



United States Attorney

District of Columbia

SEALED

Judiciary Center  
555 Fourth St. N.W.  
Washington, D.C. 20001

Writer's Direct Dial: 202.616.3702

December 1, 2008

Preston Burton, Esq.  
Orrick, Herrington & Sutcliffe, LLP  
Columbia Center  
1152 15<sup>th</sup> Street, N.W.  
Washington, D.C. 20005-1706

08cr371(JR)

**FILED**

JAN 30 2009

Re: Stewart D. Nozette

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

Dear Mr. Burton:

This letter sets forth the full and complete plea offer to your client, Mr. Stewart D. Nozette. This offer is binding only upon the Criminal and Civil Divisions of the United States Attorney's Offices for the District of Columbia and the District of Maryland, the Civil Division of the Department of Justice, and the Tax Division of the Department of Justice, Northern Criminal Enforcement Section. This plea offer will expire on December 12, 2008. Upon receipt, the executed letter will itself become the plea agreement. The terms of the offer are as follows:

1. **Charges:** Mr. Nozette agrees to waive his right to grand jury Indictment and to plead guilty to a two-count information charging a violation of Title 18, United States Code, Section 371 (Conspiracy to defraud the United States) and Title 26, United States Code, Section 7201 (Tax Evasion). It is understood that the guilty plea will be based on a factual admission of guilt to the offenses charged to be made before the Court by Mr. Nozette and will be entered in accordance with Rule 11 of the Federal Rules of Criminal Procedure. Mr. Nozette agrees that the attached "Statement of the Offense" fairly and accurately describes Mr. Nozette's actions and involvement in the conspiracy and tax evasion. It is anticipated that during the Rule 11 plea hearing, Mr. Nozette will adopt and sign the Statement of the Offense as a written proffer of evidence.

2. **Potential penalties, assessments, and restitution:** Mr. Nozette understands that the maximum sentence that can be imposed on Count 1 for conspiracy is 5 years imprisonment, a fine of \$250,000.00, or a fine of twice the pecuniary gain or loss pursuant to 18 U.S.C. § 3571(d), a \$100 special assessment, a 3-year term of supervised release, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made. Mr. Nozette understands that the maximum sentence that can be imposed on Count 2 for tax evasion is 5 years imprisonment, a fine of \$250,000.00, the costs of prosecution, a 3-year term of supervised release, a \$100 special assessment, an order of restitution, and an obligation to pay any applicable interest

Preston Burton, Esquire  
 December 1, 2008  
 Page 2

or penalties on fines or restitution not timely made. Notwithstanding the maximum sentence, Mr. Nozette understands that the sentence to be imposed in this case will be determined in accordance with the guidelines and policies promulgated by the United States Sentencing Guidelines Commission, Guidelines Manual (2007) (hereinafter "Sentencing Guidelines"). Mr. Nozette understands that this sentence, including the applicable sentencing guideline range, will be determined solely by the Court, and the government cannot and does not make any promises, representations or predictions regarding what sentence the Court will impose. Mr. Nozette further understands that if the Court imposes a sentence greater than that provided in the Sentencing Guidelines range as determined by the Court, or which is in any other way unsatisfactory to him, he cannot withdraw his guilty plea. This does not, however, limit Mr. Nozette's right to appeal an unlawful sentence.

3. **Federal Sentencing Guidelines:** Although not binding on the Court, the parties agree that the following Guideline Sections apply:

**Count 1 (Conspiracy to submit false claims):**

(a)	Base Offense Level (2X1.1; 2B1.1(a))	6
(b)	Specific Offense Characteristics	
	i. Loss more than \$200,000.00 but less than \$400,000.00 (2B1.1(b)(1)(G))	12
(c)	Role in the Offense	
	i. Aggravating Role (Leader in Criminal Activity) (3B1.1(c))	2
	Total:	20

**Count 2 (Tax Evasion):**

(a)	Base Offense Level More than \$200,000.00 (Tax loss) (2T1.1(a)(1); 2T4.1(G))	18
(b)	Specific Offense Characteristics	
	i. Failure to Correctly Report or Identify income of more than \$10,000/yr. from criminal activity(2T1.1(b)(1))	2
	Total:	20

Preston Burton, Esquire  
 December 1, 2008  
 Page 3

**Acceptance of Responsibility**

i.	Acceptance of Responsibility (3E1.1(a))	-2
ii.	Assistance (3E1.1(b))	-1
	Total:	-3

**Outstanding Guidelines Issues**

The government believes that the conspiracy and tax offenses are not subject to grouping and that the defendant is subject to a 2 level sentencing enhancement pursuant to §3D1.4. The defendant reserves the right at sentencing to argue that the conspiracy and tax offenses should be grouped and that his sentencing level should not be increased by §3D1.4. The defendant understands that based on the Court's determination of the outstanding guidelines issues referenced in this paragraph, his offense level total with acceptance of responsibility could be as low as level 17 (24-30 months, assuming Criminal History Category I) or as high as level 19 (30-37 months, assuming Criminal History Category I).

