

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

<p><b>UNITED STATES OF AMERICA</b></p> <p style="text-align: center;">v.</p> <p><b>HIGHWAY AND HEAVY PARTS, LLC,</b></p> <p style="text-align: center;"><b>Defendant.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Criminal No. 1:24-CR-124 (MAD)</p> <p><b>Rule 11(c)(1)(C) Plea Agreement</b></p>
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The United States of America, by and through its counsel of record, the United States Attorney for the Northern District of New York, and defendant **Highway and Heavy Parts, LLC** (hereinafter “the defendant”), by and through the defendant’s counsel of record, hereby enter into the following plea agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

- 1) **Corporate Authorization:** The undersigned representative is authorized to enter into this plea agreement on behalf of the defendant and thereby bind the defendant to the terms of the plea agreement as evidenced by the resolution of the defendant, attached to, and hereby incorporated by reference in, this plea agreement as Exhibit 1. The defendant further agrees and acknowledges that the plea of guilty will be entered by the defendant through its undersigned attorney and that the undersigned attorney is authorized to enter the plea of guilty on the defendant’s behalf.
  
- 2) **The Defendant’s Obligations:**
  - a) **Guilty Plea:** The defendant will waive indictment and plead guilty to Count 1 of the indictment in Case No. 1:24-cr-124 (MAD) charging conspiracy to violate the Clean Air Act, in violation of 18 U.S.C. § 371.
  
  - b) **Special Assessment:** The defendant will pay an assessment of \$400 per count of conviction pursuant to 18 U.S.C. § 3013. The defendant agrees to deliver a check or money

order to the Clerk of the Court in the amount of \$400, payable to the U.S. District Court, at the time of sentencing.

- c) **Compliance with Other Terms of Agreement:** The defendant will comply in a timely manner with all of the terms of this plea agreement.
  - d) **Access to Records:** The defendant authorizes the U.S. Attorney's Office to inspect and copy all financial documents and information provided by the defendant to the U.S. Probation Office, including those provided as a part of the Presentence Investigation. If requested, the defendant will provide any privacy waivers, consents, or releases requested by the U.S. Attorney's Office to access records to verify the defendant's financial disclosures, and if requested will complete a further financial statement provided by the U.S. Attorney's Office as well as any supporting financial documentation to the Asset Recovery Unit of the U.S. Attorney's Office no later than 10 days after receiving such a request.
  - e) **No Transfer of Assets:** The defendant certifies that the defendant has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by this plea agreement and/or that may be imposed by the Court. In addition, the defendant promises not to make any such transfers in the future.
- 3) **The Government's Obligations:**
- a) **Non-prosecution for other offenses:** For so long as the defendant's guilty plea and the sentence remain in effect, the government will not seek other federal criminal charges against the defendant based on conduct described in the indictment in Case No. 1:24-cr-124 (MAD) and/or in the paragraph of this agreement entitled "Factual Basis for Guilty

Plea,” occurring before the date on which the defendant signs this agreement. This agreement does not prevent the government from seeking charges based on other conduct.

- b) **Compliance with Other Terms of Agreement:** The government will comply in a timely manner with all of the terms of this plea agreement.
- 4) **Agreed-Upon Disposition:** Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Government and the defendant agree that the sentence of a fine of \$25,000 and a special assessment of \$400 is the appropriate disposition of this case. The United States Attorney’s Office and the defendant agree that, to the extent the agreed-upon disposition departs from the applicable sentencing guidelines range, that departure would be made for justifiable reasons under U.S.S.G. §6B1.2(c)(2). In particular, the specified sentence is reasonable and appropriate under the unique combination of facts and circumstances relating to the defendant, the offense of conviction, and related relevant conduct.
- 5) **Potential Maximum Penalties:** The defendant understands that the Court can impose the following maximum penalties for the offense to which the defendant agrees to plead guilty and may be required to impose mandatory minimum terms of imprisonment, all as set out below:
- a) **Maximum fine:** \$500,000, pursuant to 18 U.S.C. § 3571(c)(3).
  - b) **Maximum term of Probation:** 5 years, pursuant to 18 U.S.C. § 3561(c).
  - c) **Other adverse consequences:** Other adverse consequences may result from the defendant’s guilty plea as further described in paragraph F below.
- 6) **Elements of Offense:** The defendant understands that the following are the elements of the offense to which the defendant agrees to plead guilty. The defendant admits that the defendant’s conduct satisfies each and every one of these elements.
- a) First, two or more persons entered the unlawful agreement charged in the indictment;

- b) Second, the defendant knowingly and willfully became a member of the conspiracy;
- c) Third, at some point during the existence of the agreement or conspiracy, at least one of its members performed at least one of the overt acts charged in the indictment; and
- d) Fourth, the overt act or acts were committed to further some objective of the conspiracy.

7) **Factual Basis for Guilty Plea:** The defendant admits the following facts, that those facts demonstrate the defendant's guilt for the offense to which the defendant is pleading guilty, and that there are no facts establishing a viable defense to that offense:

- a) At all relevant times, the defendant was a limited liability company engaged in the sale of diesel engine parts and equipment headquartered in Coleman, Michigan.
- b) The defendant, through its corporate officers and employees, conspired and agreed with others to facilitate after-market modifications to diesel vehicles, including by tampering with emission control monitoring devices and methods, that violated the Clean Air Act. The after-market modifications included both software and hardware modifications, and the defendant was paid by customers for coordinating and facilitating the tampering work performed by others, including Kyle Offringa ("Offringa"), who was employed by North American Diesel Parts ("NA Diesel").
- c) Diesel vehicles contain "on board diagnostic" (OBD) systems required by the Clean Air Act, which monitor a vehicle's emission controls to ensure they are functioning properly. If an emissions-related malfunction or problems occurs, the OBD system causes a malfunction indicator light (MIL) to be illuminated on the vehicle's dashboard and a diagnostic trouble code (DTC) to be stored in the OBD's memory. These functions facilitate the detection and diagnosis of a malfunction in the emission control system. If the malfunction is significant and is not resolved, the OBD system may limit the top speed

of some vehicles to as low as five miles per hours (an effect commonly referred to as “limp mode” or “power reduced mode”), providing an incentive for the vehicle’s operator to seek repairs.

