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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)
JAMES GOVOSTES) **STIPULATION AND ORDER**
D/B/A DUN-RITE REFRIGERATION)
TO OPERATE AS A)
CONTRACTOR) **CASE NO DOPL 2010-344**
IN THE STATE OF UTAH)

JAMES GOVOSTES, D/B/A DUN-RITE REFRIGERATION ("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 James Govostes is the owner of Dun-Rite Refrigeration

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 R156-46b-12 through R156-46b-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 was the owner and qualifier of Dun-Rite Refrigeration & HVAC, which was previously licensed as an S360 Refrigeration contractor in the State of Utah from June 23, 2005 until November 31, 2007 when

Respondent allowed his license to expire Respondent has never been licensed as a S350 HVAC contractor in the State of Utah

- b On or about January 30, 2008 Respondent reapplied for reinstatement of his Utah S350 Refrigeration contractor license
- c On or about February 28, 2008 Respondent pleaded guilty to one count of engaging in a combination and conspiracy to suppress and eliminate competition by rigging bids for installation of commercial refrigeration in United States District Court, District of Arizona, Case Number CR06-0877PHX, transferred to the United States District Court, District of Utah as Case Number 2 07-cr-106 The court imposed a \$20,000 00 fine, and Respondent was sentenced to 36 months probation
- d On or about May 31, 2008 the Division offered Respondent a stipulated agreement in which Respondent would be issued a probationary license due Respondent's recent criminal conviction Respondent did not accept the stipulated agreement and Respondent's application for reinstatement was subsequently denied by the Division
- f Despite Respondent's license having been denied by the Division, Respondent, at least 28 separate occasions, between December 1, 2007 and October 5, 2010, knowingly continued to engage in construction activities in the State of Utah for which a contractor license was required
- g Respondent was issued a citation for practicing without a license on or about January 25, 2010 for a violation that occurred on January 12, 2010
- h Respondent was issued a citation for practicing without a license on October 5, 2010 for a violation that occurred on or about April 15, 2010 Respondent admitted the unlawful conduct and paid the fine on October 5, 2010
- i Respondent reported gross receipts from this unlicensed activity for 2008 of \$999,818 72 and 2009 of \$885,192 61 and has continued to practice without a license during 2010
- j Respondent engaged in HVAC contracting activities for which an HVAC contractor license was required, without being licensed as an HVAC contractor, on at least 28 days between June 23, 2005 and January 25, 2010

- 7
- k Respondent has engaged in conduct that resulted in a conviction with respect to a crime of moral turpitude and/or a crime that, when considered with the functions and duties of a contractor, bear a reasonable relationship to Respondent's ability to safely or competently practice as a contractor

8 Respondent admits that Respondent's conduct described above is unlawful conduct as defined in Utah Code Ann § 58-1-501(1)(a) and § 58-55-501(1), and unprofessional conduct as defined in as defined in Utah Code Ann § 58-1-501(2)(a) and (c), and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) and (b) 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(6) and Utah Code Ann § 58-1-401(2) Respondent agrees that an Order shall be entered in this matter as follows

- (a) Respondent shall pay a fine of \$56,000 00 (fifty-six thousand dollars) to the Division, pursuant to Utah Code Ann § 58-55-503 \$38,000 00 (thirty-eight thousand dollars) of the fine shall be suspended Respondent shall pay the unsuspended \$18,000 00 (eighteen thousand dollars) portion of the fine to the Division in monthly payments of \$1,000 00 (one thousand dollars) per month, with the first payment being due 30 days after the effective date of this Stipulation and Order Each monthly payment will thereafter be due on the first day of every succeeding month for the next 17 months If Respondent fails to timely pay any monthly payment or otherwise violates any term or condition of this Stipulation and Order, the suspension shall be lifted, and the \$38,000 suspended portion of the fine shall immediately become due and payable to the Division
- (b) Pursuant to Utah Code Ann § 58-1-401(4), Respondent shall immediately cease and desist from contracting in the State of Utah without a license Respondent understands that failure to comply with this Order may subject Respondent to a civil penalty of up to \$2,000 (two-thousand dollars) for each day the order is violated pursuant to Utah Code Ann § 58-1-503(1)
- (c) Respondent shall be issued a probationary license to practice as a S360 Refrigeration Contractor in the State of Utah, subject to the following terms and conditions, which shall be in effect for a period of four years

commencing upon the date this Stipulation and Order is approved by the Commission and the Division Director

- (1) Respondent shall meet with the Commission, or a Division compliance specialist, on a quarterly basis or at such other greater or lesser frequency as determined by the Division for the duration of the Stipulation and Order
- (2) If Respondent fails to comply with any requirements of the sentence imposed in the criminal case referenced above, Respondent shall notify the Division immediately and may be subject to further sanctions after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license
- (3) If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, Respondent shall cause the Division and Commission to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions
- (4) Respondent shall maintain a current license at all times during the period of this agreement
- (5) Respondent shall annually, or whenever the Division's directs, provide the Division with a current criminal history report for Respondent obtained from the State of Utah, Department Public Safety, or from any other state requested by the Division
- (6) Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address

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. If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Stipulation and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved

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 Respondent understands and agrees that if Respondent has been issued an Order by the Division to pay an administrative penalty or a fine, and Respondent has not paid the administrative penalty or fine in full at the time this Stipulation and Order becomes effective, then Respondent may not reapply for licensure in the State of Utah, in any profession or occupation, until Respondent has paid the administrative penalty or fine in full. Respondent understands and agrees that any application for licensure submitted by Respondent shall be denied for the reason of failure to pay an administrative penalty or fine by the Division until Respondent has paid the administrative penalty or fine in full. The Division may also deny the license for any other lawful reason. Respondent understands and agrees that this surrender of Respondent's license(s) does not extinguish any obligation Respondent has to pay any administrative penalty or fine previously ordered by the Division.

14 Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another

state or any application for licensure Respondent may submit in another state

15 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.

16 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

RESPONDENT

BY 
DAN S. JONES
Bureau Manager

BY 
JAMES GOVOSTES
d/b/a Dun-Rite Refrigeration

DATE 10-13-10

DATE 10-13-2010

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY 
L. MITCHELL JONES
Counsel for the Division

DATE 13 Oct 2010

ORDER

THE ABOVE STIPULATION, in the matter of **JAMES GOVOSTES, D/B/A DUN-RITE REFRIGERATION**, 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(6) 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 13th day of October, 2010


CONSTRUCTION SERVICES COMMISSION
Representative

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

DATED this 14th day of October, 2010

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


MARK B. STEINAGEL
Director