

CONTRACT
31592

THIS CONTRACT is made and entered, in duplicate, as of March 24, 2010 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on March 23, 2010, by and between ELITE BOBCAT SERVICE, INC., a California corporation ("Contractor"), whose address is 1320 E. 6th Street, Suite 100, Corona, California 92879, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, pursuant to a "Notice Inviting Bids for Improvement of Los Coyotes Diagonal Between Outer Traffic Circle and Studebaker Road in the City of Long Beach, California," bids were received, publicly opened on February 26, 2010 and declared on the date specified in said Notice; and

WHEREAS, the City Manager accepted the bid of Contractor; and

WHEREAS, the City Council authorized the City Manager to enter a contract with Contractor for the work described in Plans & Specifications No. R-6782;

NOW, THEREFORE, in consideration of the mutual terms and conditions herein, the parties agree as follows:

1. SCOPE OF WORK. Contractor shall furnish all necessary labor, supervision, tools, materials, supplies, appliances, equipment and transportation for the work described in "Plans & Specifications No. R-6782 for Improvement of Los Coyotes Diagonal Between Outer Traffic Circle and Studebaker Road in the City of Long Beach, California," said work to be performed according to the Contract Documents identified below. However, this Contract is intended to provide to City complete and finished work and, to that end, Contractor shall do everything necessary to complete the work, whether or not specifically described in the Contract Documents.

2. PRICE AND PAYMENT.

A. City shall pay to Contractor the amount(s) for materials and work identified in Contractor's "Bid for Improvement of Los Coyotes Diagonal

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Between Outer Traffic Circle and Studebaker Road in the City of Long Beach,
2 California," attached hereto as Exhibit "A".

3 B. Contractor shall submit requests for progress payments and
4 City will make payments in due course of payments in accordance with Section 9
5 of the Standard Specifications for Public Works Construction (latest edition).

6 3. CONTRACT DOCUMENTS.

7 A. The Contract Documents include: The Notice Inviting Bids,
8 Plans & Specifications No. R-6782 (which may include by reference the Standard
9 Specifications for Public Works Construction, latest edition, and any supplements
10 thereto, collectively the "Standard Specifications"); the City of Long Beach
11 Standard Plans; Plans and Drawings No. C-5775 for this work; the California Code
12 of Regulations; the various Uniform Codes applicable to trades; the prevailing
13 wage rates; Instructions to Bidders; the Bid; the bid security; the City of Long
14 Beach Disadvantaged, Minority and Women-Owned Business Enterprise Program;
15 this Contract and all documents attached hereto or referenced herein including but
16 not limited to insurance; Bond for Faithful Performance; Payment Bond; Notice to
17 Proceed; Notice of Completion; any addenda or change orders issued in
18 accordance with the Standard Specifications; any permits required and issued for
19 the work; approved final design drawings and documents; and the Information
20 Sheet. These Contract Documents are incorporated herein by the above
21 reference and form a part of this Contract.

22 B. Notwithstanding Section 2-5.2 of the Standard Specifications,
23 if any conflict or inconsistency exists or develops among or between Contract
24 Documents, the following priority shall govern: 1) Change Orders; 2) this Contract;
25 3) Permit(s) from other public agencies; 4) Plans & Specifications No. R-6782; 5)
26 Addenda; 6) Plans and Drawings No. C-5775; 7) the City of Long Beach Standard
27 Plans; 8) Standard Specifications; 9) other reference specifications; 10) other
28 reference plans; 11) the bid; and 12) the Notice Inviting Bids.

1 4. TIME FOR CONTRACT. Contractor shall commence work on a date
2 to be specified in a written "Notice to Proceed" from City and shall complete all work
3 within ninety (90) working days thereafter, subject to strikes, lockouts and events beyond
4 the control of Contractor. Time is of the essence hereunder. City will suffer damage if
5 the work is not completed within the time stated, but those damages would be difficult or
6 impractical to determine. So, Contractor shall pay to City, as liquidated damages, the
7 amount stated in the Contract Documents.

8 5. ACCEPTANCE OF WORK NOT TO CONSTITUTE A WAIVER. The
9 acceptance of any work or the payment of any money by City shall not operate as a
10 waiver of any provision of any Contract Document, of any power reserved to City, or of
11 any right to damages or indemnity hereunder. The waiver of any breach or any default
12 hereunder shall not be deemed a waiver of any other or subsequent breach or default.

