

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA)	
)	Criminal No.
v.)	
)	Filed
GCC ALLIANCE CONCRETE, INC.,)	
)	Violation: 15 U.S.C. § 1
Defendant.)	

PLEA AGREEMENT

The United States of America and GCC Alliance Concrete, Inc. ("defendant"), a corporation organized and existing under the laws of Iowa, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it would be presumed not guilty of each charge and the United States would have to prove every essential element of each charged offense beyond a reasonable doubt for it to be found guilty;
 - (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
 - (f) to appeal its conviction if it is found guilty; and
 - (g) to appeal the imposition of sentence against it.

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

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(f) above. The defendant also knowingly and voluntarily waives the 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, 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). Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it 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. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a three-count Information to be filed in the United States District Court for the Northern District of Iowa. The Information will charge the defendant with:

COUNT ONE: Participating in a conspiracy with Company B involving an agreement to suppress and eliminate competition by fixing prices and submitting rigged and noncompetitive bids for sales of ready-mix concrete in the Northern District of Iowa and elsewhere beginning at least as early as June 2008 and continuing until as late as March 2009, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1;

COUNT TWO: Participating in a conspiracy with Company C involving an agreement to suppress and eliminate competition by fixing prices and submitting rigged and

noncompetitive bids for sales of ready-mix concrete in the Northern District of Iowa beginning at least as early as January 2008 and continuing until as late as August 2009, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1;

COUNT THREE: Participating in a conspiracy with Company D involving an agreement to suppress and eliminate competition by fixing prices for sales of ready-mix concrete in the Northern District of Iowa beginning at least as early as January 14, 2008 and continuing until as late as August 2009, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges 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.

FACTUAL BASIS FOR OFFENSES CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For each Count referred to in Paragraph 2 of this Plea Agreement, the "relevant period" is as follows: For COUNT ONE: June 2008 to March 2009; for COUNT TWO: January 2008 to August 2009; and for COUNT THREE: January 14, 2008 to August 2009. During the relevant period for each count, Steven Keith VandeBrake was the sales manager for the defendant and his responsibilities included pricing decisions. During the relevant period for each count, the defendant was an entity organized and existing under the laws of Iowa with its principal place of business in Orange City, Iowa, and was a producer and seller of ready-mix concrete in the Northern

District of Iowa and elsewhere. During the relevant period for each count, the defendant had over 200 employees.

(b) During the relevant period for each count referred to in Paragraph 2 of this Plea Agreement, the defendant participated, through VandeBrake, in a conspiracy with another company engaged in the manufacture and sale of ready-mix concrete, along with at least one employee of that company, the primary purpose of which was to set agreed-upon prices, to set agreed-upon price increases, and/or to submit non-competitive and rigged bids for ready-mix concrete sold in the Northern District of Iowa and elsewhere. During conversations between the co-conspirators, agreements were reached to set agreed-upon prices, to set agreed-upon price increases, and/or to submit non-competitive and rigged bids for ready-mix concrete to be sold in the Northern District of Iowa and elsewhere.

(c) During the relevant period for each count, ready-mix concrete sold by one or more of the conspirator companies, equipment and materials necessary for the production and distribution of ready-mix concrete, as well as payments for ready-mix concrete, traveled in interstate commerce. The business activities of the defendant and co-conspirators in connection with the production and sale of ready-mix concrete that was the subject of each conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of each conspiracy were carried out within

the Northern District of Iowa. Ready-mix concrete that was the subject of each conspiracy was sold by one or more of the conspirators to customers in this District.

(e) During the relevant period for COUNT ONE, the defendant's sales of ready-mix concrete affected by the conspiracy totaled at least \$591,000. During the relevant period for COUNT TWO, the defendant's sales of ready-mix concrete affected by the conspiracy totaled at least \$475,100. During the relevant period for COUNT THREE, the defendant's sales of ready-mix concrete affected by the conspiracy totaled at least \$1,328,327. The sales affected by all three conspiracies total at least \$2,394,427.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for each violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$100 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

6. In addition, the defendant understands that for each violation:

- (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;

(b) pursuant to §8B1.1 of the United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") or 18 U.S.C. § 3563(b)(2) or 3663(a)(3), the Court may order the defendant to pay restitution to the victims of the offense; and

(c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400 special assessment upon conviction.

