Department was responsible for delivering potable water from pumping stations to City residents and businesses, as well as to certain suburban communities. Employing approximately 2000 employees, the Department was divided into bureaus, with separate and distinct functions. The largest of the bureaus was the Bureau of Operations and Distribution (hereinafter “Distribution”), which employed approximately 900 individuals. Generally, each bureau was headed by a Deputy Commissioner. With regard to Distribution, there was no Deputy Commissioner and, among other roles, defendant served as the overall manager of Distribution. The principal function of Distribution was the installation, repair and monitoring of water delivery systems within the City. The headquarters for Distribution was the Jardine Filtration Plant, located in Chicago, where defendant had his principal office.

The City's Hired Truck Program (“HTP”) provided the Department, along with other City operating departments, with a mechanism to use trucking services on an as-needed basis to complete construction and operating obligations. As to the Department’s use of the HTP through late 2003, individual requests for HTP services typically were made by Department supervisors in the field and directed to defendant’s office for review. After the request was reviewed and individual selections were made by defendant, individuals designated by the defendant would notify the particular HTP participant as to the assignment and type of truck(s) necessary, thereby “calling out” the trucks for the Department. Upon completion of the HTP assignment or based upon further review by

defendant, individual HTP trucking company participants would be notified that the truck was being assigned to another Department project, terminated or otherwise designated. From at least 1989 to late 2003, defendant exercised substantial authority as to selection, assignment, and hiring of trucks, as well as the order in which companies would be laid off at the end of a season or project (hereinafter the "lay off process") related to the HTP business of the Department.

Defendant acknowledges that the government could prove that many of the trucks used in the HTP were manufactured outside of Illinois, and the trucks and their fuel traveled in interstate commerce. Also, defendant acknowledges that the activities of the HTP and some of its participating trucking companies affected interstate commerce.

During periods relevant to the scheme, co-defendants Roger McMahon and Gerald Wesolowski were designated by defendant to perform functions and tasks relating to HTP work of the Department. Beginning no later than the early 1990s and continuing through June 1998, McMahon "called out" trucks at defendant's direction. After McMahon's retirement, Wesolowski "called out" trucks at defendant's direction. After defendant retired in or about late 2003, Wesolowski had primary responsibility for Department-related HTP matters through certain periods in 2004. In addition, as to certain periods during the course of the scheme, co-defendant Flenory Barnes was authorized to serve as a liaison for the defendant with two HTP companies, Company C and LR&C Truckline.

Defendant's Duties and Responsibilities

From 1989 to at least late 2003, during their respective employments with the City, and pursuant to the Chicago Governmental Ethics Ordinance, defendant, Wesolowski, McMahon and

Barnes (collectively, the "City Employees") each owed a duty of honest services to the City and the people of the City in the performance of their respective public duties. Illinois law and City ordinances defined that duty, providing limitations on the acceptance of payments and the solicitation of political contributions from persons doing business with the City. Defendant acknowledges that the City employees could not accept gifts (particularly gifts in excess of $50) or solicit political contributions from persons in the HTP Program.

Count of Conviction (Count One: RICO Conspiracy)

Beginning no later than the early 1990s and continuing to approximately September 2004, in Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant, along with Wesolowski and other City Employees, being persons employed by and associated with an enterprise engaged in, and the activities of which affected, interstate commerce, namely, the Department, did conspire with each other and others known and unknown to the Grand Jury to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity.

During the course of the conspiracy, defendant and Wesolowski agreed that defendant would commit at least two acts of racketeering in the conduct of the affairs of the enterprise, which acts included, among others, mail fraud and bribery in violation of state law.

In particular, defendant, typically acting through Wesolowski, McMahon, Barnes and others, performed and authorized official Department actions to benefit the financial interests of certain favored trucking companies that participated in the HTP (hereinafter the "Department Trucking Companies") by awarding, and authorizing the award of, assignments to perform HTP work for the Department; and providing preferential treatment in the selection, hiring, assigning and lay off process for HTP Department projects. In return, with the assistance of certain City officials,

including Wesolowski, McMahon and Barnes, representatives of Department Trucking Companies provided cash, campaign contributions and other things of value for the benefit of defendant and third parties associated with defendant, with the defendant knowing that such benefits were provided with intent to influence and reward defendant and the other City Employees in the performance of official acts related to the HTP. Such financial benefits from the representatives of the Department Trucking Companies were provided to defendant through Department officials and agents, including Wesolowski, McMahon and Barnes. As described below, the benefits defendant received included monetary payments, as well as gifts and contributions for the benefit of political campaigns with which defendant and other high-ranking government officials were associated.