13 6. WORKERS' COMPENSATION CERTIFICATION. Concurrently
14 herewith, Contractor shall submit certification of Workers' Compensation coverage in
15 accordance with California Labor Code Sections 1860 and 3700, a copy of which is
16 attached hereto as Exhibit "B".

17 7. CLAIMS FOR EXTRA WORK. No claim shall be made at any time
18 upon City by Contractor for and on account of any extra or additional work performed or
19 materials furnished, unless such extra or additional work or materials shall have been
20 expressly required by the City Manager and the quantities and price thereof shall have
21 been first agreed upon, in writing, by the parties hereto.

22 8. CLAIMS. Contractor shall, upon completion of the work, deliver
23 possession thereof to City ready for use and free and discharged from all claims for labor
24 and materials in doing the work and shall assume and be responsible for, and shall
25 protect, defend, indemnify and hold harmless City from and against any and all claims,
26 demands, causes of action, liability, loss, costs or expenses for injuries to or death of
27 persons, or damages to property, including property of City, which arises from or is
28 connected with the performance of the work.

1 9. INSURANCE. Prior to commencement of work, and as a condition
2 precedent to the effectiveness of this Contract, Contractor shall provide to City evidence
3 of all insurance required in the Contract Documents.

4 In addition, Contractor shall complete and deliver to City the form
5 (“Information Sheet”) attached as Exhibit “C” and incorporated by reference, to comply
6 with Labor Code Section 2810.

7 10. WORK DAY. Contractor shall comply with Sections 1810 through
8 1815 of the California Labor Code regarding hours of work. Contractor shall forfeit, as a
9 penalty to City, the sum of Twenty-five Dollars (\$25) for each worker employed by
10 Contractor or any subcontractor for each calendar day such worker is required or
11 permitted to work more than eight (8) hours unless that worker receives compensation in
12 accordance with Section 1815.

13 11. PREVAILING WAGE RATES. Contractor is directed to the
14 prevailing wage rates. Contractor shall forfeit, as a penalty to the City, Fifty Dollars (\$50)
15 for each laborer, worker or mechanic employed for each calendar day, or portion thereof,
16 that such laborer, worker or mechanic is paid less than the prevailing wage rates for any
17 work done by Contractor, or any subcontractor, under this Contract.

18 12. COORDINATION WITH GOVERNMENTAL REGULATIONS.

19 A. If the work is terminated pursuant to an order of any Federal
20 or State authority, Contractor shall accept as full and complete compensation
21 under this Contract such amount of money as will equal the product of multiplying
22 the Contract price stated herein by the percentage of work completed by
23 Contractor as of the date of such termination, and for which Contractor has not
24 been paid. If the work is so terminated, the City Engineer, after consultation with
25 Contractor, shall determine the percentage of work completed and the
26 determination of the City Engineer shall be final.

27 B. If Contractor is prevented, in any manner, from strict
28 compliance with the Plans and Specifications due to any Federal or State law, rule

1 or regulation, in addition to all other rights and remedies reserved to the parties
2 City may by resolution of the City Council suspend performance hereunder until
3 the cause of disability is removed, extend the time for performance, make changes
4 in the character of the work or materials, or terminate this Contract without liability
5 to either party.

6 13. NOTICES.

7 A. Any notice required hereunder shall be in writing and
8 personally delivered or deposited in the U.S. Postal Service, first class, postage
9 prepaid, to Contractor at the address first stated herein, and to the City at 333
10 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager. Notice
11 of change of address shall be given in the same manner as stated herein for other
12 notices. Notice shall be deemed given on the date deposited in the mail or on the
13 date personal delivery is made, whichever first occurs.

14 B. Except for stop notices and claims made under the Labor
15 Code, City will notify Contractor when City receives any third party claims relating
16 to this Contract in accordance with Section 9201 of the Public Contract Code.

17 14. BONDS. Contractor shall, simultaneously with the execution of this
18 Contract, execute and deliver to City a good and sufficient corporate surety bond, in the
19 form attached hereto and in the amount specified therein, conditioned upon the faithful
20 performance of this Contract by Contractor, and a good and sufficient corporate surety
21 bond, in the form attached hereto and in the amount specified therein, conditioned upon
22 the payment of all labor and material claims incurred in connection with this Contract.

23 15. COVENANT AGAINST ASSIGNMENT. Neither this Contract nor
24 any of the moneys that may become due Contractor hereunder may be assigned by
25 Contractor without the written consent of City first had and obtained, nor will City
26 recognize any subcontractor as such, and all persons engaged in the work of
27 construction will be considered as independent contractors or agents of Contractor and
28 will be held directly responsible to Contractor.

