

1 KEVIN V. RYAN (CASBN 118321)  
United States Attorney  
2 CHARLES B. BURCH (CASBN 79002)  
3 Chief, Criminal Division  
4 MILES EHRLICH (PASB 73912)  
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055  
6 San Francisco, California 94102  
Telephone: (415) 436-6840

7 Attorneys for Plaintiff  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12  
13 UNITED STATES OF AMERICA, ) No.  
14 Plaintiff, )  
15 v. ) PLEA AGREEMENT  
16 MARCUS O. ARMSTRONG, )  
17 Defendant. )

18  
19 I, Marcus O. Armstrong, and the United States Attorney's Office for the Northern  
20 District of California (hereafter "the government") enter into this written plea agreement  
21 (the "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of  
22 Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to Counts One, Two, and Three of the captioned  
25 information charging me with mail fraud, in violation of 18 U.S.C. §§ 1341 and 1346,  
26 wire fraud, in violation of 18 U.S.C. §§ 1343 and 1346, and obstruction of justice, in  
27 violation of 18 U.S.C. § 1512(b)(1).

28 I agree that the elements of the offenses of mail and wire fraud are as follows:

1 (1) that I made up a scheme or plan to defraud and deprive the citizens of San Francisco  
2 of public funds and their right to my honest services as a City employee; (2) that I acted  
3 with the specific intent to defraud and deprive them of their right to my honest services;  
4 and (3) that, for purposes of the *mail fraud* charge, I used or caused someone to use the  
5 mails in furtherance of the scheme or plan, or, alternatively, for purposes of the *wire*  
6 *fraud* charge, that I directly or indirectly caused the transmission of information or signals  
7 by means of an interstate wire communication in furtherance of the scheme or plan. I am  
8 aware that the maximum penalties for each conviction of mail or wire fraud are as  
9 follows:

- |    |    |                                 |  |
|----|----|---------------------------------|--|
| 10 | a. | Maximum prison sentence         | 5 years  |
| 11 | b. | Maximum fine                    | \$250,000, or twice the<br>12 amount of gain/loss,<br>whichever is greater |
| 13 | c. | Maximum supervised release term | 3 years  |
| 14 | d. | Mandatory special assessment    | \$100 per count  |
| 15 | e. | Restitution                     | \$504,000  |

16 Furthermore, I agree that the elements of the offense of obstruction of justice  
17 under 18 U.S.C. § 1512(b)(1) are as follows: (1) that I attempted to persuade another  
18 person to change his testimony in some future official proceeding; (2) that I did so  
19 corruptly – that is, with an improper purpose; (3) that I did so with the specific intent to  
20 influence his testimony in the proceeding; and (4) that when I did so, I was aware that  
21 some federal proceeding, in this case a grand jury investigation, had been initiated or was  
22 likely to be initiated in the future. I am aware that the maximum penalties for a  
23 conviction of obstruction of justice are as follows:

- |    |    |                                 |                |
|----|----|---------------------------------|----------------|
| 24 | a. | Maximum prison sentence         | 10 years       |
| 25 | b. | Maximum fine                    | \$250,000      |
| 26 | c. | Maximum supervised release term | 3 years        |
| 27 | d. | Mandatory special assessment    | \$100          |
| 28 | e. | Restitution                     | Not applicable |

1 Finally, I understand that, because I am pleading guilty to more than one count, the  
2 Court may order the sentences on those counts to run consecutively.

3 2. I agree that I am guilty of the offenses to which I will plead guilty, and I  
4 agree that the following facts are true:

5 The Defendant's Background and Duty of Honest Services

6 (A) From approximately 1999 until February 10, 2003, I was the  
7 Manager of the Information Technology Section of the City and County of San  
8 Francisco's Department of Building Inspection ("DBI"). In this position, I was  
9 responsible for overseeing the maintenance, development, and enhancement of DBI's  
10 computer network and related equipment. As the highest-ranking technology officer in  
11 DBI, I also authorized the hiring of third-party vendors for all computer-related services.

12 (B) As an officer of the City and County of San Francisco ("City"), I was  
13 aware that part of my duty to provide honest services to the citizens of the City was to  
14 refrain from using my official position to advance my personal financial interests in any  
15 way, and also to refrain from participating in, or attempting to influence, any  
16 governmental decision in which I had a financial interest.

