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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)	
TRITEX CONSTRUCTION GROUP, INC)	STIPULATION AND ORDER
TO OPERATE AS A)	
CONTRACTOR)	CASE NO. DOPL - 2012-403
IN THE STATE OF UTAH)	

TRITEX CONSTRUCTION GROUP, INC (“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. Joseph E. Fullmer 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 Tritex Construction Group, Inc, and Joseph E Fullmer, individually and 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 Rosales Inc, d/b/a Tritex Inc, was initially licensed as a contractor on or about January 16, 1998, with Oscar D Rosales listed as the qualifier and owner. The Utah contractor license for Rosales, Inc d/b/a Tritex, Inc expired prior to August 6, 2001.
- b On or about August 6, 2001, citation #13521 (Case #9414) was issued to Rosales, Inc for contracting without a license and was ordered to cease and desist from engaging in the construction trades without a license. Rosales, Inc asserts that it timely submitted an application for renewal of licensure together with a check for the renewal fee to the Division prior to the expiration of the licensure. This documentation was not received by the Division and the check was never deposited by the Division and this defense was not proven at the time the citation became final in August 2001.
- c Subsequent to the August 6, 2001 citation, the license of Rosales, Inc (license number 353527-5501) was reinstated.
- d On or about February 1, 2008 Rosales Inc, entered into a Professional Services Agreement with PayDay Payroll, LLC, using the name of Tritex Inc.
- e On or about December 28, 2009, TCG, Inc, with Oscar Rosales as its owner, was incorporated (Corporation #7550008-0142) with specialty #2361 - Residential Building Construction. No contractor license application has ever been submitted to or approved by the Division for TCG, Inc.
- f TCG, Inc, then used the Professional Services Agreement between PayDay Payroll LLC and Tri-Tex Inc to pay workers to engage in the construction trades on behalf of TCG, Inc.
- g On or about March 24, 2010 Oscar Rosales filed bankruptcy (Claim #10-23537) in federal court. The bankruptcy schedules indicated a negative equity of \$6,616,472.79.
- h On or about January 12, 2011, Oscar Rosales associated himself with Hard Rock Masonry Inc, claiming to be an officer of the company, and reinstated its corporate registration with the Division of Corporations. Previously Hard Rock Masonry's license had expired on December 8,

2009 Hard Rock Masonry changed its name to Tritex Construction Group Inc On or about February 2, 2011 Oscar Rosales filed a change of name request with the Division on the contractor license issued to Hard Rock Masonry, to change the name to Tritex Construction Group Inc

- i The name of Hardrock Masonry Inc was intentionally changed to be similar to Rosales' prior entity and dba name and with the same initials so as to appear to customers or clients of Rosales Inc, dba Tri-Tex Inc or TCG Inc., or other third parties that it was still the same entity that they were dealing with.
- j On or about January 19, 2011 the Division suspended contractor license of Tritex (No 353527-5501) because of lien recovery fund (LRF) payments. As a result of the LRF payout & order, Oscar Rosales was prohibited from being a qualifier, owner, officer or director of any contractor licensee by the Department of Commerce
- k On or about May 13, 2012, Rosales, Inc surrendered its license to the Division
- l On or about October 8, 1997, Respondent was initially licensed as a contractor in the State of Utah under License No 3473338-5501 as "J F Construction, Inc."
- m On or about April 6, 2001, Respondent changed its name to Hard Rock Masonry, Inc
- n. On or about December 8, 2009 Respondent's corporation entity expired with the Utah Division of Corporations The corporation entity was reinstated on or about January 12, 2011 by Oscar Rosales, Respondent's officer
- o On or about January 7, 2011 Respondent filed a federal income tax return for "Hard Rock Construction, Inc," a/k/a Hard Rock Masonry, Inc, for the tax year 2009 that showed no activity No tax returns were filed for 2010 or 2011
- p On or about January 12, 2011 Oscar Rosales changed Respondent's name with the Division of Corporations from Hard Rock Masonry, Inc to Tritex Construction Group, Inc.
- q On or about February 2, 2011 Oscar Rosales filed a change of name with the Division on the contractor license issued to Hard Rock Masonry to Tritex Construction Group Inc

- r On or about July 29, 2011, Oscar Rosales submitted a credit application to L.K L Associates, Inc. stating the name on the credit application as “TCG Inc” and further stating that Oscar Rosales was the owner of the company
- s. On or about December 9, 2011 Respondent submitted a bid for work with the heading “TCG Inc, Tritex Construction Group Inc” and with small print at bottom of bid stated “TCG INC is authorized to do the work”
- t. Respondent and its owner have failed to maintain financial responsibility in violation of Utah Code Ann. §§ 58-55-502(1), which lack of financial responsibility includes:
 - i. On or about March 31, 2006, a judgment in the amount of \$13,000 00 was entered in favor of Stephen W Rupp, Trustee against Joseph E, Fullmer (Fourth District Court, Utah County, State of Utah, Case No 066401733) As of the date of this Stipulation, Respondent has not satisfied the judgment.
 - ii On or about February 5, 2007 a judgment in the amount of \$3,830.50 was entered in favor of EPN, Inc against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No 060403412) As of the date of this Stipulation, Respondent has not satisfied the judgment
 - iii. On or about February 8, 2011 a judgment in the amount of \$387 82 was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No 086408584) As of the date of this Stipulation, Respondent has not satisfied the judgment.
 - iv On or about November 17, 2008 a judgment in the amount of \$975 35 was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No 086408684) As of the date of this Stipulation, Respondent has not satisfied the judgment.
 - v On or about November 17, 2008 a judgment in the amount of \$781 20 was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No 086408755) As of the date of this Stipulation, Respondent has not satisfied the judgment.
 - vi. On or about December 22, 2008 a judgment in the amount of

