



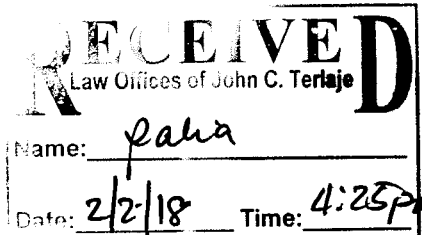
RECEIVED

FEB 02 2018

CLERK'S OFFICE
SUPERIOR COURT OF GUAM

Office of the Attorney General
Elizabeth Barrett-Anderson
Attorney General of Guam
Prosecution Division
590 S. Marine Corps Drive, Ste. 801
Tamuning, Guam 96913 • USA
(671) 475-3406 • (671) 477-3390 (Fax)
www.guamag.org

Attorney for the People of Guam



IN THE SUPERIOR COURT OF GUAM

THE PEOPLE OF GUAM,

Plaintiff,

vs.

MICHAEL J. DUENAS
DOB: 04/30/1954

Defendant.

S.C. Criminal Case No.: CM0431-17
AG Report No. 17-0537

DEFERRED
PLEA AGREEMENT

Pursuant to Guam Code Annotated 8 G.C.A. § 60.80, the defendant, **MICHAEL J. DUENAS**, represented by Attorney **JOHN C. TERLAJE, Esq.**, and the People of Guam represented by the Chief Prosecutor/Deputy Attorney General **JOSEPH B. McDONALD**, enter into the following *deferred* plea agreement:

1. The defendant, having been advised, understands the following:
 - a. the nature of the charge and its elements to which the *deferred* plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; the right to consult with and be represented by an attorney at every stage of these proceedings;
 - b. the right to plead not guilty, the right to confront and cross-examine witnesses, and the right against self-incrimination;

FILE COPY

- 1 c. the right to plead not guilty, the right to confront and cross-examine witnesses, and
2 the right against self-incrimination;
3 d. that by pleading guilty to the charge the right to a jury trial is waived; and upon
4 acceptance of the guilty plea by the Court, defendant stands convicted just as though
5 convicted by a jury;
6 e. that if defendant pleads guilty, the Court may ask questions about the offense
7 charged, and if defendant answers these questions on the record, and in the presence
8 of his or his attorney, the answers later may be used against Defendant;
9 f. That Defendant has a right to prosecution by indictment or preliminary hearing and,
10 if this right is waived, Defendant may be prosecuted by an information filed by the
11 prosecutor; and,
12 g. That if the Defendant is an alien, Defendant's guilty plea may have immigration
13 consequences, including deportation, and that the defendant has been counseled as to
14 any impact upon Defendant's immigration status.

15 2. Defendant voluntarily, and without coercion or promises apart from this Plea
16 Agreement, agrees to enter a guilty plea to **Forty Sixth Charge of Conspiracy (As a**
17 **Misdemeanor)**, in violation of 9 GCA § 13.30, which carries a maximum sentence of no more than
18 one year incarceration pursuant to 9 GCA § 80.34 and a fine not to exceed one
19 thousand dollars (\$1,000.00) pursuant to 9 G.C.A. §80.50.

20 3. The charge arises out of the incident described in Office of the Attorney General Case
21 No.17-0537 and the facts as follows:
22

23 On or around April to July 2015, in violation of 9 GCA § 13.30 and punishable in
24 accordance with 9 GCA § 80.34, **MICHAEL J. DUENAS** did agree with one or more of
25 the members of the Board of Commissioners of the Guam Housing and Urban Renewal
26 Authority that he or one of them would engage in conduct which constitutes a violation of
27 the Open Government Law; that he did so with the intention of engaging in, promoting, or
28 assisting in the violation of the Open Government Law; and that **MICHAEL J. DUENAS**
or one of the members of the Board of Commissioners of the Guam Housing and Urban
Renewal Authority performed an overt act in pursuance of the agreement; such conduct
chargeable within the time prescribed by 8 G.C.A. §10.40.

