

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MANNY ARAGON,

Defendant.

Cr. No. 07-615 WJ

**PLEA AGREEMENT**

Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Attorney General of the State of New Mexico, the Defendant, MANNY ARAGON, and the Defendant's counsel, Ray Twohig, Esq., Timothy Padilla, Esq., and Miles Hanisee, Esq.:

**REPRESENTATION BY COUNSEL**

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorneys and is fully satisfied with those attorneys' legal representation.

**RIGHTS OF THE DEFENDANT**

2. The Defendant further understands the Defendant's rights:
- a. to plead not guilty, or having already so pleaded, to persist in that plea;
  - c. to have a trial by jury; and

d. at a trial:

- 1) to confront and cross-examine adverse witnesses,
- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

#### **WAIVER OF RIGHTS AND PLEA OF GUILTY**

3. The Defendant agrees to waive these rights and to plead guilty to Counts One, Six and Ten of the Fourth Superseding Indictment filed on October 8, 2008, charging the Defendant with Conspiracy in violation of 18 U.S.C. § 371 in Count One, and Frauds and Swindles (Mail Fraud) in violation of 18 U.S.C. § 1341 in Counts Six and Ten. The Defendant further agrees to the entry of a judgment of forfeiture as to the asset listed in the forfeiture provision of the Fourth Superseding Indictment, as further set out in Paragraphs 18 through 20, below.

#### **SENTENCING**

4. The Defendant understands that the maximum penalty the Court can impose for each count of the Fourth Superseding Indictment is:

a. For the Defendant's violation of the Conspiracy statute:

- 1) a term of imprisonment of not more than 5 (five) years;
- 2) a fine not to exceed \$250,000.00;
- 3) a term of supervised release of not more than 3 (three) years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of

supervised release, the Defendant's supervised release could be revoked – even on the last day of the term – and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);

- 4) a mandatory special penalty assessment of \$100.00; and
- 5) restitution as may be ordered by the Court pursuant to law.

b. For the Defendant's violation of the Frauds and Swindles (Mail Fraud) statute:

- 1) a term of imprisonment of not more than 20 (twenty) years;
- 2) a fine not to exceed \$250,000.00;
- 3) a term of supervised release of not more than 3 (three) years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked – even on the last day of the term – and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- 4) a mandatory special penalty assessment of \$100.00; and
- 5) restitution as may be ordered by the Court pursuant to law.

5. The parties recognize that the federal sentencing guidelines are advisory, but that the Court is required to consider them in determining the sentence it imposes.

6. The United States reserves the right to make known to the United States Probation Office, for inclusion in the presentence report to be prepared under Rule 32, Fed. R. Crim. P., any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

## **FACTUAL BASIS**

7. The Defendant admits to the following facts:

a. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offenses to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this guilty plea, the United States could prove facts sufficient to establish my guilt to all of the charges to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

b. In 1997 and 1998, legislation was introduced in the legislature of the State of New Mexico to provide for the construction of a new Metro Court building in Bernalillo County. Then-Chief Metro Court Judge Michael Kavanaugh and court administrator Toby Martinez came to visit me in my capacity as President Pro Tem of the State Senate to seek my support for the legislation.

c. An architectural design firm called Design Collaborative Southwest ("DCSW") was selected to perform the architectural design work for the new Metro Court building. Toby Martinez informed me that we could profit from DCSW's selection as the architect. The managing director of DCSW, Marc Schiff, made cash payments to me and to Martinez in return for DCSW's selection as the architect. I received cash directly from Schiff. These payments were not for any legitimate services. I understood that the cash payments were funded by fraudulent overcharges that Schiff submitted to

the Metro Court for architectural work, and that Martinez as court administrator saw to it that the invoices for the overcharges were processed for payment.

