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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF ARIZONA

8 United States of America,
9 Plaintiff,
10 v.
11 Alliance Mechanical, LLC,
12 Defendant.

Case No. CR07-913-PHX-JAT
PLEA AGREEMENT

13
14 The United States of America and Alliance Mechanical, LLC ("the defendant"), a
15 corporation organized and existing under the laws of Arizona, hereby enter into the
16 following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
17 Procedure ("Fed. R. Crim. P."):

18 **RIGHTS OF DEFENDANT**

- 19 1. The defendant understands its rights:
- 20 (a) to be represented by an attorney;
 - 21 (b) to be charged by Indictment;
 - 22 (c) to plead not guilty to any criminal charge brought against it;
 - 23 (d) to have a trial by jury, at which it would be presumed not guilty of
24 the charge and the United States would have to prove every essential
25 element of the charged offense beyond a reasonable doubt for it to be found
26 guilty;
 - 27 (e) to confront and cross-examine witnesses against it and to subpoena

1 witnesses in its defense at trial;

2 (f) to appeal its conviction if it is found guilty; and

3 (g) to appeal the imposition of sentence against it.

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

6 2. The defendant knowingly and voluntarily waives the rights set out in
7 Paragraph 1(c)-(f) above. The defendant also knowingly and voluntarily waives the right
8 to file any appeal, any collateral attack, or any other writ or motion, including but not
9 limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the
10 Court if that sentence is consistent with the recommended sentence in Paragraph 8 of this
11 Plea Agreement, regardless of how the sentence is determined by the Court. This
12 agreement does not affect the rights or obligations of the United States as set forth in 18
13 U.S.C. § 3742(b)-(c). The defendant will plead guilty to the Indictment in this case,
14 which charges it with participating in a conspiracy to suppress and eliminate competition
15 by submitting rigged bids on contracts for the installation of commercial refrigeration in
16 the Phoenix, Arizona metropolitan area beginning in or around January 2005 and
17 continuing until May 16, 2005 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

18 3. The defendant, pursuant to the terms of this Plea Agreement, will plead
19 guilty to the criminal charge described in Paragraph 2 above and will make a factual
20 admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in
21 Paragraph 4 below.

22 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

25 (a) For purposes of this Plea Agreement, the “relevant period” is
26 that period beginning in or around January 2005 and continuing until May 16,
27 2005. During the relevant period, the defendant was a company existing under the

1 laws of the State of Arizona with its principal place of business in Phoenix,
2 Arizona. During the relevant period, the defendant was an installer of commercial
3 refrigeration and was engaged in the installation of commercial refrigeration in the
4 Phoenix, Arizona metropolitan area and elsewhere. Commercial refrigeration
5 includes the refrigerated cases in grocery stores such as deli, dairy and frozen food
6 cases. During the relevant period, Kendall Pope was the president and co-owner
7 of the defendant.

8 (b) During the relevant period, the defendant, through Kendall Pope,
9 participated in a conspiracy with an entity existing under the laws of the State of
10 California, with its principal place of business in Anaheim, California (“Company
11 A”) through its regional manager, James Govostes. Company A was also engaged
12 in the installation of commercial refrigeration, and the primary purpose of the
13 conspiracy was to suppress and eliminate competition by submitting rigged bids on
14 contracts for the installation of commercial refrigeration to Safeway Inc.
15 (“Safeway”) in the Phoenix, Arizona metropolitan area. In furtherance of the
16 conspiracy, the defendant, through Kendall Pope, engaged in conversations with
17 Company A, through James Govostes, during which they discussed the submission
18 of bids for commercial refrigeration installation projects let by Safeway. During
19 those conversations, the defendant, through Kendall Pope, and Company A,
20 through James Govostes, agreed to do the following: 1) submit rigged bids for the
21 installation of commercial refrigeration to Safeway in the Phoenix, Arizona
22 metropolitan area; 2) raise margins on commercial refrigeration projects for
23 Safeway; and 3) allocate bids for commercial refrigeration projects for Safeway
24 among themselves based on which co-conspirator’s company had a maintenance
25 agreement in place at the particular Safeway store for which bids were let. The
26 defendant, through Kendall Pope, and Company A, through James Govostes, also
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1 agreed upon who would submit the low bid for the commercial refrigeration
2 project at Safeway Store #2088.

