

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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: Criminal No. *09-480*  
UNITED STATES OF AMERICA :  
: Filed:  
v. :  
: Violation: 18 U.S.C. § 371  
FREDERICK LANDGRABER,  
Defendant. :  
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**PLEA AGREEMENT**

The Antitrust Division of the United States Department of Justice and the defendant, Frederick Landgraber ("Landgraber"), 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. Landgraber will waive indictment pursuant to Fed. R. Crim. P. 7(b) and plead guilty in the United States District Court of New Jersey to a one-count Information, in the form attached, in which he is charged with violating 18 U.S.C. § 371 for conspiring from approximately March 2002 until approximately June 2005 to defraud the United States, namely, the United States Environmental Protection Agency ("EPA"), and to commit an offense against the United States by providing and attempting to provide

kickbacks to an employee of a prime contractor at the Federal Creosote Superfund Site in Manville, New Jersey ("Federal Creosote"), in violation of 41 U.S.C. § 53(1).

**GOVERNMENT'S AGREEMENT**

2. Subject to Landgraber's full compliance with the understandings specified in this Agreement, and upon the Court's acceptance of the guilty plea called for by this Agreement, the Antitrust Division of the United States Department of Justice ("Antitrust Division") will not bring further criminal charges against Landgraber for any act or offense committed prior to the date of this Agreement that was in furtherance of a conspiracy to provide kickbacks to an employee of the prime contractor at Federal Creosote in order to influence the award of sub-contracts at the site, as described in the attached Information. 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.

3. 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.

**POSSIBLE MAXIMUM PENALTIES**

4. Landgraber 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 the defendant violates any condition of supervised release, he could be imprisoned up to two (2) years.

5. Landgraber 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 the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

#### **SENTENCING GUIDELINES**

6. Landgraber understands that the United States Sentencing Guidelines ("Sentencing Guidelines") are advisory, not mandatory, but that the Court must consider the Sentencing Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing a sentence. Landgraber understands that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Landgraber 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**

7. The Antitrust Division and Landgraber agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this Agreement.

8. Nothing in this Agreement limits the right of the parties to (i) present to the Probation Department or the Court any facts relevant to sentencing; (ii) make any arguments regarding where within the Stipulated Sentencing Guidelines range set forth in Schedule A (or such other range as the Court may determine) Landgraber should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to 18 U.S.C. § 3553(a); and (iii) seek an appropriately adjusted Sentencing Guidelines range if it is determined based upon new information that Landgraber's criminal history category is other than Category I. Nothing in this Agreement limits the right of the Antitrust Division to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, regardless of any stipulation set forth herein, should Landgraber move to withdraw his guilty plea once it is entered, or should it be determined that Landgraber has either (i) engaged in conduct, unknown to the Antitrust Division at the time of the signing

of this Agreement, that constitutes obstruction of justice, or (ii) committed another crime after signing this Agreement.

9. It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Department nor the Court is bound by the Stipulated Sentencing Guidelines range set forth in Schedule A, either as to questions of fact or as to the determination of the proper Sentencing Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Sentencing Guidelines adjustments, departures, or calculations different from those agreed to in Schedule A, or contemplates any sentence outside of the Stipulated Sentencing Guidelines range set forth in Schedule A, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

10. Moreover, this Agreement to stipulate on the part of the Antitrust Division, as set forth in the attached Schedule A, is based on the information and evidence that the Antitrust Division possesses as of the date of this Agreement. Thus, if the Antitrust Division obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, the Antitrust Division shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either the Antitrust Division or Landgraber from any other portion of this Agreement, including any other stipulation.

11. Landgraber understands that the sentence to be imposed on him is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. Landgraber acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. The Antitrust Division cannot, and does not, make any promise or representation as to what sentence Landgraber will receive. Moreover, Landgraber understands he will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Stipulated Guidelines Range as set forth in Schedule A.

