IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, Plaintiff, vs. JOE DIAZ, Defendant.	)	Cr. No. 1:17-03338-JB

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, Joe Diaz, and the Defendant's counsel, John L. Brownlee and Megan Mocho Jeschke of Holland & Knight LLP, and Sara Nathanson Sanchez and Rebekah Gallegos of Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A.:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by counsel and is so represented. The Defendant has thoroughly reviewed all aspects of this case and the Plea Agreement with his counsel and is fully satisfied with his attorneys' legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:

a. to be prosecuted by indictment;

b. to plead not guilty, or having already so pleaded, to persist in that plea;

c. to have a trial by jury; and

d. at a trial:

i. to confront and cross-examine adverse witnesses,

ii. to be protected from compelled self-incrimination,

iii. to testify and present evidence on the Defendant's own behalf, and

iv. to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEAS OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to the following charges:

a. Count 1 of the indictment, charging a violation of 18 U.S.C. § 286, that being Conspiracy to Defraud the United States with Respect to Claims;

b. Counts 3 and 4 of the indictment, each charging a violation of 18 U.S.C. § 1031, that being Fraud Against the United States.

ELEMENTS OF THE OFFENSES

4. If this matter proceeded to trial, the Defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for violations of the charges listed below:

Count 1: 18 U.S.C. § 286, that being Conspiracy to Defraud the United States with Respect to Claims

First: Defendant and at least one other person entered into an agreement to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment of any false, fictitious or fraudulent claim;

Second: Defendant knew the essential objective(s) of the conspiracy;

Third: Defendant knowingly and voluntarily involved himself in the conspiracy; and

Fourth: there was interdependence among the members of the conspiracy.

Counts 3 and 4 : 18 U.S.C. § 1031, that being Fraud Against the United States

First: Defendant knowingly executed or attempted to execute a scheme or artifice to defraud the United States or to get money or property by materially false or fraudulent pretenses, representations, or promises;

Second: the scheme or artifice was in connection with a contract with the United States or the procurement of services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States;

Third: the value of the contract was $1,000,000 or more.

DEFENDANT'S ADMISSION OF FACTS

5. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the indictment that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

a. At all times relevant to this recitation, I, JOE DIAZ, was president, chief executive officer and majority owner of Miratek Corporation, a Texas corporation.

b. In 2004, Miratek entered into contract NBCHD040016 with the United States Department of Interior (DOI), an agency of the United States. The contract was awarded on a non-competitive sole-source basis as part of the § 8(a) Business Development Program, a federal program administered by the Small Business

Administration (SBA) and designed to assist small businesses controlled by socially and economically disadvantaged individuals.

c. In September 2004, Miratek was awarded task order number D0400160001 under the DOI Contract. The statement of work for the task order required Miratek to provide technical and analytical support services to the Big Crow Program Office, a part of the United States Army, on a time and materials basis. As modified, the order authorized Miratek to provide approximately $1,332,000 of services to the Big Crow Program Office through April 2006.

d. Around the time that Miratek was awarded the DOI task order to provide technical and analytical services to the Big Crow Program Office, I learned that the director and leader of the Big Crow Program Office, MILTON BOUTTE, had retained lobbyists and consultants to lobby Congress, federal agencies, and federal military and civilian authorities for funds for the Big Crow Program Office. BOUTTE also retained other contractors to provide goods and services to the Big Crow Program Office. Some of the contractors BOUTTE secured did provide technical and advisory services encompassed within the statement of work while other contractors BOUTTE secured provided equipment, facilities, tuition reimbursement for relatives, and non-technical services that were not encompassed within the statement of work or appropriate.

e. BOUTTE and the Big Crow Program Office did not directly pay the lobbyists, consultants and contractors whom BOUTTE had retained. As a matter of law, federal agencies and employees are prohibited from spending federal funds to pay for materials or services intended to influence Congress or federal officials

regarding any legislation, policy or appropriation. Additionally, I understand that the Big Crow Program Office may not have had sufficient funds to make those payments at that time.

f. BOUTTE demanded that Miratek pay the lobbyists, consultants and contractors he retained and Miratek did so with funds allocated under the DOI task order. While federal contractors are permitted to conduct and pay for lobbying activities with their own monies, federal law and regulations restrict them from using appropriated funds to pay any person to influence or attempt to influence Congress or federal officers or employees in connection with any contract. Moreover, the DOI task order did not authorize Miratek to pay lobbyists, consultants or contractors for such services.

