



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
LABOR BUREAU

**PLEA AGREEMENT**

1. This is the plea agreement between the State of New York Office of the Attorney General ("OAG") and defendant Double "O" Landscaping Inc. ("Defendant Company"). This memorandum constitutes the entire agreement between the Defendant Company and OAG. This agreement supersedes any prior promises, agreements or conditions between the parties. No promises, agreements or conditions have been entered into other than those set forth in this agreement. No modification, deletion or addition to this agreement will be valid or binding on a party unless put into writing and signed by the parties. This agreement, which the parties shall request the First District Court, Criminal Court in Suffolk County to approve, will become effective immediately when signed by all the signatories listed below.

2. **The Plea and Related Terms:**

a. On a date determined by the OAG, Defendant Company shall surrender upon a felony complaint charging it with nine counts of Offering a False Instrument for Filing in the First Degree, under Penal Law § 175.35(1) (an E Felony), nine counts of Falsifying Business Records in the First Degree, under Penal Law § 175.10 (an E Felony), three counts of Failure to Pay Wages, under Labor Law § 198-a(1) (an unclassified misdemeanor), and four counts of Willful Failure to Pay Unemployment Insurance Contributions, under Labor Law § 633 (an unclassified misdemeanor), and it shall appear to be arraigned in the First District Court, Criminal Court in Suffolk County. At arraignment on the felony complaint, Defendant Company shall waive speedy trial and shall agree to adjourn the case for disposition. Defendant Company agrees to waive prosecution by information and consents to be prosecuted upon the felony complaint and superior court information.

b. On the first appearance or first adjourn date in the First District Court, Criminal Court in Suffolk County, Defendant Company agrees to plead guilty to the crime of Falsifying Business Records in the First Degree, under Penal Law § 175.10 (an E Felony). This plea shall be in full satisfaction of any crimes that could be charged in connection with the employment of landscapers for any violations of the Labor Law or the Penal Law between April 2011 and December 2013.

c. This Agreement, which the parties shall request the First District Court, Criminal Court in Suffolk County to approve, will become effective only upon the Court's approval. Upon the Court's approval, Defendant Company will plead guilty as set forth above in paragraph 2(b). At the time of its plea, Defendant Company will waive all defenses and all rights of appeal.

d. Defendant Company is represented by its attorney, Paul Kalker, Esq. Defendant Company agrees that it has been advised of, and understands, the nature of the charges against it, the elements of the offenses with which it is charged, and the range of permissible sentences,

including a fine of not less than \$500.00 nor more than \$20,000, or double the amount of the Defendant Company's gain from the commission of the crime, a conditional discharge, and restitution.

e. By pleading guilty, Defendant Company is giving up the following rights, which it has discussed with its attorneys:

- 1) Defendant Company understands that by pleading guilty it is giving up its right to a trial. Defendant Company understands that by pleading guilty it is giving up its right to have the People produce witnesses to testify against it.
- 2) Defendant Company understands that by pleading guilty it is giving up its right to have its attorneys cross-examine any witnesses who may testify against it.
- 3) Defendant Company understands that by pleading guilty it is giving up its right to have its attorneys produce witnesses to testify for it.
- 4) Defendant Company understands that by pleading guilty it is giving up its right to remain silent and the right to either testify or not testify at trial.
- 5) Defendant Company understands that by pleading guilty it is giving up its right to have the People prove its guilt beyond a reasonable doubt.
- 6) Defendant Company understands that by pleading guilty its plea will operate just like a conviction of guilty after a jury trial.
- 7) Defendant Company understands that by pleading guilty, if it has a defense to the charges, it is giving up the right to present that defense at trial.
- 8) Defendant Company understands that by pleading guilty it is giving up its right to claim that the police did anything illegal in regard to the charges, and the right to a hearing to determine if the police's conduct was, in fact, illegal.
- 9) Defendant Company understands that it has a right to have a restitution hearing and that it is giving up that right to have such a hearing.
- 10) Further, in consideration for and as part of the plea agreement in this matter, Defendant Company hereby waives and relinquishes its right to appeal from any judgment of conviction, and from any proceedings herein that may result from this prosecution. Defendant Company has been advised of the right to appeal, and the right to be represented by an attorney on appeal. It is Defendant Company's understanding and intention that this agreement will be a complete and final disposition of the matter. Defendant Company makes this waiver knowingly and voluntarily after having been fully advised of its rights by the Court and having had a full and fair opportunity to discuss these matters with its attorney.