- d) Tampering with an OBD system (also known as “tuning” or “deleting” a vehicle) allows the vehicle to continue to seemingly operate normally while the emissions control system is disabled, which reduces the high costs associated with maintaining and repairing components of the emission control systems on diesel vehicles while allowing the vehicle to emit substantially more pollutants into the atmosphere, including nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and non-methane hydrocarbons (NMHC).
- e) The defendant knew that the diesel vehicles it conspired to modify contained OBDs mandated by the Clean Air Act, but it agreed with Offringa and others to tamper with the OBDs to allow customers to operate the vehicles on public roadways illegally and in a manner injurious to the environment and to public health. The defendant also assisted customers in making hardware modifications to diesel vehicles, including by instructing them, through its corporate officers and employees, on the removal of physical exhaust system components such as tailpipes and mufflers and replacing them with so-called straight pipes that lack diesel particulate filters and other components designed to reduce harmful emissions.
- f) From June 5, 2017 through March 27, 2019, the defendant, through its corporate officers and employees, conspired with NA Diesel, Offringa, and its customers, including DAIM Logistics, Inc. (“DAIM Logistics”), Patrick Oare (“Oare”), and others to tamper with the emission control monitoring devices and systems of numerous diesel vehicles. As part of the conspiracy, the defendant referred its customers seeking delete tunes to Offringa, who

was employed by NA Diesel. Offringa then performed the delete tunes. The defendant's customers typically paid it \$1,250 to \$1,750 per modification, of which the defendant kept \$250 and remitted the remainder to NA Diesel and Offringa. The modifications performed by Offringa prevented the emission control monitoring devices, including the OBD systems, from functioning properly, resulting in the excess emissions of hazardous and toxic substances into the environment.

g) In furtherance of the conspiracy, the defendant performed numerous overt acts through its corporate officers and employees, including (i) receiving OBD components shipped by DAIM Logistics and Oare in the Northern District of New York to its headquarters in Coleman, Michigan, and in turn shipping the components to Offringa, who tuned the OBDs to bypass Clean Air Act regulatory emissions monitoring software and then shipped the OBDs back to DAIM Logistics in the Northern District of New York; (ii) communicating through texts, calls, and emails with Oare and employees of DAIM Logistics, who were in the Northern District of New York, to provide guidance on the removal and obstruction of emissions control hardware; (iii) issuing invoices to its customers, including DAIM Logistics and Oare in the Northern District of New York, by email and accepting payments for the tunes from those customers, remitting all but \$250 to NA Diesel and Offringa; and (iv) facilitating Offringa's performance of remote delete tunes via the internet of OBDs on heavy-duty diesel trucks owned and operated by DAIM Logistics in the Northern District of New York. The defendant performed these overt acts intending to commit an offense against the United States by violating the Clean Air Act.

8) **Waiver of Rights to Appeal and Collateral Attack:** The defendant waives (gives up) any and all rights, including those conferred by 18 U.S.C. § 3742 and/or 28 U.S.C. §§ 2241 and 2255,

to appeal and/or to collaterally attack the following (except that the defendant does not waive the right to raise a claim based on alleged ineffective assistance of counsel):

- a) The conviction resulting from the defendant's guilty plea;
- b) Any claim that the statute(s) to which the defendant is pleading guilty is unconstitutional;
- c) Any claim that the admitted conduct does not fall within the scope of the statute;
- d) Any sentence consistent with the agreed-upon disposition described above or any less severe sentence.

- A. **Right to Counsel:** The defendant has the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding. Defense counsel has advised the defendant of nature of the charges to which the defendant is agreeing to plead guilty and the range of possible sentences.
- B. **Waiver of Trial-Related Rights:** The defendant has the following additional constitutional rights in connection with the charges in this case: (i) to be presumed innocent until proven guilty beyond a reasonable doubt; (ii) to plead not guilty; (iii) to trial by jury; (iv) to confront, cross-examine, and compel the attendance of witnesses at trial; (v) to present defense evidence; and (vi) to remain silent and be protected against compelled self-incrimination. The defendant understands that by pleading guilty, the defendant waives (gives up) these rights.
- C. **Court Not Bound by Plea Agreement:** This plea agreement is made pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. The Court is neither a party to, nor bound by this Plea Agreement. The Court may accept or reject this Plea Agreement or defer a decision until it has considered the Presentence Investigation Report prepared by the United States Probation Office. If the Court rejects the provisions of this agreement agreeing to a specific sentence, the Court will inform the parties that the court rejects the plea agreement; advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement, pursuant to Fed. R. Crim. P. 11(c)(5) & (d).
- D. **Sentencing:**



