ORIGINAL

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 19-00008 SOM
	)	
	)	MEMORANDUM OF PLEA
v.	)	AGREEMENT
	)	
FRANK JAMES LYON,	)	DATE: January 22, 2019
	)	TIME: 2:00 p.m.
Defendant.	)	JUDGE: Kenneth J. Mansfield
	)	
	)	

MEMORANDUM OF PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the UNITED STATES OF AMERICA, by its attorney, the Assistant Attorney General of the Criminal Division, and the Defendant, FRANK JAMES LYON, and his attorney, Erika Amatore, 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 371.

2. The Defendant has read the charge against him contained in the Information, and that charge has been fully explained to him by his attorney.

3. The Defendant fully understands the nature and elements of the crime with which he has been charged.

THE AGREEMENT

4. The Defendant agrees to waive indictment and enter a voluntary plea of guilty to the Information, which charges him with conspiring to (1) violate the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA"), Title 15, United States Code, Section 78dd-2, and (2) pay a bribe to an agent of an organization receiving federal funds in violation of Title 18, United States Code, Section 666(a)(2). The Defendant is aware that he has the right to have this felony asserted against him by way of grand jury indictment. The Defendant hereby waives this right and consents that this offense may be charged against him by way of the Information. In return, the government agrees not to file additional charges against the Defendant relating to (a) any of the conduct described in the Factual Stipulations, or (b) information made known to the government prior to the date of this Agreement.

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 conspiring to violate the FCPA and to pay a bribe to an agent of an organization receiving federal funds as charged in 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 offense to which he is pleading guilty include:

a. A term of imprisonment of up to 5 years and a fine of up to the greater of $250,000, or twice the gross gain or twice the gross loss, plus a term of supervised release of up to 3 years.

b. 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.

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 charge to which the Defendant is pleading guilty:

a. The Defendant was a United States citizen and resident.

b. "Co-Conspirator 1" was a United States citizen and resident.

c. "Co-Conspirator 2" was a United States citizen and Federated States of Micronesia ("FSM") resident.

d. "State Agency" was a Hawaii governmental agency that received United States federal assistance in excess of $10,000 each year between at least in or around 2011 and in or around 2016 as part of a Federal program involving a grant.

e. "Co-Conspirator 3," a United States citizen and resident was an employee of State Agency from at least approximately 2008 until at least approximately 2012.

f. "Engineering Company" was a privately-held United States engineering and consulting company headquartered in Honolulu, Hawaii and organized under the laws of Hawaii. Engineering Company was owned and controlled by the Defendant and Co-Conspirator 1. In or around and between 2006 and 2016, Engineering Company obtained contracts valued at approximately $7.8 million with the FSM government, including for an airport improvement project funded in large part by the United States Federal Aviation Administration ("FAA AIP Contract") and for project management. In or around 2012, Engineering Company obtained a contract with State Agency.

g. "Micronesian Official 1" was a government official in the FSM Department of Transportation, Communications and Infrastructure who administered FSM's aviation programs, including the management of its airports.

h. "Micronesian Official 2" was a government official in the FSM Congress who served on a congressional committee with oversight over Engineering Company's FSM contracts.

i. From in or around 2006 through in or around 2016, the Defendant, together with his co-conspirators, provided bribe payments to FSM officials totaling at least approximately $200,000 in order to obtain approximately $7.8 million in contract payments.

j. From in or around 2011 through in or around 2016, the Defendant, together with his co-conspirators, provided bribe payments in cash to Co-Conspirator 3, for distribution to State Agency officials, totaling at least approximately $240,000 in order to obtain a $2.5 million contract.

k. The Defendant, together with his co-conspirators, discussed in person, via email, and via telephone their need and agreement to pay bribes to obtain and retain business and contracts from the FSM and State Agency and to obtain payments on those contracts.

l. The Defendant, together with his co-conspirators, discussed in person, via email, and via telephone that they would pay bribes to FSM officials and State Agency officials to obtain and retain business and contracts from the FSM and State Agency and to obtain payments on those contracts, including via wire transfers.