12. The Antitrust Division and Landgraber agree that (i) Landgraber will not appeal or otherwise litigate under 28 U.S.C. §§ 2255 and/or 2241 any sentence within or below the Stipulated Sentencing Guidelines range set forth in Schedule A, and (ii) that the Antitrust Division will not appeal any sentence within or above the Stipulated Sentencing Guidelines set forth in Schedule A. This provision is binding on the parties even if the Court employs a Sentencing Guidelines analysis different from that set forth in this Agreement. Furthermore, it is agreed that any appeal regarding the sentence of Landgraber that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. Nothing in this paragraph shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of

counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct.

13. Landgraber agrees that 30 days prior to the date of sentencing he will have \$35,000 in liquid assets in an escrow account controlled by his attorney. The Antitrust Division and Landgraber agree to recommend to the Court that the funds in the escrow account be used only to satisfy any fine or restitution that Landgraber is sentenced to pay. Landgraber acknowledges, however, that the Court may sentence him to pay a fine and restitution in excess of the amount in the escrow account. The Antitrust Division and Landgraber also agree that if the funds in the escrow account exceed the amount of fines and restitution Landgraber is sentenced to pay, they will seek the Court's permission to return the remainder to Landgraber.

14. In accordance with U.S.S.G. § 5E1.1(a)(2), the Antitrust Division and Landgraber agree to recommend to the Court that Landgraber be ordered to pay no less than \$35,000 in restitution to the EPA on a joint and several basis with his co-conspirators.

15. Landgraber 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 the reduction or modification of his sentence.

16. Landgraber understands and agrees that should the conviction following his plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution that is

not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Antitrust Division has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against him, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. 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.

#### **REPRESENTATION BY COUNSEL**

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

#### **VOLUNTARY PLEA**

18. Landgraber hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, Landgraber waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Antitrust Division has not produced



any discovery material, Jencks Act material, exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963), other than information establishing the factual innocence of Landgraber, and impeachment material pursuant to Giglio v. United States, 405 U.S. 150 (1972), that have not already been produced as of the date of the signing of this Agreement.

19. Landgraber's 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 Landgraber as to whether the Court will accept or reject the recommendations contained within this Agreement.

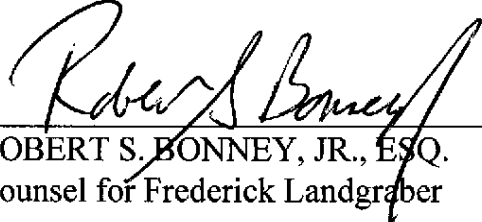
#### **ENTIRETY OF AGREEMENT**

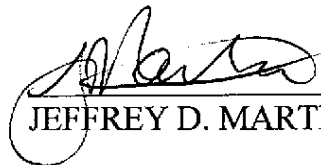
20. This Agreement constitutes the entire agreement between the Antitrust Division and Landgraber concerning the disposition of the charges contained in the attached Information. The Antitrust Division has made no other promises to or agreements with Landgraber. This Agreement cannot be modified except in writing, signed by the Antitrust Division and Landgraber.


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

Dated: 6/25/09

  
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FREDERICK LANDGRABER

  
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ROBERT S. BONNEY, JR., ESQ.  
Counsel for Frederick Landgraber

  
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JEFFREY D. MARTINO

  
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ELIZABETH PREWITT

  
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HELEN CHRISTODOULOU

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**SCHEDULE A**

1. The Antitrust Division and Landgraber recognize that the United States Sentencing Guidelines are not binding upon the Court. The Antitrust Division and Landgraber nevertheless agree to the stipulations set forth below.

2. The version of the Sentencing Guidelines effective on the date of sentencing applies in this case. The applicable guideline is U.S.S.G. § 2B4.1(a). Under the current Sentencing Guidelines, this guideline carries a Base Offense Level of 8.

3. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(1)(D) applies. This Specific Offense Characteristic results in an increase of 6 levels (loss of more than \$30,000), bringing Landgraber's Offense Level to a Level of 14.

4. Assuming that Landgraber demonstrates a recognition and affirmative acceptance of personal responsibility for the offense charged through his allocution and subsequent conduct prior to the imposition of a sentence, a 2-level reduction will be warranted pursuant to U.S.S.G. § 3E1.1(a).

5. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Landgraber is a Level of 12 (the "Stipulated Guidelines offense level") (10-16 months; \$3,000 to \$30,000 fine).