1
2 4. Defendant understands that to establish a violation of **Forty-Sixth Charge of Conspiracy**
3 (As a *Misdemeanor*), the People must prove each of the following elements beyond a
4 reasonable doubt:

5 **First:** The Defendant agreed with one or more members of the Board of
6 Commissioners of the Guam Housing and Urban Renewal Authority
7 that he or one of them would engage in conduct which constituted a
8 violation of the Open Government Law;

9 **Second:** Defendant did so with the intention of engaging in, promoting, or
10 assisting in the violation of the Open Government Law;

11 **Third:** The Defendant or one or more members of the Board of Commissioners
12 of the Guam Housing and Urban Renewal Authority did perform, or
13 one of them performed, an overt act in pursuit of their agreement;

14 **Fourth:** The incident occurred on or between April 1, 2015 to July 1, 2015,
15 inclusive, in Guam.

16 5. Defendant understands and agrees that Defendant may be called upon to testify
17 under oath about the factual details of these transactions of Defendant's *Conspiracy* at the taking
18 of this *Deferred guilty plea*. Defendant specifically agrees that he will admit the factual
19 circumstances underlying the offense at the time of the plea.
20

21 6. The Attorney General and Defendant agree, in consideration for Defendant's
22 *deferred guilty plea*, to the following:
23

- 24 a. the People agree to recommend a sentencing range of zero (0) to one (1) year
25 imprisonment, probation of one year, and a fine not to exceed \$1,000.00. Both
26 recommendations shall be based on Defendant's (b) acceptance of responsibility and
27 (c-d) the level of his assistance and cooperation as more particularly described
28

below:

1
2 **b. *Acceptance of responsibility.*** Upon and if there shall be sentencing
3 because the court has accepted and entered the Defendant's guilty
4 plea, the People's recommendation shall be based on facts known or made known to
5 the People by Defendant and is contingent on his accepting responsibility for his
6 offenses. As part of his acceptance of responsibility, Defendant agrees to make a
7 full, complete and truthful statement regarding his involvement in criminal
8 conduct and or conspiracy, as well as the involvement of all others involved in the
9 conduct and or conspiracy for which he or other defendants have been charged. The
10 People are free to withdraw this recommendation if Defendant has previously engaged
11 in any conduct which is not made known to the People by the time of sentencing and is
12 inconsistent with his acceptance of responsibility, or if he engages in any conduct
13 between the date of this plea agreement and the sentencing hearing which is
14 inconsistent with his acceptance of responsibility.
15

16
17
18 **c. *Level of assistance and cooperation.*** The People's recommendation shall also be
19 based on Defendant's level of assistance and cooperation as set forth herein and as
20 actually performed by him. The determination of whether Defendant has provided
21 assistance sufficient to recommend the low end of the range of incarceration and
22 fines rests entirely within the discretion of the Office of the Attorney General.
23 Assistance to the prosecution may include but is not limited to (i) the People's
24 evaluation of the significance and usefulness of Defendant's assistance, taking into
25 consideration the People's sole evaluation of the assistance rendered by Defendant; (ii)
26 the truthfulness, completeness, and reliability of any information or testimony
27
28

provided by Defendant; (iii) the nature and extent of Defendant's assistance; (iv) any injury suffered, or any danger or risk of injury to the Defendant or his family resulting from his assistance; (v) the timeliness of Defendant's assistance.

- d. Defendant agrees to testify fully and truthfully at any trials or hearings that the People shall in its sole discretion require. Defendant understands that this plea agreement is not conditioned on the outcome of any trial. Defendant acknowledges and understands, however, that this plea agreement is contingent on complete and truthful testimony by Defendant in response to questions asked by the Court, the prosecutor, or lawyers for any party.
- e. No promises or guarantees have been made to Defendant regarding the sentence that may be imposed. The parties hereto fully and completely understand and agree that if it accepts and enters the guilty plea judgment, it is the Court's duty to impose sentence upon the Defendant, and that any sentence either stipulated to or recommended herein is not binding on the Court. Defendant acknowledges and agrees that even if the People recommend a range most favorable to him, the Court is not required to reduce the maximum sentence as provided above. The Court is not required to accept any recommendations made by the People or Defendant, and the Court may impose any sentence up to and including the maximum penalties allowable under the law. If the Court does not accept a sentencing recommendation made by the People, Defendant nevertheless has no right to withdraw his guilty plea.
- f. If Defendant provides self-incriminating information as part of his cooperation regarding the unlawful activities of others, the People agree only to use such information as supporting the evaluation of his level of assistance and

