



U. S. Department of Justice

United States Attorney  
Northern District of Iowa

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Sioux City, IA 51101

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November 4, 2015

Mr. Leon F. Spies, Esq.  
Mellon & Spies, Attorneys  
312 E. College Street, Suite 216  
Iowa City, Iowa 52240

Re: *United States v. Thomas A. Munson*

Dear Mr. Spies:

This letter will serve as a memorandum of a sixth proposed plea agreement between the United States Attorney's Office for the Northern District of Iowa and Thomas A. Munson, defendant. All references to the "United States" or "government" in this sixth proposed plea agreement refer to the United States Attorney's Office for the Northern District of Iowa and to no other governmental entity. **This sixth proposed plea agreement will expire on November 6, 2015 at 5:00 p.m. unless otherwise extended by the government. The proposed plea agreements of November 10, 2014, September 4, 2015, September 23, 2015, October 1, 2015, and October 28, 2015 have expired and/or were rejected by defendant.**

**CHARGES AND PENALTIES**

1. JAM Defendant will waive Indictment and plead guilty to an Information that will charge one count of embezzling, stealing, purloining, converting to his own use, and concealing human remains in the possession of the United States in violation of 18 U.S.C. § 641.

2. JAM Defendant understands that Count 1 of the Information is punishable by the following maximum penalties: (1) not more than one year's imprisonment without the possibility of parole or a term of probation of not more than five years; (2) a fine of not more than \$100,000; (3) a mandatory special assessment of \$25; and (4) a term of supervised release of not more than one year.

3. JAM Defendant may be subject to the alternative fine provisions of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on

**EXHIBIT 1**

(Plea)

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defendant is the greatest of the following amounts: (1) twice the gross gain to defendant resulting from the offense; (2) twice the gross loss resulting from the offense; (3) \$100,000; or (4) the amount specified in the section defining the offense.

4. Sam Defendant understands restitution and a term of supervised release following incarceration may be imposed in addition to any other sentence. Defendant further acknowledges that, if defendant violates, at any time, any condition of supervised release, defendant could be returned to prison for the full term of supervised release and the Court is not required to grant credit for any amount of time defendant may have successfully completed on supervised release. Defendant also understands the U.S. Sentencing Guidelines will provide advisory guidance to the Court in determining a sentence in this case.

5. Sam At the time the guilty plea is entered, defendant will admit that defendant is guilty of the charge specified in Paragraph 1 of this agreement. The U.S. Attorney's Office for this District will file no additional Title 16 Archaeological Resources Protection Act-related or Title 18 false statement or obstruction-related or theft-related criminal charges based solely upon information now in our possession. If this office becomes aware of evidence of additional crimes warranting criminal prosecution, all information in our possession could be used in such a prosecution.

#### NON-COOPERATION

6. Sam Defendant understands and concedes that, although defendant is not required by the terms of this plea agreement to testify before any Court or grand jury, the United States may take the prescribed actions under 18 U.S.C. § 6001, *et. seq.* or any other applicable provision of law to compel defendant's testimony. Defendant agrees that, if defendant refuses to testify after being granted immunity and ordered by the Court to testify, defendant may be found to be in contempt of court and may be punished in accordance with Federal Rule of Criminal Procedure 42 and 18 U.S.C. §§ 401 and 402. Further, the United States Attorney's Office shall be permitted to pursue any other action available to require defendant's testimony or punish defendant's refusal to testify subsequent to any order requiring defendant to testify. Defendant understands and agrees that, because defendant is not cooperating with the government, the United States will not recommend any decrease under §5K1.1 or any other provision of the United States Sentencing Guidelines or under 18 U.S.C. § 3553(e) or any other provision of law.

**STIPULATION OF FACTS**

7. JAM By initialing each of the following paragraphs, defendant stipulates to the following facts. Defendant agrees these facts are true and may be used to establish a factual basis for defendant's guilty plea and sentence. Defendant has been advised by defendant's attorney of defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Defendant waives these rights and agrees this stipulation may be used against defendant at any time in any proceeding should defendant violate or refuse to follow through on this plea agreement, regardless of whether the plea agreement has been accepted by the Court. Defendant agrees that the stipulation below is a summary of the facts against defendant and does not constitute all of the facts the government would be able to prove at trial and may be able to prove to the Court in accordance with this agreement.

