

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA	:	Criminal No. <i>09-506</i>
	:	Filed:
v.	:	
	:	Violation: 18 U.S.C. § 371
ROBERT P. GRIFFITHS,		18 U.S.C. § 1956(h)
		18 U.S.C. § 1512(c)(2)
Defendant.	:	

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**PLEA AGREEMENT**

The Antitrust Division of the United States Department of Justice ("Antitrust Division") and the defendant, Robert P. Griffiths ("Griffiths"), hereby enter into the following Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").

**AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS**

1. Griffiths agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in the United States District Court of New Jersey. Griffiths also agrees voluntarily to consent to venue in the United States District Court of New Jersey. Pursuant to Fed. R. Crim. P. 7(b), Griffiths will waive indictment and plead guilty to a three-count Information in the United States District Court of New Jersey, in the form attached, in which he is charged with (Count One) violating 18 U.S.C. § 371 for

conspiring from approximately December 2001 until approximately August 2004, with the objectives of defrauding the United States Environmental Protection Agency ("EPA") and committing offenses against the United States by (a) providing and attempting to provide kickbacks to employees of a prime contractor ("P-C") at the Federal Creosote Superfund Site in Manville, New Jersey ("Federal Creosote") and including the amount of the kickbacks in the sub-contract prices charged to P-C, thereby causing P-C to charge those inflated prices to the EPA and the United States, in violation of 41 U.S.C. §§ 53(1) and (3); and (b) executing a scheme or artifice with the intent to defraud the United States, and with the intent to obtain money or property by means of materially false and fraudulent pretenses, representations and promises, in the procurement of property and services as a sub-contractor in connection with prime contracts where the values of those contracts were \$1 million or more, in violation of 18 U.S.C. § 1031; (Count Two) violating 18 U.S.C. § 1956(h) for conspiring from approximately February 2003 through approximately September 2004, to transport, transmit, and transfer funds, that is approximately \$207,000, from a place in the United States to and through a place outside the United States with the intent to promote the carrying on of specified unlawful activity, namely to commit wire fraud in violation of 18 U.S.C. § 1343, in violation of 18 U.S.C. § 1956(a)(2)(A); and (Count Three) violating 18 U.S.C. § 1512(c)(2) for obstructing, influencing, and impeding an official proceeding before the United States Securities and Exchange Commission.

**DEFENDANT'S COOPERATION**

2. Griffiths will cooperate fully and truthfully with the Antitrust Division in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the award of sub-contracts to provide environmental remediation services at Federal Creosote, as well as 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 (collectively referred to herein as "Federal Proceeding"). The ongoing, full, and truthful cooperation of Griffiths shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all documents, information, and other materials, including claimed personal documents, in the possession, custody, or control of Griffiths, wherever located, that may be requested by attorneys and/or agents of the United States in connection with any Federal Proceeding;

(b) making himself available for interviews with the attorneys and agents of the United States, not at the expense of the United States, at the New York Office of the Antitrust Division, or at other mutually-agreed upon locations, upon the request of attorneys and/or agents of the United States;

(c) bringing to the attention of the Antitrust Division all crimes which he has committed, and all administrative, civil, and/or criminal proceedings, investigations, or

prosecutions in which he, to his knowledge, is or has been a subject, target, party, or witness;

(d) responding fully and truthfully to all inquiries of the Antitrust Division 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, *et seq.*);

(e) otherwise voluntarily providing to the Antitrust Division any materials or information, not requested in (a)-(c) of this paragraph, that is related to any Federal Proceeding;

(f) when called upon to do so by the United States in connection with any Federal Proceeding, 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, *et seq.*); and

(g) committing no further crimes whatsoever.

### **GOVERNMENT'S AGREEMENT**

3. Subject to the full, truthful, and continuing cooperation of Griffiths, as described in Paragraph 2 of this Agreement and upon the Court's acceptance of the guilty plea called for by this Agreement, the Antitrust Division will not bring further criminal charges against Griffiths for any act or offense committed prior to the date of this

Agreement that was in furtherance of and resulted from the conspiracies or any statements he made concerning his participation in the conspiracies, as described in the attached Information, to (a) fraudulently inflate invoices and provide kickbacks to employees of a prime contractor at Federal Creosote; (b) receive the bid prices of other vendors prior to the award of sub-contracts at Federal Creosote; (c) agree to not disclose to the United States Army Corps of Engineers ("USACE") that Bennett Environmental, Inc. had submitted false invoices for approximately 20,000 tons of soil to P-C; and (d) transport, transmit, and transfer funds, that is approximately \$207,000, from a place in the United States to and through a place outside the United States. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax and securities laws, or to any crime of violence.

4. The Antitrust Division agrees that when Griffiths travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon his participation in the conspiracies described in Paragraphs 1 and 3 above, to subject Griffiths to arrest, detention, or service of process, or to prevent Griffiths from departing the United States. This paragraph does not apply to the commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or contempt (18 U.S.C. §§ 401 - 402) in connection with any testimony or information provided or requested in any Federal Proceeding.