m. The Defendant, together with his co-conspirators, caused the transfer of funds from Engineering Company to the Defendant's personal bank account and withdrew cash from his personal bank account to pay cash bribes to FSM officials and State Agency officials and to pay bribes in the form of vehicles, gifts, and entertainment for FSM officials.

n. The Defendant, together with his co-conspirators, falsely classified Engineering Company expenses as "business development" and "marketing" when in fact those funds were used to pay bribes in the form of gifts and entertainment for FSM officials.

o. The Defendant, together with his co-conspirators, used Engineering Company bank accounts and credit cards to pay bribes in the form of covering the costs of personal travel for FSM officials.

p. The Defendant, together with his co-conspirators, caused Engineering Company to make corrupt payments to a relative of Co-Conspirator 3, totaling approximately $24,000, purportedly for services provided to Engineering Company by the relative of Co-Conspirator 3. However, the relative of Co-Conspirator 3 did not provide any services to Engineering Company. The purpose of the payments was for Co-Conspirator 3's participation in influencing the award of a State Agency contract in favor of Engineering Company. During this period, Co-Conspirator 3 was an employee of State Agency.

q. The Defendant, together with his co-conspirators, caused Engineering Company to make corrupt payments to Co-Conspirator 3, totaling approximately $132,500, purportedly for marketing services provided to Engineering Company by Co-Conspirator 3. However, the purpose of the payments was for Co-Conspirator 3's participation in influencing the award of a State Agency contract in favor of Engineering Company.

r. On or about December 28, 2010, the Defendant sent an email to Co-Conspirator 2 regarding Engineering Company's purchase of travel relating to the FAA AIP Contract and an unrelated side trip to Las Vegas, Nevada, including for Micronesian Official 1 and his wife. The Defendant stated that the side trip would be expensive, but also stated, "This is a huge (and very very very critical to get renewed) contract so I am not trying to save money – or god forbid – insult [Micronesian Official 1]."

s. On or about December 28, 2010, Co-Conspirator 2 sent an email in reply to the email in Paragraph 8(r), in which Co-Conspirator 2 stated that the Engineering Company employees on the trip could charge their trip to the FAA AIP Contract, concealing the Las Vegas side trip, but collecting per diem during that time.

t. On or about December 28, 2010, Co-Conspirator 2 replied again to the email thread referenced in Paragraphs 8(r) and 8(s), stating, "Please erase this entire email when you are done."

u. On or about March 31, 2011, the Defendant and his co-conspirators caused Engineering Company to make a corrupt payment of $4,000 to a relative of Co-Conspirator 3, purportedly for consulting services, when in fact the payment was intended to compensate Co-Conspirator 3 for influencing the award of a State Agency contract in favor of Engineering Company.

v. In or around 2012, before State Agency awarded a contract to Engineering Company, the Defendant entered into an agreement with Co-Conspirator 3 whereby, after State Agency awarded the contract to Engineering Company, the Defendant would cause a portion of the State Agency contract payments to Engineering Company to be paid periodically to Co-Conspirator 3 to benefit Co-Conspirator 3 and certain State Agency officials who would have influenced the award of the State Agency contract to Engineering Company.

w. In or around 2012, Co-Conspirator 3 and certain State Agency officials caused State Agency to award a $2.5 million contract to Engineering Company in fulfillment of the corrupt agreement referenced in Paragraph 8(v).

x. In or around 2012, after Engineering Company was awarded the $2.5 million State Agency contract, the Defendant met with Co-Conspirator 3 in the District of Hawaii to provide a corrupt cash payment to Co-Conspirator 3, which the Defendant and Co-Conspirator 3 understood was in furtherance of the corrupt agreement referenced in Paragraph 8(v) to benefit Co-Conspirator 3 and certain State Agency officials who had served on the

selection committee and influenced the award of the $2.5 million State Agency contract to Engineering Company.

y. In or around 2012, the Defendant and his co-conspirators purchased an automobile for Micronesian Official 1's personal use in order to obtain and retain business.

z. On or about July 8, 2013, Micronesian Official 1 sent an email to the Defendant to go look at a Ford truck to potentially purchase for him, which the Defendant forwarded to Co-Conspirator 1, stating, "[T]his is an example of things [I] have to do[.] [I] have to find a car, negotiate a price, figure out how to pay for it, get it on a ship to [P]ohnpei[, FSM.] [T]his is illegal[.] [I] can only do these things when people don't know what I am doing[.]"

