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DISTRICT OF HAWAII  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN WINSLETT,

Defendant.

) CR. NO. 19-00125 JMS

)

) MEMORANDUM OF PLEA

) AGREEMENT

)

) DATE: September 26, 2019

) TIME: 1:30 p.m.

) JUDGE: Hon. Wes Reber Porter

)

## **MEMORANDUM OF PLEA AGREEMENT**

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the UNITED STATES OF AMERICA, by its attorney, the United States Attorney for the District of Hawaii, and the Defendant, JOHN WINSLETT, and his attorney, Richard Sing, esq., have agreed upon the following:

### **THE CHARGES**

1. The Defendant acknowledges that he has been charged in an Information with violating Title 18, United States Code, Section 1349 (Count 1), and Title 18, United States Code, Section 371 (Count 2).
2. The Defendant has read the charges against him contained in the Information, and those charges have been fully explained to him by his attorney.
3. The Defendant fully understands the nature and elements of the crimes with which he has been charged.

### **THE AGREEMENT**

4. The Defendant agrees to waive indictment and enter a voluntary plea of guilty to Counts 1 and 2 of the Information, which charge him with conspiracy to commit honest services wire fraud (Count 1), and conspiracy to accept a kickback in connection with a U.S. Government contract (Count 2). The Defendant is aware that he has the right to have these felony charges asserted against him by

way of grand jury indictment. The Defendant hereby waives this right and consents that these offenses may be charged against him by way of the Information. In return, the government agrees not to file other charges arising out of the same conduct charged in Counts 1 and 2 of the Information.

5. The Defendant agrees that this Memorandum of Plea Agreement shall be filed and become part of the record in this case.

6. The Defendant enters this plea because he is in fact guilty of conspiracy to commit honest services wire fraud and conspiracy to accept a kickback in connection with a U.S. government contract as charged in Counts 1 and 2 of the Information, and he agrees that this plea is voluntary and not the result of force or threats.

### **PENALTIES**

7. The Defendant understands that the penalties for the offenses to which he is pleading guilty include:

a. As to Count 1, a term of imprisonment of not more than 20 years, a fine of not more than \$250,000 or twice the gross gain or loss from the offense, and a term of supervised release not more than 3 years.

b. As to Count 2, a term of imprisonment of not more than 5 years, a fine of not more than \$250,000 or twice the gross gain or loss from the offense, and a term of supervised release not more than 3 years.

c. In addition, the Court must impose a \$100 special assessment as to each count to which the Defendant is pleading guilty. The Defendant agrees to pay \$100 for each count to which he is pleading guilty to the District Court's Clerk's Office, to be credited to said special assessments, before the commencement of any portion of sentencing. The Defendant acknowledges that failure to make such full advance payment in a form and manner acceptable to the prosecution will allow, though not require, the prosecution to withdraw from this Agreement at its option.

d. **Forfeiture.** Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), forfeiture of any and all property, real or personal, that constitutes or is derived from proceeds traceable to the conspiracy to commit an offense in violation of 18 U.S.C. § 1349 charged in Count 1 of the Information.

e. **Restitution.** The Court must also award restitution pursuant to Title 18, United States Code, Section 3663A, to the persons and entities victimized by the Defendant's offenses. The Defendant understands that the Court will determine the amounts of restitution to be ordered, as well as the persons and

entities entitled to such restitution, with the assistance of the United States Probation Office. The Defendant agrees to pay restitution for all losses caused by the Defendant's conduct, regardless of whether the counts of the Information associated with such losses will be dismissed as part of this Agreement.