- a. **Maximum terms of imprisonment:** The defendant understands that if the Court rejects the Plea Agreement and the defendant does not withdraw the guilty plea, then the Court has discretion to impose a sentence within the statutory maximum sentence(s) set out in this agreement. If the defendant is pleading guilty to multiple charges, the Court may be required by law to have the sentences of imprisonment on the convictions resulting from those charges run consecutively to each other. Otherwise, the Court has discretion to have sentences of imprisonment run concurrently or consecutively. See 18 U.S.C. § 3584.
- b. **Mandatory minimum terms of imprisonment:** If specified in this agreement, the conviction on one or more charges to which the defendant has agreed to plead guilty may require imposition of a mandatory minimum term of imprisonment. In such cases if the Court rejects the Plea Agreement and the defendant does not withdraw the guilty plea, the court must impose a term of imprisonment no less than the required mandatory minimum term unless an exception to that requirement applies. Such exception may be dependent on a motion by the government.
- c. **Section 851 Enhancements:** The defendant understands that if the government has filed an information against the defendant as provided 21 U.S.C. § 851, alleging that the defendant has one or more final convictions for a felony drug offense, and, as part of this agreement, the defendant has admitted and/or affirmed that the defendant was so convicted, then, by pleading guilty, the defendant will lose the right to attack any sentence the court imposes by challenging any such prior conviction.
- d. **Sentencing guidelines:**
  - i. In the event that the Court rejects the Plea Agreement and the defendant does not withdraw the guilty plea, the defendant understands that actual sentence to be imposed

upon the defendant is within the discretion of the sentencing Court, subject to the statutory maximum and mandatory minimum penalties, as described above, and the provisions of the Sentencing Reform Act and the United States Sentencing Guidelines promulgated thereunder. While the Court is not bound to impose a sentence within the applicable sentencing guidelines range, it must take into account the sentencing guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a).

- e. **Factual findings:** The defendant understands that the sentencing Court may make factual findings with respect to any and all sentencing factors and issues, including those referenced in the United States Sentencing Guidelines, whether or not such factors or issues have been admitted by the defendant or stipulated by the parties. In making those findings by a preponderance of the evidence, the Court may consider any reliable evidence, including hearsay. The Defendant understands that the sentence imposed may be determined based upon such judicial fact-finding.
- f. **Use of the Defendant's Statements:** The defendant understands that the sentencing court may consider any statement that the defendant has made or makes in this Plea Agreement, during the guilty plea, to the Probation Office, and at sentencing when imposing sentence. In addition the government may be able to use the defendant's statements in this agreement and at the guilty plea and at sentencing in any criminal, civil, or administrative proceeding. For example, if the defendant fails to enter a guilty plea (as required by this agreement) or the defendant's guilty plea is later withdrawn or vacated for any reason other than the Court's rejection of this Plea Agreement under Fed. R. Crim. P. 11(c)(5), the government may introduce the defendant's statements into evidence in any prosecution. If, however, the Court rejects this Plea Agreement under Fed. R. Crim. P. 11(c)(5), and the defendant

withdraws the guilty plea pursuant to Fed. R. Crim. P. 11(d)(2)(A), the government will not be permitted to use any of the defendant's statements in this Plea Agreement. To the extent that Rule 11(f) of the Federal Rules of Criminal Procedure and/or Rule 410 of the Federal Rules of Evidence are inconsistent with this paragraph, the defendant waives (gives up) any protections under those rules.

- g. **Sentencing-Related Information:** The government has the right to advise the sentencing Court and the Probation Office of any information, in aggravation or mitigation of sentencing, whether or not encompassed within the count(s) to which the defendant has agreed to plead guilty, subject only to the limitation described in U.S.S.G. §1B1.8. No stipulation in this plea agreement limits the obligations of both parties to ensure that the sentencing Court has all information pertinent to its determination of an appropriate sentence. The parties may provide any factual information relevant to sentencing to the Probation Office and/or to the Court, without limitation, before or after the completion of the Presentence Investigation Report. The parties agree that the submission of such information shall not be deemed "advocacy" in violation of any stipulation in this plea agreement.
- h. **Supervised Release Term and Conditions:** If the defendant is placed on supervised release, under some circumstances, including the defendant's violation of one or more supervised release conditions, the Court may extend the term of supervised release, and may modify, reduce, or enlarge the conditions of such release.
- E. **Government's Obligations Contingent on Imposition of Agreed-Upon Sentence:** If the Court imposes a sentence less severe than the agreed-upon disposition, the government has no obligation to dismiss existing charges or refrain from seeking additional charges. The

defendant waives (gives up) any defense or objection to the commencement of any prosecution for new charges that is not time-barred by the applicable statute of limitations as of the date on which the defendant signed this plea agreement, notwithstanding the expiration of the statute of limitations between the signing of the agreement and the commencement of any such prosecution.

F. **Other Adverse Consequences:** The following are some examples of the adverse consequences of pleading guilty other than the sentence imposed by the Court, along with any judicial order of forfeiture and/or restitution:

- a. Conviction of a felony may result in the loss of civil rights, including, but not limited to, the right to vote and the right to possess firearms.
- b. If the defendant is not a United States citizen, such conviction may result in deportation or removal from the United States, may bar readmission to the United States if the defendant leaves the country, and may result in a denial of a pending or future application for citizenship. If the defendant is a naturalized United States citizen, such conviction may result in denaturalization, followed by deportation or removal from the United States. Under federal law, removal or deportation may be an almost certain consequence of a conviction for a broad range of federal offenses, including, but not limited to, aggravated felonies, as defined in 8 U.S.C. § 1101(a)(43), and crimes of moral turpitude, which includes crimes involving fraud. Removal and other immigration consequences are the subject of a separate proceeding. No one, including the defendant's attorney and the Court, can predict with certainty the effect of the conviction resulting from this agreement on the defendant's immigration status. The defendant understands this uncertainty and nonetheless wishes to plead guilty regardless of any immigration consequences that the

guilty plea may entail, even if the consequence is the defendant's automatic removal from the United States.

- c. A felony conviction may adversely affect the defendant's ability to hold certain professional licenses and may impair the defendant's ability to do business with federal, state, and local governments or to receive benefits from such governments.