aa. In or around 2013, the Defendant met with Co-Conspirator 3 in the District of Hawaii to provide a corrupt cash payment to Co-Conspirator 3, which the Defendant and Co-Conspirator 3 understood was in furtherance of the corrupt agreement referenced in Paragraph 8(v) to benefit Co-Conspirator 3 and certain State Agency officials who had served on the selection committee and influenced the award of the $2.5 million State Agency contract to Engineering Company.

bb. On or about January 20, 2014, the Defendant and his co-conspirators caused a wire transfer in the amount of approximately $3,902.99 to be sent from a bank account controlled by the Defendant to the University of Hawaii to pay tuition for a relative of Micronesian Official 1.

cc. On or about April 11, 2014, the Defendant and his co-conspirators caused a wire transfer in the amount of approximately $3,599.98 to be sent from a bank account

controlled by the Defendant to the University of Hawaii to pay tuition for a relative of Micronesian Official 1.

dd. In or around 2014, the Defendant met with Co-Conspirator 3 in the District of Hawaii to provide a corrupt cash payment to Co-Conspirator 3, which the Defendant and Co-Conspirator 3 understood was in furtherance of the corrupt agreement referenced in Paragraph 8(v) to benefit Co-Conspirator 3 and certain State Agency officials who had served on the selection committee and influenced the award of the $2.5 million State Agency contract to Engineering Company.

ee. On or about April 6, 2015, in order to destroy evidence of the corrupt payments, the Defendant instructed an Engineering Company information technology consultant to automatically delete his emails after five days.

ff. In or around June 2015, the Defendant and Micronesian Official 1 instructed Co-Conspirator 2 to draft a request for qualification document seeking bids for an FSM project management contract ("PMU Contract"), including drafting selection criteria to favor Engineering Company in order to obtain an improper business advantage and win the PMU Contract.

gg. On or about July 2, 2015, shortly before traveling to Micronesia, the Defendant withdrew $6,000 cash from an Engineering Company bank account in Hawaii for the purpose of paying a cash bribe to Micronesian Official 1 and/or Co-Conspirator 3 for the benefit of Co-Conspirator 3 and State Agency officials.

hh. On or about July 3, 2015, shortly before traveling to Micronesia, the Defendant withdrew $2,000 cash from an Engineering Company bank account in Hawaii for the

purpose of paying a cash bribe to Micronesian Official 1 and/or Co-Conspirator 3 for the benefit of Co-Conspirator 3 and State Agency officials.

ii. On or about December 9, 2015, the Defendant sent an email to Co-Conspirator 1 stating that "[Micronesian Official 1] is asking for $5K/month .... So you and I will have to work together on spending & get agreement with [another Engineering Company executive] on guidelines on what goes into [marketing]."

jj. In or around 2015, the Defendant met with Co-Conspirator 3 in the District of Hawaii to provide a corrupt cash payment to Co-Conspirator 3, which the Defendant and Co-Conspirator 3 understood was in furtherance of the corrupt agreement referenced in Paragraph 8(v) to benefit Co-Conspirator 3 and certain State Agency officials who had served on the selection committee and influenced the award of the $2.5 million State Agency contract to Engineering Company.

kk. In or around 2015, the Defendant and his co-conspirators purchased an automobile for Micronesian Official 1's personal use in order to obtain and retain business.

ll. On or about April 15, 2016, the Defendant stated in an email that he intended to pay for an apartment for Micronesian Official 2 and that Micronesian Official 2 "handles the infrastructure committee – which I need to approve our $500K contract week [of] [M]ay 11."

mm. On or about December 12, 2016, the Defendant and his co-conspirators caused Engineering Company to transmit $2,500 to Co-Conspirator 3, purportedly for marketing services, when in fact the payment was intended to compensate Co-Conspirator 3 for influencing the award of a State Agency contract in favor of Engineering Company.

nn. In or around 2016, the Defendant met with Co-Conspirator 3 in the District of Hawaii to provide a corrupt cash payment to Co-Conspirator 3, which the Defendant and Co-Conspirator 3 understood was in furtherance of the corrupt agreement referenced in Paragraph 8(v) to benefit Co-Conspirator 3 and certain State Agency officials who had served on the selection committee and influenced the award of the $2.5 million State Agency contract to Engineering Company.

