

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cr. No. <u>07-252 JC</u>
)	
MARC SCHIFF,)	
)	
Defendant.)	
)	

PLEA AGREEMENT

Pursuant to Rule 11, 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 Defendant, MARC SCHIFF, and the Defendant's counsel, JOSEPH N. RIGGS, III, 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 attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
- a. to be charged and prosecuted by indictment;
 - b. 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 1 and 2 of an Information to be filed in this matter charging the Defendant in Count 1 with Conspiracy in violation of 18 U.S.C. § 371, and Frauds and Swindles (Mail Fraud) in violation of 18 U.S.C. §§ 1341 and 1346 in Count 2.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose for each count of the Information 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, 18 U.S.C. § 3663A.

- 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.

DEFENDANT'S ADMISSION OF FACTS

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. Design Collaborative Southwest ("DCSW") was awarded a contract in 1999 to provide architectural services for constructing the Bernalillo County Metropolitan Court in Albuquerque, New Mexico. As a partner at DCSW, I oversaw the project. At the time the contract was awarded, Manny Aragon was the President Pro-Tem of the Senate of the State of New Mexico, Tobias Martinez, a.k.a. Toby, was the Court Administrator for the Metropolitan Court, and Kenneth Schultz, the former mayor of the City of Albuquerque, was a lobbyist for DCSW. Aragon, Martinez, Schultz and I participated in and conspired to commit a scheme to defraud the State of New Mexico through the submission of fraudulent invoices for work on the Metropolitan Court, as outlined below.

c. Schultz requested a bonus in connection with DCSW being awarded the architectural contract for the Metropolitan Court. I agreed to pay the bonus to Schultz. Schultz later requested that I pay the bonus in cash. I began to make cash payments to Schultz. Additional contracts for the Metropolitan Court were awarded to DCSW. Schultz requested cash bonuses for assisting DCSW in acquiring the contracts. In a conversation with Schultz regarding the cash payments, Schultz admitted to me that Senator Manny Aragon was receiving payments for the Metropolitan Court contracts awarded to DCSW. I also learned that Metropolitan Court Administrator Toby Martinez was receiving some of the cash payments. I continued to make cash

payments to Schultz because I feared that DCSW would be removed from the contract or sued if the payments stopped.

d. As a method to fund the cash payments, Metropolitan Court Administrator Toby Martinez instructed me to send him false invoices from DCSW. I prepared DCSW invoices on my computer at my residence and forwarded them to Martinez's office for approval. The purpose of the false invoices was to receive money from the State of New Mexico. Martinez and others approved the invoices and forwarded payment vouchers to the State of New Mexico. Checks in payment of the vouchers were normally sent via U.S. Mail 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. The proceeds were then used to pay kickbacks to Aragon and Martinez.

e. Once the checks were received at the Metropolitan Court, I picked up the checks and deposited them into a personal investment account. I wrote checks from my investment account which were either cashed or deposited into my personal bank account. From the personal bank account I made ATM withdrawals or cashed checks. I personally gave Schultz and in some instances personally gave Aragon the proceeds of the cashed investment account checks, personal bank account checks, and ATM withdrawals.

f. I personally gave Aragon two payments of \$10,000.00 each at Aragon's law office in Albuquerque, New Mexico. Martinez accompanied me to Aragon's office for one of the payments. I also attended a meeting at an Albuquerque restaurant with Aragon, Martinez, Schultz, and a man named Raul Parra. The purpose of the meeting was to make a final payment of \$30,000.00 to Aragon. Prior to the meeting, I had given Schultz \$30,000.00 which Schultz passed to Aragon at the table.

g. Frequently, I gave the proceeds from the DCSW checks to Schultz. I understood that Schultz was responsible for paying Aragon and Martinez their kickbacks. I also understood that Schultz kept some of the cash for himself for his participation in the scheme.

h. In furtherance of the conspiracy to which I am pleading guilty, and to effect the objects thereof, on or about October 23, 2002, I submitted an invoice to the Bernalillo County Metropolitan Court Administrator's Office in the amount of \$16,800.00.

i. In furtherance of the scheme and artifice to which I am pleading guilty, and to achieve the objects thereof, on or about October 25, 2002, I caused a check, drawn upon an account of the State of New Mexico and payable to the order of Design Collaborative SW in the amount of \$16,800.00, 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.