There may be other adverse consequences as well, some of them unforeseeable. It may be difficult or impossible to predict all of the adverse consequences of the defendant's guilty plea. The defendant agrees that any resulting adverse consequences, whether or not foreseen or foreseeable, will not provide a basis for withdrawing from the guilty plea described in this agreement or otherwise challenging the resulting conviction and sentence.

- G. **Restitution:** Independent of any agreement to pay restitution, and whether there is any such agreement, the sentencing Court may be required to order that the defendant pay restitution to any victim of the offense(s) of conviction under the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A. In addition, the sentencing Court may have the authority to order that the defendant pay restitution to any victim of the offense(s) of conviction pursuant to 18 U.S.C. §§ 3663 & 3664. In any case involving a conviction for a sexual exploitation offense in chapter 110 of title 18 of the United States Code, the Court must order restitution for the full amount of the victim's losses as determined by the court. The victim's losses include, but are not limited to medical services related to physical, psychiatric, or psychological care; physical or occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorney's fees and other costs; and any other losses suffered by

the victim as a proximate result of the offense. The restitution payment will be in addition to any other civil or criminal penalty authorized by law.

H. **Forfeiture:** If the defendant has agreed to forfeiture of assets, the defendant agrees to the following terms and conditions:

- a. The defendant hereby forfeits, to the United States, all right, title, and interest of any nature in any and all assets that are subject to forfeiture, including substitute assets, as set forth above, whether those assets are in the possession or control of the defendant, a nominee, or some other third party.
- b. The defendant consents to the entry of an order of forfeiture of the assets described above.
- c. The defendant is aware that pursuant to Rule 32.2(b)(4)(A) of the Federal Rules of Criminal Procedure, a preliminary order of forfeiture becomes final as to a given defendant at sentencing or at any time before sentencing if the defendant consents. The defendant consents that the preliminary order of forfeiture in this case shall become final as to the defendant before sentencing, as of the date the preliminary order of forfeiture is entered by the Court. The defendant understands that the government, upon entry of the preliminary order of forfeiture, will address any potential third party claims pursuant to Rule 32.2(c), and seek to finalize forfeiture.
- d. Forfeiture of the defendant's assets will not satisfy all, or any portion of, a fine, restitution, or other monetary penalty that the Court may impose upon the defendant in addition to forfeiture. Satisfaction of all, or any portion of, any restitution, fine, or other penalty that the Court may impose upon the defendant in addition to forfeiture will not satisfy all, or any portion of, any forfeiture judgment ordered by the Court.

- e. In the event that any successful claim is made, by any third party, to the assets described above, the defendant agrees to forfeit substitute assets equal in value to the assets transferred to any such third party. The defendant agrees that forfeiture of substitute assets shall not be deemed an alteration of the Defendant's sentence.
- f. The defendant agrees to cooperate with the United States by taking whatever steps are necessary to pass clear title to the United States of any forfeitable assets, including but not limited to, surrendering title; completing any documents or legal proceedings required to transfer assets to the United States; and taking necessary steps to ensure that assets subject to forfeiture are not sold, disbursed, expended, destroyed, damaged, hidden or otherwise made unavailable for forfeiture or removed beyond the jurisdiction of the Court.
- g. The defendant waives the right to a jury trial on the forfeiture of assets. The defendant waives all constitutional, legal, and equitable defenses to the forfeiture of assets, as provided by this agreement, in any proceeding, including but not limited to any jeopardy defense or claim of double jeopardy or any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of an excessive fine.
- h. The defendant acknowledges that the government may institute civil or administrative proceedings against any or all of the defendant's forfeitable assets, including, but not limited to substitute assets and any forfeitable assets not identified by the defendant, and agrees not to contest any such forfeiture proceedings.
- i. The defendant represents and warrants that the defendant has no direct or indirect interest in any property, real or personal, or other asset subject to forfeiture by virtue of this plea agreement, other than those listed above.

- j. In the event the government determines that the defendant has breached any condition of this plea agreement, none of the forfeited property shall be returned to the defendant, nor shall the defendant assert any claim to the forfeited property. The defendant shall not reacquire any forfeited property, directly or indirectly, through family members, nominees, friends, or associates.

**I. Determination of Financial Condition and Payment of Interest and Penalties:**

- a. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees fully to disclose all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party.
- b. The defendant will promptly submit a complete, accurate, and truthful financial statement to the United States Attorney's Office, in a form it provides and as it directs.
- c. The defendant authorizes the United States Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.
- d. Interest and penalties may accrue, as a matter of law, on any unpaid financial obligation imposed as part of the defendant's sentence, from as early as the date of sentencing.

**J. Remedies for Breach:**

- a. Should the government determine that the defendant, after the date the defendant has signed this plea agreement, (i) has committed any further crime or violated any condition of release or supervision imposed by the Court (whether or not charged); (ii) has given false, incomplete, or misleading testimony or information; or (iii) has moved to withdraw the defendant's guilty plea for reasons other than those described in this agreement or



otherwise has breached any term or condition of this plea agreement or supplemental agreements with the government, the government will have the right, in its sole discretion, to void this agreement, in whole or in part. In the event of such breach, the defendant will remain obligated to plead guilty and otherwise comply with the terms of this agreement and will not be permitted to withdraw the defendant's guilty plea under this agreement. The defendant will be subject to prosecution for any federal criminal violation of which the government has knowledge, including but not limited to charges that this Office has agreed to dismiss or not to prosecute under this agreement.