- a) JAM Thomas A. Munson, defendant, was an employee of the National Park Service from July of 1964 to May 1994 and served as Superintendent at Effigy Mounds National Monument from February 1971 until his retirement in May of 1994.
- b) JAM The Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001 - 3013, enacted on November 16, 1990, established a regulatory system with the goal of transferring ownership, inventorying and returning Native American "cultural items" in the possession of federal agencies and museums to those lineal descendants or tribal organizations with a cultural affiliation to the human remains and associated funerary objects. 25 U.S.C. §§ 3001 – 3013.
- c) JAM As part of the enforcement regime, the Act provided for civil penalties for failing to comply with the Act, *see* 25 U.S.C. § 3007 and judicial enforcement of the Act. 25 U.S.C. § 3013.
- d) JAM Effigy Mounds National Monument located in Allamakee County, Iowa and operated by the National Park Service was established by a Presidential Proclamation by Harry S. Truman on October 25, 1949 under the Antiquities Act of 1906. The monument was established primarily to protect over 200 known prehistoric earthen burial mounds, some in the shape of

animals, constructed between 700 and 2,500 years ago. The monument land is held in fee simple by the National Park Service, United States Department of the Interior. The monument is an area of concurrent federal jurisdiction.

- e) *JAM* The following tribes are affiliated with Effigy Mounds National Monument -- and for the purposes of this case -- are (along with the National Park Service) defendant's victims pursuant to the Victim and Witness Protection Act, Title I of the Justice for All Act, and the regulations promulgated under the Act by the Attorney General of the United States: (1) Iowa Tribe of Kansas and Nebraska; (2) Iowa Tribe of Oklahoma; (3) Otoe-Missouri Tribe of Oklahoma; (4) Ho-Chunk Nation of Wisconsin; (5) Winnebago Tribe of Nebraska; (6) Upper Sioux Community of Minnesota; (7) Shakopee Mdewakanton Sioux Community of Minnesota; (8) Lower Sioux Indian Community of Minnesota; (9) Prairie Island Indian Community of Minnesota; (10) Sac and Fox Tribe of the Mississippi in Iowa; (11) Sac and Fox Nation of Missouri in Kansas and Nebraska; and (12) Sac and Fox Nation of Oklahoma.
- f) *JAM* No later than July 16, 1990, defendant decided to voluntarily, intentionally and knowingly remove skeletal prehistoric human remains from the Effigy Mounds National Monument collection to which they belonged.
- g) *JAM* On or about July 16, 1990, S.G. and defendant each carried a box of human remains from the Effigy Mounds National Monument curatorial facility to Munson's car. Munson drove the items to his Prairie du Chien, Wisconsin home where he concealed them and covered them up for more than twenty years. At all times, defendant knew the boxes contained human remains from the Effigy Mounds National Monument.
- h) *JAM* On May 17, 2012, defendant allowed a Special Agent to search his home's garage. The Special Agent then located the second box of human remains. The contents of the box were marked with Effigy Mounds catalogue numbers. Munson stated he knew both boxes contained human remains and were in his



garage the whole time.

- i) JAM Several of the human bones were broken or fragmented beyond recognition. As a direct result of defendant's crimes the National Park Service has already spent \$83,905 and will be required to spend at least another \$25,000 in restoration and repair costs. Defendant is, therefore, responsible for at least \$108,905 in restitution to the National Park Service.
- j) JAM Sometime between about July 16, 1990 and May 17, 2012 in the Northern District of Iowa and elsewhere, the defendant, did knowingly conceal and cover up a tangible object (*i.e.*, whole and fragmentary prehistoric human remains and related objects from Effigy Mounds National Monument).
- k) JAM From about July 16, 1990 to about May 17, 2012 in the Northern District of Iowa and elsewhere, the defendant, willfully and knowingly did embezzle and convert to his own use human remains in the possession of the United States, which had come into the possession and under the care of defendant by virtue of his employment as Superintendent at Effigy Mounds National Monument, National Park Service, Department of the Interior.
- l) JAM Defendant, had a trust or fiduciary relationship with the United States and the Tribes associated with the Effigy Mounds.
- m) JAM The human remains came into the possession or care of the defendant by virtue of his employment as Superintendent at Effigy Mounds National Monument.
- n) JAM The human remains were in the possession of the United States and the Tribes associated with Effigy Mounds.
- o) JAM The defendant's dealings with the human remains (*e.g.*, his removal of them from the park, concealing of them for twenty-two years, *etc.*) constituted a fraudulent conversion or appropriation of the human remains to his own use.