### **FACTUAL STIPULATIONS**

8. The Defendant admits the following facts and agrees that they are not a detailed recitation, but merely an outline of what happened in relation to the charges to which the Defendant is pleading guilty:

a. Defendant was employed as the Senior Construction Manager of REK Associates, LLC from on or about August 1, 2011 until he was terminated in or about May 2019. During the course of the charged conspiracies, Defendant was acting within the scope of his employment and to benefit REK Associates, LLC.

b. Defendant is the principal owner of Pacific Construction Consultant, LTD ("PCC"). PCC is a domestic corporation that was formed and registered in Nevada on December 1, 2009.

c. REK Associates is a private corporation and federal contractor that has been awarded multiple Department of Defense ("DOD") contracts, primarily for work maintaining U.S. military properties, including the U.S. Army, Mission Support Element Hawaii, Range Division, U.S. Army Pacific, Schofield

Barracks, Hawaii (“the Range”). In total, REK Associates has received at least \$19 million in DOD contracts for work at the Range.

d. In his role as the Senior Construction Manager, Defendant worked on federal contracts in the State of Hawaii, including contracts with the Range. In order to conduct his work on the Range, Defendant coordinated with the Supervisory Range Officer, Victor Garo, and the Range Operations Manager, Franklin Raby. Franklin Raby also served as a Contract Officer Representative and Agreement Officer Representative, which are positions involving the oversight and management of DOD contracts. At all times, as a Supervisory Range Officer and a Range Operations Manager for the Department of Defense, Garo and Raby were “public officials” as defined in 18 U.S.C. § 201. As U.S. Army and DOD employees, Garo and Raby had a fiduciary duty to the U.S. Army and DOD and to act in the best interest of the U.S. Army, DOD, and the American people.

e. Beginning in or about 2011, Defendant began giving things of value to Garo and Raby with the intent, among others, to influence their official actions and ensure that REK Associates was treated favorably in the federal contracting process at the Range.

*Victor Garo*

- f. Defendant provided the following things of value to Victor Garo:
  - i. In or about 2011, Defendant gave Garo a military surplus Pinzgauer All-Terrain Vehicle, which is believed to be worth approximately \$8,500.
  - ii. In or about 2012, Defendant paid approximately \$8,000 of Defendant's travel expenses arising out of a hunting trip to Zambia, in Africa.
  - iii. In or about 2013, Defendant gave Garo a 2006 Mercedes Benz, which is believed to be worth approximately \$8,000.
  - iv. In or about 2013 or 2014, Defendant paid approximately \$1,200 of Garo's travel expenses arising out of a hunting trip to Oklahoma.
  - v. In or about 2015, Defendant paid approximately \$1,200 of Garo's travel expenses arising out of a hunting trip to Texas.
  - vi. In or about 2015, Defendant gave Garo a 2005 or 2006 model Jeep, which is believed to be worth approximately \$10,000.
  - vii. In or about late 2016, Defendant gave Garo a diamond ring that is believed to be worth approximately \$2,300.
  - viii. On or about December 10, 2016, Defendant gave Garo \$1,600 via check.

ix. In or about 2017, Defendant gave Garo a Harley Davidson motorcycle, which is believed to be worth approximately \$6,000.

x. On or about March 8, 2017, Defendant purchased a 2017 Jeep Wrangler Unlimited Rubicon, bearing Vehicle Identification Number 1C4BJWFG2HL529103 for \$38,857.69, which Garo later shipped to Hawaii and registered and titled in his own name. Garo has since returned this Jeep to Defendant.

xi. On or about August 7, 2017, Defendant gave Garo \$2,500 via check.

xii. On or about December 17, 2017, Defendant gave Garo \$4,000 via check.

xiii. On or about January 24, 2018, Defendant gave Garo \$4,000 via check.

xiv. On or about March 24, 2018, Defendant gave Garo \$760 via check.

xv. On approximately four additional occasions throughout the conspiracy, Defendant paid for travel expenses related to trips to Tulsa, Oklahoma to attend gun shows. Defendant paid for approximately \$1,200 worth of



travel expenses for Garo on each of these trips, including airfare, hotel, car rental, and other expenses, for a total expense amount exceeding \$4,800.

xvi. On or about April 2, 2018, Defendant gave Garo \$2,400 via check.

g. In addition to the foregoing, at various times during the course of the conspiracy, Defendant gave Garo 12 firearms, which he shipped to Hawaii from the mainland, as things of value, with a total value of approximately \$31,545.00. The firearms included the following:

- i. Remington model 700 rifle, serial number B6264673;
- ii. Remington .30 cal., AR model R-15 Hunter, serial number R0013213;
- iii. Winchester model 70 rifle, serial number 151922;
- iv. Remington model 700 rifle, serial number E6670968;
- v. Francotte double barrel 500 nitro express rifle, serial number N62335;
- vi. Remington 12 gauge shotgun, serial number 8667785-V;
- vii. Kimber MFG INC. .300 BLK rifle, serial number KM47830;
- viii. Winchester model 100, 208 cal. Rifle, serial number 28889;
- ix. Winchester model 43, 218 BEE, serial number 38555A;

- x. Gustav Genschow & Co. 22 long rifle, serial number 13627;
- xi. Remington model 700, 30 AR rifle, serial number G6930448;  
and
- xii. H. Lawson Co. 650, 30-06 cal. Rifle, serial number P54514.

h. Garo never paid Defendant for the value of the above-listed firearms and other things of value. The value of the items the Defendant gave to Garo is estimated to be at least \$95,000 and not greater than \$150,000.

*Franklin Raby*

i. Defendant provided the following things of value to Franklin Raby:

- i. In or about August 2017, Defendant shipped a 1967 Ford Galaxie to Raby's son's home in Greenville, Tennessee. Defendant paid \$3400 for the vehicle.
- ii. In or about August 2017, Defendant shipped a custom rifle to Raby's residence in Ewa Beach, HI.
- iii. Defendant also provided Raby with diamond earrings meant for Raby's wife. The earrings were valued at \$2,300.
- iv. In or about 2017, Defendant gave Raby a Harley Davidson motorcycle, which is believed to be worth approximately \$6,000.

v. On approximately four additional occasions throughout the conspiracy, Defendant paid for travel expenses related to trips to Tulsa, Oklahoma to attend gun shows. Defendant paid for approximately \$1,200 worth of travel expenses for Raby on each of these trips, including airfare, hotel, car rental, and other expenses, for a total expense amount exceeding \$4,800.

j. Raby never paid Defendant for the value of the above-listed things of value. The value of the items the Defendant gave to Raby is estimated to be at least \$6,500 and not greater than \$15,000.

k. In or around November 2017, the Defendant facilitated employment negotiations between Raby and L.K., and which resulted in Raby unofficially accepting a position with REK. Raby continued working for the Department of Defense Civil Service until his retirement on or about May 31, 2018. Raby began employment as a "Program Manager" at REK on or about June 14, 2018.

l. Over time, Defendant, Garo, and Raby developed a mutual understanding that, in exchange for the above-listed things of value, Garo and Raby would use their positions and influence within DOD to advocate for and advance the interests of REK Associates as opportunities arose, including by helping REK Associates receive DOD contracts. This included helping REK Associates through

both the selection of contractors and also contract vehicles to do work on the Range. Raby also provided to REK employees, including Defendant, sensitive, internal DOD procurement information. Defendant provided the above listed things of value in part to ensure that Garo and Raby used their official positions to advance the interests of REK Associates.

m. In return for these things of value, Garo and Raby influenced official acts of the U.S. Army and DOD. Specifically, they recommended that the U.S. Army use particular contract vehicles that they knew would make it more likely that the underlying contracts would be awarded to REK Associates, and did in fact cause contracts to be awarded to REK Associates.

n. As part of the conspiracy, the Defendant, Garo, and Raby used electronic communications, including emails, that crossed state lines.

*Army Corps Kansas Contract*

o. The U.S. Army Corps of Engineers, Kansas City District issued a \$30 million Indefinite Delivery / Indefinite Quantity contract (“Army Corps Kansas Contract”) to REK and three other contractors on February 18, 2014 for environmental consulting and compliance services. The contract allowed REK and the three other contractors the opportunity to provide up to \$30 million in

unspecified products and services. Through the contract, REK and the other contractors competed with one another to bid on federal procurement opportunities.

p. In or around October 2017, Raby and Garo agreed with the Defendant and other REK Associates employees to use the Army Corps Kansas Contract as a vehicle to do work at the Range. To accomplish this, Defendant and other REK Associates employees wrote Performance Work Statements and Requests for Proposal, which are DOD procurement documents, for this project as if they were from the U.S. government, and sent them to Raby. On or about November 14, 2017, Defendant emailed a Request for Proposal to Raby and noted “this has been swiped so it is a clean authorship.” This allowed Raby to falsely pass off the Request for Proposal as his own work.

