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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING**

**OF THE DEPARTMENT OF COMMERCE**

**OF THE STATE OF UTAH**

| | | |
|---|---|---|
| IN THE MATTER OF THE LICENSE OF<br>**INKLEY BROTHERS CORPORATION**<br>TO PRACTICE AS A<br>CONTRACTOR<br>IN THE STATE OF UTAH | )<br>)<br>)<br>)<br>) | **STIPULATION AND ORDER**<br><br>CASE NO. DOPL 2010- 30 |

INKLEY BROTHERS CORPORATION ("Respondent") and the Construction Services Commission ("Commission") of the Department of Commerce of the State of Utah stipulate and agree as follows:

1. Respondent admits the jurisdiction of the Commission and the Division of Occupational and Professional Licensing ("Division") over Respondent and over the subject matter of this action. Mark Inkley and David Inkley are the owners of Respondent company and are authorized to act as agent for and enter into binding agreements on behalf of Respondent company. In this Stipulation and Order, the term "Respondent" shall mean Inkley Brothers Corporation, Mark Inkley and David Inkley collectively.

2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter.

4. Respondent understands that Respondent is entitled to a hearing before the Commission, or other Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses. Respondent acknowledges that by executing this document Respondent hereby waives the right to a hearing and any other rights to which Respondent may be entitled in connection with said hearing. Respondent understands that by signing this document Respondent waives all rights to any administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R151-46b-12 through R151-46b-15. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G-4-102(4).

5. Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter.

6. Respondent acknowledges that this Stipulation and Order, if adopted by the Commission and Division, will be classified as a public document. The Commission and Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license to other persons and entities.

7. Respondent admits the following facts are true:

a. Respondent company was first licensed to operate as a contractor in the State of Utah on or about January 24, 2006.

b. Respondent company had a judgment entered against it in the amount of $15,854.10. Respondent has a payment arrangement with the judgment creditor to pay this obligation in monthly payments of $500.00.

c. Respondent company had a state tax lien entered against it in the amount of $12,637.52. Respondent has a payment arrangement with the State Tax Commission to pay this obligation in monthly payments of $526.48.

d. David Inkley had a judgment entered against him, based upon matters related to contracting through Respondent company, in the amount of $4,997.00. Respondent is negotiating with the judgment for settlement of this judgment in full or in monthly payments.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and § 58-55-502(1); and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a). Respondent understands that the issuance of the Order in this matter is disciplinary action by the Division against Respondent's license pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2). Respondent agrees that an Order shall be entered in this matter as follows:

(1) Respondent's license shall be subject to a term of probation for a period of three years. The period of probation shall commence on the effective date of this Stipulation and Order, which is the date the Division Director signs the Order. During the period of probation, Respondent shall be subject to all of the following terms and conditions. If the Commission or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Commission or Division.

a. Respondent shall provide a current copy of an Experian Business Profile business credit report on Inkley Brothers Corporation, personal credit reports on both Mark Inkley and David Inkley, and a current financial statement of Inkley Brothers Corporation, to the Division on a quarterly

basis, and income tax returns of Inkly Brothers Corporation, David Inkley and Mark Inkley, on an annual basis or at such other greater or lesser frequency as determined by the Commission and Division, for the duration of the Stipulation and Order. If the credit reports provided indicate any negative items not previously reported, then Respondent shall additionally provide full written details of the negative items on the credit reports.

b. Respondent shall notify the Division within 10 days after any obligation of Respondent accruing after the date of this stipulation that is not paid in full when it becomes due. The notification shall state the amount not paid when due, to whom the obligation was due and the date the obligation including any penalties and interest is expected to be paid.

c. In the event the amount considered delinquent by the creditors specified in paragraph 7 increases or the credit reports provided by Respondent pursuant to subparagraph (a) above, or other information received by the Division indicates any other obligations are delinquent, or new judgments are entered against Respondent, the Division may require Respondent, at any time, and at the Division's sole discretion, to comply with the following additional requirements:

(i) Prior to taking any new contracting work, Respondent shall inform all clients, suppliers, subcontractors, or other parties involved in the transaction that Respondent's license is currently on probation for failure to maintain financial responsibility. This notice shall be provided in writing and a copy of each notice given under this paragraph shall be provided to the Division at the end of each quarter. Respondent, shall, upon request of any client, supplier, subcontractor or other party involved, furnish a copy of this Stipulation and Order to the other party.

