

- f. the right to limit restitution to the count of conviction.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The defendant hereby agrees to waive these rights and to plead guilty to Count One of the Indictment in this case, charging extortion under color of official right in violation of 18 U.S.C. § 1951 and 18 U.S.C. § 2.

SENTENCING

4. The defendant understands that the maximum penalty the Court can impose is:

- a. imprisonment for a period of not more than twenty (20) years;
- b. a fine not to exceed the greater of \$250,000.00 or twice the pecuniary gain to the defendant or pecuniary loss to the victim;
- c. a mandatory term of supervised release of not more than three (3) 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.);
- d. a mandatory special penalty assessment of \$100.00; and
- e. restitution as may be ordered by the Court.

5. Sentencing is pursuant to the Sentencing Reform Act of 1984. The parties recognize that the United States Sentencing Guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

STATEMENT OF FACTS

6. The defendant stipulates 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 offense charged against me in the indictment. 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 plea, the United States could prove facts sufficient to establish my guilt of the charge in the information beyond a reasonable doubt. I specifically admit the following facts and relevant conduct related to the charge against me, and declare under penalty of perjury that all of these facts are true and correct.

b. In 1995, I took office as the duly elected Treasurer of the State of New Mexico. I had large campaign debts that I was using my entire official salary to pay back. Soon after I took office I began taking bribes from persons doing business with the State Treasurer's Office in order to cover my living expenses. These bribes were for the purpose of affecting my exercise of my official duties, and actually did affect my exercise of my official duties. I was not legally entitled to these bribes, but I accepted them because I wanted the money.

c. I discovered that it was quite easy to get bribes from people who wanted to keep or to obtain business with the State Treasurer's Office. People would approach me and offer to help me in return for my help to them. Sometimes I would be the person who would raise this subject, and at other times the other person would be the first to raise it, but I was regularly and easily able to reach agreements with people who wanted State business for the payment of money to me in return for business.

d. Among the people who paid me money were investment advisors. During my tenure as Treasurer, the New Mexico State Treasurer's Office maintained investment advisors who obtained information about available rates of return for certain State funds. These advisors were paid commissions by brokerage firms with which State funds were invested. I had agreements with several investment advisors that they would pay me a percentage of their net profits from these commissions, after taxes and expenses had been accounted for. These investment advisors would pay me a share of their commissions, normally in cash and handed to me in person.

e. The cash payments that I received from the investment advisors were in return for my using them to assist in the investment of State funds. If the investment advisors did not pay me my cut of their commissions, or if they claimed too much in the way of expenses, I would not use them for further State work. I dropped a number of investment advisors after disputes about expenses that had the effect of reducing the payments I received.

e. After I had settled into a routine of accepting cash payments from investment advisors in return for work with the New Mexico State Treasurer's Office, a Treasurer's Office employee named Leo Sandoval came to me with a proposition. Sandoval was a childhood friend of mine whom I trusted implicitly. Sandoval told me that he had a friend named Angelo Garcia, and that Garcia would give me a share of the gross commissions on investment deals (as opposed to a percentage of net profits). Sandoval said Garcia would give me thirty percent of the gross commissions. This would yield much more in the way of payment to me, so I agreed to conduct the

investment advisor work through Angelo Garcia and a financial advisor named Kent Nelson.

f. In order to make this arrangement work, I issued a Request for Proposals (the "RFP") for applicants for investment advisors. Kent Nelson duly applied and was given the position. Although this was intended to look like a competitive appointment process, I had already agreed to appoint Nelson to the job even before the RFP was issued.

g. Once Kent Nelson was appointed as investment advisor, the New Mexico State Treasurer's Office was able to put him to work obtaining bids from brokerage firms for financial transactions called flexible repurchase agreements, or "flex repos." The brokerage firms that eventually obtained the flex repo deals would pay commissions to Nelson. Nelson would then kick back a significant portion of his fee to Angelo Garcia, who would convey the money to Leo Sandoval, who would convey my share to me. Sandoval also maintained records of how much money Nelson sent to Garcia and what my share was. I liked this arrangement because Sandoval insulated me from Garcia, and because of my high level of trust in Sandoval.

h. With respect to Count One of the Indictment in this case, Kent Nelson performed investment advisor work for the New Mexico State Treasurer's Office that resulted in his receiving commission payments of \$350,000.00 from Morgan Stanley on June 28, 2001, another \$200,000.00 from Morgan Stanley on June 28, 2001, and \$66,584.90 from Salomon Smith Barney on June 29, 2001. These commissions totaled \$616,584.90. On July 2, 2001, Nelson transferred \$278,500.00 from these commissions to a bank account controlled by Angelo Garcia. I was to share in these

funds. I obtained these funds under color of official right, acting in concert with others, despite the fact that these funds were not due me, nor to my office.

7. By signing this agreement, the Defendant admits all the foregoing facts. The Defendant understands and agrees that the Court may rely on any of these facts to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level (including any facts that support any specific offense characteristic, cross reference, upward adjustment, or upward departure).

8. It is expressly understood and agreed by and between the defendant and the United States that:

a. The United States has made, and will make, **NO AGREEMENT** pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., that a specific sentence is the appropriate disposition of this case.

b. The United States has made, and will make, **NO AGREEMENT** to approve, to oppose, or not to oppose pursuant to Rule 11(c)(1)(B), Fed. R. Crim. P., any request made by the defendant or on behalf of the defendant for a particular sentence in this case.

c. The United States hereby expressly reserves the right to make known to the United States Probation Office, for inclusion in the presentence report prepared pursuant to Rule 32, Fed. R. Crim. P., any information that the United States believes may be helpful to the Court.