1 16. CERTIFIED PAYROLL RECORDS.

2 A. Contractor shall keep and shall cause each subcontractor
3 performing any portion of the work under this Contract to keep an accurate payroll
4 record, showing the name, address, social security number, work classification,
5 straight time and overtime hours worked each day and week, and the actual per
6 diem wages paid to each journeyman, apprentice, worker, or other employee
7 employed by Contractor or subcontractor in connection with the work, all in
8 accordance with Division 2, Part 7, Article 2 of the California Labor Code. Such
9 payroll records for Contractor and all subcontractors shall be certified and shall be
10 available for inspection at all reasonable hours at the principal office of Contractor
11 pursuant to the provisions of Section 1776 of the Labor Code. Contractor's failure
12 to furnish such records to City in the manner provided herein for notices shall
13 entitle City to withhold the penalty prescribed by law from progress payments due
14 to Contractor.

15 B. Upon completion of the work, Contractor shall submit to the
16 City certified payroll records for Contractor and all subcontractors performing any
17 portion of the work under this Contract. Certified payroll records for Contractor
18 and all subcontractors shall be maintained during the course of the work and shall
19 be kept by Contractor for up to three (3) years after completion of the work.

20 C. The foregoing is in addition to, and not in lieu of, any other
21 requirements or obligations established and imposed by any department of the
22 City with regard to submission and retention of certified payroll records for
23 Contractor and subcontractors.

24 17. RESPONSIBILITY OF CONTRACTOR. Notwithstanding anything to
25 the contrary in the Standard Specifications, Contractor shall have the responsibility, care
26 and custody of the work. If any loss or damage occurs to the work that is not covered by
27 collectible commercial insurance, excluding loss or damage caused by earthquake or
28 flood or the negligence or willful misconduct of City, then Contractor shall immediately

1 make the City whole for any such loss or pay for any damage. If Contractor fails or
2 refuses to make the City whole or pay, then City may do so and the cost and expense of
3 doing so shall be deducted from the amount due Contractor from City hereunder.

4 18. CONTINUATION. Termination or expiration of this Contract shall not
5 terminate the rights or liabilities of either party which rights or liabilities accrued or existed
6 prior to termination or expiration of this Contract.

7 19. TAXES AND TAX REPORTING.

8 A. As required by federal and state law, City is obligated to report
9 the payment of compensation to Contractor on Form 1099-Misc. and Contractor
10 acknowledges that Contractor is not entitled to payment under this Contract until it
11 has provided its Employer Identification Number to City. Contractor shall be solely
12 responsible for payment of all federal and state taxes resulting from payments
13 under this Contract.

14 B. Contractor shall cooperate with City in all matters relating to
15 taxation and the collection of taxes, particularly with respect to the self-accrual of
16 use tax. Contractor shall cooperate as follows: (i) for all leases and purchases of
17 materials, equipment, supplies, or other tangible personal property totaling over
18 \$100,000 shipped from outside California, a qualified Contractor shall complete
19 and submit to the appropriate governmental entity the form in Appendix "A"
20 attached hereto; and (ii) for construction contracts and subcontracts totaling
21 \$5,000,000 or more, Contractor shall obtain a sub-permit from the California Board
22 of Equalization for the Work site. "Qualified" means that the Contractor purchased
23 at least \$500,000 in tangible personal property that was subject to sales or use tax
24 in the previous calendar year.

25 C. Contractor shall create and operate a buying company, as
26 defined in State of California Board of Equalization Regulation 1699, subpart (h),
27 in City if Contractor will purchase over \$10,000 in tangible personal property
28 subject to California sales and use tax.

1 D. In completing the form and obtaining the permit(s), Contractor
2 shall use the address of the Work site as its business address and may use any
3 address for its mailing address. Copies of the form and permit(s) shall also be
4 delivered to the City Engineer. The form must be submitted and the permit(s)
5 obtained as soon as Contractor receives a Notice to Proceed. Contractor shall not
6 order any materials or equipment over \$100,000 from vendors outside California
7 until the form is submitted and the permit(s) obtained and, if Contractor does so, it
8 shall be a material breach of this Contract. In addition, Contractor shall make all
9 purchases from the Long Beach sales office of its vendors if those vendors have a
10 Long Beach office and all purchases made by Contractor under this Contract
11 which are subject to use tax of \$500,000 or more shall be allocated to the City of
12 Long Beach. Contractor shall require the same cooperation with City, with regards
13 to subsections B, C and D under this section (including forms and permits), from
14 its subcontractors and any other subcontractors who work directly or indirectly
15 under the overall authority of this Contract.