1 cooperation: such information may be revealed to the Court but shall only be
2 used in evaluating recommendations for Defendant's sentencing range based on the
3 People's estimation of the qualitative nature and effect of his assistance and cooperation.
4 There shall be no such restrictions on the use of information: (i) previously known to
5 law enforcement agencies; (ii) revealed to law enforcement agencies by, or
6 discoverable through an independent source; (iii) in a prosecution for perjury or giving
7 a false statement; or (iv) in the event there is a material breach of this agreement by
8 Defendant.
9

10
11 7. Defendant understands and agrees that Defendant's sentencing date may be
12 continued by the Court until after the indictment and trial of others, so as to enable the People and
13 the Court to assess Defendant's assistance and cooperation.
14

15 8. The Attorney General and Defendant further agree, in consideration for Defendant's
16 *deferred plea* and full and truthful cooperation and assistance as described herein, to the following:
17

- 18 a. That, as to the **Forty Sixth Charge of Conspiracy (as a Misdemeanor)**, the Court's
19 acceptance and entry of the Defendant's guilty plea shall be deferred for a period of two (2)
20 years unless sooner terminated, which may be dismissed and expunged provided all the
21 terms and conditions for level of assistance and cooperation are satisfied;
- 22 b. That, restitution shall not apply;
- 23 c. That if Defendant's guilty plea is accepted and entered, any community service work under
24 the direction of the Adult Probation Office during the Defendant's probationary term shall
25 be at the discretion of the court;
- 26 d. That if his guilty plea is accepted and entered, Defendant shall report to the Adult Probation
27 Office once a month in person, or as ordered by that office;
- 28 e. That during the period for which guilty plea is deferred, Defendant shall report to the Adult
Probation Office as ordered by the court;
- f. That during the period for which guilty plea is deferred, Adult Probation Office shall
monitor Defendant's progress on a monthly basis; and,

- 1 (i) Defendant shall turn in his passport and/or other travel documents to the Clerk of Court;
- 2 (ii) Defendant shall comply with any court orders entered against the Defendant, including
- 3 orders of family court or any other local or federal court of competent jurisdiction;
- 4 (iii) Defendant shall not leave Guam without the approval of the court or Adult Probation
- 5 Office, with prior notice being given to the Office of the Attorney General, Prosecution
- 6 Division;
- 7 (iv) Defendant shall obey all local and federal laws;
- 8 (v) Defendant shall comply with any other condition imposed by the Court or the Adult
- 9 Probation Office;
- 10 (vi) Defendant shall report to the Adult Probation Service Office within forty-eight (48)
- 11 hours of the deferred plea or sentencing for intake and processing;
- 12 (vii) Failure of the Defendant to follow all of conditions of probation will result in a
- 13 hearing to accept and enter the guilty plea or revoke probation at which
- 14 time the court may impose the maximum sentence allowable under the statute
- 15 charged as specified in this Agreement;

16 9. Upon the Defendant's plea of guilty and in accordance with the terms of the plea

17 agreement herein, the People will move to dismiss the *Forty Seventh Charge*, as contained in the

18 Complaint filed herein. Defendant understands that if Defendant violates any condition of

19 Defendant's release or of Defendant's probation, that the Court may find Defendant in violation

20 and sentence Defendant to serve the maximum sentence in this case. Defendant stipulates and

21 agrees that if given a fair opportunity to pay any fines and restitution ordered by the court,

22 Defendant will be able to do so.

23 10. Defendant further understands and agrees that Defendant has an obligation to pay

24 any fine ordered by the Court and that this obligation survives the expiration of probation or parole

25 and that expiration of probation or parole does not prevent collection of fines.