q. REK Associates employees drafted the Performance Work Statement and Request for Proposal with particular language regarding the requirements of the project. This was done in part in order to prevent the three other contractors from bidding on the contract, because they did not possess the capabilities or expertise necessary to perform the contract as specified in the procurement documents that REK had drafted. Only REK Associates could perform the particular requirements. By engineering the Performance Work Statement and Request for Proposal in this manner, Defendant and other REK Associates employees

essentially guaranteed that the contract would be awarded to REK Associates. Defendant provided the Performance Work Statements to Raby and Garo, who ensured that they were used as DOD's procurement documents for this specific contract.

r. In or about March 2018, Army Corps Kansas determined that the work should be awarded to an "8(a) firm," which is a government classification designating a business as a tribal-owned, disadvantaged, historically underutilized business zone ("HUBZone") small business. Certain government contracts known as "8(a) contracts" can be awarded directly to government contractors, outside of the normal competitive bidding process. Defendant provided Raby with a point of contact at Cherokee Nation Environmental Solutions, LLC ("CNES"), an 8(a) firm to which REK Associates later served as a subcontractor. In or about April 2018, Defendant put Raby in touch with a CNES point of contact, and afterwards Raby informed Army Corps Kansas that it should use CNES for the project. Raby then put Army Corps Kansas employees in touch with CNES.

s. On or about April 4, 2018, Raby emailed Defendant and other REK Associates employees a document containing the Fiscal Year 2019 Work Plan for the U.S. Army Garrison of Hawaii, which included the projected budget for thirteen different projects, cumulatively valued at \$7,733,000. The fact that the

government had budgeted \$7,733,000 for the projects was confidential bid or proposal information. In the accompanying email, Raby wrote, "This is what I received from [the Directorate of Public Works] yesterday. We really need to focus on the top 5 items and see if we can get them to put it on the Corps contract." The "Corps contract" is the Army Corps Kansas contract that REK Associates and the Defendant were working to ensure went to CNES.

t. On or about July 26, 2018, acting in his official capacity, Garo signed a Request for Services Contract Approval Form, which obligated the military to allocate up to \$12 million for vegetation removal work at the Range as part of the CNES contract.

u. On or about September 27, 2018, Army Corps Kansas awarded the sole-source contract to CNES. The contract is a firm-fixed price award of \$2,183,334.96 for Vegetation Control for the Army Ranges of Hawaii.

v. Following his retirement from government employment, Raby accepted a job as a Program Manager for REK Associates. The Defendant was aware that Raby's full salary as an REK Associates employee was contingent upon CNES and REK Associates being awarded the Army Corps Kansas contract.

*The Dust Control Contract*

w. REK Associates has received several contract awards from the Army Contracting Command for work at the Range, through an organization known as CEED, of which REK Associates is a member. The most recent of the CEED contracts that was awarded to REK Associates was for Dust Control for Range Management (the “Dust Control” contract). The Dust Control contract was awarded on or about August 29, 2017, and is believed to be worth approximately \$3.76 million. Garo and Raby used their positions and influence within DOD to help REK Associates receive these contract awards. On or about May 30, 2017, Garo nominated Raby to serve as the Agreements Officer Representative on the Dust Control contract that would eventually be awarded to REK Associates on August 29, 2017.

x. The Defendant, along with other REK Associates employees, worked with Raby to improperly use the Dust Control contract to provide money to REK Associates to repair a rock quarry located on Schofield Barracks, HI, even though repair of the quarry was not within the scope of the Dust Control contract.