17 Companies Owned and Controlled by the Defendant

18 (C) In September 1999, I filed papers in the County of San Francisco to  
19 register Monarch Enterprises, Inc. ("Monarch") as a fictitious business name and I also  
20 opened a business account for the company at the Bank of America in the name of  
21 Monarch Enterprises. Monarch was under my sole ownership and control.

22 (D) In July 2001, I filed papers in San Mateo County to register  
23 Mindstorm Technologies, Inc. ("Mindstorm") as a fictitious business name and I also  
24 opened a business account for the company at the Wells Fargo Bank in the name  
25 Mindstorm Technologies. Mindstorm was also under my sole ownership and control.

26 Payments from Cobra Solutions

27 (E) In or about September 1999, I selected Cobra Solutions, Inc.  
28 ("Cobra"), an approved City vendor, to be the prime contractor to provide computer

1 network engineering and consulting services to DBI on projects under my supervision and  
2 control.

3 (F) Between September 1999 and June 2000, I stole approximately  
4 \$243,000 in City funds by having Cobra bill the City for work supposedly done by  
5 employees of Monarch, my own company. At my urging, Cobra agreed to serve as a  
6 "pass-through" entity for the payments to Monarch. I initiated the fraud by creating  
7 Monarch invoices for the phony services and work allegedly performed at DBI, and  
8 giving them to a Cobra employee. Cobra then billed the City for the amount of each  
9 Monarch invoice plus a percentage markup fee ranging from approximately 8% to 12%.  
10 When the billing paperwork arrived at DBI, I approved the Cobra invoices, falsely  
11 certifying that the work had been performed and authorizing the disbursement of City  
12 funds to Cobra. In each instance, Cobra issued a check to Monarch for the original  
13 invoice and kept the remaining 8-12% margin it received from the City on the billing. As  
14 the sole owner of Monarch, I deposited the checks from Cobra into the company's Bank  
15 of America account and used the money for my own personal expenditures. I created the  
16 Monarch invoices, approved the Cobra billings, and received and deposited the checks all  
17 within the Northern District of California.

18 (G) I unlawfully received and deposited the following checks issued  
19 from Cobra to Monarch:

Date on Check	Check Amount
September 29, 1999	\$59,748
November 5, 1999	\$54,396
December 17, 1999	\$28,700
May 23, 2000	\$47,898
June 5, 2000	\$51,792

26 Payments from GCSI

27 (H) In approximately September 2000, I selected Government Computer  
28 Sales, Incorporated ("GCSI"), an approved City vendor, to develop database management

1 and other software applications for DBI's computer network.

2 (I) Between September 2000 and April 2001, I stole an additional  
3 \$240,000 in City funds by having GCSI bill the City for work allegedly done by Monarch,  
4 my own company. At my request, GCSI agreed to serve as a "pass-through" entity for the  
5 payments to Monarch.

6 (J) As in my dealings with Cobra, I invoiced GCSI in the guise of  
7 Monarch and then approved GCSI's subsequent invoices to the City. In doing so, I  
8 falsely certified that Monarch had done work for DBI, when in truth, Monarch had done  
9 no work on any projects for the City. In each instance, GCSI issued a check to Monarch  
10 for the amount of the original invoice and retained a percentage fee as compensation for  
11 processing the billings. After depositing the GCSI checks on behalf of Monarch, I used  
12 the money on personal expenditures. Again, I created the Monarch invoices, approved  
13 the GCSI billings, and received and deposited the checks all within the Northern District  
14 of California.

15 (K) I unlawfully received and deposited the following checks issued  
16 from GCSI to Monarch:

Date on Check	Check Amount
September 19, 2000	\$74,988
November 29, 2000	\$43,160
January 12, 2001	\$77,750
April 3, 2001	\$43,740

22 (L) In carrying out this scheme with Cobra and GCSI, I was aware that  
23 what I was doing not only violated my duty to provide honest services to the citizens of  
24 San Francisco, but also violated the criminal laws. Moreover, based on my familiarity  
25 with the City's regular payment practices, it was reasonably foreseeable to me that the  
26 City would send checks to both Cobra and GCSI through the mail. Specifically, in an  
27 effort to execute this scheme to defraud, on or about September 23, 1999, I caused a  
28 check in the amount of \$67,648.13 from the City and County of San Francisco to be

1 placed in the U.S. Mail for delivery to Cobra Solutions, Inc., in San Francisco, California.