16 E. Contractor shall not be entitled to and by signing this Contract
17 waives any claim or damages for delay against City if Contractor does not timely
18 submit these forms to the appropriate governmental entity. Contractor may
19 contact the City Controller at (562) 570-6450 for assistance with the form.

20 20. ADVERTISING. Contractor shall not use the name of City, its
21 officials or employees in any advertising or solicitation for business, nor as a reference,
22 without the prior approval of the City Manager, City Engineer or designee.

23 21. AUDIT. If payment of any part of the consideration for this Contract
24 is made with federal, state or county funds and a condition to the use of those funds by
25 City is a requirement that City render an accounting or otherwise account for said funds,
26 then City shall have the right at all reasonable times to examine, audit, inspect, review,
27 extract information from, and copy all books, records, accounts and other information
28 relating to this Contract.

1 22. NO PECULIAR RISK. Contractor acknowledges and agrees that the
2 work to be performed hereunder does not constitute a peculiar risk of bodily harm and
3 that no special precautions are required to perform said work.

4 23. THIRD PARTY BENEFICIARY. This Contract is intended by the
5 parties to benefit themselves only and is not in any way intended or designed to or
6 entered for the purpose of creating any benefit or right of any kind for any person or entity
7 that is not a party to this Contract.

8 24. SUBCONTRACTORS. Contractor agrees to and shall bind every
9 subcontractor to the terms of this Contract; provided, however, that nothing herein shall
10 create any obligation on the part of City to pay any subcontractor except in accordance
11 with a court order in an action to foreclose a stop notice. Failure of Contractor to comply
12 with this Section shall be deemed a material breach of this Contract. A list of
13 subcontractor(s) submitted by Contractor in compliance with Public Contract Code
14 Sections 4100 et seq. is attached hereto as Exhibit "D" and incorporated herein by this
15 reference.

16 25. NO DUTY TO INSPECT. No language in this Contract shall create
17 and City shall not have any duty to inspect, correct, warn of or investigate any condition
18 arising from Contractor's work hereunder, or to insure compliance with laws, rules or
19 regulations relating to said work. If City does inspect or investigate, the results thereof
20 shall not be deemed compliance with or a waiver of any requirements of the Contract
21 Documents.

22 26. GOVERNING LAW. This Contract shall be governed by and
23 construed pursuant to the laws of the State of California (except those provisions of
24 California law pertaining to conflicts of laws).

25 27. INTEGRATION. This Contract, including the Contract Documents
26 identified in Section 3 hereof, constitutes the entire understanding between the parties
27 and supersedes all other agreements, oral or written, with respect to the subject matter
28 herein.

1 28. COSTS. If there is any legal proceeding between the parties to
2 enforce or interpret this Contract or to protect or establish any rights or remedies
3 hereunder, the prevailing party shall be entitled to its costs, including reasonable
4 attorney's fees.

5 29. NONDISCRIMINATION. In connection with performance of this
6 Contract and subject to federal laws, rules and regulations, Contractor shall not
7 discriminate in employment or in the performance of this Contract on the basis of race,
8 religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV
9 status, handicap or disability. It is the policy of the City to encourage the participation of
10 Disadvantaged, Minority and Women-Owned Business Enterprises, and the City
11 encourages Contractor to use its best efforts to carry out this policy in the award of all
12 subcontracts.

13 30. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
14 accordance with the provisions of the Ordinance, this Contract is subject to the applicable
15 provisions of the Equal Benefits Ordinance ("EBO"), section 2.73 et seq. of the Long
16 Beach Municipal Code, as amended from time to time.

17 A. During the performance of this Contract, the Contractor
18 certifies and represents that the Contractor will comply with the EBO. The
19 Contractor agrees to post the following statement in conspicuous places at its
20 place of business available to employees and applicants for employment:

21 "During the performance of a Contract with the City of Long Beach,
22 the Contractor will provide equal benefits to employees with spouses and its
23 employees with domestic partners. Additional information about the City of
24 Long Beach's Equal Benefits Ordinance may be obtained from the City of
25 Long Beach Business Services Division at 562-570-6200."

26 B. The failure of the Contractor to comply with the EBO will be
27 deemed to be a material breach of the Contract by the City.

28 C. If the Contractor fails to comply with the EBO, the City may

1 cancel, terminate or suspend the Contract, in whole or in part, and monies due or
2 to become due under the Contract may be retained by the City. The City may also
3 pursue any and all other remedies at law or in equity for any breach.