\$1,051 02 was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No 086409841) As of the date of this Stipulation, Respondent has not satisfied the judgment

- vii On or about May 23, 2011 a judgment in the amount of \$805 58 was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Third District Court-Salt Lake, Salt Lake County, State of Utah, Case No 116916929) As of the date of this Stipulation, Respondent has not satisfied the judgment.
- u Respondent failed to disclose judgments and tax liens when asked by the Division during the renewal of licensure process if all judgments, lien liens, child support, etc. had been satisfied Respondent obtained a license through misrepresentation to the Division.
- v Respondent violated the law by allowing TCG Inc and Oscar D Rosales to use Respondent's contractor license to contract with PayDay Resources to make payments to unlicensed individuals working for Respondent for construction activities Pursuant to that agreement Respondent paid over \$500,000 to 66 unlicensed individuals, all paid on 1099 forms, to engage in construction trades in Utah These persons were all paid through PayDay Resources, a payroll processing company, on a bi-weekly basis, as if they were employees However, all had actually been designated as 1099 (independent contractors).

8 Respondent admits that Respondent's conduct described above is unlawful conduct as defined in Utah Code Ann. §§ 58-1-501(1)(d), §§ 58-55-501(3), (9) and (10), and unprofessional conduct as defined in Utah Code Ann. §§ 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

- a Respondent is assessed fines in the following amounts

- i Pursuant to Utah Code Ann §§ 58-55-503(4), Respondent is assessed a fine in the amount of \$1,000 00 (one-thousand dollars) for violation of Utah Code Ann §§ 58-55-501(10), for allowing Oscar Rosales and TCG Inc, to use its license and the authority of its license to support the unlicensed activity of Oscar Rosales and TCG Inc in representing themselves as a contractor while submitting a credit application
- ii Pursuant to Utah Code Ann. §§ 58-55-503(4), Respondent is assessed a fine in the amount of \$1,000 00 (one-thousand dollars) for violation of Utah Code Ann §§58-55-501(10), for allowing Oscar Rosales and TCG Inc to use its license and the authority of its license to support the unlicensed activity of Oscar Rosales and TCG Inc unlawfully representing themselves as contractors while submitting a bid
- iii Pursuant to Utah Code Ann. §§ 58-55-503(4), Respondent is assessed a fine in the amount \$1,000 00 (one thousand dollars) for violation of Utah Code Ann §§ 58-55-501(9), for obtaining a license by misrepresentation in violation of Utah Code Ann §§58-1-501(1)(e)
- iv. Pursuant to Utah Code Ann §§ 58-55-503(4), Respondent is assessed a fine in the amount of \$52,800 00 (fifty-two thousand eight hundred dollars), comprised of a fine of \$800 (eight hundred dollars) for each of the 66 violations of hiring unlicensed individuals in violation of Utah Code Ann. §§ 58-55-501(3)
- v The sum of \$3,000 00 (three-thousand dollars) of the above fines shall be paid within 30 days of this order *paid 4/24/2013*
- vi In regard to the remaining \$52,800 fine, the Division will consider TCG's payment of \$5,280 00 (five-thousand two hundred and eighty dollars), which is required by TCG's separate stipulation with the Division, to satisfy the first \$5,280 of Respondent's \$52,800 fine as well as the first \$5,280 00 of TCG \$52,800 fine The remaining \$47,520 00 (forty-seven thousand five hundred and twenty dollars) portion of the fine shall be suspended If any of the following conditions are violated, the entire amount of the suspended portion of the fine shall immediately become due and payable
 - 1 Respondent shall engage in no further violation of Utah Code Ann § 58-1-501(1)(d) and § 58-55-501(3) and (9) within 3 years of the date of this Stipulation
 - 2 \$8,280 in fines is paid in full to the Division within 30 days of the date of this Stipulation and Order

- b Respondent hereby surrenders its license to operate as a contractor in the State of Utah and agrees to cease and desist from engaging in construction activities for which a license is required.
- c Respondent shall cease and desist from engaging in the unlawful activities described above
- d. Respondent may at anytime after the effective date of this Stipulation submit an application for a Utah contractor license. A license shall be granted, subject to probationary terms and conditions, which shall be agreed upon by the parties in the future, if Respondent meets all of the following conditions:
 - i Respondent has fully paid the fines described above
 - ii Respondent posts a Contractor License Bond in the amount of \$75,000 on an approved Division form
 - iii Respondent meets all of the other requirements for licensure

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 activities in the construction industry. 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

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 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.

14 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

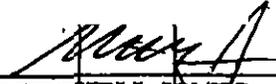
15 Respondent has read each and every paragraph contained in this Stipulation and Order Respondent understands each and every paragraph contained in this Stipulation and Order Respondent has no questions about any paragraph or provision contained in this Stipulation and Order

PROFESSIONAL LICENSING

BY: 
DAN E. JONES
Business Manager

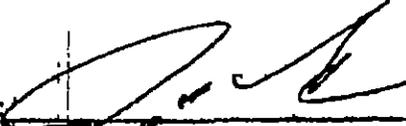
DATE: 5-1-13

JOHN E. SWALLOW
ATTORNEY GENERAL

BY: 
L. MITCHELL JONES
Counsel for the Division

DATE: 1 May 13

RESPONDENT

BY: 
JOSEPH E FULLMER
Tritex Construction Group Inc

DATE: 4-24-13

ORDER

THE ABOVE STIPULATION, in the matter of **TRITEX CONSTRUCTION GROUP, INC**, 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 24 day of April, 2013


CONSTRUCTION SERVICES COMMISSION
Representative

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

DATED this 1 day of May, 2013

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING



for
W. Roy Walker, Acting Director
MARK B. STEINAGEL
Director