g. Although I knew that diverting federal funds from the DOI task order to pay the lobbyists and consultants was not permitted by law or authorized by the contract, I acquiesced and agreed to fraudulently claim and misapply government funds allocated under the DOI task order to pay lobbyists, consultants and other contractors whom BOUTTE had retained.

h. GEORGE LOWE was one of those lobbyists. BOUTTE arranged for LOWE to lobby on behalf of the Big Crow Program Office. I was directed to have Miratek engage LOWE through his company Broadcreek Associates on behalf of BOUTTE. Although I did not know LOWE was a lobbyist at the time of the engagement, I later learned that he was a lobbyist. BOUTTE personally demanded that Miratek pay LOWE's fees and made threats towards me and the company if Miratek failed to make the required payments. Although I knew it

was wrong to continue to pay LOWE, I agreed to BOUTTE's demands and diverted funds under the DOI task order to pay for LOWE's lobbying fees.

i. To conceal and disguise the nature of the payments to LOWE and other unauthorized lobbyists, consultants and contractors in the invoices, I falsely billed LOWE / Broadcreek Associates, and other lobbyists and consultants under the "Project Manager/Senior Auditor/CPA" labor rate.

j. To further conceal the diversion of funds for unauthorized purposes, I combined with LOWE and others to structure or "map" the hours billed for his services. Pursuant to his agreement with BOUTTE, LOWE initially submitted invoices to Miratek at a flat rate of $15,000 per month. LOWE's monthly flat-fee for lobbying was not authorized under the DOI contract, and his monthly retainer was incompatible with the hourly labor rates established under that time and materials contract. For this reason, in October 2004, I asked LOWE to falsely and fraudulently restructure his flat-rate invoices on an hourly basis using the hourly labor rate prescribed for a "Project Manager"—the highest rate authorized under the DOI contract. I informed LOWE that the alteration or restructuring of his invoices was needed because the government would want to see an hourly rate for services performed under Miratek's contract. LOWE agreed to fraudulently structure his invoices. For example, LOWE modified Broadcreek Associates' invoice for September 2004 to claim payment for 185 hours of labor that he had purportedly performed under the contract at a rate of $70.85 per hour. LOWE additionally claimed reimbursement for purported travel, lodging and meal costs in the sum of $1,861.00. In total, he claimed exactly $15,000 for labor and

reimbursable costs—a sum equivalent to his monthly $15,000 retainer. LOWE thereafter submitted additional invoices claiming false or fictional hours of labor under the contract. In LOWE's invoice for September 2004 and in many subsequent invoices, LOWE affirmatively declared: "I certify to the best of my knowledge and belief, that the above bill is correct and just and that payment therefore has not been received, and that this certification is made with the understanding that any sum paid hereunder will become the basis for a claim or reimbursement by the contractor to the US government."

k. In early 2005, LOWE informed BOUTTE, me, and others that he had arranged for a transfer of more than one million dollars from or through the Alaska Army National Guard. On or about April 12, 2005, officers or agents of the Alaska Army National Guard transferred $1,185,000 through a Military Interdepartmental Purchase Request (MIPR) to the Department of Interior for benefit of the Big Crow Program Office. Those funds were added to the funding under contract NBCHD040016 "for support of BIG CROW Program Office oversight and sustainment."

l. After LOWE had arranged for that MIPR transfer of funds, his demands for money increased significantly. For example, in the invoice that LOWE submitted for February 2005 while the transfer was pending, he claimed that five (5) "principals" had each performed 381 hours of labor that month at a rate of $70.85 per hour, and he demanded payment in the sum of $134,969.25. LOWE made additional demands for money after the transfer had been completed. For example, in his invoice for April 2005, LOWE claimed that five (5) "principals"

had each performed 403 hours of labor and demanded payment of $142,762.75. In each of those invoices, LOWE again expressly acknowledged that he understood that his invoices would be the basis for a claim by Miratek to the United States: "I certify to the best of my knowledge and belief, that the above bill is correct and just and that payment therefore has not been received, and that this certification is made with the understanding that any sum paid hereunder will become the basis for a claim or reimbursement by the contractor to the US government."