2 Payments from Semantics

3 (M) Between approximately February 2001 and January 2002, I also  
4 misused my official position to help a company called Semantics Consulting Services  
5 (“Semantics”) and, in return, I accepted unlawful payments from Semantics. Specifically,  
6 I helped Semantics get hired to work as a subcontractor for GCSI on a software  
7 development project under my supervision at DBI. Later, when GCSI failed to pay  
8 Semantics for its work, I pressured GCSI to pay. When these efforts proved  
9 unsuccessful, I found another authorized City vendor to pay Semantics in a “pass-  
10 through” fashion for its work on the DBI projects. For my efforts on Semantics’ behalf, I  
11 received four checks totaling \$21,870 from the President of Semantics and used the  
12 money for my personal benefit. I acknowledge that I never sold any items to Semantics  
13 nor performed any legitimate work for Semantics in a private capacity that would justify  
14 these payments.

15 (N) I unlawfully received and deposited the following checks from  
16 Semantics into the accounts described below:

17

Date	Account of Deposit	Check Amount
18 July 30, 2001	Monarch	\$5,500
19 September 30, 2001	Mindstorm	\$7,000
20 October 13, 2001	Mindstorm	\$5,000
21 January 1, 2002	Mindstorm	\$4,370

22 (O) In carrying out this scheme with Semantics, I was aware that what I  
23 was doing not only violated my duty to provide honest services to the citizens of San  
24 Francisco, but also violated the criminal laws. Moreover, in my efforts to help Semantics  
25 get paid in furtherance of my scheme to defraud, I knowingly made interstate telephone  
26 calls – specifically, calls from San Francisco, California to GCSI’s headquarters in  
27 Issaquah, Washington. In particular, at approximately 3:20 p.m. on July 10, 2001, I made  
28 a seven minute telephone call from San Francisco, California to a GCSI employee in

1 Issaquah, Washington. During this conversation, I pressed GCSI to pay Semantics the  
2 money it was owed for its work on the DBI projects.

3 Obstruction of Justice

4 (P) Beginning on approximately February 10, 2003, I had multiple  
5 conversations on the telephone and in person with Raman Kumar, the owner and  
6 President of Semantics, during which we discussed the creation of bogus documents to  
7 obstruct any criminal and civil investigations of our financial transactions, and to allow us  
8 both to cloak the illegal payments I received from Kumar with a legitimate, non-criminal  
9 explanation.

10 (Q) On a date between approximately February 12, 2003 and February  
11 15, 2003, in a restaurant at San Mateo, California, Kumar gave me a document falsely  
12 reflecting that Semantics had purchased products and services from Monarch and  
13 Mindstorm. Although we did not use this document, we continued to discuss ways in  
14 which we could fabricate an innocent explanation for the illegal payments I received and  
15 for the nature of my relationship with Semantics. On February 22, 2003, I met Kumar at  
16 a restaurant in Newark, California, and we had further discussions on this topic. At this  
17 meeting, I instructed Kumar to create invoices on Semantics letterhead and other  
18 paperwork that would falsely corroborate our cover story – namely, that the \$21,870 in  
19 checks between Semantics and Mindstorm constituted payment for the sale of artwork to  
20 Kumar and compensation for computer consulting work Mindstorm had done for  
21 Semantics. In truth, I never sold any artwork to Kumar or his company nor provided any  
22 services whatsoever.

23 (R) I acknowledge that, at the time I was trying to persuade Kumar to  
24 fabricate these documents and support a false cover story, I had read in the public media  
25 that my activities with Semantics had been referred to the United States Attorney's Office  
26 for federal criminal investigation. Further, I knew that any false and fraudulent  
27 documents we created might protect us in both the pending civil lawsuit filed against us  
28 by the City and County of San Francisco and in any eventual state or federal criminal

1 proceedings that might result from the investigation.

2 (S) I stipulate that there is a factual basis for my guilty plea to each of  
3 the three counts in the Information.

4 3. I agree to give up all rights that I would have if I chose to proceed to trial,  
5 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
6 examine government witnesses; to remain silent or testify; to move to suppress evidence  
7 or raise any other Fourth or Fifth Amendment claims; to any further discovery from the  
8 government; and to pursue any affirmative defenses and present evidence.

9 4. I agree to give up my right to appeal my conviction, the judgment, and  
10 orders of the Court. I also agree to waive any right I may have to appeal the sentence  
11 imposed upon me, except that I reserve my right to appeal the sentence if the Court  
12 imposes a sentence of incarceration that *exceeds* the guidelines range that is contemplated  
13 by this Agreement (i.e., a sentence that exceeds the range specified for offense level 23).

