

Judge Ronald B. Leighton

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HECTOR RAY CANALES, SR.,

Defendant.

NO. CR16-5210RBL

PLEA AGREEMENT

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, J. Tate London, Assistant United States Attorney for said District, and the defendant, Hector Ray Canales, Sr., and his attorney, Zenon Olbertz, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):

**1. Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

**2. The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charge contained in the Information: Conversion from an Indian Tribal Organization, as charged in Count 1, in violation of Title 18, United States Code, Sections 1163 and 2. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that

1 before entering his plea of guilty, Defendant will be placed under oath. Any statement  
2 given by Defendant under oath may be used by the United States in a prosecution for  
3 perjury or false statement.

4 **3. Elements of the Offense.** The elements of the offense of Conversion from  
5 an Indian Tribal Organization, as charged in Count 1, in violation of Title 18,  
6 United States Code, Section 1163, are as follows:

7 First, Defendant embezzled, stole, knowingly converted to his own use or  
8 the use of another, or willfully misapplied moneys; and

9 Second, the moneys belonged to an Indian Tribal Organization.

10 **4. The Penalties.** Defendant understands that the statutory penalties for the  
11 offense of Conversion from an Indian Tribal Organization, as charged in Count 1, are as  
12 follows: imprisonment for up to five (5) years, a fine of up to two hundred fifty thousand  
13 dollars (\$250,000.00), a period of supervision following release from prison of up to  
14 three (3) years, and a one hundred dollar (\$100.00) special assessment. Defendant agrees  
15 that the special assessment shall be paid at or before the time of sentencing.

16 Defendant understands that in addition to any term of imprisonment and/or fine  
17 that is imposed, the Court may order Defendant to pay restitution to any victim of the  
18 offense, as required by law. Defendant further understands that a consequence of  
19 pleading guilty may include the forfeiture of certain property either as a part of the  
20 sentence imposed by the Court, or as a result of civil judicial or administrative process.

21 Defendant agrees that any monetary penalty the Court imposes, including the  
22 special assessment, fine, costs or restitution, is due and payable immediately, and further  
23 agrees to submit a completed Financial Statement of Debtor form as requested by the  
24 United States Attorney's Office.

25 Defendant understands that supervised release is a period of time following  
26 imprisonment during which he will be subject to certain restrictions and requirements.  
27 Defendant further understands that if supervised release is imposed and he violates one or  
28 more of its conditions, he could be returned to prison for all or part of the term of

1 supervised release that was originally imposed. This could result in Defendant serving a  
2 total term of imprisonment greater than the statutory maximum stated above.

3 **5. Rights Waived by Pleading Guilty.** Defendant understands that, by  
4 pleading guilty, he knowingly and voluntarily waives the following rights:

- 5 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 6 b. The right to a speedy and public trial before a jury of twelve persons;
- 7 c. The right to the effective assistance of counsel at trial, including, if  
8 Defendant could not afford an attorney, the right to have the Court appoint one for him;
- 9 d. The right to be presumed innocent until guilt has been established at  
10 trial, beyond a reasonable doubt;
- 11 e. The right to confront and cross-examine witnesses against him at  
12 trial;
- 13 f. The right to compel or subpoena witnesses to appear on his behalf;
- 14 g. The right to testify or to remain silent at trial, at which trial such  
15 silence could not be used against the Defendant; and
- 16 h. The right to appeal a finding of guilt or any pretrial rulings.

17 **6. United States Sentencing Guidelines.** Defendant understands and  
18 acknowledges that, at sentencing, the Court must consider the sentencing range  
19 calculated under the United States Sentencing Guidelines, together with the other factors  
20 set forth in 18 U.S.C. § 3553(a), including: (1) the nature and circumstances of the  
21 offense; (2) the history and characteristics of the defendant; (3) the need for the sentence  
22 to reflect the seriousness of the offense, to promote respect for the law, and to provide  
23 just punishment for the offense; (4) the need for the sentence to afford adequate  
24 deterrence to criminal conduct; (5) the need for the sentence to protect the public from  
25 further crimes of the defendant; (6) the need to provide the defendant with educational  
26 and vocational training, medical care, or other correctional treatment in the most effective  
27 manner; (7) the kinds of sentences available; (8) the need to provide restitution to  
28 victims; and (9) the need to avoid unwarranted sentence disparity among defendants

involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

a. The Court will determine Defendant's applicable Sentencing Guidelines range at the time of sentencing;

b. After consideration of the Sentencing Guidelines and the other factors in 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

c. The Court is not bound by any recommendation regarding the sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the parties, or by the United States Probation Department; and

d. Defendant may not withdraw a guilty plea solely because of the sentence imposed by the Court.

**7. Sentencing Factors.** The parties agree that the following Sentencing Guidelines provisions apply to this case:

a. A base offense level of six (6), pursuant to USSG § 2B1.1(a)(2); and

b. A six-level increase, pursuant to USSG § 2B1.1(b)(1)(D) for a loss of more than \$30,000.00.