*Kickbacks from Company B*

y. Company B is a general contracting business based in Oahu, Hawaii. Company B is one of REK Associates’ primary subcontractors for the



federal prime contracts that it works on in Hawaii. Company B is owned by Individual 1.

z. In or about 2011, Individual 1 and Defendant agreed that Individual 1 would pay Defendant for bringing REK's business with the federal government to Company B to serve as a subcontractor. The compensation Defendant received from Company B and Individual 1 was approximately 20-33% of Company B's profit for each project.

aa. In exchange for compensation, Defendant recommended that Company B be used as a subcontractor on federal contracts in which REK Associates served as the prime contractor. Defendant knew that he was being compensated in order to continue subcontracting REK's federal contracting work to Company B.

bb. Defendant and Individual 1 did not document their agreement in writing and did not tell anyone else about their agreement.

cc. Between February 2017 and May 2018, Individual 1 paid Defendant approximately \$723,333.33 in kickbacks.

dd. But for the conspiracy charged in Count 1 of the Information, Defendant would not have received these funds.

ee. The Defendant, at all times related to the offenses charged, acted knowingly and willfully.

9. Pursuant to CrimLR 32.1(a) of the Local Rules of the United States District Court for the District of Hawaii, the parties agree that the charges to which the Defendant is pleading guilty adequately reflect the seriousness of the actual offense behavior and that accepting this Agreement will not undermine the statutory purposes of sentencing.

### **SENTENCING STIPULATIONS**

10. Pursuant to CrimLR 32.1(b) of the Local Rules of the United States District Court for the District of Hawaii and Section 6B1.4 of the Sentencing Guidelines, the parties stipulate to the following for the purpose of the sentencing of the Defendant in connection with this matter:

a. The parties stipulate that the value of the payments, the benefits received, and the things of value obtained by government officials pursuant to U.S.S.G. § 2C1.1(b)(2), and the value of the bribe or the improper benefit to be conferred pursuant to U.S.S.G. § 2B4.1(b)(1), is not less than \$824,833.33 and not more than \$888,333.33.

b. As of the date of this agreement, it is expected that the Defendant will enter a plea of guilty prior to the commencement of trial, will truthfully admit his involvement in the offense and related conduct, and will not engage in conduct that is inconsistent with such acceptance of responsibility. If

all of these events occur, and the Defendant's acceptance of responsibility continues through the date of sentencing, a downward adjustment of 2 levels for acceptance of responsibility will be appropriate. *See* U.S.S.G. § 3E1.1(a) and Application Note 3.

c. The United States Attorney agrees that the Defendant's agreement herein to enter into a guilty plea constitutes notice of intent to plead guilty in a timely manner, so as to permit the government to avoid preparing for trial as to the Defendant. Accordingly, the United States Attorney anticipates moving in the Government's Sentencing Statement for a one-level reduction in sentencing offense level pursuant to Guideline § 3E1.1(b)(2), if the Defendant is otherwise eligible. The Defendant understands that notwithstanding its present intentions, and still within the Agreement, the prosecution reserves the rights (1) to argue to the contrary in the event of receipt of new information relating to those issues, and (2) to call and examine witnesses on those issues in the event that either the United States Probation Office finds to the contrary of the prosecution's intentions or the Court requests that evidence be presented on those issues.

11. The parties agree that notwithstanding the parties' Agreement herein, the Court is not bound by any stipulation entered into by the parties but may, with the aid of the presentence report, determine the facts relevant to sentencing. The

parties understand that the Court's rejection of any stipulation between the parties does not constitute a refusal to accept this Agreement since the Court is expressly not bound by stipulations between the parties.

12. The parties represent that as of the date of this agreement there are no material facts in dispute.

### **APPEAL/COLLATERAL REVIEW**

13. The Defendant is aware that he has the right to appeal his conviction and the sentence imposed. The Defendant knowingly and voluntarily waives the right to appeal, except as indicated in subparagraph "b" below, his conviction and any sentence within the Guidelines range as determined by the Court at the time of sentencing, and any lawful restitution order imposed, or the manner in which the sentence or restitution order was determined, on any ground whatsoever, in exchange for the concessions made by the prosecution in this Agreement. The Defendant understands that this waiver includes the right to assert any and all legally waivable claims.

a. The Defendant also waives the right to challenge his conviction or sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under Title 28, United States Code, Section 2255, except that the Defendant may make such a challenge (1) as

indicated in subparagraph “b” below, or (2) based on a claim of ineffective assistance of counsel.

b. If the Court imposes a sentence greater than specified in the guideline range determined by the Court to be applicable to the Defendant, the Defendant retains the right to appeal the portion of his sentence greater than specified in that guideline range and the manner in which that portion was determined and to challenge that portion of his sentence in a collateral attack.

c. The prosecution retains its right to appeal the sentence and the manner in which it was determined on any of the grounds stated in Title 18, United States Code, Section 3742(b).

