

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. ~~3:16~~<sup>17</sup>-CR-~~17~~<sup>17</sup>  
(GROH)

DENNIS CORPORATION,

Defendant.

**DEFERRED PROSECUTION AGREEMENT**

The defendant Dennis Corporation, by its undersigned attorney, pursuant to authority granted by its Board of Directors in the form of a Board Resolution (a copy of which is attached hereto as Exhibit A), and the United States Attorney's Office for the Northern District of West Virginia (the "Office") hereby enter into this Deferred Prosecution Agreement (the "Agreement"). Except as specifically provided below, and in accordance with the provisions specified below, this Agreement shall be in effect for a period of thirty-six (36) months.

**Information**

1. The United States will file an Information (the "Information") in the United States District Court for the Northern District of West Virginia charging Dennis Corporation with one count of conspiracy to impede the Internal Revenue Service, in violation of Title 18, United States Code, Section 371. By executing this Agreement, Dennis Corporation waives any and all rights it has to have the crime charged in the Information presented to a Grand Jury and prosecuted by indictment and waives any and all objections to venue. This waiver is knowing, voluntary, and

in express reliance on the advice of Dennis Corporation's counsel.

**Acceptance of Responsibility**

2. Dennis Corporation acknowledges that, through the conduct of certain Dennis Corporation executives, officers, and employees, during the relevant time period, Dennis Corporation engaged in, and is criminally culpable for, the charged violation of Title 18, United States Code, Section 371.

3. Dennis Corporation accepts responsibility for the conduct set forth in the Information by entering into this Agreement and by, among other things: (a) the remedial actions that Dennis Corporation will take (described in paragraph 4 below); (b) Dennis Corporation's commitment to full cooperation (described in paragraphs 5, 6 and 7 below) with the Office and its law enforcement agency partners; (c) Dennis Corporation's agreement to fulfill all of the undertakings Dennis Corporation has made in this Agreement, including (i) to pay restitution in the amount of \$250,000.00 to the State of West Virginia, (ii) to implement enhanced internal controls as set forth herein; and (iii) Dennis Corporation's agreement to comply in the future with all federal and state criminal laws.

4. Dennis Corporation represents that it will take a number of remedial actions in response to the misconduct at Dennis Corporation that has been discovered in the course of the Office's investigation. These remedial actions will include:

(a) creating the position of Ethics and Compliance Officer, whose appointment and termination must be approved by the Board of Directors of Dennis Corporation and who has direct and full access to the Board of Directors;

(b) creating a written policy:

- i. prohibiting the payment of bribes or kickbacks to any public official in exchange for any official action;
- ii. prohibiting payment to any public official via a shell company;
- iii. prohibiting the payment of reimbursements to employees including any false item as an earmark for any pass-along payment to a public official;
- iv. prohibiting the hiring of any public official without explicit notification of the appropriate state ethics commission, or equivalent, and the obtaining of a written decision approving the employment from said commission, or equivalent;
- v. requiring the maintenance of a written contract for any services provided as a subcontractor to a general contractor which is directly contracted to any governmental agency; and
- vi. requiring the issuance of Form 1099s, when required by federal law.

(c) providing effective training on the written policy containing the provisions outlined in paragraph 4(b) above to all relevant Dennis Corporation officers and employees;

Continuing Obligation of Cooperation

5. Dennis Corporation acknowledges and understands that its prior, ongoing and future cooperation is an important and material factor underlying the Office's decision to enter into this Agreement, and therefore, Dennis Corporation agrees to continue to cooperate fully and actively with the Office regarding any matter about which the Office may inquire.

6. During the term of this Agreement, Dennis Corporation agrees that its continuing cooperation shall include, but not be limited to, the following:

(a) completely and truthfully disclosing all information in its possession to the Office regarding any and all matters about which the Office may inquire, including but not limited to all information about activities of Dennis Corporation and Dennis Corporation's officers, employees and agents;

(b) assembling, organizing and providing all documents, records and other evidence in Dennis Corporation's possession, custody or control, as reasonably may be requested by the Office;

(c) proactively disclosing to the Office all information concerning any criminal wrongdoing or suspected criminal wrongdoing beyond that specifically addressed in the Information, which has not yet been explicitly disclosed to the Office, and which is either currently in Dennis Corporation's possession or which may come into its possession in the future, including conduct of the type alleged in the Information;

(d) using its reasonable best efforts to make available its officers and employees to provide information and/or testimony as requested by the Office, including sworn testimony before a grand jury or in court proceedings, as well as interviews with law

enforcement authorities. Cooperation under this paragraph shall include identification of witnesses who, to Dennis Corporation knowledge and information, may have material information concerning the conduct set forth in the Information;