4 D. Failure to comply with the EBO may be used as evidence
5 against the Contractor in actions taken pursuant to the provisions of Long Beach
6 Municipal Code 2.93 et seq., Contractor Responsibility.

7 E. If the City determines that the Contractor has set up or used
8 its contracting entity for the purpose of evading the intent of the EBO, the City may
9 terminate the Contract on behalf of the City. Violation of this provision may be
10 used as evidence against the Contractor in actions taken pursuant to the
11 provisions of Long Beach Municipal Code section 2.93 et seq., Contractor
12 Responsibility.

13 31. DEFAULT. Default shall include but not be limited to Contractor's
14 failure to perform in accordance with the Plans and Specifications, failure to comply with
15 any Contract Document, failure to pay any penalties, fines or charges assessed against
16 Contractor by any public agency, failure to pay any charges or fees for services
17 performed by the City, and if Contractor has substituted any security in lieu of retention,
18 then default shall also include City's receipt of a stop notice. If default occurs and
19 Contractor has substituted any security in lieu of retention, then in addition to City's other
20 legal remedies, City shall have the right to draw on the security in accordance with Public
21 Contract Code Section 22300 and without further notice to Contractor. If default occurs
22 and Contractor has not substituted any security in lieu of retention, then City shall have
23 all legal remedies available to it.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

ELITE BOBCAT SERVICE, INC. a California corporation

MARCH 26, 2010

By [Signature]
President
JOSEPH NANCEI
Type or Print Name

MARCH 26, 2010

By [Signature]
Secretary
JOSEPH NANCEI
Type or Print Name

"Contractor"

CITY OF LONG BEACH, a municipal corporation Assistant City Manager

4.26, 2010

By [Signature]
City Manager
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City"

This Contract is approved as to form on 4/13,

2010.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

EXHIBIT A

BIDDER'S NAME: Elite Bobcat Service, Inc.

**BID TO THE CITY OF LONG BEACH
IMPROVEMENT OF LOS COYOTES DIAGONAL
BETWEEN OUTER TRAFFIC CIRCLE AND STUDEBAKER ROAD**

In accordance with the Notice Inviting Bids for this Work in the City of Long Beach, California, to be opened on February 26, 2010 at 10:00 a.m., we offer to furnish all necessary labor, tools, materials, appliances and equipment for and perform all Work mentioned in the Notice Inviting Bids, in full compliance with Plans & Specifications No. R-6782 at the prices listed below.

We certify that we have examined the site and that the Bid is complete. By signing the Bid, we certify that the Contractor will not submit a claim based on failure to examine the site thoroughly.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE (IN FIGURES)	ITEM TOTAL (IN FIGURES)
1.	Concrete Removal	729	CY	96.00	69,984.00
2.	Bituminous Pavement Removal	49	CY	113.00	5,537.00
3.	Unclassified Excavation	471	CY	55.00	25,905.00
4.	Root Pruning	576	LF	26.00	14,976.00
5.	Tree Pruning	48	Ea	258.00	12,384.00
6.	Adjust City Manhole Frame & Cover	33	Ea	567.00	18,711.00
7.	Adjust Water Valve Box & Cover and Meter Box & Cover	40	Ea	515.00	20,600.00
8.	Reconstruct Water Valve Box & Cover	38	Ea	620.00	23,560.00
9.	Adjust Water Vault & Cover to Grade	1	Ea	1,290.00	1,290.00
10.	Adjust Gas Valve Box & Cover	4	Ea	464.00	1,856.00
11.	Relocate Traffic Signal Pull Box & Cover	2	Ea	2,060.00	4,120.00
12.	Relocate Street Light	2	Ea	5,150.00	10,300.00
13.	Do Not Disturb Monument - Reset C.I. Casting	51	Ea	540.00	27,540.00
14.	Survey Monument Casting & Cover	1	Ea	620.00	620.00