### **FINANCIAL DISCLOSURE**

14. In connection with the collection of restitution or other financial obligations, including forfeiture as set forth below, that may be imposed upon him, the Defendant agrees as follows:

a. The Defendant agrees to fully disclose all assets in which he has any interest or over which he exercises control, directly or indirectly, including any assets held by a spouse, nominee, or third party. The Defendant understands that the United States Probation Office (USPO) will conduct a presentence investigation that will require the Defendant to complete a comprehensive financial

statement. To avoid the requirement of the Defendant completing financial statements for both the USPO and the government, the Defendant agrees to truthfully complete a financial statement provided to the Defendant by the United States Attorney's Office. The Defendant agrees to complete the disclosure statement and provide it to the USPO within the time frame required by the United States Probation officer assigned to the Defendant's case. The Defendant understands that the USPO will in turn provide a copy of the completed financial statement to the United States Attorney's Office. The Defendant agrees to provide written updates to both the USPO and the United States Attorney's Office regarding any material changes in circumstances, which occur prior to sentencing, within seven days of the event giving rise to the changed circumstances. The Defendant's failure to timely and accurately complete and sign the financial statement, and any written update thereto, may, in addition to any other penalty or remedy, constitute the Defendant's failure to accept responsibility under U.S.S.G § 3E1.1.

b. The Defendant expressly authorizes the United States Attorney's Office to obtain his credit report. The Defendant agrees to provide waivers, consents, or releases requested by the United States Attorney's Office to access records to verify the financial information, such releases to be valid for a

period extending 90 days after the date of sentencing. The Defendant also authorizes the United States Attorney's Office to inspect and copy all financial documents and information held by the USPO.

c. Prior to sentencing, the Defendant agrees to notify the Financial Litigation Unit of the U.S. Attorney's Office before making any transfer of an interest in property with a value exceeding \$1,000 owned directly or indirectly, individually or jointly, by the Defendant, including any interest held or owned under any name, including trusts, partnerships, and corporations.

### **FORFEITURE**

15. As part of his acceptance of responsibility and pursuant to 18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461, the defendant agrees as follows:

a. The defendant consents to the entry of a money judgment in the amount of \$723,333.33 in United States currency. The defendant acknowledges that \$723,333.33 is property, real or personal, which constitutes or is derived from proceeds traceable to the offense charged in Count 1 of the Information, which is a conspiracy to commit a specified unlawful activity within the meaning of 18 U.S.C. § 1956(c)(7), namely a violation of 18 U.S.C. § 1343. The government agrees not to seek forfeiture in excess of \$723,333.33.

b. The defendant knowingly and voluntarily waives and agrees to waive any and all constitutional, statutory, and other challenges to the forfeiture on any and all grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment. The defendant waives all constitutional, legal, and equitable defenses to the entry of and collection of the Forfeiture Money Judgment. The defendant knowingly and voluntarily waives any right to a jury trial on the forfeiture of property.

c. The defendant agrees to consent promptly upon request to the entry of any orders deemed necessary by the government or the Court to complete the forfeiture and disposition of the property. The defendant waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of forfeiture in the charging instrument, announcement of forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant acknowledges that he understands that the forfeiture of the property, if the government elects to conduct the forfeiture criminally, will be part of the sentence imposed upon the defendant in this case and waives any failure by the Court to advise the defendant of this, pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure, during the change of plea hearing. Pursuant to Rule



32.2(b)(4) of the Federal Rules of Criminal Procedure, the defendant consents to the Forfeiture Money Judgment becoming final as to the defendant when entered.