Specifically, from no later than the early 1990s through late 2003, defendant received the following financial benefits for himself, certain City Employees and other third parties, for his primary role in ensuring that certain Department Trucking Companies obtain, secure and maintain HTP work, and otherwise receive preferential treatment related to the HTP.

Payments Made on Behalf of Company C

Defendant received cash payments and other things of value, principally through Barnes and Wesolowski, from a principal operator of Company C, in return for, and in connection with, defendant authorizing and providing Company C with HTP business opportunities on a regular basis.

In or about the early 1990s, Barnes arranged for a meeting with defendant, Barnes and representatives of Company C at a family-owned Chicago restaurant. At the meeting, Individual C and Trucking Representative 2, both of whom participated in the operations of Company C, requested defendant's assistance in obtaining HTP work in the Department. Shortly after the meeting, the representatives of Company C agreed to make cash payments to defendant in return for defendant's assistance in obtaining HTP work for Company C. Thereafter, on an occasional basis

at defendant's direction, Barnes picked up envelopes of cash from the two representatives of Company C, and delivered the envelopes to the defendant. In or about the late 1990s, after Barnes had a dispute with defendant over cash he had received for his own personal benefit from representatives of Company C, Barnes ceased picking up the envelopes from representatives of Company C on behalf of Tomczak. Rather, after introducing Wesolowski to Individual C, defendant directed Wesolowski to pick up the envelopes of cash from representatives of Company C. Thereafter, approximately twice per month, Individual C met with Wesolowski and provided him cash payments of approximately $1,300 per occasion. These payments increased around the Christmas holidays. For example, in Christmas 2002 and 2003, Individual C gave $5,000 in cash to Wesolowski for the benefit of Tomczak. In addition to receiving payments from representatives through Barnes and Wesolowski, defendant received cash payments from representatives of Company C in his office at the Jardine Filtration Plant.

In receiving the payments from representatives of Company C directly, as well as through Barnes and Wesolowski, defendant was influenced and rewarded in the performance of his official acts related to the HTP. As a result of the defendant's actions as it related to Company C, Company C received HTP business on a regular basis in the Department.

Payments Made On Behalf Of Cayla and Garfield

______Beginning in or about 1999, after defendant met with Michael Harjung, a former Department employee, defendant received cash payments from Harjung in return for, and in connection with, defendant authorizing and providing Cayla Trucking, and later Garfield Trucking, HTP business opportunities on a regular basis. Thereafter, approximately twice per month through early 2004, defendant received cash payments from Harjung, typically in the amount of $75 per truck per week. (At its peak, defendant authorized six Cayla trucks and one Garfield truck for HTP work in the

Department). In the beginning, defendant received the cash payments directly from Harjung, but beginning in or about 2000, defendant directed Wesolowski to meet with Harjung to receive the cash payments on defendant's behalf. In receiving the payments from Harjung directly, as well as through Wesolowski, defendant was influenced and rewarded in the performance of his official acts related to the HTP. As a result of the defendant's actions as it related to Cayla and Garfield, Cayla and Garfield each received HTP business on a regular basis in the Department.

Payments Made On Behalf Of GNA

Defendant received cash payments and other things of value from co-defendant John Cannatello, a principal operator of GNA, in return for, and in connection with, Tomczak authorizing and attempting to provide GNA with HTP business opportunities on a regular basis. Beginning in or about the late 1990s and continuing each year thereafter through December 2003, defendant received an envelope of up to $3,000 cash from Cannatello. Defendant received said payments during Cannatello's December visits to the Jardine facility to see the defendant. In late 2003, at or around the time of defendant's retirement, defendant directed Wesolowski to meet with Cannatello at a Chicago diner. At that time, Cannatello provided Wesolowski $3,000 in cash (divided into two envelopes), with Cannatello requesting that another GNA truck be added for HTP work in the Department. Wesolowski kept the $1,000 envelope and provided the $2,000 envelope to the defendant at his Chicago residence.

In receiving the payments from Cannatello, defendant was influenced and rewarded in the performance of his official acts related to the HTP. As a result of defendant's actions as it related to Cannatello, Cannatello received HTP business on a regular basis in the Department.

