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8 Attorneys for Plaintiff  
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 RICHARD ALLEN KERR,

16 Defendant.

ED CR No. 21-00174-JWH

PLEA AGREEMENT FOR DEFENDANT  
RICHARD ALLEN KERR

17  
18 1. This constitutes the plea agreement between RICHARD ALLEN  
19 KERR ("defendant") and the United States Attorney's Office for the  
20 Central District of California (the "USAO") in the above-captioned  
21 case. This agreement is limited to the USAO and cannot bind any  
22 other federal, state, local, or foreign prosecuting, enforcement,  
23 administrative, or regulatory authorities.

24 DEFENDANT'S OBLIGATIONS

25 2. Defendant agrees to:

26 a. At the earliest opportunity requested by the USAO and  
27 provided by the Court, appear and plead guilty to count three of the  
28 indictment in United States v. RICHARD ALLEN KERR, ED CR No. 21-

1 00174-JWH, which charges defendant with wire fraud involving  
2 deprivation of honest services in violation of 18 U.S.C. §§ 1343,  
3 1346.

4 b. Not contest facts agreed to in this agreement.

5 c. Abide by all agreements regarding sentencing contained  
6 in this agreement.

7 d. Appear for all court appearances, surrender as ordered  
8 for service of sentence, obey all conditions of any bond, and obey  
9 any other ongoing court order in this matter.

10 e. Not commit any crime; however, offenses that would be  
11 excluded for sentencing purposes under United States Sentencing  
12 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not  
13 within the scope of this agreement.

14 f. Be truthful at all times with the United States  
15 Probation and Pretrial Services Office and the Court.

16 g. Pay the applicable special assessment at or before the  
17 time of sentencing unless defendant has demonstrated a lack of  
18 ability to pay such assessments.

19 3. Defendant further agrees:

20 a. To forfeit all right, title, and interest in and to  
21 any and all monies, properties, and/or assets of any kind, derived  
22 from or acquired as a result of, or used to facilitate the commission  
23 of, or involved in the illegal activity to which defendant is  
24 pleading guilty (collectively, the "Forfeitable Assets").

25 b. To the Court's entry of an order of forfeiture at or  
26 before sentencing with respect to the Forfeitable Assets and to the  
27 forfeiture of the assets.

1           c. To take whatever steps are necessary to pass to the  
2 United States clear title to the Forfeitable Assets, including,  
3 without limitation, the execution of a consent decree of forfeiture  
4 and the completing of any other legal documents required for the  
5 transfer of title to the United States.

6           d. Not to contest any administrative forfeiture  
7 proceedings or civil judicial proceedings commenced against the  
8 Forfeitable Assets. If defendant submitted a claim and/or petition  
9 for remission for all or part of the Forfeitable Assets on behalf of  
10 himself or any other individual or entity, defendant shall and hereby  
11 does withdraw any such claims or petitions, and further agrees to  
12 waive any right he may have to seek remission or mitigation of the  
13 forfeiture of the Forfeitable Assets.

14           e. Not to assist any other individual in any effort  
15 falsely to contest the forfeiture of the Forfeitable Assets.

16           f. Not to claim that reasonable cause to seize the  
17 Forfeitable Assets was lacking.

18           g. To prevent the transfer, sale, destruction, or loss of  
19 any and all assets described above to the extent defendant has the  
20 ability to do so.

21           h. To fill out and deliver to the USAO a completed  
22 financial statement listing defendant's assets on a form provided by  
23 the USAO.

24           i. That forfeiture of Forfeitable Assets shall not be  
25 counted toward satisfaction of any special assessment, fine,  
26 restitution, costs, or other penalty the Court may impose.

27                           THE USAO'S OBLIGATIONS

28           4. The USAO agrees to:

1 a. Not contest facts agreed to in this agreement.

2 b. Abide by all agreements regarding sentencing contained  
3 in this agreement.

4 c. At the time of sentencing, move to dismiss the  
5 remaining counts of the indictment as against defendant. Defendant  
6 agrees, however, that at the time of sentencing the Court may  
7 consider any dismissed charges in determining the applicable  
8 Sentencing Guidelines range, the propriety and extent of any  
9 departure from that range, and the sentence to be imposed.

10 d. At the time of sentencing, provided that defendant  
11 demonstrates an acceptance of responsibility for the offense up to  
12 and including the time of sentencing, recommend a two-level reduction  
13 in the applicable Sentencing Guidelines offense level, pursuant to  
14 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an  
15 additional one-level reduction if available under that section.