Mr. Nozette agrees not to seek any decreases in his offense level other than those which are agreed to by the Government in this paragraph. He further agrees not to seek a downward departure for any reason from the otherwise applicable guideline range established by the Sentencing Guidelines. In the event that this plea offer is either not accepted or is accepted and subsequently withdrawn, the parties will not be bound by the proposed interpretations of applicable Sentencing Guidelines provisions contained herein.

4. **Financial Arrangements and Cooperation with IRS:** Mr. Nozette agrees that prior to or at the time of the sentencing, he will deliver to the Clerk's Office, United States District Court, a certified check in the amount of \$200.00, to cover the special assessment, as required in Title 18, United States Code, Section 3013, and to pay restitution to the Naval Research Laboratory, the Defense Advanced Research Projects Agency, and the National Aeronautics and Space Administration under a schedule and terms to be set by the Court and/or the Probation Office. The restitution owed collectively to those agencies should not exceed \$265,205.57.

Mr. Nozette further agrees to cooperate fully with the IRS in its civil examination and determination of income taxes related to taxes owed by him for 2000 through 2005 and further agrees not to conceal or dissipate funds or property that could be used to satisfy such taxes. To this end, Mr. Nozette agrees to meet with the IRS as soon as possible upon the execution of this plea agreement, but in any event no later than prior to the time of Mr. Nozette's sentencing, and agree to assessments for the years 2000 through 2005. Mr. Nozette also agrees to undertake to pay all taxes, penalties and interest found to be lawfully owed and due to the Internal Revenue Service for the years 2000 through 2005. Mr. Nozette shall cooperate with and provide the Internal Revenue

Preston Burton, Esquire  
November 1, 2008  
Page 4

Service any documentation within his possession and control, other than documents subject to the attorney-client privilege, necessary for a correct computation of all taxes due and owing for the aforementioned calendar years. Mr. Nozette further agrees to authorize the IRS-CI to turn over all pertinent grand jury material in this investigation to the IRS Civil Examination Division in order to allow the parties to determine if any additional taxes are due and owing for the years 2000 through 2005. Nothing in this agreement shall otherwise limit the IRS in its determination of taxes, penalties and interest or Mr. Nozette's rights to available process to contest such civil determination.

Mr. Nozette waives the restrictions contained in 26 United States Code § 6103 on disclosure of return information to permit the Department of Justice and IRS-CI to publicly disclose information relating to this case that is not otherwise a matter of the public record. The defendant waives any rights he may have pursuant to 26 U.S.C. § 7213, and any other right of privacy with respect to his tax returns and return information.

5. **Cooperation:** Mr. Nozette agrees to cooperate completely, candidly, and truthfully in the investigation by this Office and other federal law enforcement agencies. Specifically, Mr. Nozette agrees:

- a. to provide complete, truthful, and candid disclosure of information and all records, writings, tangible objects, or other requested materials of any kind or description that he has which relate directly or indirectly to the subject of this investigation;
- b. to answer completely, truthfully, and candidly all questions put to him by attorneys and law enforcement officials during the course of this investigation;
- c. to make himself available for interviews by attorneys and law enforcement officers of the government upon request and reasonable notice;
- d. not to attempt to protect any person or entity through false information or omission, nor falsely to implicate any person or entity;
- e. not to disclose the fact of or details regarding his cooperation with law enforcement to any person or entity;
- f. to comply with any and all reasonable requests from federal government authorities with respect to the specific assistance that he shall provide;
- g. to answer, at trial, before the grand jury, or at any hearing arising out of this investigation, all questions put to him by the Court or by the attorney for any party completely, truthfully, and candidly;

Preston Burton, Esquire  
December 1, 2008  
Page 5

h. to provide a full and complete accounting of all assets, real or tangible, held by him or in any other name for his benefit, and, to that end, to submit a standard form 500 (Financial Statement of Debtor).