Payments Defendant Received through Roger McMahon

From time to time beginning in or about the mid 1990s and continuing through late 2003, defendant received envelopes of cash through co-defendant Roger McMahon on behalf of particular Department Trucking Companies that participated in HTP work in the Department, including without limitation, co-defendant Joseph Ignoffo of Ignoffo Trucking, Individual E (the operator of Trucking Company E), Individual F (the operator of Trucking Company F), Individual G (the operator of Trucking Company G) and Individual H (the operator of Company H). These payments and benefits that defendant received typically ranged between $500-1,500 per occasion from each of the five individuals.

Defendant acknowledges that, in receiving the payments from co-defendant Joseph Ignoffo, Individual E, Individual F, Individual G and Individual H, he was influenced and rewarded in the performance of his official acts related to the HTP. As a result of defendants actions, these five Department Trucking Companies received preferential treatment in the HTP.

Payments Defendant Received from Trucking Representative 1 and Associate 1

In addition, during regular intervals from the late 1980s through the late 1990s, defendant received envelopes of cash from Trucking Representative 1 and another individual associated with Trucking Representative 1 ("Associate 1"), which payments were made to defendant at the Jardine Filtration Plant. In addition, on multiple occasions, defendant directed Wesolowski to meet with Trucking Representative 1 and Associate 1 to pick up cash payments for the benefit of defendant. Due to a falling out between defendant and Trucking Representative 1, defendant ceased taking payments and proceeded to "knock off" Trucking Representative 1 and Associate 1's trucks and refusing to assign additional work to two of the three companies associated with Trucking Representative 1 and Associate 1. Then, in or about the Fall 2003, at the request of Associate 1, defendant, accompanied by Wesolowski, met with Associate 1 at a Chicago diner. At the meeting,

Associate 1 solicited the defendant to renew the financial arrangement defendant and Trucking Representative 1 had previously made, in which Associate 1 would make specified cash payments to defendant in return for defendant providing HTP work for companies associated with Associate 1.

Defendant acknowledges that, in receiving the payments from Trucking Representative 1 and Associate 1, defendant was influenced and rewarded in the performance of his official acts related to the HTP. As a result of defendants actions, the trucking companies associated with Trucking Representative 1 received preferential treatment in the HTP. As to the Fall 2003 solicitation, defendant acknowledges that Associate 1 attempted to influence and reward defendant in the performance of his official acts related to the HTP.

Solicitation of HTP Companies for Campaign Contributions

In addition to receiving and obtaining envelopes of cash from and on behalf of the the above-mentioned Department Trucking Companies, defendant also solicited, and directed the solicitation of, certain Department Trucking Companies for campaign contributions. Regarding particular campaign contribution solicitations, defendant typically directed McMahon, Wesolowski, Barnes and Employee C to contact entities doing business with the Department to contribute to particular campaigns. Depending on the circumstances and the particular campaign, defendant typically would give the solicitors a specific amount of money he wanted raised from the particular Department vendor. As to certain campaigns, defendant used this process to raise campaign funds for the benefit of Will County States Attorney candidate Jeff Tomczak, mayoral candidate Richard M. Daley, the 11th Ward Democratic Organization, Committee to Elect John Daley and aldermanic candidate Emma Mitts, among others.

Defendant typically solicited the Department Trucking Companies for political contributions from City premises using City telephones during the normal business day. Defendant often rewarded Department Trucking Companies that provided political contributions with favorable treatment in the HTP.

Total Amount of Payments, Campaign Contributions and Things of Value Received

Defendant acknowledges that the government could prove that a reasonable estimate of the total amount of cash payments, campaign contributions and things of value related to the defendant's conduct that were received from Department Trucking Companies during the period of the conspiracy approached but did not exceed $400,000.

Concealment and Obstructive Conduct

Background

Defendant acknowledges that the government could prove that the SPECIAL AUGUST 2003-2 GRAND JURY, in connection with Grand Jury Investigation No. 02 GJ 1348, was conducting an investigation into possible violations of federal law committed by Department employees, including defendant and Wesolowski. By no later than early September 2004, it was material to the Grand Jury Investigation whether or not representatives of Department Trucking Companies provided cash payments, campaign contributions or other things of value to City Employees, including defendant and Wesolowski.