(e) providing testimony or information necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence in any criminal or other proceeding as requested by the Office, concerning the conduct set forth in the Information;

(f) with respect to any information, testimony, documents, records or physical evidence provided by Dennis Corporation to the Office and/or a grand jury, consenting to any and all disclosures of such materials to such agencies as the Office, in its sole discretion, deems appropriate. With respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, Dennis Corporation further consents to: (i) any order sought by the Office permitting such disclosures; and (ii) the Office's ex parte or in camera application for such orders; and

(g) providing active assistance, as may be required by the Office, in connection with any investigation, criminal prosecution, civil trial or other legal proceeding brought by the Office.

7. Dennis Corporation agrees that it will continue to fulfill the cooperation obligations set forth in paragraph 6 above in connection with any investigation, criminal prosecution, and/or civil proceeding brought by the Office relating to or arising out of the conduct set forth in the Information. Dennis Corporation's obligation to cooperate is not intended to apply in the event

that Dennis Corporation is a defendant in any such proceeding. Notwithstanding the foregoing, Dennis Corporation does not waive any privilege it may have with respect to any documents now or hereafter subject to the attorney-client privilege, the attorney work-product doctrine, or other recognized legal privilege.

#### **Payment of Restitution**

8. In addition to any payments required in connection with any current or future non-criminal proceedings by agencies not party to this agreement or by branches of the Department of Justice other than the Office, Dennis Corporation agrees to make restitution for relevant conduct of the instant offense in the amount of \$250,000.00 to the State of West Virginia on or before the expiration of this Agreement.

#### **Corporate Reforms**

9. Dennis Corporation agrees: (i) that any policies, procedures or other remedial measures identified in paragraph 4 that have not already been implemented will be implemented within thirty (30) days following the date of the execution of this Agreement, except that the new Ethics and Compliance Officer position required under Paragraph 4(a) will be filled within sixty (60) days following the date of the execution of this Agreement (as may be extended with the prior written approval of the Office); and (ii) that it will maintain all policies, procedures and other remedial measures identified in paragraph 4 so long as this Agreement is in effect. As a material part of this Agreement, Dennis Corporation further agrees that it will not violate any federal or state criminal laws during the deferral period. The parties consider "execution" to mean the date which the Court enters an Order continuing the trial in the case to permit for the effectuation of this Agreement.

**Deferral of Prosecution**

10. In consideration of Dennis Corporation's remedial actions to date and its commitment to (a) accept and acknowledge responsibility for its conduct, (b) continue its cooperation with the Office, (c) make the payments specified in paragraphs 8 above, (d) comply with federal and state criminal laws and (e) otherwise comply with all of the terms of this Agreement, the Office shall, following execution of this Agreement, file a joint motion with Dennis Corporation pursuant to Title 18, United States Code, Section 3161(h)(2), to defer the prosecution for a period of eighteen (18) months and to obtain an exclusion of time under the Speedy Trial Act to allow Dennis Corporation to demonstrate good conduct and compliance with the terms of this Agreement (the "§ 3161(h)(2) Motion"). By executing this Agreement and joining in the § 3161(h)(2) Motion, Dennis Corporation expressly waives all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Sections 3161 *et seq.*, Federal Rule of Criminal Procedure 48(b), and any other applicable statutes or rules, including the Local Rules of the United States District Court for the Northern District of West Virginia for the period during which this Agreement is in effect. This waiver is knowing, voluntary and in express reliance on the advice of Dennis Corporation's counsel.

11. The Office agrees that, if Dennis Corporation remains in compliance with all of its obligations under this Agreement for the 18-month period identified in paragraph 10, this Agreement shall expire, and the Office will, within thirty (30) days of the expiration of this Agreement, move the Court pursuant to Federal Rule of Criminal Procedure 48(a) to dismiss the Information with prejudice. Except in the event of a breach of this Agreement, the Office will

bring no additional charges against Dennis Corporation relating to or arising out of the matters set forth in the Information.