11) Defendant Company waives any and all rights to any claim of defective jurisdiction under Article 20 of the Criminal Procedure Law as well as any claim under the period of limitations pursuant to Criminal Procedure Law § 30.10 that are applicable to the felony and misdemeanor charges in the charging instrument.

f. Defendant Company hereby agrees to enter a plea of guilty in accordance with the terms of the plea offer that has been made, having consulted with its attorney and having been advised of all of the rights listed above.

g. Defendant is represented by its attorney, Paul Kalker, Esq. Defendant acknowledges that its attorney is simultaneously representing co-Defendant Richard Orvieto. Defendant further acknowledges that it has been informed that its constitutional right to the assistance of counsel may be substantially impaired if its lawyer is jointly representing it and co-Defendant Richard Orvieto. Defendant acknowledges that it has been informed by counsel that there is a possible conflict of interest in such joint representation; for example, it and co-Defendant Richard Orvieto may have individual defenses to the crimes charged and covered by this Agreement that are contradictory or are inconsistent. In addition, Defendant further understands that it is entering into a plea agreement that is conditioned on co-Defendant Richard Orvieto entering into a plea agreement simultaneously, and that because they may have different levels of guilt, understands that a joint plea in such circumstances may rise to a potential conflict of interest. Defendant acknowledges that its decision to proceed with the same attorney is an informed exercise of its right to retain counsel of its own choice. Defendant further acknowledges that it has chosen to not retain separate counsel, and that its consent to continued representation by Paul Kalker, Esq. is being made voluntarily and intelligently.

h. Upon entering its guilty plea Defendant Company will allocute under oath concerning the following facts:

Between April 2011 and December 2013, Defendant Company was 100% owned by co-Defendant Richard Orvieto, residing at 24 Meadow Drive, Stony Brook, NY 11790. During the time, Defendant Company and co-Defendant Richard Orvieto employed numerous workers as landscapers ("the Workers") to perform work throughout Suffolk County New York. Defendant Company and co-Defendant Richard Orvieto failed to pay 3 Workers proper wages earned within seven calendar days after the end of the week in which said wages were earned. Specifically, the Defendant and co-Defendant Richard Orvieto failed to pay three (3) employees wages totaling \$13,032.00: \$3,737.00 to the person referred to as Worker 1 in the Complaint; \$4,754.00 to Worker 2; and \$4,541.00 to Worker 3. On or about January 31, 2014, Defendant Company and co-Defendant Richard Orvieto filed or caused to be filed a New York State Department of Taxation and Finance Form NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns with the State of New York and the Defendant Company and co-Defendant Richard Orvieto failed to record all of the remuneration and wages paid to all their employees for the 4<sup>th</sup> Quarter of 2013 with the intention of concealing the commission of the crime of the Failure to Pay Unemployment Insurance Contributions under Labor Law § 633.

**3. Restitution, Interest, Fraud Penalties, and Fines:** Defendant Company shall pay: (1) \$13,032.00 in restitution pursuant to Penal Law § 60.27 to the OAG for unpaid wages on behalf of the Workers; and (2) \$19,856.64 in restitution, interest, and fraud penalties to the New York State Department of Labor, Unemployment Insurance Division for violations of Labor Law § 633. Defendant Company shall be jointly liable to pay the restitution, interest, and fraud penalties with co-Defendant Richard Orvieto as follows:

a. On or before the date of arraignment, the Defendant Company will tender the sum of \$13,032.00 to the OAG for restitution for unpaid wages. Payment must be made by a certified check, bank check, money order or attorney escrow check payable to the "New York State Office of the Attorney General" and delivered to the Assistant Attorney General present at court or mailed to the Office of the Attorney General, c/o Assistant Attorney General Benjamin Holt, 120 Broadway, New York, NY 10271.

