

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

UNITED STATES OF AMERICA	§	
	§	CAUSE NO. 5:22CR10
v.	§	JUDGE SCHROEDER
	§	
AARON STEPHENS	§	
	§	

PLEA AGREEMENT

The United States of America, **Aaron Stephens** (“defendant”),
(together, “parties”) and defendant’s attorneys, **Greg Waldron and David
Moore**, hereby enter into the following Plea Agreement pursuant to **Federal
Rule of Criminal Procedure 11(c)(1)(B)**:

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by indictment;
 - (c) to plead not guilty to any criminal charges brought against him;
 - (d) to have a trial by jury, at which he 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 him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (f) not to be compelled to incriminate himself;

- (g) to appeal his conviction, if he is found guilty; and
- (h) to appeal the imposition of sentence against him.

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

2. The defendant waives the rights listed below and agrees to enter a plea of guilty to Count One of the Indictment (pursuant to Federal Rule of Criminal Procedure 7(b)), which charges a violation of Section One of the Sherman Antitrust Act, 15 U.S.C. § 1, conspiracy to restrain trade through bid rigging. At the time of sentencing, if and after the defendant has pleaded guilty to Count One of the Indictment and complied with all terms of this Plea Agreement, the United States will move to dismiss all open counts remaining in the Indictment. The defendant understands the nature and elements of the crime to which guilt is admitted and agrees that the Factual Basis the defendant has signed is true, will be submitted as evidence, and is herein incorporated within this Plea Agreement. The defendant knowingly and voluntarily waives:

- (a) the rights set out in subparagraphs 1(c)-(h) above;
- (b) the right to file any appeal or collateral attack, including but not limited to an application or motion under 28 U.S.C. § 2241 or 2255, that challenges his conviction, including but not limited to any appeal or collateral attack raising any argument that (1) the statute to which he is pleading guilty is unconstitutional or (2) the admitted conduct does not fall within the scope of such statute; and

- (c) the right to file any appeal or collateral attack, including but not limited to an appeal under 18 U.S.C. § 3742 or an application or motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court, regardless of how the sentence is determined by the Court. This Plea Agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b).
- (d) Nothing in this Plea Agreement, however, will 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. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel.
- (e) Consistent with Federal Rule of Criminal Procedure 11(b)(1)(O), the defendant recognizes that if he is not a citizen of the United States pleading guilty may have consequences with respect to his immigration status, including removal from the United States, denial of citizenship, and denial of admission to the United States in the future. However, the defendant represents that he is a citizen of the United States.

3. The defendant will plead guilty to the criminal charge described herein and charged in Count One of the Indictment pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to the Court in accordance with Federal Rule of Criminal Procedure 11, as set forth in the stipulated Factual Basis.

POSSIBLE MAXIMUM SENTENCE & RESTITUTION

4. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$1 million, (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 three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2)).

5. In addition, the defendant understands that:

- (a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense (*i.e.* the United States Government); 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. **AGREEMENT PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 11(c)(1)(B)**

The parties agree to the following stipulations concerning the

Sentencing Guidelines:

- (a) The Base Offense Level pursuant to U.S.S.G. § 2R1.1(a) is **12**.

- (b) The **one-level enhancement** provided by U.S.S.G. § 2R1.1(b)(1) applies because the defendant entered into an agreement to submit non-competitive bids.
- (c) The **two-level enhancement** provided by U.S.S.G. § 2R1.1(b)(2)(A) applies because the volume of commerce attributable to the defendant was more than \$1,000,000 but less than \$10,000,000. The parties stipulate and agree that the volume of commerce attributable to the defendant was **more than \$9,000,000**.
- (d) A **reduction of two or three levels** for acceptance of responsibility under U.S.S.G. § 3E1.1 applies; however, this stipulation is subject to the recommendation of the United States Probation Office and the other provisions of this Plea Agreement. If circumstances indicating that the defendant has not accepted responsibility become known after execution of this Plea Agreement, this stipulation is void and the defendant may object to the failure of the presentence report to recommend the reduction. The government's request to decrease the offense level by one level in accordance with U.S.S.G. § 3E1.1(b) is contingent on the defendant demonstrating acceptance of responsibility for the offense conduct and cooperating fully in recovering restitution for all relevant conduct.
- (e) The parties agree that there exists no aggravating or mitigating circumstance of any kind, or to any degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0.
- (f) The United States **agrees to recommend** a reasonable sentence that includes a term of imprisonment **not to exceed a period of incarceration of twenty (20) months in prison**. The defendant reserves the right to argue for any reasonable sentence, including a variable, below-guidelines sentence, consistent with all relevant sentencing factors. *See* U.S.C. §§ 3553(a), 3661. The defendant understands that any recommendation made by

either the defendant or the United States is not binding on the Court.

- (g) The parties **reach no agreement** concerning the applicability of any enhancement for an Aggravating Role under U.S.S.G. § 3B1.1. The parties each reserve the right to argument concerning the applicability of any enhancement under U.S.S.G. § 3B1.1.
- (h) The parties **reach no agreement** concerning the amount of any fine, the amount of any order of restitution, or the length of any term of supervised release.