Defendant understands, however, that at the time of sentencing, the Court is free to reject these stipulated adjustments, and is further free to apply additional downward or upward adjustments in determining Defendant's Sentencing Guidelines range.

**8. United States' Sentencing Recommendation.** Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the United States agrees to recommend that the Court impose a term of imprisonment at the time of sentencing of not greater than six (6) months. Defendant understands that this recommendation is not binding on the Court and the Court may reject the recommendation of the parties and may impose any term of imprisonment up to the statutory maximum penalty authorized by law. Defendant further understands that he cannot withdraw his guilty plea simply because of the sentence

1 imposed by the Court. Except as otherwise provided in this plea agreement, the parties  
2 are free to present arguments are regarding any other aspect of sentencing.

3 **9. Ultimate Sentence.** Defendant acknowledges that no one has promised or  
4 guaranteed what sentence the Court will impose.

5 **10. Restitution.** Defendant shall make restitution to the Chehalis Tribal  
6 Housing Authority in the amount of thirty-seven thousand four hundred dollars  
7 (\$37,400.00), with credit for any amounts already paid. Said amount shall be due and  
8 payable immediately and shall be paid in accordance with a schedule of payments as  
9 proposed by the United States Probation Office and ordered by the Court.

10 **11. Statement of Facts.** The Defendant agrees that if this matter proceeded to  
11 a jury trial, the United States would be able to prove the following facts, which provide a  
12 basis for the plea. The parties agree they are free to present additional facts to the Court  
13 at time of sentencing and that the Court is free to consider these additional facts in  
14 determining the sentence to be imposed. Defendant admits he is guilty of the charged  
15 offense.

16 The Chehalis Confederated Tribes is a federally-recognized Indian tribe, whose  
17 reservation is located in southwest Washington and within the Western District of  
18 Washington. The Tribe operates a housing authority (the Chehalis Tribal Housing  
19 Authority or CTHA) whose mission is to provide safe, decent and affordable housing for  
20 Chehalis tribal members through various housing assistance programs. Defendant is a  
21 former Chair of the CTHA Board of Commissioners. During Defendant's tenure on the  
22 CTHA Board, he oversaw the implementation of an affordable housing program, the  
23 Down Payment Assistance ("DPA") loan program, which helps qualified Chehalis tribal  
24 members transition from rental housing to home ownership. Under the DPA loan  
25 program, the CTHA loans qualifying tribal members the vast majority, if not all, of the  
26 down payment for a home, and subsequently forgives repayment of the loan for those  
27 members who remain current in their mortgage payments and remain in the residence for  
28 five years.

1 Tribal members seeking a DPA loan must submit a detailed application in  
2 which they provide information regarding the composition of their household, their  
3 income level, and the mortgage financing they have qualified for and secured  
4 through a third-party lender. One of the DPA loan program requirements is that the  
5 “applicant shall not own any other residential property,” with the exception of  
6 inherited property.

7 On September 14, 2009, Defendant submitted his DPA loan application. At  
8 the time, Defendant owned residential property on the Chehalis reservation, that is, a  
9 residence located at 9 Lacamus Lane, which he did not come to own through  
10 inheritance. At all material times, Defendant understood that his ownership of the  
11 9 Lacamus Lane residence would disqualify him from receiving a DPA loan.

12 Nevertheless, Defendant devised a scheme to show the CTHA that he no  
13 longer owned the 9 Lacamus Lane residence. On July 16, 2010, Defendant executed  
14 a Quit Claim Deed purporting to transfer ownership of the residence to a relative of  
15 his wife, who is identified herein by his initials, “MM,” to protect his privacy.  
16 Defendant later presented the deed to the CTHA as proof that he no longer owned  
17 any other residential property, and thus was ostensibly eligible to receive a DPA  
18 loan. Defendant did not, however, attempt to record the deed with any government,  
19 tribal, county, state or federal agency until after the CTHA demanded repayment of  
20 the loan years later.

21 At all material times, Defendant (and not MM) exercised dominion and  
22 control over the 9 Lacamus Lane residence. MM never lived in the 9 Lacamus Lane  
23 residence, did not receive rental payments from anyone living in the residence, and  
24 never paid any of the utilities for the residence.

25 Defendant secured financing through Wells Fargo Bank for the new house he  
26 was having built. In June 2011 (almost one year after executing the deed purporting  
27 to convey the 9 Lacamus Lane residence to MM), Defendant represented to Wells  
28 Fargo Bank that he owned the 9 Lacamus Lane residence free and clear of any loans

1 and that he planned on "selling the house upon compleation [sic] of my new house."  
2 Further, on July 7, 2011, Defendant submitted a residential mortgage application to  
3 Wells Fargo in which he represented that 9 Lacamus Lane residence was as an asset  
4 that he owned and that it had a market value of \$125,000.00.

5 On June 24, 2011, Defendant caused the CTHA to issue and to mail a check  
6 in the sum of \$37,400.00 to Rels Title, which represented the proceeds of  
7 Defendant's DPA loan. On July 7, 2011, Defendant entered into a Second Leasehold  
8 mortgage with the CTHA, pursuant to which he received the benefit of the  
9 \$37,400.00 DPA loan proceeds.