d. The defendant understands that forfeiture does not constitute and will not be treated as satisfaction, in whole or in part, of any fine, restitution, reimbursement of cost of imprisonment, or any other monetary penalty this Court may impose upon the defendant in addition to the forfeiture.

e. Payment of \$300,000 of the Forfeiture Money Judgment shall be made by certified or bank check payable to the United States Marshals Service on or before 10 days in advance of the sentencing in this case. Payment of the balance of the Forfeiture Money Judgment shall be made by certified or bank check payable to the United States Marshals Service on or before December 31, 2020. The defendant shall cause said check(s) to be hand-delivered to the Asset Forfeiture Unit, United States Attorney's Office, District of Hawaii, PJKK Federal Building, 300 Ala Moana Boulevard, Room 6-100, Honolulu, Hawaii 96850, with the criminal docket number noted on the face of the check(s).

f. If the Forfeiture Money Judgment is not paid on or before the date the defendant enters his plea of guilty pursuant to this agreement, interest shall accrue at the judgment rate of interest (as defined by 28 U.S.C. § 1961) on any unpaid portion thereof at the judgment rate of interest from that date.

Furthermore, if the defendant fails to pay any portion of the Forfeiture Money Judgment on or before the dates set forth in Paragraph 15.e, the defendant consents to the forfeiture of any other property alleged to be subject to forfeiture in the Information, including substitute assets, in full or partial satisfaction of the money judgment, and remains responsible for the payment of any deficiency until the Forfeiture Money Judgment, including any accrued interest, is paid in full.

### **IMPOSITION OF SENTENCE**

16. The Defendant understands that the District Court in imposing sentence will consider the provisions of the Sentencing Guidelines. The Defendant agrees that there is no promise or guarantee of the applicability or non-applicability of any Guideline or any portion thereof, notwithstanding any representations or predictions from any source.

17. The Defendant understands that this Agreement will not be accepted or rejected by the Court until there has been an opportunity by the Court to consider a presentence report, unless the Court decides that a presentence report is unnecessary. The Defendant understands that the Court will not accept an agreement unless the Court determines that the remaining charges adequately reflect the seriousness of the actual offense behavior and accepting the Agreement will not undermine the statutory purposes of sentencing.

**WAIVER OF TRIAL RIGHTS**

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

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

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

c. If the trial is held by a judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he or she was persuaded of the Defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against the Defendant. The Defendant would be able to confront those prosecution witnesses and his attorney would be able to cross-examine them. In turn, the Defendant could present witnesses and other evidence on his own behalf. If the witnesses for the Defendant would not appear voluntarily, the Defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the Defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify.

19. The Defendant understands that by pleading guilty, he is waiving all of the rights set forth in the preceding paragraph. The Defendant's attorney has explained those rights to him, and the consequences of the waiver of those rights.

#### **USE OF PLEA STATEMENTS**

20. If, after signing this Agreement, the Defendant decides not to plead guilty as provided herein, or if the Defendant pleads guilty but subsequently makes

a motion before the Court to withdraw his guilty plea and the Court grants that motion, the Defendant agrees that any admission of guilt that he makes by signing this Agreement or that he makes while pleading guilty as set forth in this Agreement may be used against him in a subsequent trial if the Defendant later proceeds to trial. The Defendant voluntarily, knowingly, and intelligently waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence regarding the use of statements made in this Agreement or during the course of pleading guilty when the guilty plea is later withdrawn. The only exception to this paragraph is where the Defendant fully complies with this Agreement but the Court nonetheless rejects it. Under those circumstances, the United States may not use those statements of the Defendant for any purpose.

21. The Defendant understands that the prosecution will apprise the Court and the United States Probation Office of the nature, scope and extent of the Defendant's conduct regarding the charges against him, related matters, and any matters in aggravation or mitigation relevant to the issues involved in sentencing.