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE (IN FIGURES)	ITEM TOTAL (IN FIGURES)
15.	Reset 6" Spike & Washer	2	Ea	412.00	824.00
16.	PCC Curb, SPPWC Type A1(8)	35	LF	18.00	630.00
17.	PCC Curb & Gutter, SPPWC Type A2, W=2'	7,580	LF	24.00	181,920.00
18.	PCC Sidewalk, 3" Thick	15,462	SF	3.75	57,982.50
19.	Curb Ramp Detectable Warning Surface	1,068	SF	39.00	41,652.00
20.	PCC Driveway Apron, 6" Thick	223	SF	6.00	1,338.00
21.	PCC Alley Intersection, 6" Thick	350	SF	8.00	2,800.00
22.	PCC Bus Stop Street Pad, 10" Thick	5,350	SF	8.00	42,800.00
23.	Cross Gutter, 8" Thick	2,070	SF	8.00	16,560.00
24.	Crushed Miscellaneous Base	488	CY	47.00	22,936.00
25.	(S) Cold Milling Asphalt Concrete Pavement	176,200	SY	1.45	255,490.00
26.	Asphalt Concrete Pavement	15,000	Ton	24.00 24.00	360,000.00 360,000.00
27.	Asphalt Rubber Hot Mix (ARHM)	19,850	Ton	60.00 70.00 60.00	1,191,000.00 1,389,500.00 1,191,000.00
28.	(S) Pavement Markers, Markings and Traffic Striping	1	LS	53,300.00	53,300.00
29.	(S) Permanent Roadway Signing	1	LS	8,500.00	8,500.00
30.	(S) Loop Detectors	151	Ea	205.00	30,955.00
31.	Temporary Traffic Control Devices	1	LS	100,000.00	100,000.00
32.	Caltrans Encroachment Permit Compliance	1	LS	3,000.00	3,000.00

TOTAL AMOUNT BID 3,347,570.50

We understand that these quantities are estimates only and are given solely for the purpose of facilitating the comparison of Bids, and that the Contractor's compensation will be computed on the basis of the actual quantities in the completed Work.

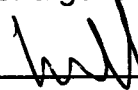
WORKERS' COMPENSATION CERTIFICATION

In accordance with California Labor Code Sections 1860 and 3700, I certify that I am aware of the provisions of Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with said provisions before commencing the performance of the Work of this contract.

Contractor's Name:

ELITE BOBCAT SERVICE, INC.

Signature of Contractor, or a corporate officer
of Contractor, or a general partner of Contractor



Title: PRESIDENT

Date: 3/26/10

EXHIBIT "B"

INFORMATION TO COMPLY WITH LABOR CODE SEC. 2810

To comply with Labor Code Sec. 2810, Contractor shall complete and submit this Information Sheet which shall be incorporated into and be a part of the Contract:

- 1) Workers' Compensation Insurance:
 - A. Policy Number: BB1091560
 - B. Name of Insurer (NOT Broker): SEABRIGHT INS CO
 - C. Address of Insurer: 1501 4TH AVENUE, SUITE 2600, SEATTLE, WA 98101-1664
 - D. Telephone Number of Insurer: 206-269-8500

- 2) For vehicles owned by Contractor and used in performing work under this Contract:
 - A. VIN (Vehicle Identification Number): NOT YET DETERMINED
 - B. Automobile Liability Insurance Policy Number: CM009164
 - C. Name of Insurer (NOT Broker): UNIGARD INS CO
 - D. Address of Insurer: 15805 NE 24TH STREET, BELLEVUE, WA 98008-2409
 - E. Telephone Number of Insurer: 800-777-1757

- 3) Address of Property used to house workers on this Contract, if any: NA

- 4) Estimated total number of workers to be employed on this Contract: 40

- 5) Estimated total wages to be paid those workers: \$213,000.00

- 6) Dates (or schedule) when those wages will be paid: PAID WEEKLY - DATES NOT YET DETERMINED
(Describe schedule. For example, weekly or every other week or monthly)

- 7) Estimated total number of independent contractors to be used on this Contract: 5

- 8) Taxpayer's Identification Number: [REDACTED]

EXHIBIT "C"

EXHIBIT D

LIST OF SUBCONTRACTORS

The Bidder shall set forth hereon, the name, location of the place of business, and telephone number of each subcontractor, including minority subcontractors, who will perform work or labor or render service to the Prime Contractor in or about the construction of the Work or improvement, or a subcontractor licensed by the state of California who, under subcontract to the Prime Contractor, specially fabricates and installs a portion of the Work or improvement according to detailed drawings contained in the Plans and Specifications, in an amount in excess of 1/2 of 1 percent of the Prime Contractor's total bid or \$10,000 (whichever is greater).