Defendant further acknowledges that the government could prove that, on September 22, 2004, Roger McMahon was arrested by federal agents. During the course of post-arrest statements, McMahon acknowledged that he solicited and obtained cash payments and campaign contributions on behalf of, and at the direction of, defendant. McMahon further acknowledged handwriting a document (hereinafter the "2002 Campaign Document") that summarized the campaign

contributions McMahon and Wesolowski were to obtain from representatives of certain Department Trucking Companies in support of political candidate Jeff Tomczak. On September 24, 2004, after Wesolowski spoke with defendant and indicated he had been visited by federal authorities, defendant and Wesolowski paid an unannounced visit to McMahon, where the three engaged in a discussion of the federal HTP investigation focusing on the Department, including inquiries made of the companies referred to in the 2002 Campaign Document, including Company C and GNA.

Obstructive Conduct Relating to Individual C

On September 28, 2004, Individual C received an unsolicited visit from Wesolowski and defendant. The three then met at a coffee shop near Individual C's place of work. While the three sat in a booth, defendant informed Individual C, among other things, that a number of trucking companies listed in the 2002 Campaign Document should be avoided. Defendant told Individual C that McMahon had been confronted by law enforcement and had provided information about a campaign contribution or "Christmas list." Defendant also indicated that Company C had been discussed numerous times in the law enforcement interview of McMahon. Defendant indicated that they wanted to contact John Cannatello (of GNA) and provide him with the same information and asked Individual C if he knew where Cannatello's garage was located. Individual C provided the location of the Chicago garage of GNA. At the end of the meeting, defendant asked Individual C if he could count on Individual C to keep quiet. Defendant then asked Individual C to leave the meeting first, so that no one would see the three together leaving the coffee shop. Individual C then departed. Neither defendant nor Wesolowski contacted Cannatello after the meeting with Individual C.

On September 29, 2004, after Individual C had informed federal investigators of the visit by defendant and Wesolowski, Individual C placed a recorded telephone call to Wesolowski.

Individual C then had a brief conversation with Wesolowski, who was in his vehicle with defendant at the time. Individual C told Wesolowski that he was updating Wesolowski as requested, as Individual C had just received a grand jury subpoena and was going to have to testify before the grand jury. Individual C further stated that the government was claiming that it had evidence that envelopes were being passed to defendant and Wesolowski, and Individual C was looking for advice on what to say to the grand jury. In the background, defendant stated: "We're not saying a word." Wesolowski repeated the defendant's advice, telling Individual C: "We're not going to say a word, we're not going to say nothing, because they're going to ask us and we're going to say no."

Count of Conviction (Count Twenty Six)

______On or about April 8, 2003, in the Northern District of Illinois, Eastern Division, defendant, a resident of Chicago, Illinois, willfully made and subscribed, and caused to be made and subscribed, a joint United States Individual Income Tax Return (Form 1040 with schedules and attachments) for the calendar year 2002, which return was verified by a written declaration that it was made under the penalties of perjury, and filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter, in that it was stated on line 22 in that return that the total income was $163,939, while defendant knew that statement was false in that the defendant failed to report additional gross income received in calendar year 2002, including income related to payments from representatives of the Department Trucking Companies, in violation of Title 26, United States Code, Section 7206(1).

Defendant similarly filed false tax returns for calendar years 2000, 2001 and 2003, in that he failed to report income-related payments from representatives of the Department Trucking Companies, in violation of Title 26, United States Code, Section 7206(1).

During the periods 2000-2004, defendant failed to report income related to the HTP which resulted in a total tax loss of approximately $82,637 as follows:

Year	Cash Payments	Tax Loss
2000	$61,600	$19,179
2001	69,105	20,249
2002	77,365	22,513
2003	71, 382	20,696
Total		$82,637

The above statement of facts is not an exhaustive account of the defendant's knowledge of the events described, nor does it describe all of the government's evidence regarding the counts of conviction. Rather, it is a true and accurate summary of facts necessary to establish a factual predicate for the defendant's plea of guilty to Counts One and Twenty Six.

6. The defendant, for purposes of computing his sentence under the United States Sentencing Guidelines, stipulates to having committed the following additional mail fraud offense in conjunction with his work at the Department:

Participation In a Fraud Scheme To Award Promotions For *Shakman*-Covered Positions

Defendant, along with other City of Chicago officials devised, intended to devise and participated in a scheme and artifice to defraud the City of Chicago ("the City") of money, property, and the intangible right to the honest services of defendant, co-schemer Robert Sorich and other City employees, and to deprive certain applicants for City employment and promotions of money and property, by means of materially false and fraudulent pretenses, representations, promises and material omissions, and in furtherance thereof caused the United States mail to be used on or about January 23, 2002.

