

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

**DUNN ENGINEERING
ASSOCIATES, P.C.**

* **Criminal No.: 05-128**

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* **Filed: 04/29/05**

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* **Violation: 18 U.S.C. § 201(c)(1)(A)**

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PLEA AGREEMENT

The United States of America and Dunn Engineering Associates, P.C. (“Defendant”), a professional corporation organized and existing under the laws of New York, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) 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 the charge and the United States would have to prove every essential element of the 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.

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

2. The Defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b) - (g) above. The Defendant also knows that it has, 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 8 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). Pursuant to Fed. R. Crim. P. 7(b), the Defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the District of Columbia. The Information will charge the Defendant with giving something of value to a public official, not provided for by law for the proper discharge of official duty, for an official act to be performed by such public official in violation of 18 U.S.C. § 201(c)(1)(A).

3. The Defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge 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 OFFENSE CHARGED

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

(a) The Defendant is a professional corporation organized and existing under the laws of the State of New York.

(b) From approximately May 24, 2001 to June 07, 2003 the Defendant

performed traffic engineering services for the Traffic Services Administration, a division of the District of Columbia's Department of Transportation (hereinafter collectively referred to as the "D.C. D.O.T.") under its \$17.5 million Integrated Traffic Management System ("I.T.M.S.") contract.

(c) At all times relevant to this Plea Agreement D-1 and D-2 were principals, officers and owners of the Defendant with supervisory authority for the Defendant's performance of the I.T.M.S. contract.

(d) From approximately May 2001 to April 2003 A-1 was the D.C. D.O.T. Associate Director charged with the administration and oversight of the I.T.M.S. contract.

(e) On or about October 18, 2002 the Defendant, through D-2 after consultation with D-1, gave an item of personal value to A-1, to wit, it paid a \$1,348.91 hotel bill for and on behalf of A-1.

(f) In giving the item of personal value detailed in subparagraph (e) both D-1 and D-2 were acting within the scope of their respective employment as principals, officers and owners of the Defendant with an intent to benefit the Defendant.

(g) The gift of the item of personal value detailed in subparagraph (e) was not provided for by law for the proper discharge of A-1's official duty.

(h) The Defendant, through D-1 and D-2, gave the item of personal value detailed in subparagraph (e) for an official act to be performed by A-1, a public official, to wit, favorable treatment of the Defendant by A-1 in his future administration and oversight of the I.T.M.S. contract.

POSSIBLE MAXIMUM SENTENCE

5. The Defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of 18 U.S.C. § 201(c)(1)(A) is a fine in an amount equal to the greatest of:

- (a) \$500,000 (18 U.S.C. § 3571(c));
- (b) twice the gross pecuniary gain the Defendant derived from the crime (18 U.S.C. § 3571(d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the Defendant (18 U.S.C. § 3571(d)).

6. In addition, the Defendant understands that:

- (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one (1) year, but not more than five (5) years;
- (b) pursuant to § 8B1.1 of the United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”), 18 U.S.C. § 3563(b)(2) or 3663(a)(3), the Court may order it 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 \$400.00 special assessment upon conviction for the charged crime.

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 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 advisory Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), 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 \$75,000, payable in full before the thirtieth (30th) day after the date of judgment, with interest accruing under 18 U.S.C. § 3612(f)(1)-(2) on any amount not paid in full before the fifteenth (15th) day after the date of judgement, pursuant to the applicable advisory Guidelines calculation set forth in subparagraph (a) and the downward departure agreement set forth in subparagraph (b). 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 United States 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.

(a) The United States and the Defendant agree that the applicable advisory Guidelines fine range prescribed for this offense through application of the U.S.S.G. is \$125,000 to \$250,000 as follows:

(I) the base offense level for a gratuity offense wherein the Defendant is

not a public official is nine (9) (U.S.S.G. § 2C1.2(a)(2));

(ii) the recipient of the gratuity, A-1, was, at the time of the offense, a public official holding a high-level decision-making position, which provides for an increase of four (4) levels (U.S.S.G. § 2C1.2(b)(3));

(iii) because the adjusted offense level resulting from the calculations of subsections (I) and (ii) is less than fifteen (15), the offense level is increased to fifteen (15) (U.S.S.G. § 2C1.2(b)(3)), which provides for a base fine of \$125,000 (U.S.S.G. § 8C2.4(d));

(iv) the Defendant is assigned a base culpability score of five (5) (U.S.S.G. § 8C2.5(a)), which is increased by two (2) points because the Defendant is an organization with fifty (50) or more employees and an individual within substantial authority personnel participated in the offense (U.S.S.G. § 8C2.5(b)(4)); and then decreased by two (2) points because the Defendant fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct (U.S.S.G. § 8C2.5(g)(2)), resulting in a final adjusted culpability score of five (5) which provides for a minimum multiplier of 1.0 and a maximum multiplier of 2.0 to be applied to the base fine of \$125,000 set forth in subsection (iii).