14 Further, I warrant that I have not entered into or participated in a joint defense  
15 Agreement, written or unwritten, with any person or entity. And I promise not to enter  
16 into or participate in any such agreement relating to the facts underlying my case or the  
17 offense to which I am pleading guilty. If, notwithstanding these assurances, it should  
18 ever be determined that I have entered into or participated in such a joint defense  
19 agreement, I specifically waive any right I may have to assert the attorney-client privilege  
20 with respect to any attorney or other defendant who is also a participant in such an  
21 agreement. Furthermore, should it ever be determined that I entered into or participated  
22 in a joint defense agreement concerning the facts and charges involved in this case, I  
23 agree to waive my right to conflict-free representation by any attorney or other defendant  
24 where a conflict arises from that attorney's or defendant's participation in the joint  
25 defense agreement.

26 5. I agree not to file any collateral attack on my conviction or sentence,  
27 including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced,  
28 except for a claim that my constitutional right to the effective assistance of counsel was

1 violated.

2 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is  
3 entered.

4 7. I agree that the Sentencing Guidelines should be calculated as follows, and  
5 that I will not ask for any other adjustment to or reduction in the offense level or for a  
6 downward departure of any kind (except to argue in support of a motion by the  
7 government for downward departure based on my substantial assistance under U.S.S.G.  
8 §5K1.1):

9	a.	Base Offense Level, §2C1.7(a)	10
10	b.	Gain of more than \$400,000, §2B1.1(b)(1)(H)	+14
11	c.	Obstruction of Justice, §3C1.1	+2
12	d.	Acceptance of responsibility: (If I meet the requirements of 13 U.S.S.G. § 3E1.1)	<u>-3</u>
14	e.	Adjusted offense level	23

15 I agree that, regardless of any other provision in this Agreement, the government may  
16 and will provide to the Court and the Probation Office all information relevant to the  
17 charged offenses or the sentencing decision. I also agree that the Court is not bound by  
18 the Sentencing Guidelines calculations above; the Court may conclude that a higher  
19 guideline range applies to me, and, if it does, I will not be entitled, nor will I ask, to  
20 withdraw my guilty plea.

21 8. I agree to pay restitution in an amount to be set by the Court, but in no event  
22 less than \$505,000, which represents the total unlawful payments I received for the  
23 schemes charged in Counts One and Two of the Information. I agree that I will make a  
24 good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or  
25 after sentencing, I will, upon request of the Court, the government, or the U.S. Probation  
26 Office, provide accurate and complete financial information, submit sworn statements and  
27 give depositions under oath concerning my assets and my ability to pay, surrender assets I  
28 obtained as a result of my crimes, and release funds and property under my control in

1 order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the  
2 time of sentencing.

3 9. I agree to cooperate with the U.S. Attorney's Office before and after I am  
4 sentenced. My cooperation will include, but will not be limited to, the following:

- 5 a. I will respond truthfully and completely to any and all questions put to me,  
6 whether in interviews, before a grand jury or at any trial or other  
7 proceeding;
- 8 b. I will provide all documents and other material asked for by the  
9 government;
- 10 c. I will testify truthfully at any grand jury, court or other proceeding as  
11 requested by the government;
- 12 d. I will surrender any and all assets acquired or obtained directly or indirectly  
13 as a result of my illegal conduct;
- 14 e. I will request continuances of my sentencing date, as necessary, until my  
15 cooperation is completed;
- 16 f. I will tell the government about any contacts I may have with any  
17 co-defendants or subjects of investigation, or their attorneys or individuals  
18 employed by their attorneys;
- 19 g. I will not reveal my cooperation, or any information related to it, to anyone  
20 without prior consent of the government.

21 10. I agree that the government's decision whether to file a motion pursuant to  
22 USSG §5K1.1, as described in the government promises section below, is based on its  
23 sole and exclusive decision of whether I have provided substantial assistance, and I agree  
24 that the government's decision will be binding on me. I understand that the government's  
25 decision whether to file such a motion, or the extent of the departure recommended by  
26 any motion, will not depend on whether convictions are obtained in any case. I also  
27 understand that the Court will not be bound by any recommendation made by the  
28 government.

11. I agree not to commit or attempt to commit any crimes before sentence is  
imposed or before I surrender to serve my sentence; violate the terms of my pretrial  
release (if any); intentionally provide false information or testimony to the Court, the  
Probation Office, Pretrial Services, or the government; or fail to comply with any of the  
other promises I have made in this Agreement. I agree that if I fail to comply with any

1 promises I have made in this Agreement, the government will be released from all of its  
2 promises, but I will not be released from my guilty plea.