In particular, defendant participated in a scheme in which he and his co-schemers, acting at the direction of officials of the Mayor's Office of Intergovernmental Affairs ("IGA"), including Sorich, routinely manipulated the interview and selection process for certain City employment

positions by conducting sham interviews, falsely inflating interview scores, and otherwise guaranteeing that certain pre-selected candidates who were favored by IGA would win the employment positions, often to the exclusion of equally or more qualified candidates. This pre-selected status was granted by IGA at times because of the prospective employee's association with particular political organizations, including the defendant's, among other reasons.

Section 2-74-050 of the Chicago Municipal Code provides for personnel rules, including public notice, and the selection of persons based on their "relative fitness" and "job-related selections procedures," and includes provisions for ranking applicants. Section 2-74-090 provides that no person "shall make any false statement, certification, mark [or] rating . . . with regard to any test, certifications or appointment . . . or in any manner commit or attempt to commit any fraud [or] prevent the impartial execution of this ordinance. . . ." It also provides that no person "shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this ordinance . . . ."

From approximately 1999 to present, it has been a violation of Illinois law for "[a]ny officer, agent, or employee of, or anyone who is affiliated in any capacity with any unit of local government . . . [to] make[] a false entry in any book, report, or statement of any unit of local government . . . with the intent to defraud the unit of local government . . . ." 720 ILCS § 5/33E-15. Moreover, under Illinois law it is unlawful for any public officer or employee to knowingly perform an act which he knows he is forbidden by law to perform. 720 ILCS § 5/33-3(b).

Pursuant to orders and decrees entered by the United States District Court for the Northern District of Illinois, Eastern Division, on May 5, 1972, and June 20, 1983, in the case of *Shakman, et al. v. The Democratic Organization of Cook County, et al.*, 69 C 2145, City employees were, at all relevant times, among other things:

(1) prohibited from compelling or coercing political activity by any City employee; and

(2) permanently enjoined from directly or indirectly, in whole or in part:

(A) conditioning, basing, or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, or affecting the hiring of any person as a governmental employee (other than for positions exempt from the *Shakman* decrees), upon or because of any political reason or factor including, without limitation, any prospective employee's political affiliation, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such prospective employee's political sponsorship or recommendation;

(B) knowingly inducing, aiding, abetting, participating in, cooperating with or encouraging the commission of any act which is proscribed by the orders.

In addition to his general familiarity with the *Shakman* decree given his high-ranking managerial position, defendant previously sued under the *Shakman* decree and therefore was fully aware of the nature and scope of this court order.

Certain positions within the Department, such as non-policymaking jobs of Motor Truck Driver, Laborer, Plumber, Caulker, Foreman, Operating Engineer were covered by the *Shakman* consent decree (hereinafter "*Shakman*-covered positions"), and City officials involved in hiring or promoting individuals to *Shakman*-covered positions had to certify that political considerations played no role in the decisionmaking process. Accordingly, pursuant to the *Shakman* decree and other rules and regulations, the City generally was to conduct a merit-based, apolitical hiring and promotion process for *Shakman*-covered positions.

IGA was a branch of the Mayor's office with offices located in Room 406 at 121 N. LaSalle

(City Hall). From at least the early 1990s through late 2003, employees and agents of IGA, acting in their official capacities, participated in certain aspects of promotions and hiring relating to *Shakman*-covered positions, including Sorich, IGA Official 1 and IGA Official 2.

Typically, as to filling *Shakman*-covered positions, a vacancy or open position was announced, and individuals submitted applications or bids for the position. Qualified applicants or bidders were identified by the City Department of Personnel, working in conjunction with the personnel officer within the Department and, based on a review process, were selected for a quantitative and qualitative interview. An interviewer (sometimes a panel of interviewers) conducted the interviews. In conjunction with the interview, interviewers were to complete a rating sheet, which set forth a numerical scoring system to grade the job candidate on hiring criteria and provided for written comments by the interviewer. Ultimately, each interview was to be rated with a numerical score for the job candidate. The candidates with the highest scores were selected for the position and notified by the City that they had been selected for the position.