SENTENCING BY THE COURT

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing a sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing its sentence. The defendant understands that the Court will make Guidelines determinations by applying a standard of preponderance of the evidence. The defendant understands 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).

8. The United States agrees that it will recommend a reasonable sentence that may include a period of incarceration up to but not exceeding 20 months. *See* Federal Rule of Criminal Procedure 11(c)(1)(B). The United States further agrees that, at the time of sentencing, if and after the defendant has pleaded guilty to Count One of the Indictment and complied with all terms of this Plea Agreement, the United States will move to dismiss all open counts remaining in the Indictment. The defendant may argue for any reasonable sentence. There is no agreement between the parties as to the amount of any fine, the amount of any order of restitution, or the length of any term of supervised release. The defendant recognizes that the Court may render any reasonable sentence, up to and including the maximum sentence. The above constitute the only Guidelines stipulations agreed upon by the parties. With the exception of any reduction pursuant to U.S.S.G. § 5K1.1, if applicable to this individual case, the parties agree not to seek any Guidelines adjustment or departure for any reason that is not set forth in this Plea Agreement or explicitly reserved for argument under the terms of Paragraph 6. The defendant understands that any Guidelines determinations are made by the Court at the time of sentencing, regardless of any stipulations contained within this agreement, and that the Court may

determine the Guidelines differently than any stipulation reached by the parties. The defendant understands that he may not withdraw his plea of guilty, even if the Court determines the Sentencing Guidelines differently than the stipulations contained within this Plea Agreement. The defendant understands that the Court may sentence the defendant to a term of imprisonment up to and including the statutory maximum. The parties each reserve their right to bring any relevant information or argument to the Court's attention at the time of sentencing. *See* 18 U.S.C. §§ 3553(a), 3661.

SUSPENSION AND DEBARMENT

9. The defendant understands that, upon sentencing, his conviction will be reported to the Department of Justice's Bureau of Justice Assistance pursuant to 10 U.S.C. § 2408 for inclusion in the Defense Procurement Fraud Debarment Clearinghouse database and the System for Award Management. The defendant understands that 10 U.S.C. § 2408 provides for a mandatory term of debarment of at least five (5) years, which term may only be waived if the Secretary of Defense determines a waiver is in the interests of national security. The defendant understands that he may be subject to additional suspension or debarment actions by state or federal agencies other than the Department of Justice's Antitrust Division, based upon the conviction resulting from this Plea Agreement and upon grounds other than 10 U.S.C. § 2408, and that this Plea Agreement in no way controls

what additional action, if any, other agencies may take. The defendant nevertheless affirms that he wants to plead guilty regardless of any suspension or debarment consequences of his plea.

WAIVER OF RIGHT TO RECORDS

10. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

REPRESENTATION BY COUNSEL

11. The defendant has thoroughly reviewed all legal and factual aspects of this case with defense counsel and is fully satisfied with defense counsel's legal representation. The defendant has received satisfactory explanations from defense counsel concerning each paragraph of this Plea Agreement, each of the defendant's rights affected thereby, and the alternatives to entering a guilty plea. After conferring with counsel, the defendant concedes guilt and has concluded that it is in the defendant's best interest to enter this Plea Agreement rather than proceeding to trial.

VOLUNTARY PLEA

12. 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. 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.

GOVERNMENT'S AGREEMENT

13. The United States Attorney for the Eastern District of Texas and the United States Department of Justice's Antitrust Division agree not to prosecute the defendant for any additional charges based upon the conduct underlying and related to the defendant's plea of guilty, except that the United States may pursue the following actions notwithstanding its obligations under this Plea Agreement: (a) civil matters of any kind; (b) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (c) any crime of violence. After sentencing, the government will dismiss any remaining criminal charges against this defendant.

VIOLATION OF PLEA AGREEMENT

14. The defendant understands that upon violation of any provision of this Plea Agreement or any Court order or rule, or if the guilty plea pursuant to this Plea Agreement is vacated or withdrawn, the government

will be free from its obligations under this Plea Agreement and may prosecute the defendant for all offenses of which it has knowledge. In such event, the defendant waives any objections based upon delay in prosecution. The 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 because of the defendant's violation of this 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 addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Federal Rule of Evidence 410.

ENTIRETY OF AGREEMENT

15. This Plea Agreement consists of this document, the signed Factual Basis, and the sealed addendum required by Local Rule CR-49. References to "agreement" or "Plea Agreement" or "plea agreement" refer to this document, the signed Factual Basis, and the sealed addendum, incorporated together. The defendant, the defendant's attorneys, and the government acknowledge that this agreement is a complete statement of the parties' agreement in this case. It supersedes all other plea agreements and

may not be modified unless the modification is in writing and signed by all parties. No other promises have been made or implied.

SIGNED:

1/11/23
Date

12-9-22
Date

12-9-22
Date

Jillian M. Rogowski
DANIEL A. LOVELAND, JR.
JILLIAN ROGOWSKI
AIDAN MCCARTHY
Trial Attorneys

[Signature]
AARON STEPHENS
Defendant

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