16 NATURE OF THE OFFENSE

17 5. Defendant understands that for defendant to be guilty of  
18 the crime charged in count three, that is, wire fraud involving  
19 deprivation of honest services in violation of Title 18, United  
20 States Code, Sections 1343 and 1346, the following must be true: (i)  
21 defendant devised or knowingly participated in a scheme or plan to  
22 deprive the City of Adelanto and its residents of their right of  
23 honest services; (ii) the scheme or plan consists of a bribe or  
24 kickback in exchange for the defendant's services; (iii) defendant  
25 owed a fiduciary duty to the City of Adelanto and its residents; (iv)  
26 defendant acted with the intent to defraud by depriving the City of  
27 Adelanto and its residents of their right of honest services; (v)  
28 defendant's act was material; that is, it had a natural tendency to

1 influence, or was capable of influencing, the City of Adelanto's  
2 acts; and (vi) defendant used, or caused someone to use, the wires to  
3 carry out or to attempt to carry out the scheme or plan.

4 PENALTIES

5 6. Defendant understands that the statutory maximum sentence  
6 that the Court can impose for a violation of Title 18, United States  
7 Code, Sections 1343 and 1346, is: 20 years imprisonment; a 3-year  
8 period of supervised release; a fine of \$250,000 or twice the gross  
9 gain or gross loss resulting from the offense, whichever is greatest;  
10 and a mandatory special assessment of \$100.

11 7. Defendant understands that supervised release is a period  
12 of time following imprisonment during which defendant will be subject  
13 to various restrictions and requirements. Defendant understands that  
14 if defendant violates one or more of the conditions of any supervised  
15 release imposed, defendant may be returned to prison for all or part  
16 of the term of supervised release authorized by statute for the  
17 offense that resulted in the term of supervised release, which could  
18 result in defendant serving a total term of imprisonment greater than  
19 the statutory maximum stated above.

20 8. Defendant understands that, by pleading guilty, defendant  
21 may be giving up valuable government benefits and valuable civic  
22 rights, such as the right to vote, the right to possess a firearm,  
23 the right to hold office, and the right to serve on a jury. Defendant  
24 understands that he is pleading guilty to a felony and that it is a  
25 federal crime for a convicted felon to possess a firearm or  
26 ammunition. Defendant understands that the conviction in this case  
27 may also subject defendant to various other collateral consequences,  
28 including but not limited to revocation of probation, parole, or

1 supervised release in another case and suspension or revocation of a  
2 professional license. Defendant understands that unanticipated  
3 collateral consequences will not serve as grounds to withdraw  
4 defendant's guilty plea.

5 9. Defendant understands that, if defendant is not a United  
6 States citizen, the felony conviction in this case may subject  
7 defendant to: removal, also known as deportation, which may, under  
8 some circumstances, be mandatory; denial of citizenship; and denial  
9 of admission to the United States in the future. The Court cannot,  
10 and defendant's attorney also may not be able to, advise defendant  
11 fully regarding the immigration consequences of the felony conviction  
12 in this case. Defendant understands that unexpected immigration  
13 consequences will not serve as grounds to withdraw defendant's guilty  
14 plea.

15 FACTUAL BASIS

16 10. Defendant admits that defendant is, in fact, guilty of the  
17 offense to which defendant is agreeing to plead guilty. Defendant  
18 and the USAO agree to the statement of facts provided below and agree  
19 that this statement of facts is sufficient to support a plea of  
20 guilty to the charges described in this agreement and to establish  
21 the Sentencing Guidelines factors set forth in paragraph 12 below but  
22 is not meant to be a complete recitation of all facts relevant to the  
23 underlying criminal conduct or all facts known to either party that  
24 relate to that conduct.

25 Defendant was Mayor of the City of Adelanto ("the City") during  
26 2015, 2016, 2017, and part of 2018. As Mayor, defendant was an agent  
27 of the City, whose duties as Mayor and as a member of the City  
28 Council included setting public policy for the City, including

1 through consideration of and voting on City ordinances, overseeing  
2 the functioning of City government, setting the City's budget,  
3 serving on committees as directed by the City Council, and performing  
4 other administrative duties. Based on his employment and duties,  
5 defendant owed a duty of honest services to the City, and its  
6 residents. Among other things, defendant voted on ordinances  
7 governing zoning regulations in the City, and served on the City's  
8 Cannabis Dispensary Permit Committee, which determined the number of  
9 dispensary permits that would be issued, and determined which  
10 applicants would receive a dispensary permit.