- p) JAM The defendant acted with the intent to deprive the United States and the Tribes associated with the Effigy Mounds possession and use of the human remains.

### SENTENCING PROVISIONS

8. JAM Defendant understands and agrees to be sentenced based on facts to be found by the sentencing judge by a preponderance of the evidence and agrees facts essential to the punishment need not be (1) charged in the Information; (2) proven to a jury; or (3) proven beyond a reasonable doubt. Defendant agrees the Court will determine the appropriate sentence after considering a variety of factors, including: (1) the nature and circumstances of the offense and the history and characteristics of defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence to afford adequate deterrence to criminal conduct; (4) the need for the sentence to protect the public from further crimes of defendant; (5) the need for the sentence to provide defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (6) the need to avoid unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. Defendant understands the Court will also consider the kinds of sentence and the sentencing range established by the United States Sentencing Guidelines for the applicable category of offense(s) committed by defendant and will consider any pertinent policy statements issued as part of the Guidelines. The Court will consider relevant adjustments under the United States Sentencing Guidelines, which will include a review of such things as defendant's role in the offense, criminal history, acceptance or lack of acceptance of responsibility, and other considerations. The Court may also consider other information including any information concerning the background, character, and conduct of defendant.

9. JAM The parties agree that the appropriate sentence to be imposed is a one-year term of probation which would include, at least, conditions that: (1) defendant serve 12 months' home detention to include intermittent confinement on 10 consecutive weekends; and (2) defendant complete, during his term of home detention (at the direction, and to the satisfaction, of United States Probation) 100 hours of community service. The parties further agree that, no later than three business days prior to the date scheduled for defendant's sentencing, defendant



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shall submit a written “public acknowledgment of guilt and apology” to (1) the Tribes associated with the Effigy Mounds Nation Monument (*i.e.*, (A) Iowa Tribe of Kansas and Nebraska; (B) Iowa Tribe of Oklahoma; (C) Otoe-Missouri Tribe of Oklahoma; (D) Ho-Chunk Nation of Wisconsin; (E) Winnebago Tribe of Nebraska; (F) Upper Sioux Community of Minnesota; (G) Shakopee Mdewakanton Sioux Community of Minnesota; (H) Lower Sioux Indian Community of Minnesota; (I) Prairie Island Indian Community of Minnesota; (J) Sac and Fox Tribe of the Mississippi in Iowa; (K) Sac and Fox Nation of Missouri in Kansas and Nebraska; and L) Sac and Fox Nation of Oklahoma); (2) the National Park Service; and (3) any interested media including the following (A) the Sioux City Journal; (B) the Waterloo-Cedar Falls Courier; (C) the Dubuque Telegraph Herald; (D) the Cedar Rapids Gazette, (E) the Des Moines Register, (F) Indianz (at <http://www.indianz.com>); (G) Pechanga (at <http://www.pechanga.net>); and (H) Indian Country Today (at <http://indiancountrytodaymedianetwork.com>). This “public acknowledgment of guilt and apology” is subject to the approval of the United States Attorney and defendant must provide a final version of the document to the United States Attorney for approval and editing no later than 30 days following the entry of defendant’s guilty plea. Additionally, defendant must produce an audio and visual digital recording of himself reading the “public acknowledgment of guilt and apology” for dissemination, by the United States Attorney’s Office to (1) the Tribes associated with the Effigy Mounds Nation Monument; and (2) the National Park Service. This recording of the “public acknowledgment of guilt and apology” is also subject to the approval of the United States Attorney and defendant must provide a final version of the document to the United States Attorney for approval and editing no later than 30 days following the entry of defendant’s guilty plea.