6. **Government Concessions:** In exchange for his guilty plea, the government agrees not to oppose Mr. Nozette's release pending sentencing, agrees not to oppose a 3-level downward adjustment for acceptance of responsibility pursuant to Sentencing Guidelines, Section 3E1.1(a) and (b), agrees not to oppose Mr. Nozette's voluntary surrender to commence serving any sentence which is imposed, provided that Mr. Nozette continues to show his acceptance of responsibility by: (a) cooperating with the presentence report writer (including answering all material questions truthfully and providing all financial information requested); (b) cooperating fully and truthfully with the court in any proceeding arising from this matter; (c) complying with the other provisions of this agreement; and (d) abiding by the conditions set for his release by the Court. Also, subject to other paragraphs in this agreement, the United States will not bring any additional criminal charges against Mr. Nozette in the United States District Court in the District of Columbia, the United States District Court in the District of Maryland or the Superior Court of the District of Columbia for the allegations charged in the Information or for information previously provided to the government related to the operations of Grafton Engineering and Development, Inc. involving a potential conflict of interest. This agreement not to prosecute Mr. Nozette does not extend to any other federal, state or local crimes. Also, subject to other paragraphs in this agreement, the United States will not bring any criminal charges against Mr. Nozette's spouse, Wendy M. McColough, in the United States District Court in the District of Columbia, the United States District Court in the District of Maryland or the Superior Court of the District of Columbia related to the allegations charged in the Information or for information previously provided to the government related to the operations of Grafton Engineering and Development, Inc. involving a potential conflict of interest.

7. **Departure Committee:** At the time of Mr. Nozette's sentencing, the United States will advise the sentencing judge and the probation office of the full nature, extent, and value of the cooperation provided by Mr. Nozette to the United States. In addition, before sentencing, the United States will inform the Departure Committee of the United States Attorney's Office for the District of Columbia of the full nature, extent and value of the cooperation provided by Mr. Nozette to the United States. If the Departure Committee determines that Mr. Nozette has provided substantial assistance in the investigation or prosecution of another person or entity that has committed any offense, then this Office will file a motion pursuant to § 5K1.1 of the sentencing guidelines. Mr. Nozette understands that the determination of whether he has provided "substantial assistance" is within the sole discretion of the United States Attorney for the District of Columbia. Mr. Nozette further understands that the failure of this Office to file a "substantial assistance" departure motion is not a ground for him to move to withdraw his plea of guilty in this case.

Preston Burton, Esquire  
December 1, 2008  
Page 6

8. **Court is not bound:** Mr. Nozette understands that the Court is not obligated to follow any recommendation of the government at the time of sentencing and that the final decision regarding his bond status or detention will be made by the Court at the time of his plea of guilty. The Court's decision in these regards are not grounds for withdrawal from this agreement.

9. **Reservation of Allocution** The United States reserves allocution, including, among other things, the right: to inform the presentence report writer of any relevant facts; to dispute factual inaccuracies in the presentence report and to contest any matters not provided for in this plea agreement; to set forth at sentencing and at any proceedings before the Bureau of Prisons all of its evidence with respect to all of Mr. Nozette's criminal activities, subject to the provisions of the following paragraph.

10. If in this plea agreement the Government has agreed to recommend or refrain from recommending to the sentencing judge a particular resolution of any sentencing issue, the Government reserves the right to full allocution in any post-sentence litigation in order to defend the sentencing judge's ultimate decision on such issues.

11. **Breach of Agreement:** If Mr. Nozette fails to make a complete, truthful, and candid disclosure of information to federal law enforcement officers, government attorneys, and grand juries conducting this investigation, or to the Court, and/or if he commits any further crimes, or attempts to withdraw the plea, the United States will have the right to characterize such conduct as a breach of this plea agreement. If during this investigation or prosecution Mr. Nozette should commit perjury, engage in criminal conduct while pending sentencing, knowingly give any false statement, commit any act of contempt, or obstruct justice, the United States may prosecute him for these offenses to the fullest extent provided by law. In the event of a breach, (a) the United States will be free from its obligations under the agreement and may take whatever position it believes appropriate as to the sentence and the conditions of Mr. Nozette release (for example, should Mr. Nozette commit any conduct after the date of this agreement that would form the basis for an increase in his offense level or justify an upward departure - examples of which include but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the probation officer or Court - the Government is free under this agreement to seek an increase in the offense level based on that post-agreement conduct); (b) Mr. Nozette will not have the right to withdraw the guilty plea; (c) Mr. Nozette shall be fully subject to criminal prosecution for any other crimes which he has committed or might commit, if any, including perjury and obstruction of justice; and (d) the United States will be free to use against Mr. Nozette, directly and indirectly, in any criminal or civil proceeding any of the information or materials provided by him pursuant to this cooperation agreement, including all statements he has made and all evidence he has produced during proffers, interviews,

Preston Burton, Esquire  
December 1, 2008  
Page 7

testimony, regardless of any constitutional provision, statute, rule, or agreement to the contrary. Mr. Nozette waives any right to claim that evidence presented in such prosecution is tainted by virtue of the statements he has made.

Any such prosecutions of the defendant 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 running of the applicable statute of limitations before the commencement of such prosecutions. Mr. Nozette knowingly and voluntarily agrees to waive any and all defenses based on the statute of limitations for any prosecutions commenced pursuant to the provisions of this paragraph.

