

COPY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CIVIL COURT
4/6/99
Luther D. Thomas, Clerk

[Handwritten Signature]
Deputy Clerk

UNITED STATES OF AMERICA)	Criminal No.: 1:99-CR-098
)	
v.)	Filed:
)	
ECO-TECH, INC.,)	
)	Violation:
Defendant.)	15 U.S.C. § 1

PLEA AGREEMENT BETWEEN UNITED STATES
OF AMERICA AND ECO-TECH, INC.

The United States of America and the defendant, Eco-Tech, Inc., hereby enter into the following plea agreement pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure.

1. The defendant will waive indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure and voluntarily plead guilty to a one-count criminal information charging a violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) in connection with a conspiracy to rig bids for the sale of industrial valves (including large butterfly valves), filter equipment (including filter underdrains), and other materials to contractors on the Etowah River Water Treatment Facility Improvements Project, let by the Cherokee County Water and Sewerage Authority in October 1994 ("Etowah Project"). The conspiracy charged

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will be from in or about July 1994 up to and including December 1996, the exact dates being unknown to the United States.

2. The defendant understands that the maximum sentence for violating 15 U.S.C. § 1 is a fine that is the greatest of \$10,000,000, twice the gross pecuniary gain derived from the crime, or twice the gross pecuniary loss caused to the victims of the crime (15 U.S.C. § 1, 18 U.S.C. § 3571). In addition, pursuant to 18 U.S.C. § 3013(a)(2)(B), the defendant must pay a special assessment of \$400 at the time of sentencing, a form of probation may be imposed pursuant to 18 U.S.C. § 3561 for a term of one to five years, and restitution may be ordered.

3. The United States and the defendant estimate that the total dollar volume of commerce attributable to the defendant for the purpose of applying U.S.S.G. § 2R1.1(d) in this case is approximately \$924,731. The United States and the defendant recognize that the Court is not bound by that estimate. Based on the estimate, the United States and the defendant agree to recommend a base fine of \$184,946.20 (U.S.S.G. § 2R1.1(d)(1), U.S.S.G. § 8C2.4(b)), a culpability score of five (U.S.S.G. § 8C2.5(a), U.S.S.G. § 8C2.5(b)(5), U.S.S.G. § 8C2.5 (g)(3)), and a guideline fine range of \$184,946.20 to \$369,892.40 (U.S.S.G. § 8C2.6, U.S.S.G. § 8C2.7). The United States and the defendant understand that the Court is not bound by those recommendations. Subject to the full and continuing cooperation of the defendant, as described in paragraph seven below and prior to sentencing in this case, the United States agrees to file a U.S.S.G. § 8C4.1 departure motion for substantial

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assistance prior to sentencing and to otherwise fully advise the Court and the Probation Office of the basis of its motion. The United States and the defendant agree to recommend to the Court that the appropriate sentence in this case is a fine of \$160,000, which takes into account a U.S.S.G. § 8C4.1 departure, and no further departure for said fine will be sought by either party. The United States and the defendant understand and agree that U.S.S.G. § 8C3.4 should not be applicable to the joint recommendation of \$160,000, and both parties agree not to recommend any such offset as to defendant Eco-Tech, Inc. with respect to any fine imposed on defendant Herbert H. Timmerman. The United States and the defendant understand that the Court is not bound by the recommendation of \$160,000.

4. The United States and the defendant agree to recommend that any fine imposed by the Court shall be payable within 10 days of the imposition of sentence. Payment of the fine shall be made by certified or cashier's check payable to the Clerk of the United States District Court for the Northern District of Georgia, U.S. Courthouse, Suite 2211, Richard B. Russell Bldg., 75 Spring Street, SW, Atlanta, Georgia 30303. A copy of the payment check shall be sent to John T. Orr, Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, Suite 1176, Richard B. Russell Building, 75 Spring Street, SW, Atlanta, Georgia 30303.

5. The defendant understands and agrees that the sentence recommended by the United States shall not be binding upon the Court, and that, under this agreement, the Court retains complete discretion to impose any sentence

up to the maximum provided by law. Furthermore, the defendant understands and agrees that, as provided in Rule 11(e)(2) of the Federal Rules of Criminal Procedure, if the Court does not impose the sentence recommended by the United States, the defendant nevertheless has no right to withdraw its plea of guilty.