10. *Jm* Defendant, defendant’s attorney, and the United States may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing, or any other proceeding related to this case, so long as the offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information and controlling authority to the Probation Office and Court for use in preparing and litigating adjustments, enhancements, or departures scored in the presentence report, including offering statements made by defendant at any time.

11. *Jm* The parties are free to contest or defend any ruling of the Court unless otherwise limited by this agreement, on appeal or in any other post-conviction proceeding.

12. Sam Defendant understands that, pursuant to the Victim and Witness Protection Act, Title I of the Justice for All Act, and the regulations promulgated under the Act by the Attorney General of the United States:

- A. The victim of a crime is given the opportunity to comment on the offense and make recommendations regarding the sentence to be imposed. Defendant understands the victim's comments and recommendations may be different from those of the parties to this agreement.
- B. The government is required to consult with victims of serious crimes to obtain their views regarding the appropriate disposition of the case against defendant and to make any such information regarding sentencing known to the Court. Defendant understands any victim's opinions and recommendations may be different from those presented by the government.
- C. The government is required to "fully advocate the rights of victims on the issue of restitution unless such advocacy would unduly complicate the sentencing proceeding," and the Court is authorized to order restitution by defendant to victims of crime, including, but not limited to, restitution for property loss, personal injury, or death.

#### **CONDITIONS OF SUPERVISION**

13. Sam If probation or a term of supervised release is ordered, the parties are free to seek whatever conditions they deem appropriate consistent with the other provisions of this plea agreement.

#### **FINANCIAL MATTERS**

14. Sam Defendant agrees to pay a special assessment of \$25 per count, for a total of \$25, as required by 18 U.S.C. § 3013. Defendant may pay the special assessment to the Clerk of Court by credit card or use the enclosed payment coupon. Defendant or defendant's representative will send or deliver the special assessment payment to the U.S. District Clerk of Court, 111 Seventh Avenue, SE, Box 12, Cedar Rapids, IA 52401. If defendant does not pay the Clerk of Court by credit card, payment must be in the form of a money order made out to the "U.S. District Clerk of Court." The special assessment must be paid before this signed agreement is returned to the U.S. Attorney's Office. If defendant fails to pay the special assessment prior to the sentencing, defendant stipulates that a downward



adjustment for acceptance of responsibility under USSG §3E1.1 is not appropriate unless the Court finds defendant has no ability to pay prior to the sentencing.

15. *SM* Defendant agrees to pay restitution to all victims in this case, including relevant conduct victims. This restitution obligation shall include, but may not be limited to, \$108,905 to the National Park Service for the restoration and repair of archeological resource (including repatriation and reburial costs). Defendant understands that, because restitution is mandatory, the amount of restitution shall be imposed regardless of defendant's financial resources. Any restitution obligation should be paid to the Clerk of Court for eventual disbursement to the victim(s). Complete restitution shall be due and payable at or before the time of sentencing. Defendant agrees to cooperate in efforts to collect the restitution obligation, by *e.g.*, set-off of program payments, execution on exempt and non-exempt property or any other means the United States deems appropriate. Defendant understands imposition or payment of restitution will not restrict or preclude the filing of any civil suit or administrative action. Defendant agrees any restitution imposed will be non-dischargeable in any bankruptcy proceeding and defendant will not seek a discharge or a finding of dischargeability as to the restitution obligation.

16. *SM* Defendant agrees to fully and truthfully complete the enclosed financial statement form. Further, upon request, defendant agrees to provide the U.S. Attorney's Office with any information or documentation in defendant's possession or control regarding defendant's financial affairs and agrees to submit to a debtor's examination when requested. Defendant agrees to provide this information whenever requested until such time any judgment or claim against defendant, including principal and interest, is satisfied in full. This information will be used to evaluate defendant's capacity to pay any claim or judgment against defendant.