- b. If the defendant breaches this agreement, the government will have the following remedies, among others, available to it:
  - i. To bring prosecution for any federal criminal offenses dismissed or not prosecuted under this agreement. The defendant waives (gives up) any defense or objection to the commencement of any such prosecution that is not time-barred by the applicable statute of limitations as of the date on which the defendant signed this plea agreement, notwithstanding the expiration of the statute of limitations between the signing of the agreement and the commencement of any such prosecution.
  - ii. In connection with any such prosecution, any information, statement, and testimony provided by the defendant, and all leads derived therefrom, may be used against the defendant, without limitation and without regard to any rights the defendant may have under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.
  - iii. To utilize any information, statement, or testimony provided by the defendant in any proceeding, including at sentencing, notwithstanding U.S.S.G. §1B1.8;

- iv. To advocate if, and how, any particular adjustment or specific offense characteristic affects the applicable Sentencing Guidelines range without regard to any contrary stipulations contained in this agreement;
- v. To refrain from making any sentencing-related motion favorable to the defendant without regard to any provision in this agreement obligating the government to consider making or make such motion upon fulfillment of certain conditions;
- vi. To urge the sentencing Court to take the defendant's breach into account when imposing sentence;
- vii. To recommend any sentence the government deems appropriate, even if such recommendation is at odds with any stipulation in this agreement.

K. **Limitations:** This agreement is between the United States Attorney's Office for the Northern District of New York and the defendant. References to "the government" in this agreement refer only to that Office. This agreement does not bind any other federal, state, or local prosecuting authorities. Furthermore, this agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant, including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability, proceedings relating to the forfeiture of assets, and proceedings by the Department of Homeland Security, Bureau of Citizenship and Immigration Services relating to the immigration status of the defendant.

L. **Agreement Must be Signed; Modifications Must be Written or on the Record:** This agreement, to become effective, must be signed by all of the parties listed below. No promises, agreements, terms, or conditions other than those set forth in this plea agreement will be

effective unless memorialized in writing and signed by all parties or confirmed on the record before the Court.

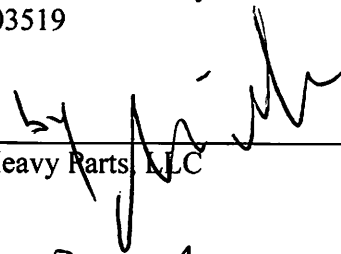
M. **Agreement to Plead Guilty Voluntary:** The defendant acknowledges reading each of the provisions of this plea agreement with the assistance of counsel and understands its provisions. The defendant further acknowledges that the defendant's agreement to plead guilty is voluntary and did not result from any force, threat, or promises (other than the promises in this plea agreement and any written supplemental agreements or amendments).

CARLA B. FREEDMAN  
United States Attorney

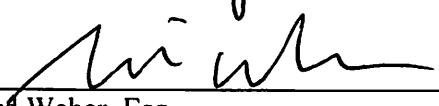


Benjamin S. Clark  
Assistant United States Attorney  
Bar Roll No. 703519

8/16/24  
Date

  
Highway and Heavy Parts, LLC  
Defendant

8/16/24  
Date

  
Richard Weber, Esq.  
Attorney for Defendant  
Bar Roll No. 705353

8/16/24  
Date

# **Exhibit 1**



Tel: 989.941.3597  
Fax: 989.941.3597  
HighwayandHeavyParts.com

Corporate Resolution for Highway & Heavy Parts LLC

We, the undersigned, having authority to bind the company pursuant to the operating agreement, do hereby enter into this corporate resolution authorizing Richard Weber, Highway & Heavy Parts LLC's counsel of record, to enter into a plea agreement with the United States on Highway & Heavy Parts LLC's behalf.

NATHAN I SELER  
Member 1 Name

Andrew Thompson  
Member 2 Name

[Signature]  
Member 1 Signature

[Signature]  
Member 2 Signature

7/30/24  
Member 1 Date

7/30/24  
Member 2 Date

**Coleman Location (Headquarters)**  
5015 N Dickenson Rd  
Coleman, MI 48618

**Saginaw Location**  
3785 Bay Rd  
Saginaw, MI 48603

**Bay City Location**  
3139 Christy Way  
Saginaw, MI 48603

**OPERATING AGREEMENT FOR  
HIGHWAY AND HEAVY PARTS, LLC**

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**THIS OPERATING AGREEMENT** made and effective as of the 8<sup>th</sup> day of January, 2015, by and among **HIGHWAY AND HEAVY PARTS, LLC**, a Michigan Limited Liability Company, ("Company"), and the persons executing this Operating Agreement as members of the Company and all of those who shall hereafter be admitted as members, (individually "Member" and collectively "Members"), who agree as follows:

**ARTICLE I - ORGANIZATION**

1. **Formation.** The Company has been organized as a Michigan Limited Liability Company under and pursuant to the Michigan Limited Liability Company Act, as amended, ("Act"), by the filing of Articles of Organization, ("Articles"), with the Department of Licensing and Regulatory Affairs of the State of Michigan as required by the Act.
2. **Name.** The name of the Company shall be **HIGHWAY AND HEAVY PARTS, LLC**, the Company may also conduct its business under one or more assumed names.
3. **Purposes.** The purpose of the Company is to engage in any activity for which Limited Liability Companies may be formed under the Act. The Company shall have all the powers necessary or convenient to effect any purpose for which it is formed, including all powers granted by the Act.
4. **Duration.** The Company shall continue in existence for the period fixed in the Articles for the duration of the Company or until the Company shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.
5. **Registered Office and Resident Agent.** The Registered Office and Resident Agent of the Company shall be as designated in the initial Articles or any amendments. The Registered Office and/or Resident Agent may be changed from time to time. Any such change shall be made in accordance with the Act. If the Resident Agent shall ever resign, the Company shall promptly appoint a successor.
6. **Intention for Company.** The Members have formed the Company as a Limited Liability Company under and pursuant to the Act. The Members specifically intend and agree that the Company not be a partnership, including a limited partnership, or any other venture, but a Limited Liability Company under and pursuant to the Act. No Member shall be construed to be a partner in the Company or a partner of any other Member or person, and the Articles, this Operating Agreement, and the relationships created thereby and arising therefrom shall not be construed to suggest otherwise.
7. **Contingent Member Interest.** The Company shall be entitled to recognize the exclusive right of a person registered on its books as the owner of membership interest for all purposes, including voting and distributions, and shall not be found to recognize any equitable or other claim to interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Michigan. In order to be a Member of the Company each Member must also be a Member of **HIGHWAY AND HEAVY PROPERTIES, LLC**, a Michigan Limited Liability Company. If a Member is not a reciprocal member, he/she shall be required to sell his/her membership interest to the Company.

