

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)	Criminal No.:1:01-CR-491
)	
v.)	Filed: 07/12/01
)	
STEELE-NICKLES & ASSOCIATES, INC.,)	
)	
Defendant.)	Violation: 15 U.S.C. § 1

PLEA AGREEMENT BETWEEN UNITED STATES OF
AMERICA AND STEELE-NICKLES & ASSOCIATES, INC.

The United States of America and the defendant, Steele-Nickles & Associates, Inc., hereby enter into the following plea agreement pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure.

1. The defendant will waive indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure and voluntarily plead guilty to a one-count criminal information charging a violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) in connection with a conspiracy to rig bids for the sale of equipment and other materials and related services used in the construction and maintenance of wastewater treatment plants in the States of Alabama and Georgia. The conspiracy to be charged began at least as early as early 1995 and continued thereafter at least through October 23, 1998, the exact dates being unknown to the

United States. The criminal information will charge the defendant with having agreed to rig bids on the following three projects:

- (1) City of Hawkinsville, Georgia (approximate bid date February 17, 1995);
- (2) Trussville Wastewater Treatment Plant - Jefferson County, Alabama (approximate bid date February 21, 1996); and
- (3) a project for the Water, Light and Sinking Fund Commission of the City of Dalton, Georgia, which ultimately involved construction improvements to the Loopers Bend Wastewater Treatment Plant (approximate bid date January 27, 1998).

2. The defendant understands that the maximum sentence for violating 15 U.S.C. § 1 is a fine that is the greatest of \$10,000,000, twice the gross pecuniary gain derived from the crime, or twice the gross pecuniary loss caused to the victims of the crime (15 U.S.C. § 1, 18 U.S.C. § 3571). In addition, pursuant to 18 U.S.C. § 3013(a)(2)(B), the defendant must pay a special assessment of \$400 at the time of sentencing, a form of probation may be imposed pursuant to 18 U.S.C. § 3561 for a term of one to five years, and restitution may be ordered.

3. The United States and the defendant estimate that the total dollar volume of commerce attributable to the defendant for the purpose of applying U.S.S.G. § 2R1.1(d)(3) in this case is approximately \$643,051. The United States and the defendant recognize that the Court is not bound by that estimate. Based on

the \$643,051 estimate, the United States and the defendant agree that: (1) the base fine under the Guidelines is \$128,610 (U.S.S.G. §§ 2 R1.1(d)(1), 8C2.4(b)); (2) the defendant has a culpability score of four (U.S.S.G. § 8C2.5(a), (g)(3)); and (3) its Guideline fine range is \$102,888 to \$205,776 (U.S.S.G. §§ 8C2.6, 8C2.7). The United States and the defendant understand that the Court is not bound by those Guideline fine estimates. In view of the current and likely future financial condition of the defendant, it is the recommendation of the United States and the defendant pursuant to U.S.S.G. § 8C3.3 that the Court reduce defendant's fine below that otherwise required by U.S.S.G. § 8C2.7 and impose no fine, because the imposition of a fine within the range determined under U.S.S.G. § 8C2.7 would impair defendant's ability to make restitution to its victims. Instead, it is the recommendation of the United States and the defendant that restitution in the amount of a total of \$100,000 be ordered to be paid to the victims of the crime. The United States agrees to promptly inform the United States Probation Office as to the respective portion of the \$100,000 that it believes is due each eligible victim. The willingness of the United States to enter into this plea agreement is, in part, due to the agreement of Marion A. Steele to personally guarantee the payment by Steele-Nickles & Associates, Inc. of a fine or restitution in an amount up to a total of \$100,000 in this case. That guarantee is evidenced by a letter from Marion A. Steele, attached hereto as Exhibit A.

4. Payment of the fine or restitution ordered in this matter shall be made by certified or cashier's check payable to the Clerk of the United States District Court for the Northern District of Georgia, U.S. Courthouse, Suite 2211, Richard B. Russell Bldg., 75 Spring Street, SW, Atlanta, Georgia 30303 on or before the conclusion of the next business day following imposition of sentence. A copy of the payment check shall be sent to John T. Orr, Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, Suite 1176, Richard B. Russell Building, 75 Spring Street, SW, Atlanta, Georgia 30303. Within five business days following the execution of this agreement, the sum of \$100,400 shall be deposited on defendant's behalf in its attorney's escrow account until the defendant has been sentenced by this Court, at which time the money in this account shall be used by said attorney to pay the fine or restitution imposed and the \$400 special assessment.

5. The defendant understands and agrees that the sentence recommended by the United States and the defendant shall not be binding upon the Court, and that, under this agreement, the Court retains complete discretion to impose any sentence up to the maximum provided by law. Furthermore, the defendant understands and agrees that, as provided in Rule 11(e)(2) of the Federal Rules of Criminal Procedure, if the Court does not impose the sentence recommended by the United States and the defendant, the defendant nevertheless has no right to withdraw its plea of guilty.

