

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA)	
)	Criminal No. CR10-4025-MWB
v.)	
)	Filed
STEVEN KEITH VANDEBRAKE,)	
a/k/a STEVE VANDEBRAKE)	Violation: 15 U.S.C. § 1
)	
Defendant.)	
_____)	

PLEA AGREEMENT

The United States of America and Steven Keith VandeBrake ("the defendant") 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 his 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 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.

CRB 5/26/10
AMG 5/26/10
FLG 5/26/10²

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

The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) 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 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 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 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. 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 2006 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. The United States agrees that at the arraignment, it will stipulate to the release of the 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 each count 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 2006 to August 2009. During the relevant period for each count, the defendant was an executive for Company A and/or its predecessor entity with responsibility over business operations and pricing decisions. During the relevant period for each count, Company A 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 of ready-mix concrete and seller of ready-mix concrete in the Northern District of Iowa and elsewhere. The predecessor to Company A also 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 of ready-mix concrete and seller of ready-mix concrete in the Northern District of Iowa and elsewhere.

(b) For each count, during the relevant period for that count, the defendant participated 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. During the relevant period for each count, the defendant was a manager or supervisor and the criminal activity for all counts combined involved five or more persons or was otherwise extensive.

(c) For each count, during the relevant period for that count, ready-mix concrete sold by one or more of the conspirator firms, equipment and supplies necessary for the production and distribution of ready-mix concrete, and/or payments for ready-mix concrete, traveled in interstate commerce. The business activities of Company A and co-conspirators in connection with the production and sale of ready-mix concrete that were

the subjects 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.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for each 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)).

6. 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; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$300 special assessment upon conviction for the charged crimes.

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 have the following agreements with respect to the applicable Sentencing Guidelines:

(a) For purposes of calculating the Offense Level pursuant to U.S.S.G. § 2R1.1, the parties agree that the conduct involved participation in an agreement to submit non-competitive bids; in addition, the United States alleges and the defendant does not dispute that the total volume of commerce attributable to the defendant for all three counts combined is more than one million but less than ten million dollars.

(b) For purposes of determining “role in the offense” pursuant to U.S.S.G. §3B1.1, the parties agree that a 3-level enhancement is appropriate.

(c) For purposes of determining “acceptance of responsibility” pursuant to U.S.S.G. § 3E1.1, the parties agree that, provided the applicable offense level is

16 or greater, a 3-level reduction is appropriate.

Accordingly, the parties agree that the final Offense Level taking into account all of the above is 15.

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$100,000, payable in full before the fifteenth (15th) day after the date of judgment, and a period of imprisonment of nineteen (19) months ("the recommended sentence"). The United States makes no recommendation with regard to restitution. The defendant agrees that he will not request that he be allowed to serve any part of his sentence in home detention, intermittent confinement, or community confinement. The United States will not object to the defendant's request that the Court recommend to the Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal Minimum Security Camp (if possible at Yankton, SD) to serve his sentence, and that the defendant be released following the imposition of sentence to allow him to self-surrender to the assigned prison facility on a specified date no later than forty-five (45) days after the date of judgment. 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 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 parties further agree that the recommended sentence set

forth in this Plea Agreement is reasonable. The defendant understands that the Court will order him to pay a \$300 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided 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 a sentence consistent with the recommended sentence contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

GOVERNMENT'S AGREEMENT

11. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed after January 1, 2006 and 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 ("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.

12. The 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.

REPRESENTATION BY COUNSEL

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

VOLUNTARY PLEA

14. 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.

VIOLATION OF PLEA AGREEMENT

15. 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 the 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 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 Relevant Offense, 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.

16. 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 based on the 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, the 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.

ENTIRETY OF AGREEMENT

17. 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.

18. 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.

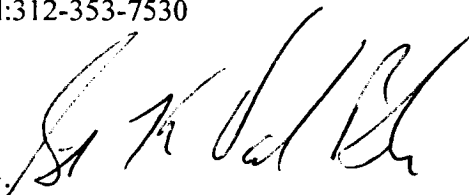
Respectfully submitted,

DATED: 5/24/10

BY: 

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DATED: 5-24-2010

BY: 

Steven Keith VandeBrake
Defendant

DATED: 5-24-2010

BY: 

F. Lee Goodwin
Counsel for Steven Keith VandeBrake