## **ARTICLE II - BOOKS, RECORDS AND ACCOUNTING**

1. **Books and Records.** The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act and such books and records shall be kept at the Company's Registered Office or at the office of its attorneys or accountants. The Company may issue a Certificate of Membership Interest, in the form and content approved by the Managers, evidencing the membership interest of the Members in the Company.
2. **Fiscal Year/Accounting.** The Company's fiscal year shall be the calendar year. The particular accounting methods and principles to be followed by the Company shall be selected by the Managers.
3. **Reports.** The Members shall each receive reports from the Company concerning the financial condition and results of operation of the Company and the capital accounts in the time, manner, and form as the Managers determine. Such reports shall be provided at least annually as soon as practicable after the end of each year and shall include a statement of each Member's share of profits and other items of income, gain, loss, deduction, and credit.
4. **Member's Accounts.** Separate capital accounts for each Member shall be maintained by the Company. Each Member's capital account shall reflect the Member's capital contributions and increases for the Member's share of any net income or gain of the Company. Each Member's capital account shall also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the Company.
5. **Taxation.** The Members intend that the Company shall be taxed as a partnership, pursuant to Subchapter K of the Internal Revenue Code of 1986, as amended, ("Code"), for federal and state income tax purposes, and agree to report all Company items of income, gain, loss, deduction, and credit in accordance with that Subchapter. Each of the Members consent to and acknowledge that they will own interest in a flow-through entity. The Members and not the Company shall have the responsibility and obligation to pay tax on their allocable share of the Company's profits.

## **ARTICLE III - CAPITAL CONTRIBUTIONS**

1. **Initial Commitments and Contributions.** The initial Members agree to make the capital contributions set forth on attached Exhibit "A". The interests of the respective Members in the total capital of the Company, their respective "Sharing Ratios", are also set forth on Exhibit "A". The Sharing Ratios shall be adjusted from time to time to reflect changes in the capital accounts of the Members. Any additional Member, other than an assignee of a membership interest who has been admitted as a Member, shall make the capital contribution set forth in an Admission Agreement. No interest shall accrue on any capital contribution and no Member shall have any right to withdraw or to be repaid any capital contribution, except as provided in this Operating Agreement.
2. **Additional Contributions.** In addition to the initial capital contributions, the Managers may determine from time to time that additional capital contributions are needed to enable the Company to conduct its business and affairs. Upon making such a determination, notice thereof shall be given to all Members in writing at least ten (10) business days prior to the date on which such additional contributions are due. Such notice shall describe in reasonable detail the purposes and uses of such additional capital, the amounts of additional capital required, and the date by which payment of the additional capital is required. Each Member shall be obligated to make such additional capital contribution to the extent of any unfulfilled commitment.
3. **Failure to Contribute.** If any Member fails to make a capital contribution when required, the Company may, in addition to the other rights and remedies the Company may have under the Act or applicable law, take such enforcement action, including the commencement and prosecution of court proceedings, against such

Member as the Members consider appropriate. Moreover, the remaining Members may elect to contribute the amount of such required capital themselves. In such event, the remaining Members shall be entitled to treat such amounts as an extension of credit to such defaulting Member, payable upon demand, with interest accruing thereon at the rate of nine percent (9%) per annum until paid, all of which shall be secured by such defaulting Member's interest in the Company, including any distributions. Each Member who may default, grants to each Member who may grant an extension of credit, a security interest in such defaulting Member's interest in the Company.

#### **ARTICLE IV - ALLOCATIONS AND DISTRIBUTIONS**

1. **Allocations.** Except as may be required by the Code or this Operating Agreement, net profits, net losses, and other items of income, gain, loss, deduction, and credit of the Company shall be allocated among the Members in accordance with their Sharing Ratios.
2. **Distributions.** Distributions to the Members may be made from time to time. Distributions may be made only after the Managers determine, in their reasonable judgment, that the Company has sufficient cash on hand which exceeds the current and the anticipated needs of the Company to fulfill its business purposes, including needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any. All distributions shall be made to the Members in accordance with their Sharing Ratios. Distributions shall be in cash or property or partially in both, as determined by the Managers. No distribution shall be declared or made if, after giving it effect, the Company would not be able to pay its debts as they become due in the usual course of business, or the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved at the time of the distribution to satisfy the preferential rights of other Members upon dissolution that are superior to the rights of the Members receiving the distribution.

#### **ARTICLE V - DISPOSITION OF MEMBERSHIP INTERESTS**

1. **General.** Every sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other disposition of any membership interest shall be made only with prior written consent of all other Members. Any attempted disposition of any membership interest in violation of this Article is null and void *ab initio*. This provision shall not apply to the sale or transfer of any membership interest to a trust or other entity of which a Member retains sole control so long as such transfer does not violate any tax election. Approval of the other Members for such a transfer shall not be required.
2. **Permitted Dispositions.** Subject to the provisions of this Article, a Member may assign such Member's membership interest in the Company in whole or in part. The assignment of a membership interest does not itself entitle the assignee to participate in the management and affairs of the Company or to become a Member. Such assignee is only entitled to receive, to the extent assigned, the distributions the assigning Member would otherwise be entitled to.
3. **Admission of Substitute Members.** A person who acquires a membership interest shall be admitted as a substitute Member and shall be entitled to all the rights and powers of the assignor only if the other Members unanimously consent. If admitted, the substitute Member has, to the extent assigned, all of the rights and powers, and is subject to all of the restrictions and liabilities of a Member.
4. **Transfers from Custodianships.** Any membership interest held by a custodian for a minor under the laws of the State of Michigan or any other state shall be fully transferrable and assignable to the minor when the minor reaches the age of termination of such custodianship under the applicable statute.