6. The defendant agrees that it will assist the United States in satisfying the Court that there exists a factual basis for its plea pursuant to Rule 11(f) of the Federal Rules of Criminal Procedure. The defendant also understands and agrees that the United States Sentencing Guidelines are applicable to this case. The United States and the defendant agree that both parties may present facts to the Probation Office and to the Court to assist the Court in determining the appropriate disposition of this case. The United States and the defendant agree to request that the Court order a presentence investigation prior to the imposition of sentence pursuant to Rule 32(b) of the Federal Rules of Criminal Procedure.

7. The defendant agrees that it will cooperate fully, candidly, and truthfully with the United States in the prosecution of this case, and in the conduct of any federal grand jury investigation or other federal investigations in the United States involving antitrust and other violations in the water or wastewater treatment industry, including the presently ongoing grand jury investigation being conducted in the Northern District of Georgia, and in any litigation or other proceedings arising or resulting from any such investigations, whether civil or criminal, to which the United States is a party.

8. Subject to the defendant's full and continuing cooperation, as described in paragraph seven above, and the acceptance of its guilty plea, imposition of sentence by the Court and full payment by the defendant of any fine or restitution ordered by the Court, up to a total of \$100,000, the United States agrees not to

bring further criminal charges against the defendant or any of its current or former directors, officers, or employees who were acting in such capacity on behalf of the defendant, under the federal antitrust statutes (15 U.S.C. §§ 1, 2), the mail or wire fraud statutes (18 U.S.C. §§ 1341, 1343), the false statements or entries statute (18 U.S.C. § 1001), the false claims statutes (18 U.S.C. §§ 286, 287), the conspiracy to commit an offense against the United States or to defraud the United States statute (18 U.S.C. § 371), any other federal criminal statute which prohibits any act also prohibited by any of the aforesaid statutes, or the RICO statutes (18 U.S.C. §§ 1961-1968), for any act or offense committed prior to February 8, 2001, arising out of any conspiracy, combination, or scheme to submit collusive, fraudulent, or noncompetitive bids in connection with water or wastewater treatment projects bid or let prior to February 8, 2001. Should the United States determine that any current or former director, officer, or employee of the defendant may have information relevant to any government investigation of the water and wastewater treatment equipment industry, the United States may request such person's cooperation by notifying counsel for that individual (or the individual directly should he or she have no counsel) in writing of the government's request for cooperation. In the event that person declines to make himself or herself available on reasonable notice from the Antitrust Division for interviews or testimony before a grand jury or in other court proceedings, such person shall not have the benefit of the non-prosecution agreement of the United States contained in this paragraph;

provided, however, that if said person exercises his or her Fifth Amendment privilege under the United States Constitution to decline to testify before a grand jury or in other court proceedings when called upon to do so by the Antitrust Division, the Antitrust Division shall seek an order compelling said testimony under 18 U.S.C. § 6001 et seq. if it desires to present such testimony, and in such case the exercise of the Fifth Amendment privilege shall not deny that individual the benefit of the aforesaid non-prosecution agreement unless that individual shall continue to refuse to testify following the entry of a compulsion order. In the event such person is called upon after February 8, 2001 by the Antitrust Division to give testimony, and does give testimony, before a grand jury or in other court proceedings, such person is only subject to prosecution by the Antitrust Division for perjury, subornation of perjury, false declarations (18 U.S.C. §§ 1621-1623), obstruction of justice (18 U.S.C. §§ 1501-1518) or contempt (18 U.S.C. §§ 401-402) and only for any such offenses committed after February 8, 2001. Further, in the event of such prosecution for perjury, subornation of perjury, false declarations, obstruction of justice or contempt, the guilty plea of Steele-Nickles & Associates, Inc. shall not be used as direct, rebuttal, or impeachment evidence in such case by the Antitrust Division. The terms of this paragraph do not apply to any crimes of violence, criminal federal tax or securities violations, offenses related to money or anything of value offered or given to a public official or employee of any general contractor, engineer, or architect for any illegal purpose, or civil matters of any kind.

9. The defendant understands and agrees that its failure to provide full and complete cooperation to the United States would be a material breach of this plea agreement, would render this plea agreement null and void, and would release the United States from its promises and commitments made in this plea agreement, including the nonprosecution commitments contained in paragraph eight above. In the event of any further prosecution of the defendant resulting from a breach of this agreement, the defendant agrees to waive its right to interpose the statute of limitations as a defense with regard to any period of time which passes after the date of this plea agreement.

10. 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, as a result of the guilty plea entered pursuant hereto, and that this plea agreement in no way controls whatever action, if any, such other agencies take. The United States, however, agrees that, if requested, it will advise the appropriate officials of any governmental agency considering administrative action against the defendant as a result of the guilty plea entered pursuant hereto of the fact, manner, and extent of the defendant's cooperation, as described herein, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to the defendant.

11. The defendant agrees that it will maintain its status as active upon the records of the Secretary of State of Georgia and in compliance with the State of

Georgia's annual registration filing requirements pending the final resolution of this case and compliance with the sentence imposed therein.

12. The United States and the defendant agree that, other than the foregoing, the United States has made no promises to, or agreements with, the defendant and that this plea agreement, along with the attached Exhibit A, constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charges against the defendant in this case.

Agreed to this 28 day of June, 2001.

STEELE-NICKLES &
ASSOCIATES, INC.

UNITED STATES OF AMERICA

By: /S/
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