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 charge to which the Defendant is pleading guilty adequately reflects 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. Base offense level: Pursuant to U.S.S.G. § 2C1.1(a)(2), that the base offense level for purposes of sentencing guideline calculations for the charged offense is 12;

b. That a 14-level enhancement of the guideline offense level applies under U.S.S.G. § 2B1.1 since the offense involved a benefit received of more than $550,000.

c. That a two-level increase to the offense level applies since the offense involved more than one bribe pursuant to U.S.S.G. § 2C1.1(b)(1);

d. As of the date of this agreement, it is expected that 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 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.

e. The Government 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 Government 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.

f. The Defendant has a Criminal History Category of I.

g. Although not binding on the probation office or the Court, the parties agree that the Defendant's total offense level is likely to be 25, which corresponds to a guidelines range of 57-71 months, limited by the statutory maximum term of imprisonment referenced in Paragraph 7.

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 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 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, but is not limited to, the right to assert any constitutional challenges to the Defendant's conviction and guilty plea on appeal or collateral review, including any arguments that the statute or statutes to which the Defendant is pleading guilty are unconstitutional, and any claims that the statement of facts provided in this Agreement is insufficient to support the Defendant's guilty plea.

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 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 the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or third party. The Defendant agrees to truthfully complete the financial statement form provided to the Defendant in connection with this Agreement by the earlier of 45 days from the Defendant's signature on this Agreement or the date of the Defendant's entry of a guilty plea, sign it under penalty of perjury, and provide it to both the United States Attorney's Office and the United States Probation Office. The Defendant agrees to provide updates with any material changes in circumstances, as described in Title 18, United States Code, Section 3664(k), 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 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 Department of Justice to obtain a credit report on him. The Defendant also authorizes the Department of Justice to inspect and copy all financial documents and information held by the United States Probation Office.

c. Prior to sentencing, the Defendant agrees to notify the U.S. Department of Justice, Criminal Division, Fraud Section 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.

IMPOSITION OF SENTENCE

15. 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.

16. 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 charge adequately reflects the seriousness of the actual offense behavior and accepting the Agreement will not undermine the statutory purposes of sentencing.

WAIVER OF TRIAL RIGHTS

17. 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.

18. 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

19. 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, that he makes while pleading guilty as set forth in this Agreement, or that were made to the Government on or after December 12, 2018 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, during the course of pleading guilty, or that were made to the Government on or after December 12, 2018 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.

20. 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.

21. 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.

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

a. He 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 indicted later in the investigation, and related civil proceedings.

b. The Defendant agrees to be available to speak with law enforcement officials and other representatives of the Department of Justice 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 in this Information or

any subsequent charges related to this investigation, at which the prosecution requests him to testify.

d. 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 officials as set forth in paragraph 21(b) of 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 Guideline Section 5K1.1 and Rule 35(b), 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, or in the investigation of other activities deemed by the United States Department of Justice to be of interest and value to United States law enforcement. The Defendant understands that:

a. The decision as to whether to make such a request or motion is entirely within the discretion of the government.

b. This Agreement does not require the government to make such a request or motion.

c. This Agreement confers neither any right upon the Defendant to have the government make such a request or motion, nor any remedy to the Defendant in the event the government fails to make such a request or motion.

d. Even in the event that the government makes such a request or motion, the Court may refuse to depart from the Advisory Guidelines established by statute.

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

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

DATED: Honolulu, Hawaii, JAN 22 2019.

AGREED:

BRIAN A. BENCZKOWSKI
Assistant Attorney General of the Criminal Division
Attorney for the United States,
Acting Under Authority Conferred by 28 U.S.C. § 515

DANIEL S. KAHN
Deputy Chief, Fraud Section

ERIKA AMATORE
Attorney for Defendant

KATHERINE A. RAUT
Trial Attorney, Fraud Section

FRANK JAMES LYON
Defendant