3 (c) In accordance with the agreement, the defendant, through Kendall
4 Pope, and Company A, through James Govostes, submitted rigged bids to Safeway
5 for the commercial refrigeration project at Safeway Store #2088.

6 (d) During the relevant period, substantial quantities of refrigeration
7 fixtures, materials, and equipment, necessary for the defendant and Company A to
8 perform commercial refrigeration installation projects in the Phoenix, Arizona
9 metropolitan area, were transported across state lines in a continuous and
10 uninterrupted flow of interstate commerce and in a manner substantially affecting
11 interstate commerce. The business activities of the defendant and Company A
12 related to the installation of commercial refrigeration affected by this conspiracy
13 were within the flow of, and substantially affected, interstate trade and commerce.

14 (e) During the relevant period, both the general business activities of the
15 victim, Safeway Inc., which is headquartered in California, and the commercial
16 refrigeration installation activities of the defendant, headquartered in Arizona,
17 were conducted across state lines and had a not insubstantial effect on interstate
18 commerce. Safeway does business throughout the United States.

19 (f) Acts in furtherance of this conspiracy were carried out within the
20 District of Arizona. The commercial refrigeration installation projects that were
21 affected by this conspiracy were located in the Phoenix, Arizona metropolitan
22 area.

23 **POSSIBLE MAXIMUM SENTENCE**

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

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

6 6. In addition, the defendant understands that:

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

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

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

16 **SENTENCING GUIDELINES**

17 7. The defendant understands that the Sentencing Guidelines are advisory, not
18 mandatory, but that the Court must consider the Guidelines in effect on the day of
19 sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining
20 and imposing sentence. The defendant understands that the Guidelines determinations
21 will be made by the Court by a preponderance of the evidence standard. The defendant
22 understands that although the Court is not ultimately bound to impose a sentence within
23 the applicable Guidelines range, its sentence must be reasonable based upon consideration
24 of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

25 **SENTENCING AGREEMENT**

26 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the
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1 defendant agree that they will jointly recommend, as the appropriate disposition of this
2 case, that the Court impose a sentence within the applicable Guidelines range requiring
3 the defendant to pay to the United States a criminal fine of \$55,000, payable in full before
4 the forty-fifth (45th) day after the date of judgment with interest accruing under 18 U.S.C.
5 § 3612(f)(1)-(2) (“the recommended sentence”). The parties agree that there exists no
6 aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
7 consideration by the U.S. Sentencing Commission in formulating the Sentencing
8 Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties agree not to
9 seek or support any sentence other than the recommended sentence. The parties further
10 agree that the recommended sentence set forth in this Plea Agreement is reasonable.

11 (a) The defendant understands that the Court will order it to pay a \$400
12 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine
13 imposed.

14 9. Subject to the ongoing, full, and truthful cooperation of the defendant
15 described in Paragraph 11 of this Plea Agreement, and before sentencing in the case, the
16 United States will fully advise the Court and the Probation Office of the fact, manner, and
17 extent of the defendant’s cooperation and its commitment to prospective cooperation with
18 the United States’ investigation and prosecutions, all material facts relating to the
19 defendant’s involvement in the charged offense, and all other relevant conduct.

20 10. The United States and the defendant understand that the Court retains
21 complete discretion to accept or reject the recommended sentence provided for in
22 Paragraph 8 of this Plea Agreement.

23 (a) If the Court does not accept the recommended sentence, the United
24 States and the defendant agree that this Plea Agreement, except for Paragraph
25 10(b) below, shall be rendered void.