### **GENERAL MATTERS**

17. *SM* Defendant shall not violate any local, state, or federal law during the pendency of this agreement. Any law violation, with the exception of speeding or parking violations, committed by defendant will constitute a breach of this agreement and may result in the revocation of the entire agreement or any of its terms. Defendant or defendant's attorney shall notify this office within 48 hours if defendant is questioned, charged, or arrested for any law violation.

18. JAW If defendant violates any term or condition of this plea agreement, in any respect, the entire agreement will be deemed to have been breached and may be rendered null and void by the United States. Defendant understands, however, the government may elect to proceed with the guilty plea and sentencing. These decisions shall be in the sole discretion of the United States. If defendant does breach this agreement, defendant faces the following consequences: (1) all testimony and other information defendant has provided at any time (including any stipulations in this agreement) to attorneys, employees, or law enforcement officers of the government, to the Court, or to the federal grand jury may and will be used against defendant in any prosecution or proceeding; (2) the United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions; and (3) the United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

19. JAW Defendant waives all claims defendant may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment to the Constitution. Defendant also agrees any delay between the signing of this agreement and the final disposition of this case constitutes excludable time under 18 U.S.C. § 3161 et seq. (the Speedy Trial Act) and related provisions.

#### WAIVER OF APPEAL

20. JAW After conferring with defendant's attorney and after being advised of defendant's appeal rights, defendant knowingly and voluntarily waives defendant's right to appeal the conviction and the sentence imposed, or to request or receive any reduction in sentence by operation of 18 U.S.C. § 3582(c)(2). Defendant also waives the right to file post-conviction relief actions, including actions pursuant to 18 U.S.C. § 3582(c)(2), 28 U.S.C. § 2255, 28 U.S.C. § 2241, *coram nobis*, and motions to reconsider or reduce defendant's sentence. Defendant retains the right to appeal or contest defendant's sentence in the following limited circumstances: (1) if the sentence is not in accordance with this plea agreement; (2) if the sentence imposed exceeds the maximum statutory penalty; and (3) if the sentence is constitutionally defective. This waiver does not, however, prevent defendant from challenging the effectiveness of defendant's attorney after conviction and sentencing. Defendant does not have any complaints at this time about the effectiveness of defendant's attorney. The waivers set out above relate to any issues



that now exist or that may arise in the future. Defendant agrees to these waivers in order to induce the government to accept the provisions and stipulations of this plea agreement, to avoid trial, and to have defendant's case finally concluded. Defendant understands that, at the conclusion of the sentencing hearing, the Court will note defendant's appeal rights are limited by this waiver. No assurances or promises have been made by any party as to what defendant's ultimate sentence will be.

**ACKNOWLEDGMENT OF DEFENDANT'S UNDERSTANDING**

21. *Sam* Defendant acknowledges defendant has read each of the provisions of this entire plea agreement with the assistance of counsel and understands its provisions. Defendant has discussed the case and defendant's constitutional and other rights with defendant's attorney. Defendant understands that, by entering a plea of guilty, defendant will be giving up the right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in defendant's defense; to remain silent and refuse to be a witness by asserting defendant's privilege against self-incrimination; and to be presumed innocent until proven guilty beyond a reasonable doubt. Defendant agrees defendant's attorney has represented defendant in a competent manner and has no complaints about that lawyer's representation. Defendant states defendant is not now on or under the influence of, any drug, medication, liquor, or other substance, whether prescribed by a physician or not, that would impair defendant's ability to fully understand the terms and conditions of this plea agreement.

22. *Sam* Defendant acknowledges that prior plea offers including those dated November 10, 2014, September 4, 2015, September 23, 2015, October 1, 2015, and October 28, 2015 have expired and/or were rejected. Defendant agrees defendant was notified of the plea offers and defendant had a full and complete opportunity to discuss the offers with defense counsel prior to the expiration or rejection dates.