5. It is understood that this Agreement does not bind any other federal agency or local prosecuting authority or administrative agency other than the Antitrust Division of the United States Department of Justice. However, if requested, the Antitrust Division will bring the fact, manner and extent of the cooperation of Griffiths to the attention of other prosecuting, administrative, and other agencies as a matter for such agencies to consider as appropriate.

**POSSIBLE MAXIMUM PENALTIES**

6. Griffiths understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 371 is:

(a) a term of imprisonment of not more than five (5) years;

(b) a fine of not more than the greater of \$250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense; or

(c) both such sentences; and

(d) a term of supervised release of no more than three (3) years following any term of imprisonment pursuant to 18 U.S.C. § 3583(b)(2) and U.S.S.G. § 5D1.2(a)(2).

Pursuant to 18 U.S.C. § 3583(e)(3), if Griffiths violates any condition of supervised release, he could be imprisoned up to two (2) years.

7. Griffiths also understands that:

(a) the Court shall impose an order of restitution, pursuant to 18 U.S.C. § 3663A and U.S.S.G. § 5E1.1; and

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

8. Griffiths understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1956(h) is:

(a) a term of imprisonment of not more than twenty (20) years; or

(b) a fine of not more than the greater of \$500,000, or twice the value of the funds involved in the transportation, transmission, or transfer, whichever is greater; or

(c) both such sentences; and

(d) a term of supervised release of no more than five (5) years following any term of imprisonment pursuant to 18 U.S.C. § 3583(b)(1) and U.S.S.G. § 5D1.2(a)(1).

Pursuant to 18 U.S.C. § 3583(e)(3), if Griffiths violates any condition of supervised release, he could be imprisoned up to three (3) years.

9. Griffiths also understands that:

(a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3583(d), the Court may impose an order of 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 Griffiths to pay a \$100.00 special assessment upon conviction for the charged crime.

10. Griffiths understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1512(c)(2) is:

(a) a term of imprisonment of not more than twenty (20) years;

(b) a fine of not more than the greater of \$250,000; or

(c) both such sentences; and

(d) a term of supervised release of no more than five (5) years following any term of imprisonment pursuant to 18 U.S.C. § 3583(b)(1) and U.S.S.G. § 5D1.2(a)(2).

Pursuant to 18 U.S.C. § 3583(e)(3), if Griffiths violates any condition of supervised release, he could be imprisoned up to three (3) years.

11. In addition, Griffiths understands that:

(a) pursuant to 18 U.S.C. §§ 3663 and 3664, the Court may impose an order of restitution to the victim of the offense; and

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

#### **SENTENCING GUIDELINES**

12. Griffiths understands the United States Sentencing Guidelines (“Sentencing Guidelines”) are advisory, not mandatory, but that the Court must consider the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. Griffiths understands that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Griffiths understands that although the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, its sentence must be reasonable based upon considerations of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).



**SENTENCING AGREEMENT**

13. Griffiths understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. It is understood that the Sentencing Guidelines are not binding on the Court. Griffiths acknowledges that the entry of his guilty plea to the charged offense authorizes the sentencing court to impose any sentence up to and including the statutory maximum sentence. The United States cannot and does not make any promises or representations as to what sentence Griffiths will receive. Griffiths understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with either parties' sentencing recommendation, he nevertheless has no right to withdraw his plea of guilty. The Antitrust Division will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of Griffiths' activities with respect to this case, and all other activities of Griffiths which the Antitrust Division deems relevant to sentencing; and (c) the timeliness, nature, extent and significance of the Griffiths's cooperation with the Antitrust Division. In so doing, the Antitrust Division may use any information it deems relevant, including information provided by Griffiths both prior and subsequent to the signing of this Agreement. The Antitrust Division reserves the right to make any statement to the Court or the Probation Office concerning the nature of the offenses charged in the attached Information, the participation of Griffiths therein, and any other facts or circumstances that it deems relevant. The Antitrust Division also

reserves the right to comment on or to correct any representation made by or on behalf of Griffiths, and to supply any other information that the Court may require.

14. If the Antitrust Division determines that Griffiths has provided substantial assistance in any Federal Proceeding, and has otherwise fully complied with all of the terms of this Agreement, it will file a motion, pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence Griffiths in light of the factors set forth in U.S.S.G. § 5K1.1(a)(1)-(5), and thus impose, in the Court's discretion, a sentence below the applicable Sentencing Guidelines ranges for incarceration and fine. The Antitrust Division and Griffiths are free to recommend or argue for any specific sentence to the Court.

15. Griffiths understands that this Agreement does not in any way affect or limit the right of the Antitrust Division to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of sentence.

16. Griffiths acknowledges that the decision whether he has provided substantial assistance in any Federal Proceeding is within the sole discretion of the Antitrust Division. It is understood that should the Antitrust Division determine that Griffiths has not provided substantial assistance in any Federal Proceeding, such a determination will release the Antitrust Division from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not entitle Griffiths to withdraw his guilty plea once it has been entered. Griffiths further understands that whether or not the Antitrust Division files its motion pursuant to

U.S.S.G. § 5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

#### **REPRESENTATION BY COUNSEL**

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

#### **VOLUNTARY PLEA**

18. Griffiths' decision to enter into this 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 Agreement. The Antitrust Division has made no promises or representations to Griffiths as to whether the Court will accept or reject the recommendations contained within this Agreement.