<u>Stipulated Offense</u>

Beginning in the 1990s and continuing to in or about at least late 2002, defendant, while the First Deputy Commissioner of the Department, headed a political organization that acted at the direction of certain IGA officials. Depending on the particular time period, defendant's political organization had 100-250 active participants, most of whom were City employees within the Department. The principal purpose of defendant's political organization was to perform "field"-related political work on behalf of candidates directed by top political operatives of the political organization supporting the Mayor of Chicago, including Sorich, IGA Official 1 and other IGA officials. This field activity, which typically occurred on weekends during election cycles, consisted

of handing out literature and doing door-to-door activities on behalf of the hand selected political campaigns and candidates, which selections were communicated to defendant through IGA officials.

Typically, at the beginning of an election cycle, an IGA Official, usually Sorich or IGA Official 1, contacted defendant and communicated the particular campaign or political effort IGA wanted defendant's organization to actively support. Upon receiving this notification, defendant convened a meeting of his organization's coordinators, who were Department employees, to notify them of the particular political campaign they would be supporting and to discuss the intended work plan. These coordination meetings, which typically lasted approximately one hour or less, occurred on city premises during the normal business day and typically involved 5-10 Department employees. Following the meetings, defendant's coordinators contacted individual Department employees to obtain "volunteers" for the assigned field activities. At the direction of IGA, defendant conducted field activities with Department employees on behalf of the campaigns affiliated with Chicago mayoral candidate Richard M. Daley, United States congressional candidates, statewide Democratic candidates and numerous aldermanic candidates, among others. Acting on his own, defendant conducted field activities with Department employees on behalf of his son, Will County State's Attorney candidate Jeff Tomczak.

In return for the political assistance provided by Department employees to defendant's political organization, defendant rewarded certain employees with governmental benefits, including authorized raises and overtime work. In addition, defendant regularly and routinely sought IGA's assistance and took other official acts in order to attempt to obtain City promotions for *Shakman*-covered positions to, among others, certain members of defendant's political organization. More specifically, upon the announcement that the bidding process for a particular *Shakman*-covered position had commenced, defendant contacted IGA and scheduled a meeting, typically with Sorich.

The purpose of the meeting was to make promotion requests to IGA for certain Department employees active in his political organization for the posted openings, in a process termed "going forward" on particular candidates. In going forward on these candidates, defendant typically described to Sorich the political work of the particular individual in an attempt to justify the promotion request. These meetings with IGA typically occurred at City Hall, in the IGA Offices, often in the presence of a Department official accompanying the defendant. During the time period of the scheme, defendant had multiple meetings each year with Sorich. Through these meetings and communications with Sorich, defendant also learned that other City employees who ran political organizations, like defendant, had similar meetings with Sorich for the purpose of recommending politically active City employees to the *Shakman*-covered positions. In that context, defendant was aware that he was competing with coordinators of other political organizations to win promotions through Sorich.

After the IGA meeting at which job candidates were discussed with defendant, and typically before any interviews for the particular position had been conducted, defendant knew that Sorich met with the Department personnel officer ("Officer A") and gave names of the individuals whom IGA had pre-selected to win the *Shakman*-covered job openings within the Department. For *Shakman*-covered positions within the Department's Bureau of Distribution, Officer A typically provided the list to the defendant, among others, who was responsible for overseeing the interview process to ensure that the IGA selected candidates won.

After receiving the list from Officer A, defendant provided the IGA-dictated results to an interview coordinator whom defendant had selected. Defendant's interview coordinator, in turn, selected interview panelists and conducted the interview process to achieve the IGA-dictated results, generally irrespective of the employment-related merits of the individual candidates. In order to

achieve the IGA-dictated results, defendant was aware that the interview scoring sheets were falsified and otherwise manipulated in such a fashion as to guarantee that the persons pre-selected by IGA for political reasons (including some individuals in defendant's political organization) would "win" the promotion and thus "be made." Defendant was also aware that false certifications were signed by Department officials, attesting that the hiring process complied with the dictates of the *Shakman* decree.

In reviewing the IGA lists, defendant, based on his work in the Department, was sometimes familiar with the work product of the individuals IGA had selected to win the position. On multiple occasions, defendant believed that IGA had selected particular candidates to win who were unqualified or less competent than other candidates for the positions. On occasion, defendant would inform Sorich of defendant's views of the relative incompetence of the IGA selections. Sorich's typical response was for the defendant to "Do the best you can with him."