Name And Address Of Subcontractor	Classification Or Type Of Work
Name <u>All American Asphalt</u>	<u>cold milling</u>
Address _____	Dollar amount of contract \$ <u>277,000.00</u>
City <u>Corona</u>	DBE / MBE / WBE / Racial Origin _____ <small>(Circle one)</small>
Phone no. <u>951-736-7600</u>	License No. <u>267073</u>
Name <u>Ranch Rock Corp.</u>	<u>striping</u>
Address _____	Dollar amount of contract \$ <u>59,850.00</u>
City <u>Rialto</u>	DBE / MBE / WBE / Racial Origin <u>NA</u> <small>(Circle one)</small>
Phone no. <u>909-5461020</u>	License No. <u>923649</u>
Name <u>Case Land Survey</u>	<u>Survey</u>
Address _____	Dollar amount of contract \$ <u>11,600.00</u>
City <u>Orange Survey</u>	DBE / MBE / WBE / Racial Origin <u>NA</u> <small>(Circle one)</small>
Phone no. _____	License No. <u>LS 5411</u>
Name <u>MSL Electric</u>	<u>Electrical</u>
Address _____	Dollar amount of contract \$ <u>8,000.00</u>
City <u>Anaheim</u>	DBE / MBE / WBE / Racial Origin _____ <small>(Circle one)</small>
Phone no. ⁷¹⁴ <u>693-4837</u>	License No. <u>922456</u>

REPRODUCE AND ATTACH ADDITIONAL SHEETS AS NEEDED

Loop Masters
Anaheim
714 714-2221

755319

2748200

Loop

BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS: That we, ELITE BOBCAT SERVICE, INC., a California corporation, as PRINCIPAL, and * _____, located at ** _____, a corporation, incorporated under the laws of the State of MARYLAND, admitted as a Surety in the State of California, and authorized to transact business in the State of California, as SURETY, are held and firmly bound unto the CITY OF LONG BEACH, CALIFORNIA, a municipal corporation, in the sum of THREE MILLION THREE HUNDRED FORTY-SEVEN THOUSAND FIVE HUNDRED SEVENTY DOLLARS AND FIFTY CENTS (\$3,347,570.50), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

* FIDELITY AND DEPOSIT COMPANY OF MARYLAND

** THE CONDITION OF THIS OBLIGATION IS SUCH THAT:
C/O ZURICH 1400 AMERICAN LANE, SCHAUMBURG, IL 60196

WHEREAS, said Principal has been awarded and is about to enter the annexed contract (incorporated herein by this reference) with said City of Long Beach for The Improvement of Los Coyotes Diagonal Between Outer Traffic Circle and Studebaker Road and is required by said City to give this bond in connection with the execution of said contract;

NOW, THEREFORE, if said Principal shall well and truly keep and faithfully perform all of the covenants, conditions, agreements and obligations of said contract on said Principal's part to be kept, done and performed, at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect;

PROVIDED, that any modifications, alterations or changes which may be made in said contract, or in the work to be done, or in the services to be rendered, or in any materials or articles to be furnished pursuant to said contract, or the giving by the City of any extension of time for the performance of said contract, or the giving of any other forbearance upon the part of either the City or the Principal to the other, shall not in any way release the Principal or the Surety, or either of them, or their respective heirs, administrators, executors, successors or assigns, from any liability arising hereunder, and notice to the Surety of any such modifications, alterations, changes, extensions or forbearances is hereby waived. No premature payment by said City to said Principal shall release or exonerate the Surety, unless the officer of said City ordering the payment shall have actual notice at the time the order is made that such payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event in an amount more than the amount of such premature payment.

IN WITNESS WHEREOF, the above-named Principal and Surety have executed, or caused to be executed, this instrument with all of the formalities required by law on this 1ST day of APRIL, 2010.

ELITE BOBCAT SERVICE, INC.

Contractor

By: [Signature]
Name: JOSEPH NANCE
Title: PRESIDENT

By: _____
Name: _____
Title: _____

Approved as to form this 13 day of April, 2010.

ROBERT E. SHANNON, City Attorney
By: [Signature]
Deputy City Attorney

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

SURETY, admitted in California

By: [Signature]
Name: CHARLES L. FLAKE
Title: ATTORNEY-IN-FACT

Telephone: (818) 409-2800

Approved as to sufficiency this 12 day of April, 2010.