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

19. Griffiths agrees that should the Antitrust Division determine in good faith that Griffiths has given false, misleading, or incomplete information or testimony, or that Griffiths has otherwise failed to fulfill any of the obligations set out in this Agreement, the

Antitrust Division shall notify counsel for Griffiths in writing by personal or overnight delivery or facsimile transmission of its intention to void any of its obligations under this Agreement (except its obligations under this paragraph), and Griffiths will be subject to prosecution for any federal criminal violation of which the Antitrust Division has knowledge, including but not limited to the substantive offenses relating to the investigation resulting in this Agreement. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

20. Griffiths understands and agrees that in any further prosecution of him resulting from the release of the Antitrust Division from its obligations under this Agreement based on Griffiths' violation of the 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, Griffiths unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

21. Griffiths agrees to, and adopts as his own, the factual statement contained in Schedule A. In the event that Griffiths breaches this Agreement, Griffiths agrees that this Agreement, including the factual statement contained in Schedule A, provides a sufficient basis for any possible future extradition request that may be made for his return to the

United States to face charges either in the Information referenced in Paragraphs 1 and 3 of this Agreement or in any related indictment. Griffiths further agrees not to oppose or contest any request for extradition by the United States to face charges either in the Information referenced in Paragraphs 1 and 3 of this Agreement or in any related indictment.

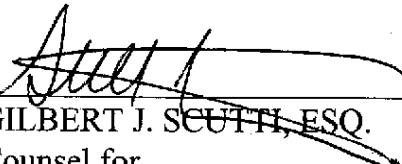
**ENTIRETY OF AGREEMENT**


22. This Agreement constitutes the entire agreement between the Antitrust Division and Griffiths concerning the disposition of the criminal charges contained in this case. This Agreement cannot be modified except in writing, signed by the parties.

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

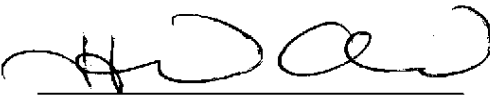
Dated: *July 6, 2009*

  
ROBERT P. GRIFFITHS

  
GILBERT J. SCUTTI, ESQ.  
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ROBERT P. GRIFFITHS

  
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SCHEDULE A

The Antitrust Division of the U.S. Department of Justice and Robert P. Griffiths agree to stipulate to the following facts:

a. From approximately December 2001 until approximately August 2004, Griffiths was employed by Bennett Environmental, Inc. ("BEI"). BEI's main office was in Oakville, Ontario, Canada. From approximately December 2001 until approximately the August 2004, BEI transported, treated and disposed of contaminated soils from the United States and elsewhere. From December 2001 through the August 2004, BEI was awarded sub-contracts to transport, treat, and dispose of contaminated soils at the Federal Creosote Superfund Site in Manville, New Jersey ("Federal Creosote"), totaling approximately \$43 million. The prime contracts under which BEI was awarded the sub-contracts were greater than \$1 million.

b. From approximately December 2001 until approximately August 2004, Griffiths participated in a conspiracy with other persons and entities the primary purpose of which was to defraud the United States Environmental Protection Agency ("EPA") and to commit offenses against the United States by (1) fraudulently inflating BEI's invoices to include kickbacks to certain employees and officers of a prime contractor of the EPA at Federal Creosote and amounts BEI kept for itself; (2) fraudulently receiving the bid prices of other vendors prior to the award of sub-contracts at Federal Creosote without the knowledge, consent or authorization of the United States Army Corps of Engineers ("USACE"); and (3) concealing material facts by agreeing to not disclose to USACE that BEI had submitted false invoices for approximately 20,000 tons of soil to a prime contractor.

c. Griffiths understood that the prime contractor included BEI's fraudulently inflated amounts as part of the costs the prime contractor charged to the EPA for work performed by BEI.

d. The loss to the EPA totaled approximately \$2.41 million and the "improper benefit to be conferred" to BEI, as that term is defined in the current version of the United States Sentencing Guidelines §2B4.1, totaled at least \$14 million.

e. Acts in furtherance of this conspiracy were carried out within the United States District of New Jersey. Griffiths and his co-conspirators approved kickbacks sent via wire transfers from BEI's bank account in Canada to a co-conspirator's bank account in New Jersey.

f. From approximately February 2003 through approximately September 2004, Griffiths violated Title 18, United States Code, Section 1956(h), by participating in

a conspiracy to transport, transmit, and transfer funds, that is approximately \$207,000, from a place in the United States to and through a place outside the United States with the intent to promote the carrying on of specified unlawful activity, namely wire fraud in violation of Title 18, United States Code, Section 1343, as described in paragraphs (b) through (e) above.

g. On or about November 3, 2005, Griffiths willfully impeded an official proceeding of the United States Securities and Exchange Commission by falsely stating that 1) he did not discuss the competitor's bid with an employee of the prime contractor; 2) he had not received information that was not available to the other bidders; and 3) an employee of the prime contractor had not been unethical in the bid process.