26 11. Defendant understands that Defendant has a right to appeal Defendant's conviction

27 in this case pursuant to 8 GCA §§ 130.10 and 130.15, and agrees to waive that right for the

28 purpose of this plea.

1 12. Defendant understands that Defendant has a right to move for a reduction of
2 sentence within one hundred twenty (120) days of sentencing pursuant to 8 GCA § 120.46, and
3 agrees to waive that right for the purpose of this plea.

4 13. Defendant understands that pursuant to Title 8 Guam Code Annotated § 11.10,
5 Defendant has a right to expungement of certain, enumerated criminal records. Should the Court
6 enter judgment against Defendant, Defendant voluntarily agrees to waive this right as to any
7 records of incidents reflected in Attorney General reports included in the negotiation of this
8 agreement, including those incidents the government has declined to charge, were charged and
9 dismissed or were charged and to which Defendant has pled guilty to a lesser included offense.
10

11 14. Defendant states that Defendant has told his or his lawyer all the facts and
12 circumstances known about the charges. Defendant's lawyer has counseled and advised
13 Defendant on the nature of each charge as well as on any and all lesser included charges.
14

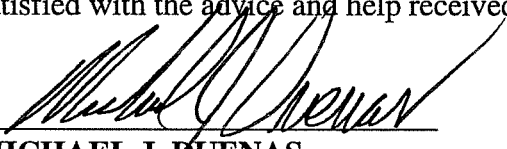
15 15. Defendant and the government each intend this plea agreement and the sentence
16 imposed be a final sentence and a total and conclusive resolution of the charges described within
17 this plea agreement.
18

19 16. If after accepting this plea the Court concludes that any of the plea agreement's
20 provisions regarding sentence or the terms and conditions of probation are inappropriate, it can
21 reject the plea. If the Court decides to reject the plea provisions regarding sentencing, it must give
22 both the People and the Defendant an opportunity to withdraw from the plea agreement. In case
23 this plea agreement is withdrawn, all original charges will automatically reinstated. If the Court
24 decides to reject the plea agreement provisions regarding sentencing and neither the People not the
25 Defendant elects to withdraw the plea agreement, then any sentence recommended herein is not
26
27
28

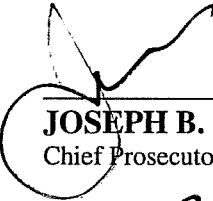
1 binding upon the Court, and the Court is bound only the sentencing limits set forth in paragraph 2
2 and the applicable statutes.

3 17. The Defendant understands and agrees that this agreement shall not be binding on
4 the People should the Defendant be charged with or commit a crime between the time of the taking
5 of the Plea Agreement and the time for sentencing in this case.
6

7 18. By Defendant's signature, Defendant attests that Defendant has read this agreement
8 and its provisions have been fully explained by his or his attorney. Defendant believes
9 Defendant's lawyer has done all that anyone could do to counsel and assist Defendant and is
10 satisfied with the advice and help received.

11
12 
13 **MICHAEL J. DUENAS**
14 Defendant

15 Dated: 01/31/2018

16
17 
18 **JOSEPH B. McDONALD**
19 Chief Prosecutor/Deputy Attorney General

20 Dated: 2/2/18

21
22 
23 **JOHN C. TERLAJE**
24 Counsel for Defendant

25 Dated: 1/31/18

26 After a hearing held on _____, 20__, and a finding the Defendant's plea
27 of guilty to **Forty Sixth Charge of Conspiracy (As a Misdemeanor)**, is knowingly and voluntarily
28 made, this Court now defers acceptance of the guilty plea for TWO (2) YEARS. Sentencing is set
for _____, 20__.

HONORABLE
Judge, Superior Court of Guam