It was reasonably foreseeable to the defendant that, in furtherance of the scheme to defraud that, on or about January 23, 2002, at Chicago, in the Northern District of Illinois, Eastern Division, an envelope containing a promotion letter relating to Employee A, a participant in Tomczak's political organization for whom defendant "went forward" with Sorich and whom Sorich "made", was delivered by United States mail according to the direction thereon, in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

7. For purposes of calculating the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) The Guidelines are calculated pursuant to the November 2003 edition of the Guidelines Manual.

Count of Conviction (Count One-RICO)

(b) Pursuant to Guideline § 2E1.1(a), the base offense level is the greater of 19 or the offense level applicable to the underlying racketeering activity. The parties agree that the guideline relating to the underlying racketeering activity would apply, in that the base offense level for the underlying racketeering activity would be calculated by reference to 2B1.1(c)(3)(C) and 2C1.1(a), in which the base offense level is level 10. Pursuant to Guidelines Section 2C1.1(b)(1), the offense level is increased by 2 levels because the offense involved more than one bribe payment. Pursuant to guidelines Section 2C1.1(b)(2)(A) and 2B1.1(b)(1)(F), and based on the government's best estimate of the total amount of payments and things of value, excluding proffer protected information under Section 1B1.8, the offense level is increased at least 12 levels because the amount of the payments exceeded $200,000 but was less than $400,000. Thus, the underlying racketeering activity yields an offense level of 24.

(c) Pursuant to Guideline § 3B1.1(a), the base offense level is increased four levels to 28 because the defendant was an organizer or leader of criminal activity that involved five or more participants.

(d) Pursuant to Guideline § 3C1.1, the base offense level is increased two levels to 30 because the defendant willfully attempted to obstruct or impede the administration of justice during the course of the investigation.

Count of Conviction (Count Twenty Six–False Tax Return)

(e) Pursuant to Guideline 2T1.1(a), the parties agree that the tax loss for the count of conviction and relevant conduct is more than $80,000 and less than $200,000, and that the base offense level for the tax counts is 16, pursuant to Guideline 2T1.1(a).

(f) Pursuant to Guideline 2T1.1(b)(1), the parties agree that the base offense level is

increased two levels to 18 because the defendant failed to report or to correctly identify the source of income exceeding $10,000 in any year from criminal activity.

Stipulated Offense

(g) Pursuant to Guidelines Section 2C1.7, the base offense level is level 10.

(h) Pursuant to Guidelines Section 2C1.7(b)(1)(B), the offense level is increased by 8 levels to 18 because the offense involved an elected official or any official holding a high-level decision making position, namely the defendant and Robert Sorich. The parties further agree that, due to the nature of the offense, the pecuniary loss to the City is difficult to estimate or quantify.

(i) Pursuant to Application Note 5 of 2C1.7, because the defendant and his co-schemers' conduct was part of a systematic or pervasive corruption of a governmental function that may cause loss of public confidence in government, including systematic and pervasive violation of a federal court order, the government believes that an upward departure of 2 offense levels is appropriate.

Grouping.

(j) Pursuant to the application of Guideline Sections 3D1.2-3D1.3, the following three groups are created, with the applicable offense levels:

i. Group One: a group with an adjusted offense level of 30 based on calculations set forth above in (b) -(d);

ii. Group Two: a group with an adjusted offense level of 18 based on calculations set forth in (e)-(f) above;

ii. Group Three, a group with an adjusted offense level of 20 based on calculations set forth in (g)-(i) above;

(k) Based on application of 3D1.4(c) to the offense levels for the three respective groups, in that Group Two and Group Three are each 9 or more levels less serious than Group One, no offense levels are added to the adjusted offense level of Group One.

Acceptance of Responsibility.

(l) The parties agree that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. Defendant contends that if he continues to accept responsibility for his actions, within the meaning of Guideline 3El.l and does not falsely deny conduct relevant to the offenses for which he is pleading guilty, a two-level reduction in the offense level is appropriate.

(m) The parties agree that defendant has notified the government timely 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, within the meaning of Guideline 3E1.1(b); an additional one-point reduction in the offense level is therefore appropriate, provided the Court determines the offense level to be 16 or greater prior to the operation of Guideline 3E1.1(a); and

provided that the court determines that a two-level reduction for acceptance of responsibility is appropriate under Guideline 3E1.1(a).

(n) Given defendant's efforts to mitigate the effects of his obstructive conduct and his substantial assistance to the investigation, the parties agree that it is appropriate to apply the provisions of both Guideline 3C1.1 and Guideline 3E1.1.