(b) The United States and the Defendant agree to jointly recommend that the Court depart downward from the applicable advisory Guidelines fine range set forth in subparagraph (a) to the fine contained in the recommended sentence set forth in this paragraph because of the Defendant's substantial assistance in the government's

investigation and prosecution of an individual not directly affiliated with the Defendant.

U.S.S.G. § 8C4.1(a). The Defendant's assistance in the prosecution of this individual has been timely, significant and useful.

(c) The Defendant understands that the Court will order it to pay a \$400 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1 in addition to any fine imposed.

(d) 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 hearing, will provide sufficient information concerning the Defendant, the crime charged in this case, and the Defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and the Defendant agree to request jointly that the Court, pursuant to Fed. R. Crim. P. 32(c), accept the Defendant's guilty plea and impose sentence without ordering a presentence report. The Court's denial of this request to impose sentence without a presentence report will not void this Plea Agreement.

9. Subject to the ongoing, full, and truthful cooperation of the Defendant described in Paragraph 11 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office, if a presentence report is ordered by the Court, of the fact, manner, and extent of the Defendant's cooperation and its commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the Defendant's involvement in the charged offense, and all other relevant conduct.

10. The United States and the Defendant understand that the Court retains complete

discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the Defendant agree that this Plea Agreement, except for subparagraph (b) below, shall be rendered void.

(b) If the Court does not accept the recommended sentence, the Defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the Defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statements made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the Defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the Defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 13 below, will be tolled for the period between the date of the signing of the Plea Agreement and the date the Defendant withdrew its guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

DEFENDANT'S COOPERATION

11. The Defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal gratuity and related criminal laws involving the provision of traffic engineering services to the

D.C. D.O.T., any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (“Federal Proceeding”). The ongoing, full, and truthful cooperation of the Defendant shall include, but not be limited to:

- (a) producing to the United States all documents, information, and other materials in the possession, custody, or control of the Defendant, requested by the United States in connection with any Federal Proceeding;

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

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

- (a) producing all documents, including claimed personal documents, and other materials, requested by attorneys and agents of the United States;

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

- (c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or

intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

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

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

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 14(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 13 will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

GOVERNMENT'S AGREEMENT

13. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, and subject to the cooperation requirements of Paragraph 11 of this Plea Agreement, 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 the Defendant's giving of gratuities to D.C.

D.O.T. officials (“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.

14. The United States agrees to the following:

(a) Upon the Court’s acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence and subject to the exceptions noted in subparagraph (c) below, the United States will not bring criminal charges against any current director, officer, or employee of the Defendant for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the Defendant that was undertaken in furtherance of the Relevant Offense;

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

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

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

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 12 of this

Plea Agreement, the agreement in subparagraph (d) above not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

(f) 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; and

(g) Documents provided under Paragraphs 11(a) and 12(a) shall be deemed responsive to the outstanding grand jury subpoena issued to the Defendant.

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 conviction 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 it will advise the appropriate officials of any government 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 charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

17. 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

18. The Defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the Defendant has failed to provide full and truthful cooperation, as described in Paragraph 11 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the Defendant in writing by personal or overnight delivery 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 Relevant Offense, the statute of limitations period for such offense will 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 or current directors, officers, or employees of 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 charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the Defendant.

21. The undersigned is authorized to enter into 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 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.

23. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

Respectfully submitted,

_____/s/_____
PETER H. GOLDBERG
Senior Trial Attorney
United States Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3700
Washington, D.C. 20530
(202) 307-5784

DATED: ____ 04/29/05 ____

_____/s/_____
JOHN SCHMOLL
Senior Trial Attorney
United States Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3700
Washington, D.C. 20530
(202) 307-5780

DATED: ____ 04/29/05 ____

DUNN ENGINEERING ASSOCIATES, P.C.

BY: ____/s/_____
WALTER M. DUNN, JR.
President
Dunn Engineering Associates, P.C.

DATED: ____ 04/29/05 ____

/s/
ANTHONY V. NANNI
Counsel for Dunn Engineering Associates, P.C.

DATED: 04/29/05