8. 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.

STIPULATIONS

9. To assist the Court in determining the advisory sentencing guideline range, the United States and the Defendant stipulate as follows:

a. For purposes of U.S.S.G. § 2B1.1(b)(1), the loss amount attributable to the Defendant was more than \$400,000.00 but not more than \$1,000,000.00.

b. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a three-level reduction from his base offense level as calculated under the sentencing guidelines. This reduction depends on the Defendant personally providing to the United States Probation Officer who prepares the pre-sentence report in this case an appropriate written statement in which the Defendant clearly establishes the Defendant's entitlement to this reduction. Further, the United States is free to withdraw this stipulation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing.

10. The Defendant understands that the above stipulations are not binding on the Court and that whether the Court accepts the stipulations is a matter solely within

the discretion of the Court after it has reviewed the pre-sentence report. Further, the Defendant understands that the Court may choose to deviate from the advisory guideline sentence. The Defendant understands that if the Court does not accept the above stipulations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court deviates from the advisory guideline range, the Defendant will not seek to withdraw the plea of guilty. In other words, regardless of any stipulations the parties may enter into, insofar as is otherwise permitted by law, the Defendant's final sentence is solely within the discretion of the Court.

DEFENDANT'S ADDITIONAL OBLIGATIONS

11. 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.

12. The Defendant hereby agrees that:

a. The Defendant will cooperate with the United States by giving truthful and complete information and/or testimony concerning his participation in and knowledge of criminal activities. The Defendant understands that if he falsely implicates an innocent person in the commission of a crime or exaggerates the involvement of any person in the commission of a crime in order to appear cooperative, or if the Defendant falsely minimizes the involvement of any person in the commission of a crime in order to protect that person, then the Defendant will be in violation of this plea agreement, and the United States will have the right to rescind the plea agreement and re-institute criminal proceedings against the Defendant.

b. The Defendant will testify truthfully if called as a witness in any state or federal grand jury investigation and/or any civil or criminal proceeding brought in the District of New Mexico or elsewhere.

c. If requested to do so by the United States Attorney's Office, the Defendant will provide all documents, records, writings, tangible objects, or materials of any kind that are in his possession or under his custody or control and that relate directly or indirectly to any area of inquiry or investigation in this proceeding.

d. If requested to do so by the United States Attorney's Office, the Defendant will submit a personal financial statement under oath and/or submit to interviews by the United States Attorney's Office regarding his capacity to satisfy any fines and/or restitution.

e. If the Defendant complies with the obligations he has undertaken in this plea agreement, and if he has provided substantial assistance within the meaning of 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1, the government will move upon completion of the Defendant's cooperation to have the Court depart downward from the applicable guideline sentence. The Defendant understands, however, that the decision whether to depart downwards, as well as the amount of any departure, is solely within the discretion of the Court. The Defendant further understands that the determination as to whether the defendant has provided substantial assistance will be made in the sole discretion of the United States Attorney for the District of New Mexico.

WAIVER OF APPEAL RIGHTS

13. The Defendant is aware that federal law affords a Defendant the right to appeal the sentence imposed. Acknowledging that, the Defendant knowingly waives

the right to appeal any sentence within the statutory range applicable to the statute(s) of conviction.

GOVERNMENT'S AGREEMENT

14. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that the United States 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 does not bind any other federal, state, or local agencies or prosecuting authorities, including the Tax Division of the U.S. Department of Justice.

15. The United States agrees that any order of restitution entered as part of the Defendant's criminal sentence should be limited to the scope of the Defendant's criminal agreement and to losses suffered by the State of New Mexico that were foreseeable by the Defendant. The United States further agrees that, to the extent that any other person may actually pay restitution for such losses as part of a criminal sentence in a related case, the Defendant should be entitled to a reduction in restitution payments by a like amount.

VOLUNTARY PLEA

16. 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

17. 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

18. 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 \$200.00 in payment of the special penalty assessments described above.

ENTIRETY OF AGREEMENT

19. 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 ____ day of _____, 2007.

DAVID C. IGLESIAS
United States Attorney

Jonathon M. Gerson
Paula G. Burnett
Assistant United States Attorneys
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

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

MARC SCHIFF
Defendant

JOSEPH N. RIGGS, III
Attorney for Defendant