(o) Based on the facts known to the government, the defendant's criminal history points equal 0 and the defendant's criminal history category is I; and

(p) Defendant, his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. Defendant understands that the Probation Department 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 Sentencing Guidelines calculation.

8. The parties acknowledge that in proffer sessions conducted with the government following the return of the indictment in this case, defendant provided information, not previously known to the government, concerning other criminal conduct committed by him, including but not limited to the following criminal activity:

For a number of years beginning in the 1980s and continuing to in or about the late 1980s, defendant received cash payments from the owner of a trucking company (Trucking Representative #3) who was a substantial participant in the HTP. Defendant typically received $75 per truck on an occasional basis, totaling in excess of $10,000.

As to this conduct, the parties acknowledge that under USSG §1B1.8, the information provided by defendant in proffer sessions concerning these criminal acts may not be used against him in the calculation of his sentencing guidelines, but will be disclosed to the Court.

9. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, and that the Court must consult those Guidelines and take them into account when sentencing the defendant.

10. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea on the basis of such corrections.

11. Defendant understands that, as to Count One, this count carries a maximum penalty of twenty years imprisonment, and a maximum fine of $250,000, twice the gross gain to defendant or loss to others, whichever is greatest; and a term of supervised release of not more than three years. As to Count Twenty Six, defendant understands that this count carries a maximum penalty of three years imprisonment, a maximum fine of $250,000, and a term of supervised release of not more than one year, together with costs of prosecution, estimated not to exceed $500.

Therefore, the total potential sentence carried under the counts to which defendant will plead guilty is twenty-three years imprisonment, a $500,000 fine, a term of supervised release of not more than six years, together with costs of prosecution, estimated not to exceed $500.

12. Defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed $100 on each count to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of $200 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

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

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, and considering each count separately, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) 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 of defendant's guilt beyond a reasonable doubt.

(d) 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. In turn, 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.

(e) 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.

14. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

15. Defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement, subject to the Court imposing a sentence consistent with the calculations agreed to by the parties as set forth in paragraphs 7 and 19 of this Agreement. Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, 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, which relates directly to this waiver or to its negotiation.

16. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate.

(a) Defendant agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify, before any grand jury and court proceeding, and any related civil administrative or court proceeding.

(b) Defendant agrees to postpone his sentencing until after the conclusion of the prosecution of his co-defendants in this case and any defendants in related cases.

17. Nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from the defendant.

18. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

19. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, assuming the defendant's full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline 5K1.1 to depart from the applicable sentencing guidelines range and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court. However, this Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons of two-thirds of the low end of the applicable sentencing guidelines. Other than the agreed term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed term of incarceration set forth, the defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d) and (e). If,

however, the Court refuses to impose the agreed term of incarceration set forth herein, thereby rejecting the Plea Agreement, or otherwise refuses to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

20. The defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which any restitution is to be paid in this case. The defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances in order to determine the proper fine and restitution schedule according to which the defendant may be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court.

21. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. Defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the 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 the 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.

22. 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 indictment as to this defendant, as well as all counts of the initial indictment.

23. The indictment charges that, pursuant to Title 18, United States Code, Section 1963, as well as Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), defendant and the enterprise acquired interests subject to forfeiture. Defendant agrees to the entry of a forfeiture judgment in the amount of $175,000 and a preliminary order of forfeiture because funds in this amount are subject to forfeiture. Prior to sentencing, defendant agrees to deposit $175,000 into his attorney's escrow account. Defendant further agrees to that the forfeiture judgment shall be satisfied on or before the day sentence is imposed with a check or wire transfer from his attorney's escrow account to the United States Marshal Seized Asset Management Account. Defendant understands that forfeiture of this property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to the forfeiture judgment, but that said amount is in total satisfaction of defendant's forfeiture liability not withstanding the charged forfeiture alleging joint and several liability in the superseding indictment.

24. In return for the defendant's plea of guilty and related admissions in this agreement, the government agrees that it will not bring any additional criminal charges against the defendant in the Northern District of Illinois for the conduct charged in the Indictment in Case No. 04 CR 921, as well as for any other criminal conduct arising out of defendant's employment with the City of Chicago.

25. 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.

26. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

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

28. 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: __________

______________________ PATRICK J. FITZGERALD United States Attorney	______________________ DONALD TOMCZAK Defendant
______________________ PATRICK COLLINS PATRICK MCGOVERN Assistant United States Attorneys	______________________ PATRICK TUITE PATRICK COTTER Attorneys for the Defendant