## ARTICLE VI - MEETINGS OF MEMBERS

1. **Voting.** All Members shall be entitled to vote on any matter submitted to a vote of the Members. Notwithstanding the foregoing, the Members shall have the right to vote on all of the following: (a.) dissolution of the Company; (b.) merger of the Company; (c.) a transaction involving an actual or potential conflict of interest between a Member or a Manager and the Company; (d.) an amendment to the Articles; or (e.) the sale, exchange, lease, or other transfer of any of the assets of the Company other than in the ordinary course of business.
2. **Required Vote.** Unless a greater vote is required by the Act or the Articles, the affirmative vote or consent of a majority of the Sharing Ratios of all the Members entitled to vote or consent on such matter shall be required.
3. **Meetings.** An annual meeting of Members for the transaction of such business as may properly come before the Meeting shall be held at the place, date, and time as the Members shall determine. Special meetings of Members for any proper purpose or purposes may be called at any time by the holders of at least ten percent (10%) of the Sharing Ratios of all Members or the Manager. The Company shall deliver or mail written notice stating the date, time, place, and purpose of any meeting to each Member entitled to vote at the meeting. Such notice shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting. All meetings of Members shall be presided over by a Chairperson who shall be a Member so designated by the Members.
4. **Consent.** Any action required or permitted to be taken at an annual or special meeting of the Members may be taken without a meeting, prior notice, or vote; provided the Members must sign a consent setting forth the action so taken. The consent must be signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all membership interests entitled to vote on the action were present and voted. Every written consent shall bear the date and signature of each Member who signs the consent. Prompt notice of the taking of action without a meeting by less than unanimous written consent shall be given to all Members who have not consented in writing to such action.
5. **Deadlock.** In the event the Members reach a deadlock on any matter submitted to them for a vote, the matter shall be brought before a third party chosen by the Members. The decision of the chosen third party shall be binding. In the event the Members cannot agree on a third party, each Member shall make a list of five (5) third party candidate in order of preference, the candidate with the highest ranking appearing on both Member's lists shall be the chosen third party.

## ARTICLE VII - MANAGEMENT

1. **Management Vested With Managers.** The business and affairs of the Company shall be managed by no fewer than one (1) and no more than seven (7) persons, ("Managers"), who shall be designated by written consent of the Members. The Members shall determine the Managers' terms, duties, compensation and benefits, if any.
2. **General Powers of Managers.** Each Manager has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including the power to: (a.) purchase, lease, or otherwise acquire any real or personal property; (b.) sell, convey, mortgage, grant a security interest in, pledge, lease, exchange, or otherwise dispose or encumber any real or personal property; (c.) open one or more depository accounts and make deposits into and checks and withdrawals against such accounts; (d.) borrow money and incur liabilities and other obligations; (e.) enter into any and all agreements and execute any and all contracts, documents, and instruments; (f.) engage employees and agents, define their respective duties, and establish their compensation or remuneration; (g.) establish pension plans, trusts, profit sharing plans, and other benefit and incentive plans for Members, Managers, employees, and agents of the Company; (h.) obtain

insurance covering the business and affairs of the Company and its property and on the lives and well being of its Members, Managers, employees and agents; (i.) commence, prosecute, or defend any proceeding in the Company's name; and (j.) participate with others in partnerships, joint ventures, and other associations and strategic alliances.

3. **Standard of Care/Liability.** Every Manager shall discharge his or her duties as a manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the Company. A Manager shall not be liable for monetary damages to the Company for any breach of any such management duties except for receipt of a financial benefit to which the Manager is not entitled, voting for or assenting to a distribution to Members in violation of this Operating Agreement or the Act, or a knowing violation of the law.

4. **Limitations.** Notwithstanding the foregoing and any other provision contained in this Operating Agreement to the contrary, no act shall be taken, sum expended, decision made, obligation incurred, or power exercised by any Manager on behalf of the Company except with the majority consent of all Members, based on their respective Sharing Ratios, with respect to: (a.) any significant and material purchase, receipt, lease, exchange, or other acquisition of any real or personal property or business outside of normal business operations; (b.) the sale of any of the assets or property of the Company, excluding Company inventory, having a fair market value in excess of \$15,000.00; (c.) any mortgage, grant of security interest, pledge, or encumbrance upon any of the assets or property of the Company; (d.) any merger; (e.) any matter which could result in a change in the amount or character of the Company's capital; (f.) any change in the character of the business and affairs of the Company; (g.) the commission of any act which would make it impossible for the Company to carry on its ordinary business and affairs; or (h.) any loan or extension of credit to or from the Company.

Notwithstanding the foregoing and any other provision contained in this Operating Agreement to the contrary, no act shall be taken, sum expended, decision made, obligation incurred or power exercised by any Manager on behalf of the Company except with the unanimous consent of all Members, based on their respective Sharing Ratios, with respect to: (a.) any amendment or restatement of the Articles or this Operating Agreement; or (b.) any act that would contravene any provision of the Articles or this Operating Agreement or the Act.

5. **Reimbursement.** Members shall be entitled to reimbursement from the Company of all expenses of the Company reasonably incurred and paid for by the Member on behalf of the Company.

