UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	IP 05- -CR
v.	)	
	)	
IRVING MATERIALS, INC.,	)	
Defendant.	)	

PLEA AGREEMENT

The United States of America and Irving Materials, Inc. ("defendant"), a corporation organized and existing under the laws of Indiana, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands its rights:

(a) to be represented by an attorney;

(b) to be charged by Indictment;

(c) to plead not guilty to any criminal charge brought against it;

(d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;

(e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(f) to appeal its conviction, if it is found guilty; and

(g) to appeal the imposition of sentence against it.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(f) above. Upon the Court's acceptance of the defendant's guilty plea, the defendant will also knowingly and voluntarily waive its right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 that challenges the sentence imposed by the Court if that sentence is consistent with or below the sentence recommended in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b) - (c). Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive Indictment and plead guilty to a one-count Information to be filed in the United States District Court for the Southern District of Indiana, Indianapolis Division. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by fixing the price at which ready mixed concrete was sold in the Indianapolis, Indiana metropolitan area beginning in or about July 2000 and continuing until May 25, 2004 in violation of the Sherman Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the "Relevant Period" is that period from July, 2000 until May 25, 2004. During the Relevant Period, the defendant was a corporation organized and existing under the laws of Indiana with its principal place of business in Greenfield, Indiana. During the Relevant Period, the defendant was a producer of ready mixed concrete and was engaged in the manufacture and sale of ready mixed concrete in the Indianapolis, Indiana metropolitan area and elsewhere. Ready mixed concrete is a product whose ingredients include cement, aggregate (sand and gravel), water, and, at times, other additives. Ready mixed concrete is made on demand and, if necessary, is shipped to work sites by concrete mixer trucks.

(b) During the Relevant Period, the defendant, by and through certain of its officers and certain employees, including certain high-level personnel of the defendant, participated in a conspiracy with other persons and entities engaged in the manufacture and sale of ready mixed concrete, the primary purpose of which was to fix the price at which ready mixed concrete was sold in the Indianapolis, Indiana metropolitan area. In furtherance of the conspiracy, the defendant, by and through certain of its officers and certain employees, engaged in conversations and attended meetings with representatives of other ready mixed concrete producers in the Indianapolis, Indiana metropolitan area. During such meetings and conversations, agreements were reached to fix the price at which ready mixed concrete was to be sold in the Indianapolis, Indiana metropolitan area.

(c) During the Relevant Period, the corporate conspirators purchased substantial quantities of equipment and supplies necessary to the manufacture and sale of ready mixed concrete, which equipment and supplies were shipped into Indiana from points of origin outside

Indiana. During the Relevant Period, the business activities of the corporate conspirators in connection with the manufacture and sale of ready mixed concrete affected by the conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the Southern District of Indiana, Indianapolis Division. The conspiratorial meetings and conversations described above took place in the Indianapolis, Indiana metropolitan area, and at least one of these meetings occurred in this District. In addition, sales of ready mixed concrete affected by this conspiracy were made by one or more of the conspirators to customers within the Southern District of Indiana.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Act completed prior to June 22, 2004 is a fine in an amount equal to the greatest of:

(a) $10 million (15 U.S.C. § 1);

(b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or

(c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

6. In addition, the defendant understands that:

(a) pursuant to Section 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines"), 18 U.S.C. §3563(b)(2), or 18 U.S.C. §3663(a)(3), the Court may order it to pay restitution to the victims of the offense;

(b) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order it to pay a $400.00 special assessment upon conviction for the charged crime; and

(c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but no more than five years.

SENTENCING GUIDELINES

7. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines at the time of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in imposing sentence. The defendant understands and agrees that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant further understands and agrees that although the Court is not ultimately bound to impose a sentence within the applicable advisory Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or to determine the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of $29.2 million payable in installments as set forth below with interest accruing under 18 U.S.C.§

3612(f)(1)-(2) ("the Recommended Sentence").

(a) The United States and the defendant agree to recommend, in the interest of justice pursuant to 18 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b) that the fine be paid in the following installments: within 30 days of imposition of sentence – $5.2 million (plus any accrued interest); at the one-year anniversary of imposition of the sentence ("anniversary") – $4.8 million (plus any accrued interest); at the two-year anniversary – $4.8 million (plus any accrued interest); at the three-year anniversary $4.8 million (plus any accrued interest); at the four-year anniversary $4.8 million (plus any accrued interest) and at the five-year anniversary $4.8 million (plus any accrued interest); provided, however, that the defendant shall have the option at any time before the five-year anniversary of prepaying the remaining balance (plus any accrued interest) then owing on the fine.