10 In or about April/May 2012, the CTHA conducted a review of the DPA  
11 program, including Defendant's loan. The CTHA determined that Defendant was  
12 not eligible to receive the loan because he owned the 9 Lacamus Lane residence at  
13 the time he received the loan proceeds. The CTHA demanded that Defendant repay  
14 the DPA loan, which he refused to do.

15 **12. Non-Prosecution of Additional Offenses.** As part of this Plea  
16 Agreement and conditioned upon the Defendant's fulfillment of all of its conditions,  
17 the United States Attorney's Office for the Western District of Washington agrees to  
18 not prosecute the Defendant for any additional offenses known to it as of the time of  
19 this Agreement that are based upon evidence in its possession at this time and that  
20 arise out of the conduct giving rise to this investigation. In this regard, Defendant  
21 recognizes that the United States has agreed not to prosecute all of the criminal  
22 conduct that the evidence establishes were committed by him solely because of the  
23 promises made by him in this Agreement. Defendant acknowledges and agrees,  
24 however, that for purposes of preparing the Presentence Report, the United States  
25 Attorney's Office will provide the United States Probation Office with evidence of  
26 all relevant conduct committed by him.

27 **13. Acceptance of Responsibility.** At sentencing, *if* the Court concludes that  
28 Defendant qualifies for a downward adjustment acceptance for acceptance of



1 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or  
2 greater, the United States will make the motion necessary to permit the Court to decrease  
3 the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because  
4 Defendant has assisted the United States by timely notifying the United States of his  
5 intention to plead guilty, thereby permitting the United States to avoid preparing for trial  
6 and permitting the Court to allocate its resources efficiently.

7 **14. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if he  
8 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement,  
9 and Defendant or others may be prosecuted for all offenses for which the United States  
10 has evidence. Defendant agrees not to oppose any steps taken by the United States to  
11 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea  
12 Agreement. He also agrees that if he is in breach of this Plea Agreement, he has waived  
13 any objection to the reinstitution of charges in the Information or to the filing of any  
14 additional charges.

15 Defendant understands that the terms of this Plea Agreement apply only to  
16 conduct that occurred prior to the execution of this Agreement. If, after the date of this  
17 Agreement, Defendant should engage in illegal conduct, or conduct that is in violation of  
18 his conditions of release (examples of which include, but are not limited to: obstruction  
19 of justice, failure to appear for a court proceeding, criminal conduct while pending  
20 sentencing, and false statements to law enforcement agents, the United States Attorney's  
21 Office, the Pretrial Services Officer, Probation Officer or Court), the United States is free  
22 under this Agreement to seek a sentence that takes such conduct into consideration. Such  
23 a sentence could include a sentencing enhancement under the United States Sentencing  
24 Guidelines or an upward departure from the applicable sentencing guidelines range, or a  
25 higher sentence recommendation than the one outlined in this Agreement.

26 **15. Waiver of Appeal.** As part of this Plea Agreement and on the condition  
27 that the Court imposes a custodial sentence that is within or below the Sentencing  
28



Guidelines range that is determined by the Court at the time of sentencing, Defendant waives to the full extent of the law:

- a. Any right conferred by Title 18, United States Code, Section 3742 to appeal the sentence, including any restitution order imposed; and
- b. Any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation.

Furthermore, this waiver does not preclude Defendant from bringing an appropriate motion pursuant to 28 U.S.C. § 2241, to address the conditions of her confinement or the decisions of the Bureau of Prisons regarding the execution of her sentence.

If Defendant breaches this Plea Agreement at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or sentence in any way, the United States may prosecute Defendant for any counts, including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

**16. Voluntariness of Plea.** Defendant acknowledges that he has entered into this Plea Agreement freely and voluntarily, and that no threats or promises, other than the promises contained in this Plea Agreement, were made to induce him to plead guilty.

**17. Statute of Limitations.** In the event this Plea Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Agreement to: (1) 30 days following the date of non-acceptance of the Plea Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.


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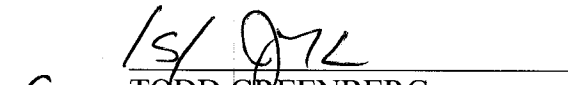
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1       **18. Completeness of Agreement.** The United States and Defendant  
2 acknowledge that these terms constitute the entire Plea Agreement between the parties.  
3 This Agreement only binds the United States Attorney's Office for the Western District  
4 of Washington. It does not bind any other United States Attorney's Office or any other  
5 office or agency of the United States, or any state or local prosecutor.

6       DATED this 2<sup>nd</sup> day of May, 2016.

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9         
10       HECTOR RAY CANALES, SR.  
11       Defendant

12         
13       ZENON G. BERTZ  
14       Attorney for Defendant

15       for   
16       TODD GREENBERG  
17       Assistant United States Attorney

18         
19       J. TATE LONDON  
20       Assistant United States Attorney