m. My efforts to resist LOWE's increased payment demands were rebuffed by BOUTTE and his representatives. At my direction, Miratek continued to incorporate LOWE's charges in claims for payment made to the Department of Interior under contract NBCHD040016, task order D040016000. To avoid detection, LOWE's large claims were restructured in several invoices. For example:

i. Invoice #4801 submitted on or about June 8, 2005, included a claim for payment of $19,219.92 under the pretense that Broadcreek Associates had performed 212 hours of work under the DOI contract;

ii. Invoice #4893 submitted on or about July 14, 2005, included a claim for payment of $182,407.92 under the pretense that Broadcreek Associates had performed 2,012 hours of work under the DOI contract; and

iii. Invoice #4941 submitted on or about August 9, 2005, included a claim for payment of $183,314.52 under the pretense that Broadcreek Associates had performed 2,022 hours of work under the DOI contract.

n. Despite these payments, LOWE demanded more money. One of the consultants who BOUTTE had retained was acquainted with LOWE and attempted to intercede and moderate LOWE's demands. On August 27, 2005, this consultant sent an email to LOWE (and copies to BOUTTE and me) concerning LOWE's demands for money. The consultant noted in that email that Miratek had already paid LOWE "$530K" (i.e., $530,000), and that I had agreed to make another payment to LOWE in September. The consultant wrote that he thought that my payments to LOWE were satisfactory. LOWE responded by email on August 29, 2005:

> Well . . You think wrong! You seem to forget that I am the one that placed those funds on that account. I have also received verification that they processed ALL of my invoices which total in excess of $850K and have diverted funds for other uses. That in and of itself is a major problem, it is known as diversion of funds. I don't appreciate the tone of your email. I am meeting with my attorneys at Arent Fox at 11:00 today to move forward. I will not be treated like this by you, Milt [BOUTTE], [Former Miratek Employee #1] and/or Joe [DIAZ]. . . .

Later that same day, I forwarded this email strand to Former Miratek Employee #1 with the comment that LOWE's "lawyer talk is a big bluff . . . . . unless he wants to go straight to Leavenworth."

o. Although I was aware that the diversion of funds to LOWE was illegal, and while I did not believe that LOWE would make good on this threat to report the diversion if his demands were not met, I directed Miratek to continue to make

payments to LOWE based on the demands from BOUTTE. Those funds were obtained and diverted to LOWE through additional false claims against the UNITED STATES. For example, invoice #5009 submitted on or about September 14, 2005, included a claim for payment of $106,253.52 under the pretense that LOWE and Broadcreek Associates had provided 1,172 hours of work under the DOI task order. By the time the funding ran out on the DOI task order, LOWE's payment demands accounted for more than half of the MIPR he had secured and a significant portion of the remaining amounts were used to pay for other consultants and contractors sourced by BOUTTE.

p. Miratek and the DOI task order could not indefinitely sustain the scheme to defraud the UNITED STATES and to obtain money from the UNITED STATES by means of false and fraudulent pretenses and representations to pay for LOWE and the other consultants retained by BOUTTE. Miratek's task order under the DOI contract was to expire in April 2006, and funding under that order had been depleted. Further, Miratek graduated from the § 8(a) Business Development Program in or around April 2004 and was not eligible to receive another sole-source contract under that program.

q. For purposes of perpetuating the conspiracy and scheme to pay consultants retained by BOUTTE, I conspired with BOUTTE, ARTURO VARGAS and others to have another sole source § 8(a) contract awarded to Vartek, LLC. Vartek was a joint venture between Miratek and Vargas, P.C., an accounting firm owned by VARGAS. VARGAS and I agreed to form the Vartek joint venture under the SBA § 8(a) Mentor Protégé Program for purposes of enabling Vartek to

receive contracts under the § 8(a) Program. For purposes of obtaining the Small Business Administration's approval to enter into a Mentor-Protégé Agreement, VARGAS and I represented to the Small Business Administration that Vargas P.C. was developing into an information technology firm and that Miratek would mentor and help develop Vargas P.C. into an information technology firm.

r. Knowing that VARGAS and I had successfully enrolled Vartek in the § 8(a) Mentor Protégé program, and that Vartek was eligible for § 8(a) sole source awards, I, BOUTTE, VARGAS, and others combined and conspired to have a source § 8(a) contract awarded to Vartek. I knew that VARGAS already knew the nature of the fraudulent scheme to pay LOWE's false and fraudulent invoices as a result of VARGAS's prior accounting service for Miratek. Before Vartek could receive any § 8(a) contracts, the Small Business Administration's approval of the joint venture was required. To obtain approval, VARGAS and I represented to the SBA that VARGAS and Vargas P.C. would manage the joint venture; that subcontractors would perform none of the work without prior consent from SBA; and that VARGAS and Vargas P.C. would perform a majority of the work under the § 8(a) contract. These representations were materially untrue. While VARGAS processed invoices prepared by Miratek and submitted claims to the government, VARGAS and Vargas, P.C., did not perform a substantive amount of technical or analytical work performed in support of the Big Crow Program Office. Instead, the majority of the work was performed by the consultants and lobbyists retained by BOUTTE. In effect, the Vartek joint venture served as a

vehicle through which government funds were fraudulently claimed and diverted to pay lobbyists, consultants and contractors retained by BOUTTE.