(ii) Respondent shall hire and pay a licensed CPA, pre-approved by the Division, to complete the following:

A. Respondent shall set up a trust checking account that is managed by the CPA. The CPA shall be the only person authorized to sign checks or withdrawals from the trust account.

B. If Respondent receives any funds from any client, construction project, or any other source, the funds shall either (1) be deposited in the trust account, or

(2) be made payable in a joint check to any subcontractor or supplier.

C. Funds from the trust account may be paid to Respondent only after full payment has been made to all of Respondent's subcontractors and suppliers on any given project.

D. Respondent shall cause the CPA shall provide a complete report of trust transactions to the Division on a quarterly basis.

E. Respondent shall cause the CPA to provide a report to the Division, on a quarterly basis, demonstrating procedures by which the CPA has reviewed any deposits going into all bank accounts in which Respondent has an interest and that the CPA has determined that all such deposits comply with the requirements set forth above.

d. Respondent agrees that the maintenance of a solvent financial condition, the timely payment of all newly created obligations accruing after the date of this Stipulation and Order, satisfaction of the $4,997 judgment identified in paragraph 7d above by an agreed upon payoff plan or monthly payment plan reached within 90 days of this agreement, and compliance with all terms and conditions of this Stipulation and Order, are conditions of maintaining Respondent's license.

e. Respondent shall maintain a current license at all times during the period of this agreement.

f. Respondent shall immediately notify the Division in writing of any change in Respondent's business address.

g. Respondent shall be responsible for payment of all costs associated with this Stipulation and Order. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of this Stipulation and Order.

h. If Respondent has still not demonstrated financial responsibility as set forth in Utah Code Ann. § 58-55-306 at the end of the probationary period, the Division may take appropriate action against Respondent. The period of probation shall be tolled while any petition alleging unlawful or unprofessional conduct is pending.

9. This Stipulation and Order, upon approval by the Commission and Division Director, shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Commission and Director are not required to accept the terms of this Stipulation and Order and that if the Commission does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Commission, Director, and the Respondent waive any claim of bias or prejudgment Respondent might have with regard to the Commission and Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice.

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation. Respondent agrees not to take any action or make any public statement, that creates, or tends to create, the impression that any of the matters set forth in this Stipulation and Order are without factual basis. A public statement includes statements to one or more Commission or Board members during a meeting of the Commission or Board. Any such action or statement shall be considered a violation of this Stipulation and Order.

12. The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Commission and Division Director. Respondent must comply with all the terms and conditions of this

Stipulation immediately following the Commission and Division Director's signing of the Order page of this Stipulation and Order. Respondent shall complete all the terms and conditions contained in the Stipulation and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Commission. Failure to complete a term or condition in a timely manner shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

13. If Respondent violates any term or condition of this Stipulation and Order, the Commission may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

14. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

BY: _____
DAN S. JONES
Bureau Manager

DATE: 1-25-10

RESPONDENT

BY: _____
MARK INKLEY
INKLEY BROTHERS CORPORATION

DATE: 1/25-2010

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: _____
L. MITCHELL JONES
Counsel for the Division

DATE: 26 Jan 2010

BY: _____
DAVID INKLEY
INKLEY BROTHERS CORPORATION

DATE: 1/25/2010

## ORDER

THE ABOVE STIPULATION, in the matter of **INKLEY BROTHERS CORPORATION,** is hereby approved by the Construction Services Commission, and constitutes its Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute the Commission's final Order in this case.

DATED this 22 day of Jan, 2010.

CONSTRUCTION SERVICES COMMISSION
Representative

I concur with the above Stipulation and Order, which the Construction Services Commission has approved.

DATED this 27 day of January, 2010.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

MARK B. STEINAGEL
Director