11 Beginning on an unknown date, but no later than on or about  
12 November 23, 2015, and continuing until an unknown date but no  
13 earlier than on or about June 18, 2018, in San Bernardino County,  
14 within the Central District of California, and elsewhere, defendant  
15 together with others, knowingly and with the intent to defraud,  
16 devised, participated in, and executed a scheme to defraud the City  
17 as to material matters, including by depriving the City of its right  
18 to the intangible right of honest services of defendant, namely, the  
19 honest performance of defendant's duties as Mayor. Specifically,  
20 defendant secretly used his official position to enrich himself and  
21 his co-schemers by: (1) passing ordinances authorizing various types  
22 of commercial marijuana activities, including marijuana cultivation,  
23 marijuana distribution and transportation, and retail sales of  
24 marijuana via a dispensary; (2) drafting zones for commercial  
25 marijuana activities to include locations used by his supporters; and  
26 (3) ensuring his supporters obtained the licenses or permits they  
27 sought; all in contravention of conflict of interest prohibitions  
28

1 applying to defendant, and in exchange for bribes, kickbacks, gifts,  
2 payments, and other things of value.

3       The fraudulent scheme operated, in substance, in the following  
4 manner: defendant would receive bribes and kickbacks in the form of  
5 cash and checks from Person A (or intermediaries of Person A), Person  
6 C, and other co-schemers with business interests in the City;  
7 defendant and co-schemers would disguise the bribes and kickbacks as  
8 something other than a bribe or kickback, such as gifts, donations to  
9 a charitable fund, donations to defendant's election campaign, or  
10 advance payments for the proceeds of planned litigation associated  
11 with a motorcycle accident; in exchange for the bribes and kickbacks,  
12 defendant would provide favorable official action on behalf of the  
13 City to Person A, Person C, and other co-schemers with business  
14 interests in the City by authorizing various types of commercial  
15 marijuana activities, ensuring his supporters obtained the licenses  
16 or permits they sought, and interfering with enforcement activities  
17 by City officials; defendant would not publicly disclose his  
18 financial relationship with co-schemers; and from December 2016 to  
19 April 2018, defendant accepted multiple payments totaling at least  
20 \$57,500, in bribes and kickbacks from Person A, Person C, and other  
21 co-schemers.

22       On or about February 28, 2017, in San Bernardino County, and  
23 elsewhere, defendant for the purpose of executing the above-described  
24 scheme to defraud, deposited a check from a Bank of America account  
25 ending in 8478 in the approximate amount of \$10,000 into a US Bank  
26 account ending in 0917, causing the transmission of a wire  
27 communication in interstate commerce.



SENTENCING FACTORS

11. Defendant understands that in determining defendant's sentence the Court is required to calculate the applicable Sentencing Guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant understands that the Sentencing Guidelines are advisory only, that defendant cannot have any expectation of receiving a sentence within the calculated Sentencing Guidelines range, and that after considering the Sentencing Guidelines and the other § 3553(a) factors, the Court will be free to exercise its discretion to impose any sentence it finds appropriate up to the maximum set by statute for the crime of conviction.

12. Defendant and the USAO agree to the following applicable Sentencing Guidelines factors:

Base Offense Level:	14	U.S.S.G. § 2C1.1
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Defendant and the USAO reserve the right to argue that additional specific offense characteristics, adjustments, and departures under the Sentencing Guidelines are appropriate.

13. Defendant understands that there is no agreement as to defendant's criminal history or criminal history category.

14. Defendant and the USAO reserve the right to argue for a sentence outside the sentencing range established by the Sentencing Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7).

WAIVER OF CONSTITUTIONAL RIGHTS

15. Defendant understands that by pleading guilty, defendant gives up the following rights:

a. The right to persist in a plea of not guilty.

b. The right to a speedy and public trial by jury.

c. The right to be represented by counsel -- and if necessary have the Court appoint counsel -- at trial. Defendant understands, however, that, defendant retains the right to be represented by counsel -- and if necessary have the Court appoint counsel -- at every other stage of the proceeding.

d. The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e. The right to confront and cross-examine witnesses against defendant.

f. The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

g. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

h. Any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF APPEAL OF CONVICTION

16. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty plea was involuntary, by pleading guilty defendant is waiving and giving up any right to

1 appeal defendant's conviction on the offense to which defendant is  
2 pleading guilty. Defendant understands that this waiver includes,  
3 but is not limited to, arguments that the statute to which defendant  
4 is pleading guilty is unconstitutional, and any and all claims that  
5 the statement of facts provided herein is insufficient to support  
6 defendant's plea of guilty.