3 12. If I am prosecuted after failing to comply with any promises I made in this  
4 Agreement, then (a) I agree that any statements I made to any law enforcement or other  
5 government agency or in Court, whether or not made pursuant to the cooperation  
6 provisions of this Agreement, may be used in any way; (b) I waive any and all claims  
7 under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal  
8 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal statute or rule,  
9 to suppress or restrict the use of my statements, or any leads derived from those  
10 statements; and (c) I waive any defense to any prosecution that it is barred by a statute of  
11 limitations, if the limitations period has run between the date of this Agreement and the  
12 date I am indicted.

13 13. I agree that this Agreement contains all of the promises and agreements  
14 between the government and me, and I will not claim otherwise in the future.

15 14. I agree that this Agreement binds the U.S. Attorney's Office for the  
16 Northern District of California only, and does not bind any other federal, state, or local  
17 agency.

18 The Government's Promises

19 15. The government agrees not to file or seek any additional charges against the  
20 defendant that could be filed as a result of the investigation that led to the pending  
21 information.

22 16. The government agrees to recommend the Guidelines calculations (before  
23 any departure for substantial assistance under U.S.S.G. §5K1.1) that are set forth in  
24 paragraph 7 above. The government agrees not to ask for any other upward adjustment or  
25 upward departure of any kind, except as specified in paragraph 7 of this Agreement.

26 17. The government agrees not to use any statements made by the defendant  
27 pursuant to this Agreement against him, unless the defendant fails to comply with any  
28 promises in this Agreement. The government may, however, tell the Court and the U.S.

1 Probation Department about the full extent of the defendant's criminal activities and  
2 relevant conduct in connection with the calculation of the Sentencing Guidelines.

3 18. The government acknowledges that the defendant has, as of the date of this  
4 plea agreement, cooperated fully and truthfully in the continuing federal criminal  
5 investigation being conducted by the Federal Bureau of Investigation and the United  
6 States Attorney's Office for the Northern District of California. The United States  
7 acknowledges, further, that this cooperation constitutes substantial assistance to law  
8 enforcement authorities within the meaning of U.S.S.G. §5K1.1. Provided that the  
9 defendant continues to cooperate fully and truthfully with the government in its  
10 investigation, and otherwise complies fully with this Agreement, the United States will,  
11 before sentencing, file a motion for downward departure under §5K1.1, explaining the  
12 nature and extent of the defendant's cooperation. The extent of this recommended  
13 departure, however, rests in the sole and exclusive judgment of the United States, based  
14 on its independent assessment of the value of the assistance provided by the defendant.  
15 And, in this respect, the United States expressly reserves the right to recommend  
16 whatever level of departure it deems appropriate under §5K1.1 at the time of sentencing.

17 19. Based on the information now known to it, the government will not oppose  
18 a downward adjustment of three levels for acceptance of responsibility under U.S.S.G.  
19 §3E1.1.

#### 20 The Defendant's Affirmations

21 20. I confirm that I have had adequate time to discuss this case, the evidence,  
22 and this Agreement with my attorney, and that he has provided me with all the legal  
23 advice that I requested.

24 21. I confirm that while I considered signing this Agreement and, at the time I  
25 signed it, I was not under the influence of any alcohol, drug, or medicine.

26 22. I confirm that my decision to enter a guilty plea is made knowing the  
27 charges that have been brought against me, any possible defenses, and the benefits and  
28 possible detriments of proceeding to trial. I also confirm that my decision to plead guilty

1 is made voluntarily, and that no one coerced or threatened me to enter into this  
2 Agreement.

3  
4 Dated: \_\_\_\_\_

\_\_\_\_\_  
MARCUS O. ARMSTRONG  
Defendant

6  
7 KEVIN V. RYAN  
United States Attorney

8  
9 Dated: 7/2/03

\_\_\_\_\_  
MILES F. EHRLICH  
Assistant United States Attorney

11  
12 I have fully explained to my client all the rights that a criminal defendant has and  
13 all the terms of this Agreement. In my opinion, my client understands all the terms of this  
14 Agreement and all the rights he is giving up by pleading guilty, and, based on the  
15 information now known to me, his decision to plead guilty is knowing and voluntary.

16  
17 Dated: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM L. OSTERHOUDT  
Attorney for Defendant

19  
20  
21 FRANK S. MOORE  
Attorney for Defendant