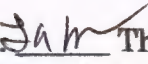
23. *Sam* Defendant acknowledges defendant is entering into this plea agreement and is pleading guilty freely and voluntarily because defendant is guilty and for no other reason. Defendant further acknowledges defendant is entering into this agreement without reliance upon any discussions between the government and defendant (other than those specifically described in this plea agreement), without promise of benefit of any kind (other than any matters contained in this plea agreement), and without threats, force, intimidation, or coercion of any kind. Defendant further acknowledges defendant's understanding of the nature of each



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offense to which defendant is pleading guilty, including the penalties provided by law.

**VERIFICATION**

24  This letter constitutes the entire agreement between the parties. No other promises of any kind, express or implied, have been made to defendant by the United States or its agents. No additional agreement may be entered into unless in writing and signed by all parties. The agreement will not be deemed to be valid unless and until all signatures appear where indicated below.

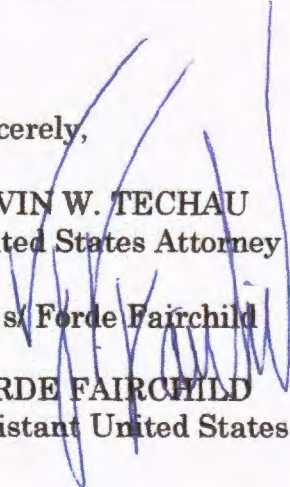
If this agreement is acceptable, please have your client indicate acceptance by placing initials on the line preceding each of the above paragraphs and by signing below where indicated. By initialing each paragraph and signing below, defendant acknowledges defendant has read, fully understands, and agrees to each paragraph of this agreement. Please return all enclosures, completed and signed, with this signed letter to the U.S. Attorney's Office.

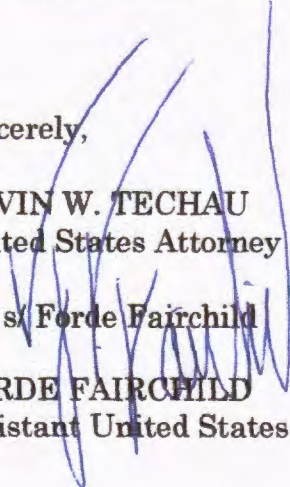
Enclosed are a Waiver of Indictment, the Information, and Consent to Proceed Before a United States Magistrate. After the signed waiver and consent are returned, they will be filed with the Information. The government will ask the Court to schedule a guilty plea hearing. The Information is your file copy.

Finally, please remember to pay the special assessment as agreed above.

Thank you for your cooperation.

Sincerely,

  
KEVIN W. TECHAU  
United States Attorney

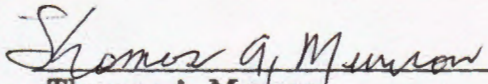
By, s/  Forde Fairchild  
FORDE FAIRCHILD  
Assistant United States Attorney

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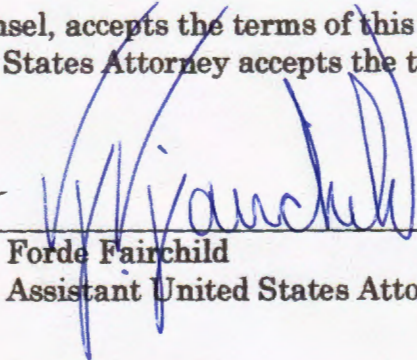
**ENCLOSURES:**

Financial Statement Form  
Special Assessment Payment Coupon  
Waiver of Indictment  
Consent to Proceed Before Magistrate Judge

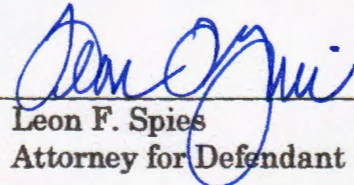
The undersigned defendant, with advice of counsel, accepts the terms of this plea agreement. The undersigned Assistant United States Attorney accepts the terms of the executed plea agreement.

  
\_\_\_\_\_  
Thomas A. Munson  
Defendant

11/06/2015  
Date

  
\_\_\_\_\_  
Forde Fairchild  
Assistant United States Attorney

11/19/15  
Date

  
\_\_\_\_\_  
Leon F. Spies  
Attorney for Defendant

Nov. 6. 2015  
Date