(b) The defendant understands that the Court will order it to pay a $400 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(B) in addition to any fine imposed.

(c) Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 12 of this Plea Agreement, and before sentencing in this case, the United States will fully advise the Court of the fact, manner, and extent of the defendant's cooperation and commitment to prospective cooperation with the United States' investigations and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct. The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, will provide sufficient information concerning the defendant, the crime charged in this case, and the defendant's role in the crime to enable meaningful exercise of

sentencing authority by the Court under 18 U.S.C. § 3553. The United States and the defendant agree to request jointly that the Court accept the defendant's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by the defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.

(d) The United States contends that had this case gone to trial, the United States would have presented evidence to prove that the gain derived from or the loss resulting from the charged offense is sufficient to justify the Recommended Sentence set forth in this paragraph, pursuant to 18 U.S.C. § 3571(d). For purposes of this plea and sentencing only, the defendant waives its rights to contest this calculation.

9. The United States and the defendant agree that the applicable Sentencing Guidelines fine range exceeds the fine contained in the Recommended Sentence set out in Paragraph 8 above. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 12 of this Plea Agreement and in the Cooperation Agreement filed separately with the Court under seal, and prior to sentencing in this case, the United States will make a motion, pursuant to U.S.S.G. § 8C4.1, for a downward departure from the Sentencing Guidelines fine range and will request that the Court impose the Recommended Sentence set out in Paragraph 8 of this Plea Agreement because of the defendant's substantial assistance in the government's investigations and prosecutions of violations of federal criminal law in the ready mixed concrete industry. The United States and the defendant also agree not to seek or support any sentence outside of the advisory Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this

Plea Agreement. The United States and the defendant further agree that the Recommended Sentence set forth in this Plea Agreement is reasonable.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the Recommended Sentence provided for in Paragraph 8 of this Plea Agreement.

(a) If the Court rejects the Recommended Sentence, then the Court shall, on the record and in open court (or, for good cause, *in camera*):

(1) Inform the parties that the Court rejects the Plea Agreement;

(2) Advise the defendant that the Court is not required to follow the Plea Agreement and give the defendant an opportunity to withdraw the plea; and

(3) Advise the defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the Plea Agreement contemplated.

(b) If the defendant withdraws its guilty plea, this Plea Agreement, except for Paragraph 10(c), shall be rendered void.

(c) If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 14 below, will be tolled for the period between the date of the signing of the Plea Agreement and the date Defendant withdrew its

guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

11. The United States and the defendant agree that restitution is not appropriate in this case because it would unduly complicate or prolong the sentencing process.

DEFENDANT'S COOPERATION

12. The defendant and its subsidiaries in the ready mixed concrete industry will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the manufacture and sale of ready mixed concrete in the Indianapolis, Indiana metropolitan area, and any litigation or other proceedings arising or resulting from such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

(a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant or any of its subsidiaries, requested by attorneys and agents of the United States in connection with any Federal Proceeding as described above;

(b) using its best efforts to secure the ongoing, full and truthful cooperation, as defined in Paragraph 13 of this Plea Agreement, of the current and former directors, officers, and employees of the defendant or any of its subsidiaries as may be requested by the United States, but excluding Fred R. "Pete" Irving, John Huggins, Daniel C. Butler and Price Irving, including making these persons available, at the defendant's expense, for interviews and the provision of testimony in grand jury, trial and other judicial

proceedings in connection with any Federal Proceeding as described above.

13. The ongoing, full, and truthful cooperation of each person described in Paragraph 12(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing all non-privileged documents, including claimed personal documents, and other materials, requested by attorneys and agents of the United States in connection with any Federal Proceeding as described above;

(b) making himself or herself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States in connection with any Federal Proceeding as described above;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding as defined above, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding as defined above;

(e) when called upon to do so by the United States in connection with any Federal Proceeding as defined above, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of

justice (18 U.S.C. § 1503); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 15(c), the statute of limitations will be tolled as to him or her for any Relevant Offense as defined in Paragraph 15(a) will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