7 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

8 17. Defendant agrees that, provided the Court imposes a total  
9 term of imprisonment on the count of conviction of no more than 57  
10 months, defendant gives up the right to appeal all of the following:  
11 (a) the procedures and calculations used to determine and impose any  
12 portion of the sentence; (b) the term of imprisonment imposed by the  
13 Court; (c) the fine imposed by the Court, provided it is within the  
14 statutory maximum; (d) to the extent permitted by law, the  
15 constitutionality or legality of defendant's sentence, provided it is  
16 within the statutory maximum; (e) the term of probation or supervised  
17 release imposed by the Court, provided it is within the statutory  
18 maximum; and (f) any of the following conditions of probation or  
19 supervised release imposed by the Court: the conditions set forth in  
20 Second Amended General Order 20-04 of this Court; the drug testing  
21 conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the  
22 alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

23 18. The USAO agrees that, provided (a) all portions of the  
24 sentence are at or below the statutory maximum specified above and  
25 (b) the Court imposes a term of imprisonment of no less than 46  
26 months, the USAO gives up its right to appeal any portion of the  
27 sentence.

1                                    RESULT OF WITHDRAWAL OF GUILTY PLEA

2            19. Defendant agrees that if, after entering a guilty plea  
3 pursuant to this agreement, defendant seeks to withdraw and succeeds  
4 in withdrawing defendant's guilty plea on any basis other than a  
5 claim and finding that entry into this plea agreement was  
6 involuntary, then (a) the USAO will be relieved of all of its  
7 obligations under this agreement; and (b) should the USAO choose to  
8 pursue any charge that was either dismissed or not filed as a result  
9 of this agreement, then (i) any applicable statute of limitations  
10 will be tolled between the date of defendant's signing of this  
11 agreement and the filing commencing any such action; and  
12 (ii) defendant waives and gives up all defenses based on the statute  
13 of limitations, any claim of pre-indictment delay, or any speedy  
14 trial claim with respect to any such action, except to the extent  
15 that such defenses existed as of the date of defendant's signing this  
16 agreement.

17                                    EFFECTIVE DATE OF AGREEMENT

18            20. This agreement is effective upon signature and execution of  
19 all required certifications by defendant, defendant's counsel, and an  
20 Assistant United States Attorney.

21                                    BREACH OF AGREEMENT

22            21. Defendant agrees that if defendant, at any time after the  
23 signature of this agreement and execution of all required  
24 certifications by defendant, defendant's counsel, and an Assistant  
25 United States Attorney, knowingly violates or fails to perform any of  
26 defendant's obligations under this agreement ("a breach"), the USAO  
27 may declare this agreement breached. All of defendant's obligations  
28 are material, a single breach of this agreement is sufficient for the

1 USAO to declare a breach, and defendant shall not be deemed to have  
2 cured a breach without the express agreement of the USAO in writing.  
3 If the USAO declares this agreement breached, and the Court finds  
4 such a breach to have occurred, then: (a) if defendant has previously  
5 entered a guilty plea pursuant to this agreement, defendant will not  
6 be able to withdraw the guilty plea, and (b) the USAO will be  
7 relieved of all its obligations under this agreement.

8 22. Following the Court's finding of a knowing breach of this  
9 agreement by defendant, should the USAO choose to pursue any charge  
10 that was either dismissed or not filed as a result of this agreement,  
11 then:

12 a. Defendant agrees that any applicable statute of  
13 limitations is tolled between the date of defendant's signing of this  
14 agreement and the filing commencing any such action.

15 b. Defendant waives and gives up all defenses based on  
16 the statute of limitations, any claim of pre-indictment delay, or any  
17 speedy trial claim with respect to any such action, except to the  
18 extent that such defenses existed as of the date of defendant's  
19 signing this agreement.

20 c. Defendant agrees that: (i) any statements made by  
21 defendant, under oath, at the guilty plea hearing (if such a hearing  
22 occurred prior to the breach); (ii) the agreed to factual basis  
23 statement in this agreement; and (iii) any evidence derived from such  
24 statements, shall be admissible against defendant in any such action  
25 against defendant, and defendant waives and gives up any claim under  
26 the United States Constitution, any statute, Rule 410 of the Federal  
27 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal  
28 Procedure, or any other federal rule, that the statements or any

1 evidence derived from the statements should be suppressed or are  
2 inadmissible.