12. It is further understood that, should the Office determine that Dennis Corporation has deliberately given materially false, incomplete, or misleading information pursuant to this Agreement; has committed any crimes subsequent to the date of this Agreement; or has otherwise knowingly, intentionally, and materially violated any provision of this Agreement, Dennis Corporation thereafter shall be subject to prosecution for any crimes of which the Office has knowledge. Any such prosecution may be premised on any information provided by or on behalf of Dennis Corporation to the Office or its law enforcement agency partners at any time. Moreover, Dennis Corporation agrees that any such prosecution relating to the allegations in the Information that are not time-barred as of the date of the execution of this Agreement may be commenced against Dennis Corporation, notwithstanding the expiration of any applicable statute of limitations between the execution of this Agreement and the expiration of this Agreement under paragraph 11. By this Agreement, Dennis Corporation expressly intends to and does waive any and all rights in this respect. Such waiver is knowing, voluntary and in express reliance on the advice of Dennis Corporation's counsel.

13. It is further agreed that, in the event that the Office determines that Dennis Corporation has knowingly, intentionally and materially violated any provision of this Agreement:

(a) this Agreement and the Information are admissible in any future court proceedings by this Office against Dennis Corporation as an admission by Dennis Corporation; all statements made by or on behalf of Dennis Corporation or any of its officers, directors or employees to the Office and its law enforcement agency partners, including any testimony given by Dennis



Corporation or any of its officers, directors or employees before a grand jury or elsewhere, whether before or after the date of this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against Dennis Corporation; and (b) Dennis Corporation shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence or any other statute or federal rule that statements made by or on behalf of Dennis Corporation before or after the date of this Agreement, or any leads derived therefrom, should be suppressed. However, nothing in the Agreement shall constitute a waiver of any Confrontation Clause rights under the Sixth Amendment to the United States Constitution that Dennis Corporation may have.

14. Dennis Corporation agrees that it shall not, through its attorneys, Board of Directors, agents, officers or employees, make any public statement, in litigation or otherwise, contradicting its acceptance of responsibility for the acts of its executives, officers and employees described in the Information. Any such contradictory statement by Dennis Corporation, its present or future attorneys, Board of Directors, agents, officers or employees shall constitute a breach of this Agreement, and, subject to cure as hereinafter provided, Dennis Corporation thereafter shall be subject to prosecution as specified in paragraphs 10 through 13. The decision as to whether any such contradictory statement will be imputed to Dennis Corporation for the purpose of determining whether Dennis Corporation has breached this Agreement shall be committed to the sole discretion of the Office. Upon the Office's notifying Dennis Corporation of any such contradictory statement, Dennis Corporation may avoid a finding of a breach of this Agreement by publicly repudiating such statement within seventy-two (72) hours after receipt of notice by

the Office. This Paragraph is not intended to apply to any statement made by any former Dennis Corporation officer, director or employee, or by any current Dennis Corporation officer, director or employee who is under investigation or is or has been charged with a crime or other wrongdoing by the government or an agency thereof.

15. Dennis Corporation agrees that the decision whether conduct and/or statements of any individual will be imputed to Dennis Corporation for the purpose of determining whether Dennis Corporation has knowingly, intentionally and materially violated any provision of this Agreement shall be committed to the sole discretion of the Office, provided, however, that the statements of any former officer, director or employee of Dennis Corporation made after their employment with Dennis Corporation has ended shall not be attributed to Dennis Corporation for such purpose. Should the Office determine that Dennis Corporation has committed a knowing, intentional, and material breach of any provision of this Agreement, the Office shall provide written notice of the alleged breach to Dennis Corporation, addressed to Dennis Corporation's counsel or to any successor that Dennis Corporation may designate, and provide Dennis Corporation with a two-week period from the date of receipt of such notice in which to make a presentation to the Office, or its designee, to demonstrate that no breach has occurred, or, to the extent applicable, that the breach was not knowing, intentional or material, or has been cured. Upon request by Dennis Corporation, the Office may agree in writing to extend this two-week period, including to provide Dennis Corporation with an opportunity to cure any breach of this Agreement. The parties to this Agreement expressly understand and agree that should Dennis Corporation fail to make a presentation to the Office, or its designee, within the two-week period (or other period agreed to by the Office), the Office may conclusively presume that Dennis

Corporation is in knowing, intentional and material breach of this Agreement. The parties further understand and agree that the exercise of discretion by the Office or its designee under this paragraph is not subject to review in any court or tribunal or any other office within the United States Department of Justice.

16. Except to the extent permitted by the Office, Dennis Corporation agrees that, if it sells or merges all or substantially all of its business operations as they exist as of the date of this Agreement to, or into, a single purchaser or group of affiliated purchasers during the term of this Agreement, Dennis Corporation shall include in any contract for sale or merger a provision binding the purchaser/successor to Dennis Corporation's obligations described in this Agreement. Such purchaser/successor shall also have the benefits, privileges and rights conferred to Dennis Corporation under this Agreement.