d. In or about the year 2001, I learned from Toby Martinez that the Metro Court needed funds to pay for installation of an audio-visual system in its new building. Martinez told me that, if I could obtain additional funding for the installation of an audio-visual system, it would be beneficial to him and to me. Martinez told me that I could receive as much as \$600,000 from the proceeds of the courthouse audio-visual contract. I asked Martinez how much "extra" would be available from the proceeds of the audio-visual contract, and he told me that about one million dollars would be available.

e. In January 2002, I made a capital outlay request to the Senate of the State of New Mexico for \$3,600,000.00 for the audio-visual project, which constituted an overt act in furtherance of the conspiracy to which I am pleading guilty.

f. Martinez and I received illegitimate payments from Raul Parra in connection with the installation of the audio-visual system. Parra was an officer of an engineering firm called P2RS. I received approximately \$626,000.00 from Parra during the years 2003 and 2004. I understood that these funds were the proceeds of the fraudulent overbillings on the audio-visual contract, and that I was receiving the money in exchange for my agreement to assist in securing funding for the project. At Parra's request, I issued some invoices to Parra for consulting or legal services to make it appear that there was a legitimate purpose for the payments. I did not provide anywhere close to \$626,000.00 worth of legal services to Parra.

g. In furtherance of the scheme and artifice to which I am

pleading guilty, and to achieve the objects thereof, on or about June 13, 2003, I participated in a conspiracy which caused a check, drawn upon an account of the State of New Mexico and payable to the order of Integrated Control Systems, Inc., in the amount of \$605,993.04, to be mailed from the Financial Control Division of the New Mexico Department of Finance and Administration in Santa Fe, New Mexico, to the Accounting Department of the Bernalillo County Metropolitan Court in Albuquerque, New Mexico.

h. In furtherance of the scheme and artifice to which I am pleading guilty, and to achieve the objects thereof, on or about November 21, 2003, I participated in a conspiracy which caused a check, drawn upon an account of the State of New Mexico and payable to the order of Integrated Control Systems, Inc., in the amount of \$675,470.99, to be mailed from the Financial Control Division of the New Mexico Department of Finance and Administration in Santa Fe, New Mexico, to the Accounting Department of the Bernalillo County Metropolitan Court in Albuquerque, New Mexico.

i. I was aware that the success of the conspiracy and the scheme and artifice to which I am pleading guilty depended upon our receiving the funds from the State of New Mexico. I understood that the funds were normally mailed from Santa Fe County to Bernalillo County. I was also aware that the submission of false invoices as described above caused checks to be mailed in this fashion.

j. By signing this agreement, I admit all the foregoing facts and admit that there is a factual basis for each element of the crimes to which I am pleading guilty. I agree that the Court may rely on any of these facts, as well as any undisputed facts in

the presentence report, to determine my sentence, including, but not limited to, the advisory guideline offense level.

### **SENTENCING AGREEMENT**

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant agree that his total period of incarceration (not including incarceration imposed should he violate any term of supervised release) shall be 67 months in the Bureau of Prisons. The remaining components of the Defendant's sentence, including any fine, length and conditions of a term of supervised release, and any restitution, will be decided by the Court. The United States agrees that, if the Defendant complies with all terms of this agreement, it will not oppose voluntary surrender of the Defendant to his designated Bureau of Prisons facility.

9. The Defendant understands that this Plea Agreement and, in particular, the agreement set out in ¶ 8, above, may be accepted or rejected by the Court, or that the Court may defer decision until it reviews the pre-sentence report to be prepared in this case, all pursuant to Fed. R. Crim. P. 11(c)(3)(A). The Defendant agrees that, so long as the Court accepts this Plea Agreement and, in particular, the agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C) contained in ¶ 8, above, the Defendant will not seek to withdraw his plea of guilty.

### **DEFENDANT'S ADDITIONAL OBLIGATIONS**

10. The Defendant understands the Defendant's obligation to provide the United States Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

### **WAIVER OF APPEAL RIGHTS**

11. The Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging that, the defendant knowingly waives the right to appeal any sentence within the agreement of the parties pursuant to Rule 11(c)(1)(C) as set out in ¶ 8 of this agreement, or the manner in which that sentence was determined, on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement.