12. In the event of a dispute as to whether Mr. Nozette has knowingly given materially false, incomplete or misleading information in fulfilling the terms of his cooperation agreement or whether Mr. Nozette has knowingly committed any other material breach of this agreement, and if the United States wants to exercise its rights under this agreement, and if Mr. Nozette so requests, the matter shall be submitted to the Court and shall be determined by the Court in an appropriate proceeding at which Mr. Nozette's disclosures and documents shall be admissible and at which time the United States shall have the burden to establish the same by a preponderance of the evidence.

13. **Presence of Counsel** : At all briefing and interviewing sessions conducted by investigators and/or attorneys for the government, Mr. Nozette shall be entitled to the presence, advice, and assistance of counsel, unless waived.

14. **Offices Bound**: Mr. Nozette understands that this agreement is binding only upon the Criminal and Civil Divisions of the United States Attorney's Offices for the District of Columbia and the District of Maryland, the Civil Division of the Department of Justice, and the Tax Division of the Department of Justice, Northern Criminal Enforcement Section. This agreement does not bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against Mr. Nozette.

15. **Waiver of Appeal and Venue**: Mr. Nozette is aware that federal law, specifically 18 U.S.C. § 3742, affords him the right to appeal his sentence. The defendant is aware that the parties' calculation of the sentencing range under the Sentencing Guidelines is not a promise of the sentence to be imposed on him and is not binding on the Judge. Knowing that, Mr. Nozette waives the right to appeal his sentence or the manner in which it was determined pursuant to 18 U.S.C. § 3742, except to the extent that (a) the Court sentences Mr. Nozette to a period of imprisonment


Preston Burton, Esquire  
December 1, 2008  
Page 8

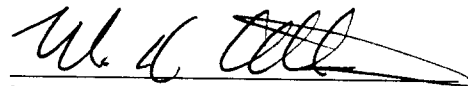
longer than the statutory maximum, (b) the Court departs upward from the applicable Sentencing Guideline range pursuant to the provisions of U.S.S.G. §§ 5K2, or (c) the Court imposes a sentencing enhancement pursuant to §3D1.4 and, in so doing, imposes a period of incarceration above a total offense level of 17. Further, defendant reserves his right to make a collateral attack upon his sentence pursuant to 28 U.S.C. § 2255 if new and currently unavailable information becomes known to him. In agreeing to this waiver, Mr. Nozette is aware that his sentence has not yet been determined by the Judge. Realizing the uncertainty in estimating what sentence the Judge will ultimately impose, Mr. Nozette knowingly and willingly waives his right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the USAO in this agreement. Mr. Nozette also knowingly and willingly waives his right, if any, to challenge the plea agreement or appeal the sentence based on venue.

16. **Complete Agreement:** No other agreements, promises, understandings or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by Mr. Nozette, Mr. Nozette's counsel and an Assistant United States Attorney for the District of Columbia.

If the foregoing terms and conditions are satisfactory, Mr. Nozette may indicate his assent by signing the agreement in the space indicated below and returning the original to me once it has been signed by Mr. Nozette and his counsel.

Truly yours,

  
JEFFREY A. TAYLOR  
UNITED STATES ATTORNEY  
DISTRICT OF COLUMBIA

By:   
MICHAEL K. ATKINSON  
Assistant United States Attorney  
District of Columbia



Preston Burton, Esquire  
December 1, 2008  
Page 9

Rosemary E. Paguni / KID with approval  
ROSEMARY E. PAGUNI, CHIEF  
U.S. DEPARTMENT OF JUSTICE  
NORTHERN CRIMINAL  
ENFORCEMENT SECTION

By: Kenneth P. Vert  
KENNETH C. VERT  
Trial Attorney

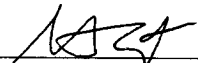
Rod J. Rosenstein / STD with approval  
ROD J. ROSENSTEIN  
UNITED STATES ATTORNEY  
DISTRICT OF MARYLAND

Preston Burton, Esquire  
December 1, 2008  
Page 10

I have read this plea agreement and have discussed it with my attorney, Preston Burton, Esquire. I fully understand this agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this agreement fully. I am pleading guilty because I am in fact guilty of the offense(s) identified in paragraph one.

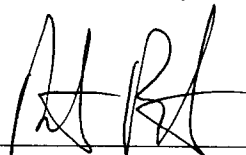
I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this plea agreement. I am satisfied with the legal services provided by my attorney in connection with this plea agreement and matters related to it.

Date: 11 December 2008

  
\_\_\_\_\_  
Stewart D. Nozette  
Defendant

I have read each of the pages constituting this plea agreement, reviewed them with my client, and discussed the provisions of the agreement with my client, fully. These pages accurately and completely set forth the entire plea agreement. I concur in my client's desire to plead guilty as set forth in this agreement.

Date: 11 December 2008

  
\_\_\_\_\_  
Preston Burton  
Attorney for the Defendant