26 (b) If the Court does not accept the recommended sentence, the
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1 defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and
2 (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty
3 plea, and any statement made in the course of any proceedings under Fed. R. Crim.
4 P. 11 regarding the guilty plea or this Plea Agreement or made in the course of
5 plea discussions with an attorney for the government shall not be admissible
6 against the defendant in any criminal or civil proceeding, except as otherwise
7 provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it
8 withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the
9 statute of limitations period for any offense referred to in Paragraph 16 of this Plea
10 Agreement will be tolled for the period between the date of the signing of the Plea
11 Agreement and the date the defendant withdrew its guilty plea or for a period of
12 sixty (60) days after the date of the signing of the Plea Agreement, whichever
13 period is greater.

14 **DEFENDANT'S COOPERATION**

15 11. The defendant will cooperate fully and truthfully with the United States in
16 the prosecution of this case, the conduct of the current federal investigation of violations
17 of federal antitrust and related criminal laws involving the installation of commercial
18 refrigeration in the Phoenix, Arizona metropolitan area, any other federal investigation
19 resulting therefrom, and any litigation or other proceedings arising or resulting from any
20 such investigation to which the United States is a party ("Federal Proceeding"). The
21 ongoing, full, and truthful cooperation of the defendant shall include, but not be limited
22 to:

23 (a) producing to the United States all non-privileged documents,
24 information, and other materials wherever located, in the possession, custody, or
25 control of the defendant, requested by the United States in connection with any
26 Federal Proceeding;

1 (b) using its best efforts to secure the ongoing, full, and truthful
2 cooperation, as defined in Paragraph 12 of this Plea Agreement, of the current
3 directors, officers, and employees of the defendant as may be requested by the
4 United States, including making these persons available, at the defendant's
5 expense, for interviews and the provision of testimony in grand jury, trial, and
6 other judicial proceedings in connection with any Federal Proceeding.

7 12. The ongoing, full, and truthful cooperation of each person described in
8 Paragraph 11(b) above will be subject to the procedures and protections of this Paragraph,
9 and shall include, but not be limited to:

10 (a) producing all non-privileged documents, including claimed personal
11 documents, and other materials, wherever located, requested by attorneys and
12 agents of the United States;

13 (b) making himself or herself available for interviews, not at the expense
14 of the United States, upon the request of attorneys and agents of the United States;

15 (c) responding fully and truthfully to all inquiries of the United States in
16 connection with any Federal Proceeding, without falsely implicating any person or
17 intentionally withholding any information, subject to the penalties of making false
18 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et*
19 *seq.*);

20 (d) otherwise voluntarily providing the United States with any non-
21 privileged material or information not requested in (a) - (c) of this paragraph that
22 he or she may have that is related to any Federal Proceeding;

23 (e) when called upon to do so by the United States in connection with
24 any Federal Proceeding, testifying in grand jury, trial, and other judicial
25 proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18
26 U.S.C. § 1621), making false statements or declarations in grand jury or court
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1 proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction
2 of justice (18 U.S.C. § 1503, *et seq.*); and

3 (f) agreeing that, if the agreement not to prosecute him or her in this
4 Plea Agreement is rendered void under Paragraph 14(c), the statute of limitations
5 period for any Relevant Offense as defined in Paragraph 14(a) will be tolled as to
6 him or her for the period between the date of the signing of this Plea Agreement
7 and six (6) months after the date that the United States gave notice of its intent to
8 void its obligations to that person under the Plea Agreement.

9 **GOVERNMENT'S AGREEMENT**

10 13. Upon acceptance of the guilty plea called for by this Plea Agreement and
11 the imposition of the recommended sentence, and subject to the cooperation requirements
12 of Paragraph 11 of this Plea Agreement, the United States agrees that it will not bring
13 further criminal charges against the defendant for any act or offense committed before the
14 date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy
15 involving the installation of commercial refrigeration in the Phoenix, Arizona
16 metropolitan area. The nonprosecution terms of this paragraph do not apply to civil
17 matters of any kind, to any violation of the federal tax or securities laws, or to any crime
18 of violence.