s. The Vartek joint venture was awarded two contracts in support of the Big Crow Program Office. Contract W9124Q-06-C-0514, awarded on or about December 22, 2005, authorized Vartek to provide technical and analytical support to the Big Crow Program Office through February 21, 2007, at a cost of up to $3,209,116 as modified. After expiration of that contract, a second sole source contract, number W9124Q-07-C-0563, was awarded on or about March 16, 2007, and authorized Vartek to provide such support to the Big Crow Program Office through about March 11, 2009, at a cost of up to $3,847,940 as modified.

t. Although neither of those time and materials contracts authorized payments to lobbyists, consultants or contractors, I, BOUTTE, VARGAS, and others conspired and combined to make claims under those contracts to pay lobbyists, consultants and contractors retained by BOUTTE. As before, I authorized and directed former Miratek employees to disguise lobbyists, consultants and contractors under the "Project Managers" labor categories. In certain instances, false identities were assigned to the contracting entities. At my direction, former Miratek employees structured or "mapped" payments to lobbyists, consultants and contractors by falsely representing that they had performed hours of work under the contract roughly commensurate with their fees.

u. During the time period of the conspiracy, Miratek and Vartek received from the government approximately $8.4 million for the DOI task order, contract number W9124Q-06-C-0514 and/or contract number W9124Q-07-C-0563. BOUTTE

required the companies to pay nearly $4.1 million in illegal payments to lobbyists, consultants and contractors who were associated with BOUTTE. These payments were billed to the government through the DOI task order, contract number W9124Q-06-C-0514 and/or contract number W9124Q-07-C-0563. In this manner, VARGAS and I combined to make 36 fraudulent claims against the United States, containing requests for payments for lobbyists, consultants, contractors and other unauthorized costs disguised as labor performed under the Program Manager labor category. LOWE was one of those lobbyists, and 12 of the claims included disguised demands for payment for LOWE's lobbying charges that continued into 2006. In total, Miratek paid LOWE over $880,000 pursuant to BOUTTE's demands, which was billed to the United States through the DOI task order and contract number W9124Q-06-C-0514. Of the remaining funds, approximately $2.2 million were paid for legitimate business purposes for which the government received value. The balance, approximately $2.1 million, was retained by the companies.

6. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime(s) to which the Defendant is pleading guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

SENTENCING

7. The Defendant understands that the maximum penalty provided by law for each offense is:

a. As to Count 1, a term of imprisonment for a period of not more than ten years; a fine not to exceed the greater of $250,000 or twice the pecuniary gain to the Defendant or pecuniary loss to the victim; a term of supervised release of not more than three years to follow any term of imprisonment (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.); a mandatory special penalty assessment of $100.00; and restitution as may be ordered by the Court.

b. As to Counts 3 and 4, each count carries a term of imprisonment for a period of not more than ten years; a fine not to exceed ~~the greater of~~ $5,000,000; a term of supervised release of not more than three years to follow any term of imprisonment (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.); a mandatory special penalty assessment of $100.00; and restitution as may be ordered by the Court.

8. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

RECOMMENDATIONS

9. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant recommend as follows:

a. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to USSG § 3E1.1(a), so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of two levels from the base offense level as calculated under the sentencing guidelines, and if applicable, a reduction of an additional offense level pursuant to USSG § 3E1.1(b). This reduction is contingent upon the Defendant personally providing to the United States Probation Officer who prepares the presentence report in this case an appropriate oral or written statement in which the Defendant clearly establishes the Defendant's entitlement to this reduction. Further, the United States is free to withdraw this recommendation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes, failing to appear in Court as required, and/or failing to obey any conditions of release that the Court may set.

b. The Defendant understands that the above recommendations are not binding on the Court and that whether the Court accepts these recommendations is a matter solely within the discretion of the Court after it has reviewed the presentence

report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. If the Court does not accept any one or more of the above recommendations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the Defendant's plea of guilty. In other words, regardless of any of the parties' recommendations, the Defendant's final sentence is solely within the discretion of the Court.