3 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

4 OFFICE NOT PARTIES

5 23. Defendant understands that the Court and the United States  
6 Probation and Pretrial Services Office are not parties to this  
7 agreement and need not accept any of the USAO's sentencing  
8 recommendations or the parties' agreements to facts or sentencing  
9 factors.

10 24. Defendant understands that both defendant and the USAO are  
11 free to: (a) supplement the facts by supplying relevant information  
12 to the United States Probation and Pretrial Services Office and the  
13 Court, (b) correct any and all factual misstatements relating to the  
14 Court's Sentencing Guidelines calculations and determination of  
15 sentence, and (c) argue on appeal and collateral review that the  
16 Court's Sentencing Guidelines calculations and the sentence it  
17 chooses to impose are not error, although each party agrees to  
18 maintain its view that the calculations in paragraph 12 are  
19 consistent with the facts of this case. While this paragraph permits  
20 both the USAO and defendant to submit full and complete factual  
21 information to the United States Probation and Pretrial Services  
22 Office and the Court, even if that factual information may be viewed  
23 as inconsistent with the facts agreed to in this agreement, this  
24 paragraph does not affect defendant's and the USAO's obligations not  
25 to contest the facts agreed to in this agreement.

26 25. Defendant understands that even if the Court ignores any  
27 sentencing recommendation, finds facts or reaches conclusions  
28 different from those agreed to, and/or imposes any sentence up to the

1 maximum established by statute, defendant cannot, for that reason,  
2 withdraw defendant's guilty plea, and defendant will remain bound to  
3 fulfill all defendant's obligations under this agreement. Defendant  
4 understands that no one -- not the prosecutor, defendant's attorney,  
5 or the Court -- can make a binding prediction or promise regarding  
6 the sentence defendant will receive, except that it will be within  
7 the statutory maximum.

8 NO ADDITIONAL AGREEMENTS

9 26. Defendant understands that, except as set forth herein,  
10 there are no promises, understandings, or agreements between the USAO  
11 and defendant or defendant's attorney, and that no additional  
12 promise, understanding, or agreement may be entered into unless in a  
13 writing signed by all parties or on the record in court.

14 //

15 //

16 //

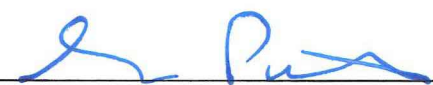
PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

27. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE  
FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

E. MARTIN ESTRADA  
United States Attorney

  
JULIUS J. NAM  
SEAN D. PETERSON  
Assistant United States Attorneys

01/12/2023  
Date

  
RICHARD ALLEN KERR  
Defendant

1/12/2023  
Date

  
CARLOS L. JUAREZ  
Attorney for Defendant  
RICHARD ALLEN KERR


1-12-2023  
Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences



1 of entering into this agreement. No promises, inducements, or  
2 representations of any kind have been made to me other than those  
3 contained in this agreement. No one has threatened or forced me in  
4 any way to enter into this agreement. I am satisfied with the  
5 representation of my attorney in this matter, and I am pleading  
6 guilty because I am guilty of the charge and wish to take advantage  
7 of the promises set forth in this agreement, and not for any other  
8 reason.

9   
10 RICHARD ALLEN KERR  
11 Defendant

12  
13  
14 Date 1/12/2023

15 CERTIFICATION OF DEFENDANT'S ATTORNEY

16 I am RICHARD ALLEN KERR's attorney. I have carefully and  
17 thoroughly discussed every part of this agreement with my client.  
18 Further, I have fully advised my client of his rights, of possible  
19 pretrial motions that might be filed, of possible defenses that might  
20 be asserted either prior to or at trial, of the sentencing factors  
21 set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines  
22 provisions, and of the consequences of entering into this agreement.  
23 To my knowledge: no promises, inducements, or representations of any  
24 kind have been made to my client other than those contained in this  
25 agreement; no one has threatened or forced my client in any way to  
26 enter into this agreement; my client's decision to enter into this

27 //

28 //

1 agreement is an informed and voluntary one; and the factual basis set  
2 forth in this agreement is sufficient to support my client's entry of  
3 a guilty plea pursuant to this agreement.

4  
5 \_\_\_\_\_  
6 CARLOS L. JUAREZ  
Attorney for Defendant  
7 RICHARD ALLEN KERR  
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1-12-2023  
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Date