17. It is understood that this Agreement is binding on Dennis Corporation and the Office, but specifically does not bind any other federal agencies, any state or local law enforcement agencies, any licensing authorities or any regulatory authorities. However, if requested by Dennis Corporation or its attorneys, the Office will bring to the attention of any such agencies, including but not limited to any licensing authorities, the Agreement, the extensive cooperation of Dennis Corporation and its compliance with its obligations under this Agreement, and any corporate reforms specified in this Agreement. It is the intent of the parties to this Agreement that the Agreement does not confer or provide any benefits, privileges or rights to any individual or other entity other than the parties hereto, and that nothing in the Agreement shall be construed as acknowledging that the Agreement, including the Information and the evidence underlying the Agreement or Information, shall be admissible in any proceeding other than a proceeding brought

by the Office. Moreover, Dennis Corporation may raise any and all defenses and/or assert affirmative claims in any civil proceedings brought by third parties as long as doing so does not otherwise violate any term of this Agreement.


18. The Office has concluded that deferring prosecution is appropriate because deferral will likely meet all of the goals of prosecution. This conclusion is based on Dennis Corporation's extensive cooperation; its acceptance of responsibility; the remedial actions Dennis Corporation has committed to undertake in this Agreement; and Dennis Corporation's assurances that it intends to become a model of integrity in the engineering services industry in and around the State of South Carolina.

19. Dennis Corporation and the Office agree that, upon the execution of this Agreement, this Agreement (including any attachments) shall be publicly filed in the United States District Court for the Northern District of West Virginia.

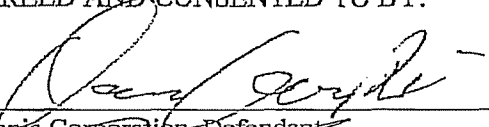
20. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between Dennis Corporation and the Office. No modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, Dennis Corporation's attorneys and a duly authorized representative of Dennis Corporation.

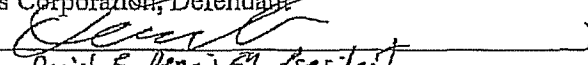
Dated: Wheeling, West Virginia  
December 8, 2016

~~WILLIAM J. HELENFELD, II~~  
**BETSY STEINFELD JIVIDEN**  
Acting United States Attorney  
Northern District of West Virginia

By:   
Jarod J. Douglas  
Assistant U.S. Attorney

AGREED AND CONSENTED TO BY:

  
Dennis Corporation, Defendant

(By   
Daniel P. Hennig, Esq. President

  
Sherri A. Lydon, Esq., Counsel for Defendant



CORPORATE RESOLUTION No. 1  
OF  
DENNIS CORPORATION

It is hereby resolved that Dennis Corporation has approved the appointment of Mrs. Pamela Johnston as the Ethics and Compliance Officer (ECO). Both her and her successors' appointment and termination has to be approved by the Board of Directors. In matters concerning Ethics and Compliance the ECO will have complete and unfettered access to the Board of Directors.

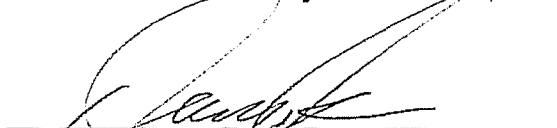
The ECO will develop and publish an Ethics and Compliance Policy that will include as a minimum; the prohibiting of payment of bribes or kickbacks to any public official in exchange for any official action, prohibiting payment to any public official via a shell company, prohibiting the payment of reimbursement to employees including any false item as an earmark for any pass-along payment to a public official, prohibiting the hiring of any public official without explicit notification of the appropriate state ethics commission, or equivalent and the obtaining of a written decision approving the employment from said commission , or equivalent, requiring the maintenance of a written contract for any services provided as a subcontractor to a general contractor which is directly contracted to any governmental agency, requiring the issuance of Form 1099s when required by federal law.

The ECO will provide effective training on the written policy containing the provisions as described above to all relevant Dennis Corporation Officers and employees.

**CERTIFICATE**

The undersigned hereby certifies that he is the Secretary of Dennis Corporation, a C-Corporation organized and existing under the laws of the State of South Carolina; that the foregoing is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of said Corporation held on the 9<sup>th</sup> day of December, 2016, at which meeting a quorum was at all times present and acting; that the passage of said resolution was in all respects legal; and that said resolution is in full force and effect.

Dated this 9<sup>th</sup> day of December, 2016

  
Secretary Signature

Daniel R. Dennis  
Printed Name

Raised Corporate Seal