### **COOPERATION**

22. The Defendant agrees that he will fully cooperate with the United States.

a. The Defendant agrees to testify truthfully at any and all trials, hearings, or any other proceedings at which the prosecution requests him to testify, including, but not limited to, any grand jury proceedings, trial proceedings involving co-Defendants and others charged later in the investigation, sentencing hearings, and related civil proceedings.

b. The Defendant agrees to be available to speak with law enforcement officials and representatives of the United States Attorney's Office at any time and to give truthful and complete answers at such meetings, but he understands he may have his counsel present at those conversations, if he so desires.

c. The Defendant agrees he will not assert any privilege to refuse to testify at any grand jury, trial, or other proceeding, involving or related to the crimes charged in this Information or any subsequent charges related to this investigation, at which the prosecution requests him to testify.

d. The Defendant agrees that his sentencing date may be delayed based on the government's need for the Defendant's continued cooperation, and agrees not to object to any continuances of the Defendant's sentencing date sought by the United States.

e. Pursuant to Section 1B1.8(a) of the Sentencing Guidelines, the prosecution agrees that self-incriminating information provided pursuant to this Agreement to cooperate will not be used in determining the applicable guideline range, except as may be provided in this Agreement and under Section 1B1.8(b) of the Sentencing Guidelines.

23. In the event that the Defendant does not breach any of the terms of this Agreement but the Court nonetheless refuses to accept the Agreement after the Defendant has made statements to law enforcement authorities or representatives of the United States Attorney's Office pursuant to this Agreement, the prosecution agrees not to use said statements in its case-in-chief in the trial of the Defendant in this matter. The Defendant understands that this does not bar the use of information and evidence derived from said statements or prohibit the use of the statements by the prosecution in cross-examination or rebuttal.

24. Pursuant to Guidelines § 5K1.1 and Rule 35(b) of the Federal Rules of Criminal Procedure, the prosecution may move the Court to depart from the Guidelines on the ground that the Defendant has provided substantial assistance to authorities in the investigation or prosecution of another person who has committed an offense. The Defendant understands that:

- a. The decision as to whether to make such a request or motion is entirely up to the prosecution.
- b. This Agreement does not require the prosecution to make such a request or motion.
- c. This Agreement confers neither any right upon the Defendant to have the prosecution make such a request or motion, nor any remedy to the Defendant in the event the prosecution fails to make such a request or motion.
- d. Even in the event that the prosecution makes such a request or motion, the Court may refuse to depart from the Guidelines or to impose a sentence below the minimum level established by statute.

25. The Defendant and his attorney acknowledge that, apart from any written proffer agreements, if applicable, no threats, promises, agreements or conditions have been entered into by the parties other than those set forth in this Agreement, to induce the Defendant to plead guilty. Apart from any written proffer agreements, if applicable, this Agreement supersedes all prior promises, agreements or conditions between the parties.

26. To become effective, this Agreement must be signed by all signatories listed below.




27. Should the Court refuse to accept this Agreement, it is null and void and neither party shall be bound thereto.

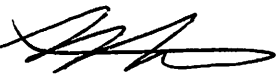
SEP 26 2019


DATED: Honolulu, Hawaii, \_\_\_\_\_.

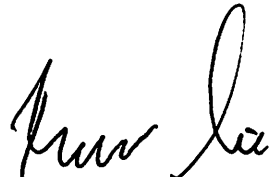
AGREED:

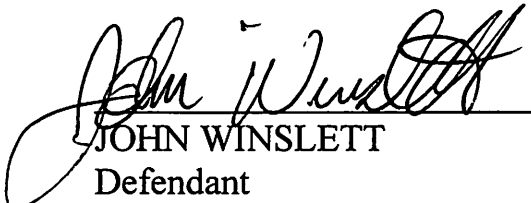
KENJI M. PRICE  
United States Attorney  
District of Hawaii

  
\_\_\_\_\_  
MICAH SMITH  
Deputy Chief, Criminal Division

  
\_\_\_\_\_  
MARC A. WALLENSTEIN  
Assistant U.S. Attorney

  
\_\_\_\_\_  
Fa LAURA CONNELLY  
Trial Attorney, Fraud Section

  
\_\_\_\_\_  
RICHARD SING  
Attorney for Defendant

  
\_\_\_\_\_  
JOHN WINSLETT  
Defendant