6. The defendant agrees that it will assist the United States in satisfying the Court that there exists a factual basis for its plea pursuant to Rule 11(f) of the Federal Rules of Criminal Procedure. The defendant also understands and agrees that the United States Sentencing Guidelines are applicable to this case. The United States and the defendant agree that both parties may present facts to the Probation Office and to the Court to assist the Court in determining the appropriate disposition of this case. The United States and the defendant agree to request that the Court order a presentence investigation prior to the imposition of sentence.

7. The defendant agrees that it will cooperate fully, candidly, and truthfully with the United States in the prosecution of this case, and in the conduct of any federal grand jury investigation or other federal investigations in the United States involving antitrust and other violations in the water or wastewater treatment industry, including the presently ongoing grand jury investigation being conducted in the Northern District of Georgia, and in any litigation or other proceedings arising or resulting from any such investigations, whether civil or criminal, to which the United States is a party.

8. Subject to the defendant's full and continuing cooperation, as described in paragraph seven above, and the acceptance of its guilty plea and the imposition of sentence by the Court, the United States agrees not to bring further criminal charges against the defendant under the federal antitrust statutes (15 U.S.C. §§ 1, 2), the mail or wire fraud statutes (18 U.S.C. §§ 1341, 1343), the false statements or entries statute (18 U.S.C. § 1001), the false claims statutes (18 U.S.C. §§ 286, 287), the conspiracy to defraud the United States statute (18 U.S.C. § 371), any other federal criminal statute which prohibits any act also prohibited by any of the aforesaid statutes, or the RICO statutes (18 U.S.C. §§ 1961-68), for any act or offense committed prior to November 4, 1998, arising out of any conspiracy, combination, or scheme to submit collusive, fraudulent, or noncompetitive bids in connection with water or wastewater treatment projects bid or let prior to November 4, 1998. Pursuant to U.S.S.G. § 1B1.8, information told to the government by the defendant in debriefings concerning any projects other than the Etowah Project shall not be used in determining the applicable Guideline range. The government also agrees not to use such information to ask for a higher sentence within a given Guideline range with respect to the defendant. However, nothing in this agreement would prevent the government from fully informing the Probation Office and the Court of the information provided by the defendant or from informing the Probation Office and the Court of information it had concerning the defendant prior to its initial

debriefing of the defendant. Further, nothing in this agreement would prevent the government from using leads developed from the debriefings of the defendant for sentencing purposes if it were so disposed and for any purpose described in U.S.S.G. § 1B1.8(b), nor would anything in this agreement prevent the government from using information provided by the defendant about the Etowah Project at sentencing. The terms of this paragraph do not apply to any crimes of violence, criminal federal income tax violations, or any offense related to money or anything of value offered or given to a public official or employee of any general contractor, engineer, or architect for any illegal purpose, or to civil matters of any kind.

9. The defendant understands and agrees that the failure to provide full and complete cooperation to the United States would be a material breach of this plea agreement, would render this plea agreement null and void, and would release the United States from its promises and commitments made in this plea agreement, including the nonprosecution and non-use commitments contained in paragraph eight above. In the event of any further prosecution of the defendant resulting from a breach of this agreement, the defendant agrees to waive its right to interpose the statute of limitations as a defense with regard to any period of time which passes after the date of the plea agreement.

10. 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, as a result of the guilty plea entered pursuant hereto,

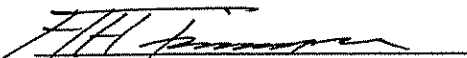
and that this plea agreement in no way controls whatever action, if any, such other agencies take. The United States, however, agrees that, if requested, it will advise the appropriate officials of any governmental agency considering administrative action against the defendant as a result of the guilty plea entered pursuant hereto of the fact, manner, and extent of the defendant's cooperation, as described herein, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to the defendant.

11. The United States and the defendant agree that other than the foregoing, the United States has made no promises to, or agreements with, the defendant and that this plea agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charges against it in this case.

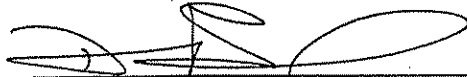
Agreed to this 24th day of February, 1999.

ECO-TECH, INC.

By:



Herbert H. Timmerman
Chief Executive Officer
Eco-Tech, Inc.

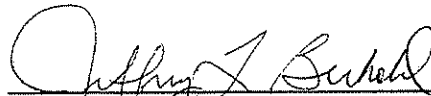


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