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the 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 sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. 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 parties stipulate to the following Guidelines calculation:

(a) Pursuant to U.S.S.G. § 2R.1.1(b)(2), the volume of commerce attributable to the defendant is \$2,394,427.

(b) Pursuant to U.S.S.G. § 8C2.4(b) and U.S.S.G. § 2R.1.1(d)(1), the base fine is \$478,885.

(c) Pursuant to U.S.S.G. § 8C2.5(a), the defendant's starting culpability score is 5. For purposes of 8C2.5(b), the defendant organization had 50 or more employees, and "substantial authority personnel" of the organization

participated in the offense. Accordingly, 2 points are added to the culpability score pursuant to U.S.S.G. § 8C2.5(b)(4). The organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct. Accordingly, 2 points are subtracted from the culpability score pursuant to U.S.S.G. § 8C2.5(g)(2). The resulting culpability score is 5.

(d) Pursuant to U.S.S.G. § 8C2.6, the applicable multiplier range is 1.00 to 2.00.

(e) Pursuant to U.S.S.G. § 8C2.7, the Guidelines fine range is \$478,885 to \$957,770.

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the parties agree to recommend, as the appropriate disposition of this case, that the Court impose a sentence within the stipulated Guidelines range set forth in Paragraph 8, requiring the defendant to pay to the United States a criminal fine of an amount between \$478,885 and \$957,770, payable in full before the fifteenth (15th) day after the date of judgment (“the recommended sentence”). The parties agree not to seek or support any sentence outside of the stipulated Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. However, the parties are free to recommend a fine of any amount within the stipulated Guidelines fine range. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a 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. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

10. The defendant understands that the Court will order it to pay \$1,200 in special assessments, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed. If probation is not required by U.S.S.G. §8D1.1 or 18 U.S.C. §§ 3553(a), 3562(a), both parties will recommend that no term of probation be imposed, but the defendant understands that the Court's denial of this request will not void this Plea Agreement.

11. The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, along with the record from previous related cases (*United States v. VandeBrake*, No. 10-cr-04025-MWB, *United States v. Stewart*, No. 10-cr-04028-MWB), will provide sufficient information concerning the defendant, the crimes charged in this case, and the defendant's role in the crimes to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. Accordingly, pursuant to Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. §6A1.1(a)(2), and subject to the Court's approval, the United States and defendant agree to request jointly that the Court accept the defendant's guilty pleas and impose an expedited sentencing schedule, to be determined at the plea hearing. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject either party's sentencing recommendation

provided for in Paragraph 9 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose either party's sentencing recommendation, it nevertheless has no right to withdraw its pleas of guilty.

13. In light of civil cases (*see In Re: Iowa Ready-Mix Concrete Antitrust Litigation*, No. 5:10-CV-04038-MWB) that have been filed alleging injuries from the antitrust conspiracies described herein, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the offenses charged in the Information.

GOVERNMENT'S AGREEMENT

14. Upon acceptance of the guilty pleas called for by this Plea Agreement and the imposition of sentence, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy relating to the manufacture or sale of ready-mix concrete in Iowa. 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.

15. 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, based upon the convictions 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 the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

16. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

VOLUNTARY PLEAS

17. The defendant's decision to enter into this Plea Agreement and to tender pleas 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.

VIOLATION OF PLEA AGREEMENT

18. The defendant agrees that, should the United States determine in good faith that the defendant has violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, electronic mail, or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the 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. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any offense referred to in Paragraph 14 of this Plea Agreement, the statute of limitations period for such offense shall 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.

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


ENTIRETY OF AGREEMENT

20. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

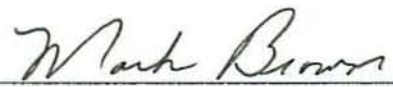
21. The undersigned are authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

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

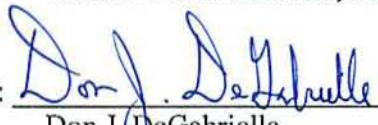
Respectfully submitted,

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