



**AND WAIVE CERTAIN RIGHTS**

2. Defendant knowingly and voluntarily waives the rights set out in paragraph 1(b)-(g). Defendant also knowingly and voluntarily waives his 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 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in paragraph 9 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), 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 Defendant with entering into and engaging in a combination and conspiracy to suppress and eliminate competition by fixing the prices at which ready mixed concrete was sold in the Indiana counties of Bartholomew, Jackson, and Jennings beginning in or about February 2003 and continuing until approximately June 2004 in violation of the Sherman Act (15 U.S.C. § 1).

3. 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. The United States agrees that it will stipulate to the release of defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

**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 in or about February 2003 and continuing until approximately June 2004. During the Relevant Period, Defendant was president of a ready mixed concrete company (“Company A”) that was organized and existing under the laws of Indiana. During the Relevant Period, Company A manufactured and sold ready mixed concrete in the Indiana counties of Bartholomew, Jackson, and Jennings. During the Relevant Period, Company A’s sales of ready mixed concrete in the Indiana counties of Bartholomew, Jackson, and Jennings totaled at least \$7 million.

(b) 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. Ready mixed concrete is purchased by do-it-yourself customers, commercial customers, as well as local, state, and federal governments for use in various construction projects, including bridges, tunnels, and roads.

(c) During the Relevant Period, Defendant participated in a conspiracy with another person and another entity engaged in the manufacture and sale of ready mixed concrete, the primary purpose of which was to maintain and increase the prices at which ready mixed concrete was sold in the Indiana counties of Bartholomew, Jackson, and Jennings. In furtherance of the conspiracy, Defendant engaged in conversations with a representative of another ready mixed concrete manufacturer. During those conversations, Defendant and his co-

conspirators reached agreements to maintain and increase the price at which their respective companies sold ready mixed concrete.

(d) During the Relevant Period, the corporate conspirators purchased substantial quantities of equipment and supplies necessary to the production and distribution of ready mixed concrete in a manner substantially affecting interstate commerce. During the Relevant Period, the business activities of the corporate conspirators in connection with the manufacture and sale of ready mixed concrete affected by this conspiracy were within the flow of, or substantially affected, interstate trade and commerce.

(e) Acts in furtherance of this conspiracy, including the conspiratorial conversations described above, were carried out within the Southern District of Indiana. 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. Defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Act completed prior to June 22, 2004 is:

- (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of one (1) year following any term of

imprisonment. If Defendant violates any condition of supervised release, Defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and Section 5D1.2(a)(3) of the United States Sentencing Guidelines (“Sentencing Guidelines,” “Guidelines,” or “U.S.S.G.”)).

6. In addition, Defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A) the Court is required to order Defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

#### **SENTENCING GUIDELINES**

7. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on June 1, 2004, along with the other factors set forth in 18 U.S.C. § 3553(a), in imposing sentence. Defendant understands and agrees that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Defendant further understands and agrees that although the Court is not ultimately bound to impose a sentence within the applicable 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 Defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to Defendant or to determine Defendant’s applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

8. The United States and Defendant agree that pursuant to U.S.S.G. § 2R1.1,

Defendant's Base Offense Level is 10. The United States and Defendant further agree that, because the volume of commerce attributable to Defendant is more than \$6,250,000 but not greater than \$15,000,000, a four-level increase under U.S.S.G. § 2R1.1(b)(2)(D) is appropriate. Finally, the United States and Defendant agree that Defendant is entitled to a two-level decrease under U.S.S.G. § 3E1.1 for Acceptance of Responsibility. The United States and Defendant agree that no other adjustments under the Sentencing Guidelines are warranted in this case.

### **SENTENCING AGREEMENT**

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and Defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence within the applicable Guidelines range requiring Defendant to: pay to the United States a criminal fine of Seventy Thousand Dollars (\$70,000), payable in full before the thirtieth (30<sup>th</sup>) day after the date of judgment with interest accruing under 18 U.S.C. § 3612(f)(1)-(2) for any portion not paid before the fifteenth (15<sup>th</sup>) day after the date of judgment; serve a period of incarceration of eight (8) months; serve a period of home confinement of two (2) months; and serve no period of supervised release beyond the period of home confinement (the "Recommended Sentence"). The United States and Defendant agree that there exist no aggravating or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the Sentencing Guidelines that should result in a sentence outside of the Guidelines range. The United States and Defendant also agree not to seek or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The United States and Defendant further agree that the Recommended Sentence set forth in this Plea

Agreement is reasonable. The United States and Defendant agree that under U.S.S.G. § 5E1.1(b)(2), restitution is not appropriate in this case because it would complicate or prolong the sentencing process. Defendant understands that the Court will order him to pay a \$100.00 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

10. Subject to the ongoing, full, and truthful cooperation of Defendant described in paragraph 12 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the United States Probation Office of the fact, manner, and extent of Defendant's cooperation and his commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to Defendant's involvement in the charged offense, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and Defendant will not oppose, that sentencing be postponed until his cooperation is complete.

11. The United States and Defendant understand that the Court retains complete discretion to accept or reject the Recommended Sentence provided for in paragraph 9 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 Defendant that the Court is not required to follow the Plea Agreement and give Defendant an opportunity to withdraw the plea; and
- (3) Advise Defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward Defendant than the Plea Agreement contemplated.

(b) If Defendant withdraws his guilty plea, this Plea Agreement, except for paragraph 11(c), shall be rendered void.

(c) If Defendant withdraws his 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 Defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, Defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in paragraph 13 below, will be tolled for the period between the date of the signing of the Plea Agreement and the date Defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

#### **DEFENDANT'S COOPERATION**

12. Defendant 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, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of Defendant shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of Defendant, requested by

attorneys and agents of the United States;

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, 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 material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying before a grand jury, at trial, and in 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).

#### **GOVERNMENT'S AGREEMENT**

13. Subject to the full, truthful, and continuing cooperation of Defendant, as described in paragraph 12 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and imposition of the Recommended Sentence, the United States will not bring further criminal charges against Defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the manufacture and sale of ready mixed concrete in the Indiana counties of

Bartholomew, Jackson, and Jennings (“Relevant Offense”). 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.

14. Defendant understands that he 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 Defendant’s cooperation as a matter for that agency to consider before determining what administrative action, if any, to take.

#### **REPRESENTATION BY COUNSEL**

15. Defendant has been represented by counsel and is fully satisfied that his counsel has provided competent legal representation. Defendant has thoroughly reviewed this Plea Agreement with his counsel and acknowledges that counsel has advised him of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences. Furthermore, Defendant has received satisfactory explanations from his counsel concerning each paragraph of this Plea Agreement and alternatives available to him other than entering into this Plea Agreement. After conferring with his counsel and considering all available alternatives, Defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

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

16. Defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that Defendant 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 Defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and, thereafter, Defendant 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. Defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against Defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this 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.

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

#### **VOLUNTARY PLEA**

18. 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,