19 14. The United States agrees to the following:

20 (a) Upon the Court's acceptance of the guilty plea called for by this Plea
21 Agreement and the imposition of the recommended sentence and subject to the
22 exceptions noted in Paragraph 14(c), the United States will not bring criminal
23 charges against any current director, officer, or employee of the defendant for any
24 act or offense committed before the date of this Plea Agreement and while that
25 person was acting as a director, officer, or employee of the defendant that was
26 undertaken in furtherance of an antitrust conspiracy involving the installation of
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1 commercial refrigeration in the Phoenix, Arizona metropolitan area (“Relevant
2 Offense”) except that the protections granted in this paragraph shall not apply to
3 Kendall Pope;

4 (b) Should the United States determine that any current or former
5 director, officer, or employee of the defendant may have information relevant to
6 any Federal Proceeding, the United States may request that person’s cooperation
7 under the terms of this Plea Agreement by written request delivered to counsel for
8 the individual (with a copy to the undersigned counsel for the defendant) or, if the
9 individual is not known by the United States to be represented, to the undersigned
10 counsel for the defendant;

11 (c) If any person requested to provide cooperation under Paragraph
12 11(b) fails to comply with his or her obligations under Paragraph 12, then the
13 terms of this Plea Agreement as they pertain to that person, and the agreement not
14 to prosecute that person granted in this Plea Agreement, shall be rendered void;

15 (d) Except as provided in Paragraph 14(e), information provided by a
16 person described in Paragraph 11(b) to the United States under the terms of this
17 Plea Agreement pertaining to any Relevant Offense, or any information directly or
18 indirectly derived from that information, may not be used against that person in a
19 criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a
20 false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice
21 (18 U.S.C. § 1503, *et seq.*);

22 (e) If any person who provides information to the United States under
23 this Plea Agreement fails to comply fully with his or her obligations under
24 Paragraph 12 of this Plea Agreement, the agreement in Paragraph 14(d) not to use
25 that information or any information directly or indirectly derived from it against
26 that person in a criminal case shall be rendered void;

1 (f) The nonprosecution terms of this paragraph do not apply to civil
2 matters of any kind, to any violation of the federal tax or securities laws, or to any
3 crime of violence; and

4 (g) Documents provided under Paragraphs 11(a) and 12(a) shall be
5 deemed responsive to outstanding grand jury subpoenas issued to the defendant.

6 **REPRESENTATION BY COUNSEL**

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

12 **VOLUNTARY PLEA**

13 16. The defendant's decision to enter into this Plea Agreement and to tender a
14 plea of guilty is freely and voluntarily made and is not the result of force, threats,
15 assurances, promises, or representations other than the representations contained in this
16 Plea Agreement. The United States has made no promises or representations to the
17 defendant as to whether the Court will accept or reject the recommendations contained
18 within this Plea Agreement.

19 **VIOLATION OF PLEA AGREEMENT**

20 17. The defendant agrees that, should the United States determine in good faith,
21 during the period that any Federal Proceeding is pending, that the defendant has failed to
22 provide full and truthful cooperation, as described in Paragraph 12 of this Plea
23 Agreement, or has otherwise violated any provision of this Plea Agreement, the United
24 States will notify counsel for the defendant in writing by personal or overnight delivery or
25 facsimile transmission and may also notify counsel by telephone of its intention to void
26 any of its obligations under this Plea Agreement (except its obligations under this
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1 paragraph), and the defendant shall be subject to prosecution for any federal crime of
2 which the United States has knowledge including, but not limited to, the substantive
3 offenses relating to the investigation resulting in this Plea Agreement. The defendant
4 may seek Court review of any determination made by the United States under this
5 Paragraph to void any of its obligations under the Plea Agreement. The defendant agrees
6 that, in the event that the United States is released from its obligations under this Plea
7 Agreement and brings criminal charges against the defendant for any offense referred to
8 in Paragraph 14 of this Plea Agreement, the statute of limitations period for such offense
9 will be tolled for the period between the date of the signing of this Plea Agreement and
10 six (6) months after the date the United States gave notice of its intent to void its
11 obligations under this Plea Agreement.

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

21 **ENTIRETY OF AGREEMENT**

22 19. This Plea Agreement constitutes the entire agreement between the
23 United States and the defendant concerning the disposition of the criminal charge in this
24 case. This Plea Agreement cannot be modified except in writing, signed by the United
25 States and the defendant.