10. Apart from the recommendations set forth in this plea agreement, the United States and the Defendant reserve their rights to assert any position or argument with respect to the sentence to be imposed, including but not limited to the applicability of particular sentencing guidelines, adjustments under the guidelines, departures or variances from the guidelines, and the application of factors in 18 U.S.C. § 3553(a).

11. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under USSG § 1B1.3.

DEFENDANT'S ADDITIONAL AGREEMENT

12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

13. The Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

14. By signing this plea agreement, the Defendant waives the right to withdraw the Defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d) unless (1) the court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5) or (2) the Defendant can show a fair and just reason as those terms are used in Rule 11(d)(2)(B) for requesting the withdrawal. The United States and the Defendant agree that if any co-defendant prevails in a motion to dismiss the indictment in this case based on either the applicable statute of limitations, or an argument that the indictment is unconstitutionally untimely, or both, under facts that reasonably apply to the Defendant, that would be a fair and just reason for the Defendant to withdraw his guilty plea and bring his own motion to dismiss the indictment based on similar grounds. The Defendant understands that if the court rejects the plea agreement, whether or not the Defendant withdraws the guilty plea, the United States is relieved of any obligation it had under the agreement and the Defendant shall be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted.

RESTITUTION

15. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. The Defendant agrees and acknowledges that, as part of the Defendant's sentence, the Court is not limited to ordering restitution only for the amount involved in the particular offense or offenses to which the Defendant is entering a plea of guilty, but may and should order restitution resulting from all of the Defendant's criminal conduct related to this case.

16. In this case, the Defendant agrees to pay restitution in a total principal amount to be determined by the Court, which will become payable in full to the United States District Court Clerk immediately upon imposition of sentence. No later than July 1 of each year after sentencing, until restitution is paid in full, the Defendant shall provide the Asset Recovery Unit, United States Attorney's Office, P.O. Box 607, Albuquerque, New Mexico 87103, (1) a completed and signed financial statement provided to the Defendant by the United States Attorney's Office and/or the United States Probation Office and (2) a copy of the Defendant's most recent tax returns.

17. The Defendant agrees to cooperate fully with the United States Attorney's Office by making a full and complete financial disclosure. Within fourteen days of executing this agreement, the Defendant agrees to complete and sign a financial disclosure statement or affidavit disclosing 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, and disclosing any transfer of assets that has taken place within three years preceding the entry of this plea agreement. The Defendant will submit to an examination if requested, which may be taken under oath. The Defendant will not encumber, transfer, or

dispose of any monies, property, or assets under the Defendant's custody or control without written approval from the United States Attorney's Office. If the Defendant is ever incarcerated in connection with this case, the Defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments. If the Defendant fails to make the required financial disclosure or conceals, dissipates, or transfers assets without prior approval, the United States, in its discretion, may withdraw from this agreement.

WAIVER OF APPEAL RIGHTS

18. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's convictions and any sentence, including any fine, within or below the applicable advisory guideline range as determined by the Court, as well as any order of restitution entered by the Court. The Defendant specifically agrees not to appeal the Court's resolution of any contested sentencing factor in determining the advisory sentencing guideline range. In other words, the Defendant waives the right to appeal both the Defendant's convictions and the right to appeal any sentence imposed in this case except to appeal the sentence to the extent, if any, that the Court may depart or vary upward from the advisory sentencing guideline range as determined by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's convictions and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241 or 2255, or any other extraordinary writ, except on the issues of (1) defense counsel's ineffective assistance, or (2) the challenges to the indictment as described in Paragraph 14 of this Agreement.

GOVERNMENT'S ADDITIONAL AGREEMENT

19. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

a. Following sentencing, the United States will move to dismiss Counts 2 and 5 through 46, inclusive, of the indictment.

b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

20. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

21. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement and any addenda). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

22. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

23. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of $300 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

24. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 4 day of April, 2018.

JOHN C. ANDERSON
United States Attorney

Timothy S. Vasquez
Jeremy Peña
Assistant United States Attorneys
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. In addition, I have explained to my client the elements to each offense to which she/he is pleading guilty. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

JOHN L. BROWNLEE
MEGAN MOCHO JESCHKE
SARA NATHANSON SANCHEZ
REBEKAH GALLEGOS
Attorneys for the Defendant

I have carefully discussed every part of this agreement with my attorneys. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorneys have advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.

JOE DIAZ
Defendant