#### **ARTICLE VIII - EXCULPATION OF LIABILITY/INDEMNIFICATION**

1. **Exculpation of Liability.** Unless otherwise provided by law or expressly assumed, a person who is a Member shall not be liable for the acts, debts, or liabilities of the Company.

2. **Indemnification of Members and Managers.** The Company shall indemnify any Member or Manager who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal, other than an action by or in the right of the Company, by reason of the fact that such person is or was a Member or Manager of the Company, against expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement, actually and reasonably incurred by such person in connection with the action, suit, or proceeding. Indemnification shall apply only if the person acted in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that such person reasonably believed to be in the best interests of the Company. With respect to a criminal action or proceeding, indemnification shall only apply if such person had no reasonable cause to believe such person's conduct was unlawful. To the extent that a Member or Manager of the Company has been successful on the merits or otherwise in defense of any action, suit, or proceeding, or in defense of any claim, issue, or other matter in the action, suit, or proceeding, such

person shall be indemnified against actual and reasonable expenses, including attorney fees, incurred by such person in connection with the action, suit, or proceeding and any action, suit, or proceeding brought to enforce the mandatory indemnification provided herein. Notwithstanding the foregoing to the contrary, no indemnification shall be provided to a Member, Manager, employee, or agent of the Company for or in connection with the receipt of a financial benefit to which such person is not entitled, for voting or assenting to a distribution to Members in violation of this Operating Agreement or the Act, or for a knowing violation of law.

3. **Indemnification of Employees or Agents.** The Company may indemnify any employee or agent who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal, other than an action by or in the right of the Company, by reason of the fact that such person is or was an employee or agent of the Company, against expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement, actually and reasonably incurred by such person in connection with the action, suit, or proceeding. Indemnification shall apply only as authorized in the specific case upon a determination that the person acted in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that such person reasonably believed to be in the best interests of the Company. This determination and evaluation shall be made by a majority vote of the Members who are not parties or threatened to be made parties to the action, suit, or proceeding. With respect to a criminal action or proceeding, indemnification shall only apply if such person had no reasonable cause to believe such person's conduct was unlawful. Notwithstanding the foregoing to the contrary, no indemnification shall be provided to a Member, Manager, employee, or agent of the Company for or in connection with the receipt of a financial benefit to which such person is not entitled, for voting or assenting to a distribution to Members in violation of this Operating Agreement or the Act, or for a knowing violation of law.

#### **ARTICLE IX - DISSOLUTION AND WINDING UP**

1. **Dissolution.** The Company shall dissolve and its affairs shall be wound up upon the first of the following events to occur: (a.) at any time specified in the Articles or this Operating Agreement; (b.) upon the happening of any event specified in the Articles or this Operating Agreement; (c.) by the unanimous consent of all of the Members; or (d.) upon the death, withdrawal, expulsion, bankruptcy, or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company unless, within ninety (90) days after the disassociation of a membership as so provided in this Section, a majority of the remaining Members consent to continue the business of the Company and to the admission of one (1) or more Members as necessary.

2. **Winding Up.** Upon dissolution, the Company shall cease carrying on its business and affairs and shall commence the winding up of the Company's business and affairs and complete the winding up as soon as practicable. Upon the winding up of the Company, the assets of the Company shall be distributed, first to creditors to the extent permitted by law in satisfaction of the Company debts, liabilities, and obligations, and then to Members and former Members, first in satisfaction of liabilities for distributions and then, in accordance with their Sharing Ratios. Such proceeds shall be paid to such Members as soon as practicable after the date of winding up.

#### **ARTICLE X - MISCELLANEOUS PROVISIONS**

1. **Terms.** Nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the person or persons, firm, or corporation may in the context require.


2. **Article and Section Headings.** The article and section headings contained in this Operating Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit, or describe the scope or intent of any provision of this Operating Agreement.

3. **Counterparts.** This Operating Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which will constitute one and the same.
4. **Entire Agreement.** This Operating Agreement constitutes the entire agreement among the parties and contains all of the agreements among the parties with respect to this subject matter. This Operating Agreement supersedes any and all other agreements, either oral or written, between the parties with respect to this subject matter.
5. **Severability.** The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions, and this Operating Agreement shall be construed in all respects as if such invalid or unenforceable provisions were reduced to its legally enforceable maximum or omitted.
6. **Amendment.** This Operating Agreement may be amended or revoked at any time by a written agreement executed by all of the Members. No change or modification to this Operating Agreement shall be valid unless in writing and signed by all of the then current Members.
7. **Notices.** Any notice permitted or required under this Operating Agreement shall be conveyed to the party and will be deemed to have been given when deposited in the United States mail, postage paid, or when delivered in person, or by courier or by facsimile transmission.
8. **Binding Effect.** Subject to the provisions of this Operating Agreement relating to transferability, this Operating Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, administrators, representatives, successors, and assigns.
9. **Governing Law.** This Operating Agreement is executed and delivered in the State of Michigan and shall be governed by, construed, and enforced in accordance with the laws of the State of Michigan.

THEREFORE, this Operating Agreement has been made and executed the day and year first written.

Signed and Sealed:

HIGHWAY AND HEAVY PARTS, LLC,  
a Michigan Limited Liability Company

  
NATHAN ISELER, on behalf of the Limited  
Liability Company and as Member

  
ANDREW THOMPSON, on behalf of the  
Limited Liability Company and as Member

Prepared By:  
SHINNERS & COOK, P.C.  
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**EXHIBIT "A"**  
**(Membership Interests)**

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<u>Member</u>	<u>Initial Capital Contribution</u>	<u>Interest in Capital (Sharing Ratios)</u>
Nathan Iseler	\$ _____	50%
Andrew Thompson	\$ _____	50%