GOVERNMENT'S AGREEMENT

14. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the Recommended Sentence, and subject to the cooperation requirements of Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendant or any of its subsidiaries in the ready mixed concrete industry for any act or offense committed on or before May 25, 2004 that was undertaken in furtherance of an antitrust conspiracy involving the manufacture and sale of ready mixed concrete in the Indianapolis, Indiana metropolitan area. The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

15. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the Recommended Sentence and subject to the exceptions noted in Paragraph 15(c), the United States will not bring criminal charges against any current or former director, officer, or employee of the defendant or any of its

subsidiaries in the ready mixed concrete industry for any act or offense committed on or before May 25, 2004 and while that person was acting as a director, officer, or employee of the defendant or any of its subsidiaries in the ready mixed concrete industry that was undertaken in furtherance of an antitrust conspiracy involving the manufacture and sale of ready mixed concrete in the Indianapolis, Indiana metropolitan area ("Relevant Offense"), except that the protections granted in this paragraph shall not apply to Fred R. "Pete" Irving, John Huggins, Daniel C. Butler or Price Irving;

(b) Should the United States determine that any current or former director, officer, or employee of the defendant or its subsidiaries may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;

(c) If any person requested to provide cooperation under Paragraph 15(b) fails to comply with his or her obligations under Paragraph 13, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;

(d) Except as provided in Paragraph 15(e), information provided by a person described in Paragraph 15(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a

prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 13 of this Plea Agreement, the agreement in Paragraph 15(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

(f) The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence; and

(g) Documents provided under Paragraphs 12(a) and 13(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant or any of its subsidiaries.

16. The defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant and its subsidiaries, including the fact that the United States has moved for a downward departure pursuant to U.S.S.G. § 8C4.1, as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

17. The defendant has reviewed all legal and factual aspects of this case with its attorney and is fully satisfied with its attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with its attorney and has received satisfactory explanations from its attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with its attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

18. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement and the Cooperation Agreement filed separately with the Court under seal. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

19. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant or any of its subsidiaries has failed to provide full and truthful cooperation, as described in Paragraph 12 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States may notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify its counsel by telephone of its intention to void its

obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant and its subsidiaries shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant may seek court review of any determination made by the United States under this paragraph to void any of its obligations under the Plea Agreement. The defendant and its subsidiaries agree that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant or its subsidiaries for any offense referred to in Paragraph 14 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of the Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement or the date that the court rules that this Plea Agreement is null and void, whichever is later.

20. The defendant understands and agrees that in any further prosecution of it or its subsidiaries resulting from the release of the United States from its obligations under this Plea Agreement based on the defendant's or its subsidiaries' violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by it, its subsidiaries or current or former directors, officers or employees of it or its subsidiaries to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it or its subsidiaries in any such further prosecution. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

21. This Plea Agreement and the Cooperation Agreement, filed separately with the Court under seal, constitute the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

22. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached hereto and incorporated by reference in this Plea Agreement. *See* Attachment A.

23. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

DATED: June 22, 2005 Respectfully submitted,

BY: _____
EARL G. BRINKER
Secretary
Irving Materials, Inc.

BY: _____
FRANK J. VONDRAK

_____
SUSAN B. RIVAS
Counsel for Irving Materials, Inc.

_____
JONATHAN A. EPSTEIN

MICHAEL W. BOOMGARDEN

Attorneys,
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Attachment A

Secretary Certificate

Resolutions of the Board of Directors of Irving Materials, Inc.

The undersigned certifies that the Board of Directors of Irving Materials, Inc. ("IMI") unanimously adopted the following resolutions on May 19, 2005:

RESOLVED, the execution, delivery, and performance of the Plea Agreement between IMI and the United States Department of Justice, in substantially the form presented to this meeting ("Plea Agreement"), is hereby approved;

RESOLVED, that any duly elected officer of IMI (collectively, "Authorized Officer"), is hereby authorized and directed to execute and deliver the Plea Agreement in the name and on behalf of IMI;

RESOLVED, that any Authorized Officer or other designated corporate representative is hereby authorized to represent IMI at any hearing in order to waive certain rights of IMI and to enter a plea, all in accordance with the provisions of the Plea Agreement; and

RESOLVED, that any Authorized Officer is hereby authorized and empowered to take any and all actions required or appropriate in order to carry out the intent and purpose of the preceding resolutions.

Date: June 16, 2005

Earl G. Brinker, Secretary

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