b. On or before the date of arraignment, the Defendant Company will tender the sum of \$3,412.42 to be applied to the restitution, interest, and fraud penalties to the New York State Department of Labor, Unemployment Insurance Division for violations of Labor Law § 633. This payment must be made by a certified check, bank check, money order or attorney escrow check payable to the "New York State Department of Labor, Unemployment Insurance Division" and delivered to the Assistant Attorney General present at court or mailed to the Office of the Attorney General, c/o Assistant Attorney General Benjamin Holt, 120 Broadway, New York, NY 10271. Within 90 days of the date that Defendant Company pleads guilty, the Defendant Company must deliver a certified check, bank check, money order or attorney escrow check for the remaining amount of restitution for unpaid unemployment insurance contributions, interest, and fraud penalties in the amount of \$16,444.32 payable to the "New York State Department of Labor, Unemployment Insurance Division" and delivered to the Assistant Attorney General present at court or mailed to the Office of the Attorney General, c/o Assistant Attorney General Benjamin Holt, 120 Broadway, New York, NY 10271.

c. If Defendant Company or co-Defendant Richard Orvieto do not pay the restitution, interest, and fraud penalties as described above, then Defendant Company will be deemed not in compliance with this agreement.

4. For a period of two years from the date that Defendant Company is sentenced, Defendant Company shall provide copies to the OAG of all New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns that Defendant Company files with the State of New York. The copies shall be mailed to the Office of the Attorney General, c/o Assistant Attorney General Benjamin Holt, 120 Broadway, New York, NY 10271.

5. It is a violation of this agreement if:

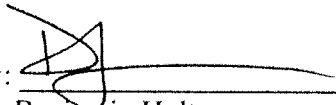
a. Defendant Company fails to deliver or mail the restitution, interest, and fraud penalty payments to the OAG as set forth in Paragraph 3; or

- b. Defendant Company violates the Labor Law or any term of this agreement or commits any other crime contained in either the Labor or Penal Laws of the State of New York before sentencing.
6. If the OAG, in its sole discretion, determines that the Defendant Company has fully complied with this agreement:
- a. The OAG will recommend that the Court sentence Defendant Company to a conditional discharge and payment of restitution, interest, and fraud penalties as noted above. The Court may impose a mandatory surcharge and the crime victims' assistance fee as well as any fine permissible under the Penal or Labor Laws.
- b. Defendant Company understands that the Court has the authority to impose any lawful sentence pursuant to the plea of guilty. The maximum permissible sentence for the crime of Falsifying Business Records in the First Degree under Penal Law § 175.10 is a fine of no more than \$5,000.00 dollars or double the amount of the Defendant Company's gain from the commission of the crime, a conditional discharge, and restitution.
7. If Defendant Company does not comply with this agreement in any respect, including failing to pay the restitution, interest, and fraud penalties prior to sentence as described above in paragraph 3, then the OAG reserves the right to withdraw the plea agreement.
8. It is further understood that acceptance of the plea and sentence specified in this agreement is subject to approval of the Court. In the event the Court does not approve the plea or sentence, the parties may agree to revise the terms in writing, such that it is acceptable to the Court, or either party, in writing, may terminate this agreement.
9. This Agreement is limited to the New York State Office of the Attorney General and cannot bind other government agencies.
10. The OAG and Defendant Company reserve all rights under the law to make statements or submissions to the Court in connection with sentencing, not inconsistent with the provisions of this agreement.

11. This agreement consists of 6 pages including the signatory pages.

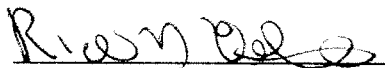
Dated: New York, New York  
June 23, 2015

ERIC T. SCHNEIDERMAN  
Attorney General of  
the State of New York


By:   
Benjamin Holt  
Assistant Attorney General

I, Richard Orvieto, as president of Double "O" Landscaping Inc., have read the entire agreement and certify that the statements made in it are true to the best of my knowledge. I understand all of its terms after fully and carefully consulting with my attorneys. My plea of guilty is given freely, voluntarily, knowingly, and without coercion of any kind. No threats or promises, other than the promises contained in this agreement, have been made to me to induce me to plead guilty. I am not under the influence of alcohol, drugs, or medication, nor is there any other mental or physical impairment, which prevents me from understanding these proceedings as my mind is clear and of sound judgment. I am entering into the plea contained in this agreement knowingly, intelligently and voluntarily, and have signed it in the presence of my counsel.

Dated: 11/11/15, New York  
June 22, 2015

  
Double "O" Landscaping Inc.  
By: Richard Orvieto, President

APPROVED BY:

  
Paul Kalker, Esq.  
Attorney for Double "O" Landscaping Inc.