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Assistant Attorney General
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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	)	
AARROW LANDSCAPE	)	**STIPULATION AND ORDER**
CONSTRUCTION, LLC	)	
TO OPERATE AS A CONTRACTOR	)	CASE NO. DOPL 2010-382
IN THE STATE OF UTAH	)	

AARROW LANDSCAPE CONSTRUCTION, LLC ("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. Thomas E. Macaluso is the owner of Respondent company and is 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 both Aarrow Landscape Construction, LLC, and Thomas E. Macaluso, collectively and individually.

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 was first licensed as a contractor in the State of Utah on or about September 16, 1983.

b. Respondent is currently delinquent the amount of $159,634.66 owed to All American Sod Farms for a judgment entered against Respondent. Respondent has a payment arrangement with the judgment creditor to pay this obligation in monthly payments of $500.00 through February 2011 then in monthly payments of $1,000.00.

c. Respondent is currently delinquent the amount of $4,665.74 owed to For-Shor Company for a judgment entered against Respondent. Respondent has a payment arrangement with the judgment creditor to pay this obligation in monthly payments of $500.00.

d. Respondent had tax liens entered against Respondent in the amount of $190,922.11, owed to Internal Revenue Service. Respondent is negotiating with the Internal Revenue Service to pay this obligation in monthly payments and has agreed to pay the monthly payment amount that is required by the Internal Revenue Service.

e. Respondent has judgments entered against Respondent in the amount of $8,929.30 owed to the Utah State Tax Commission. Respondent has since paid the judgments down to $6,137.33. Respondent has a payment arrangement with the Utah State Tax Commission to pay this obligation in monthly payments of $500.00.

f. On the application for renewal of license filed with the Division on or about November 24, 2009, Respondent made a misrepresentation by claiming that all judgments and tax liens had been paid in full.

8. Respondent admits that Respondent's conduct described above is unlawful conduct as defined in Utah Code Ann. § 58-1-501(1)(e) and § 58-55-501(9) and 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) 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:

(1) Respondent shall pay an administrative penalty of $500.00 (five-hundred dollars) to the Division, pursuant to Utah Code Ann. § 58-55-503, within 90 days of the effective date of this Stipulation and Order.

(2) Respondent's license shall be subject to a term of probation for a period of ten 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 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.

b. Respondent shall provide the Division with the following documents on a quarterly basis:

(i) a current copy of an Experian Business Profile business credit report for Aarrow Landscape Construction, LLC; and

(ii) a personal credit report for Thomas E Macaluso.

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.

c. Respondent shall provide the Division with the following documents 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:

(i) a business income tax return for Aarrow Landscape Construction, LLC;

(ii) a personal income tax return for Thomas E Macaluso; and

(iii) a current financial statement for Aarrow Landscape Construction, LLC.

d. Respondent shall notify the Division within 10 days after any obligation of Respondent becoming due 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.

e. 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 (b) above, or any other information received by the Division indicates any other obligations are delinquent, or any new judgment is entered against Respondent, the Division may, at any time and at the Division's sole discretion, require Respondent 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.

F. Respondent agrees that the maintenance of a solvent financial condition, the timely payment of all obligations becoming due after the date of this Stipulation and Order, , including timely payment of the obligations identified in paragraph 7, and compliance with all terms and conditions of this Stipulation and Order, are conditions of maintaining Respondent's license.

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

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

h. 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.

i. Periods of non-compliance with any term or condition of this Stipulation and Order shall not apply toward the reduction of the period of probation set forth in the Stipulation and Order.

j. 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. 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. 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 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. 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: 1-18-11

RESPONDENT

BY: _____
THOMAS E. MACALUSO
Aarrow Landscape Construction, LLC

DATE: 1-18-11

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: _____
L. MITCHELL JONES
Counsel for the Division

DATE: 19 Jan 2011

ORDER

THE ABOVE STIPULATION, in the matter of **AARROW LANDSCAPE CONSTRUCTION, LLC**, 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 26 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