### **GOVERNMENT'S AGREEMENT**

12. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that it will move to dismiss the outstanding counts of the Indictment against the Defendant at the time of imposition of sentence, and that it will not bring additional criminal charges against the Defendant arising out of the Defendant's conduct now known to the United States Attorney's Office for the District of New Mexico. The Defendant understands that this agreement is limited solely to the United States Attorney's Office for the District of New Mexico and the Attorney General of the State of New Mexico and does not bind any other federal agencies or



prosecuting authorities, including the Tax Division of the U.S. Department of Justice and the New Mexico Department of Taxation and Revenue.

13. Provided that the Defendant fulfills the Defendant's obligations as set out above, the Attorney General of the State of New Mexico agrees that the State of New Mexico will not bring any criminal charges against the Defendant arising out of the Defendant's conduct now known to the Attorney General of the State of New Mexico.

#### **VOLUNTARY PLEA**

14. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no representations or promises from anyone as to what sentence the Court will impose. The Defendant represents that the Defendant is pleading guilty because the Defendant is in fact guilty, and for no other reason.

#### **VIOLATION OF PLEA AGREEMENT**

15. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

### **SPECIAL ASSESSMENT**

16. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$300.00 in payment of the special penalty assessments described above.

### **FINES**

17. The Defendant acknowledges that he is subject to fines upon each count of conviction pursuant to 18 U.S.C. § 3571. The Defendant recognizes that the determination of the amount of any fine is a matter consigned to the sound exercise of the discretion of the Court.

### **FORFEITURE**

18. The Defendant agrees to forfeit all his interests in the following specific property listed in the forfeiture demand of the Fourth Superseding Indictment:

Account No. 07Q-001369  
Financial Network Investment Corporation  
El Segundo, California  
Clearing through Pershing LLC, a BNY Securities Group Company

The Defendant agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of the property identified by this agreement. The United States agrees not to seek the forfeiture of additional assets other than those identified in this agreement.

19. The Defendant further agrees to waive all interest in any of the asset identified in ¶ 18, above, in any administrative or judicial forfeiture proceeding, whether

criminal or civil, state or federal. The Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. In particular, the Defendant consents to the entry of Preliminary Orders of Forfeiture as to the asset described in ¶ 18, above, at the time of entry of his guilty plea in this case. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

20. The Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment, except that the Defendant specifically reserves the right to challenge the forfeitures carried out in accordance with this Plea Agreement under habeas corpus on grounds of ineffective assistance of counsel. The Defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. Defendant acknowledges that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct, property facilitating illegal conduct and property involved in illegal conduct giving rise to forfeiture.

## RESTITUTION

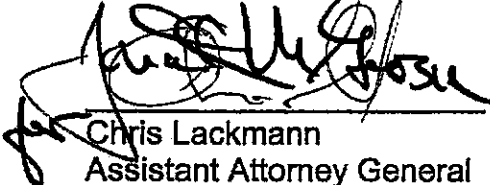
21. The parties recognize that any order of restitution entered as part of the Defendant's criminal sentence may encompass the full scope of the Defendant's criminal agreement and all losses suffered by the State of New Mexico that were foreseeable by the Defendant. The United States agrees that, in fashioning a sentence in this case, including any order of restitution, the Court should consider the amount by which the Defendant actually benefitted financially from his conduct, which the parties estimate to be approximately \$650,000.00. The United States further agrees that, to the extent that any other person may actually pay restitution as part of a criminal sentence in a related case as to losses for which the Defendant has also been determined by the Court to be liable, the Defendant should be entitled to a reduction in restitution payments by a like amount.

## ENTIRETY OF AGREEMENT

22. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 14<sup>th</sup> day of October, 2008.


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I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.



MANNY ARAGON  
Defendant



RAY TWOHIG, Esq.  
Attorney for Defendant



TIMOTHY PADILLA, Esq.  
Attorney for Defendant



J. MILES HANISEE, Esq.  
Attorney for Defendant