STIPULATIONS

9. The United States and the defendant stipulate as follows:

a. The 1995 edition of the United States Sentencing Guidelines Manual is applicable to this case.

b. Pursuant to U.S.S.G. § 3E1.1, the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. Consequently, the defendant is entitled to a reduction of three levels from the base offense level as calculated under the sentencing guidelines. This reduction is contingent upon the defendant providing an appropriate oral or written statement to the United States Probation officer who prepares the presentence report in this case in which the defendant clearly establishes his entitlement to this reduction.

c. For purposes of U.S.S.G. § 2C1.1(b)(1) (1995 edition), the offense involved more than one bribe or extortion.

d. For purposes of U.S.S.G. § 2C1.1(b)(2)(A) (1995 edition) and the calculation of relevant conduct for sentencing purposes, the value of the payments that the defendant and those with whom he acted in concert received was more than \$2,500,000.00 but not more than \$5,000,000.00.

e. For purposes of U.S.S.G. § 2C1.1(b)(2)(B) (1995 edition), the offense involved payments for the purpose of influencing an elected official.

10. The United States and the defendant understand that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. The defendant understands and agrees that if the Court does not

accept any one or more of the above stipulations, the defendant hereby waives the right to appeal the Court's rejection of such stipulations.

DEFENDANT'S ADDITIONAL OBLIGATIONS

11. The defendant understands his obligation to provide the United States Probation Office with truthful, accurate, and complete information. The defendant hereby represents that he 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 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, as determined by the United States in its sole discretion, the defendant successfully completes his cooperation as described above, the United States will move, pursuant to U.S.S.G. § 5K1.1, to have the Court downwardly depart 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.

FORFEITURE

13. The defendant agrees to cooperate fully in helping the United States to locate and identify any asset derived from or used in the commission of the offenses in this case. The defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about which he may have knowledge that were derived from or used in the commission of offenses committed by other persons.

14. The defendant agrees that he will forfeit to the United States all of his right, title, and interest in the following assets and properties:

a. A parcel of real property known as 1595 Sichler Road, located in Los Lunas, New Mexico, being described as approximately 6 acres of land, including all buildings, fixtures and appurtenances thereto.

WAIVER OF APPEAL RIGHTS

15. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed.

a. Acknowledging that, the defendant knowingly waives the right to appeal any sentence within the guideline range applicable to the statute of conviction as determined by the Court after resolution of any objections by either party to the Presentence Report to be prepared in this case, and the defendant specifically agrees not to appeal the determination of the Court in resolving any contested sentencing factor.

GOVERNMENT'S AGREEMENT

16. Provided that the defendant fulfills his obligations as set out above, the United States agrees that:

a. Upon the imposition of sentence in this case, the United States will move to dismiss Count Two of the Indictment.

b. 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.

c. This agreement is limited 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.

VOLUNTARY PLEA

17. The defendant agrees and represents that this plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence the Court will impose.

VIOLATION OF PLEA AGREEMENT

18. The defendant understands and agrees that if he violates any provision of this plea agreement, the United States may declare this plea 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 Information to be filed in this case, as well as perjury, false statement, and obstruction of justice, and to additional criminal or civil forfeiture proceedings.

SPECIAL ASSESSMENT

17. At the time of sentencing, the defendant will tender a money order or certified check payable to the order of the **United States District Court**, District of New Mexico, 333 Lomas Blvd. N.W., Suite 270, Albuquerque, New Mexico 87102, in the amount of \$100.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

18. 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 8th day of November, 2005.

DAVID C. IGLESIAS
United States Attorney

Jonathon M. Gerson
Assistant United States Attorney
201 Third Street N.W., Suite 900
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.

MICHAEL MONTOYA
Defendant

Jacquelyn Robins, Esq.
Attorney for Defendant

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENT NELSON,

Defendant.

CRIMINAL NO. 05-2021 JP

Mail Fraud: 18 U.S.C. §§ 1341 and
1346; Forfeiture: 18 U.S.C. §982.

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

In or about and between December 1999 and March 2005, both dates being approximate and inclusive, in the State and District of New Mexico, in Santa Fe County, and elsewhere, the defendant **KENT NELSON** devised a scheme and artifice to defraud by depriving the people of the State of New Mexico of the intangible right of honest services of their public officials, namely, the payment of substantial sums of money in order to corruptly influence the Treasurer of the State of New Mexico to award securities work to the defendant **KENT NELSON**.

For the purpose of executing such scheme and artifice, on or about February 27, 2003, the defendant **KENT NELSON** placed in an authorized depository for mail matter an envelope addressed to **MICHAEL MONTOYA**, to be sent or delivered by the United States Postal Service, containing a check payable to **MICHAEL MONTOYA** in the amount of \$5,000.00.

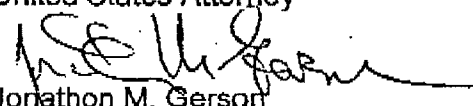
In violation of violation of Title 18, United States Code, Sections 1341 and 1346.

FORFEITURE

The defendant **KENT NELSON** shall forfeit to the United States all right, title and interest in the condominium unit known and described as Unit 111 at 457 Mountain Village Boulevard, located in Mountain Village, San Miguel County, Colorado, such property being traceable to proceeds obtained as a result of the violation of Title 18, United States Code, Section 1341, as set out above. If by any act or omission of the defendant said property, or any portion thereof, cannot be located upon the exercise of due diligence, has been transferred, sold to or deposited with any third party, has been placed beyond the jurisdiction of the Court, has been substantially diminished in value, or has been commingled with other property which cannot be divided without difficulty, other property shall be substituted and forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b).

All in violation of Title 18, United States Code, Section 982(a)(1).

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