26 20. The undersigned is authorized to enter this Plea Agreement on behalf of the
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1 defendant as evidenced by the Resolution of the Board of Directors of the defendant
2 attached to, and incorporated by reference in, this Plea Agreement.

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

6 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

7 22. As the duly authorized representative of the defendant, I have read each of
8 the provisions of the entire plea agreement with the assistance of counsel, and understand
9 its provisions.

10 23. I have discussed the case, the defendant's constitutional rights, and other
11 rights with the defendant's attorney. I understand that by entering my plea of guilty the
12 defendant will be giving up its rights to plead not guilty, to trial by jury, to confront,
13 cross-examine, and compel the attendance of witnesses, to present evidence in its defense
14 -- all with the assistance of counsel -- and to be presumed innocent until proven guilty
15 beyond a reasonable doubt.

16 24. The defendant agrees to enter its guilty plea as indicated above on the terms
17 and conditions set forth in this agreement.

18 25. I have been advised by the defendant's attorney of the nature of the charges
19 to which the defendant is entering its guilty plea. I have further been advised by the
20 defendant's attorney of the nature and range of the possible sentence and that the
21 defendant's ultimate sentence will be determined according to the guidelines promulgated
22 pursuant to the Sentencing Reform Act of 1984. I further understand that, under certain
23 limited circumstances, the court may depart upward or downward from the calculated
24 guideline range.

25 26. The defendant's guilty plea is not the result of force, threats, assurances or
26 promises other than the promises contained in this agreement. The defendant agrees to
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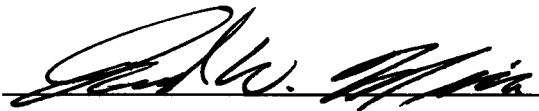
1 the provisions of this agreement as a voluntary act on its part rather than at the direction
2 of or because of the recommendation of any other person. The defendant further agrees
3 to be bound by this agreement's provisions.

4 27. I agree that this written plea agreement contains all the terms and conditions
5 of the defendant's plea and that promises made by anyone (including the defendant's
6 attorney), and specifically any predictions as to the guideline range applicable, that are
7 not contained within this written plea agreement are without force and effect and are null
8 and void.

9 28. I am satisfied that the defendant's attorney has represented the defendant in
10 a competent manner.

11 29. I am fully capable of understanding the terms and conditions of this plea
12 agreement. I am not now on or under the influence of any drug, medication, liquor, or
13 other intoxicant or depressant, which could impair my ability to fully understand the
14 terms and conditions of this plea agreement.

15
16 3/6/08
17 _____
Date

18 
19 _____
Authorized Representative for Defendant

20 **DEFENSE ATTORNEY'S APPROVAL**

21 30. I have discussed this case and the plea agreement with my client, in detail
22 and have advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
23 constitutional and other rights of an accused, the factual basis for and the nature of the
24 offense to which the guilty plea will be entered, possible defenses, and the consequences
25 of the guilty plea including the maximum statutory sentence possible. I have further
26 discussed the sentencing guideline concept with the defendant. No assurances, promises,
27 or representations have been given to me or to the defendant by the United States or by
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1 any of its representatives which are not contained in this written agreement. I concur in
2 the entry of the plea as indicated above and on the terms and conditions set forth in this
3 agreement as in the best interests of my client. I agree to make a bona fide effort to
4 ensure that the guilty plea is entered in accordance with all the requirements of
5 Fed. R. Crim. P. 11.


6 3/6/08
7 Date

8 
9 STEPHEN M. DICHTER
10 Attorney for Defendant

11 **UNITED STATES' APPROVAL**

12 31. I have reviewed Alliance Mechanical, LLC's matter and this plea
13 agreement. I agree on behalf of the United States that the terms and conditions set forth
14 are appropriate and are in the best interests of justice.

15 03/06/08
16 Date

17 
18 KALINA M. TULLEY
19 Attorney, Antitrust Division

20 **COURT'S ACCEPTANCE**

21 _____
22 Date

23 _____
24 United States District Judge
25 Judge James A. Teilborg