By: [Signature]
City Manager/City Engineer

- NOTE: 1. Execution of the bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and a Notary's certificate of acknowledgment must be attached.
2. A corporation must execute the bond by 2 authorized officers or, if executed by a person not listed in Sec. 313, Calif. Corp. Code, then a certified copy of a resolution of its Board of Directors authorizing execution must be attached.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange



On 4-01-10 before me, Jan C. Moran, Notary Public

Date

Here Insert Name and Title of the Officer

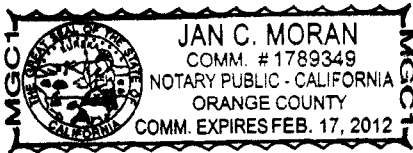
personally appeared Charles L. Flake

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Jan C. Moran
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Bond for Faithful Performance

Document Date: 4/1/10 Number of Pages: 1

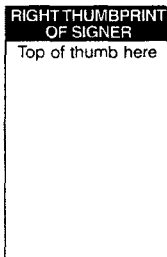
Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

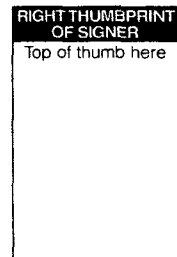
Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Richard A. COON, Charles L. FLAKE, David L. CULBERTSON and Lexie SHERWOOD, all of Anaheim, California, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: ~~any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons.~~ This power of attorney revokes that issued on behalf of Richard A. COON, Charles L. FLAKE, David L. CULBERTSON, Matthew P. FLAKE, Lexie SHERWOOD, dated November 7, 2005.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 15th day of November, A.D. 2006.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Eric D. Barnes Assistant Secretary

William J. Mills

By:

William J. Mills

Vice President

State of Maryland }
City of Baltimore } ss:

On this 15th day of November, A.D. 2006, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn

Notary Public

My Commission Expires: July 14, 2011

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

“Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,....and to affix the seal of the Company thereto.”

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 1ST day of APRIL, 2010.


Assistant Secretary

State of California
County of Riverside

On April 1, 2010 before me, Jeff Lee, a notary public, personally appeared Joseph Nanci, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

Signature Jeff Lee (Seal)



KNOW ALL MEN BY THESE PRESENTS: That we, ELITE BOBCAT SERVICE, INC., a California corporation as PRINCIPAL, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, located at C/O ZURICH 1400 AMERICAN LN., SCHALMBURG, IL 60196, a corporation, incorporated under the laws of the State of MARYLAND, admitted as a surety in the State of California, and authorized to transact business in the State of California, as SURETY, are held and firmly bound unto the CITY OF LONG BEACH, a municipal corporation, in the sum of THREE MILLION THREE HUNDRED FORTY-SEVEN THOUSAND FIVE HUNDRED SEVENTY DOLLARS AND FIFTY CENTS (\$3,347,570.50), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal has been awarded and is about to enter the annexed contract (incorporated herein by this reference) with said City of Long Beach for The Improvement of Los Coyotes Diagonal Between Outer Traffic Circle and Studebaker Road is required by law and by said City to give this bond in connection with the execution of said contract;

NOW, THEREFORE, if said Principal, as Contractor of said contract, or any subcontractor of said Principal, fails to pay for any materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon, of any kind, or for amounts due under the Unemployment Insurance Act, during the original term of said contract and any extensions thereof, and during the life of any guaranty required under the contract, or shall fail to pay for any materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work to be done under any authorized modifications of said contract that may hereafter be made, or for any work or labor done of any kind, or for amounts due under the Unemployment Insurance Act, under said modification, said Surety will pay the same in an amount not exceeding the sum of money hereinabove specified and, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court; otherwise this obligation shall be void;

PROVIDED, that any modifications, alterations or changes which may be made in said contract, or in any of the work or labor required to be done thereunder, or in any of the materials, provisions, equipment, or other supplies required to be furnished pursuant to said contract, or the giving by the City of any extension of time for the performance of said contract, or the giving of any other forbearance upon the part of either the City or the Principal to the other, shall not in any way release the Principal or Surety, or either of them, or their respective heirs, administrators, executors, successors or assigns, from any liability arising hereunder, and notice to the Surety of any such modifications, alterations, changes, extensions or forbearances is hereby waived. No premature payment by said City to said Principal shall release or exonerate the Surety, unless the officer of the City ordering the payment shall have actual notice at the time the order is made that the payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event in an amount more than the amount of such premature payment.

This Bond shall inure to the benefit of any and all persons, companies and corporations entitled by law to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, the above-named Principal and Surety have executed, or caused to be executed, this instrument with all of the formalities required by law on this 1ST day of APRIL, 2010.

ELITE BOBCAT SERVICE, INC.

Contractor

By: [Signature]

Name: JOSEPH NANCEI

Title: PRESIDENT

By: _____

Name: _____

Title: _____

Approved as to form this 13 day of April, 2010.

ROBERT E. SHANNON, City Attorney

By: [Signature]
Deputy City Attorney

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

SURETY, admitted in California

By: [Signature]

Name: CHARLES L. FLAKE

Title: ATTORNEY-IN-FACT

Telephone: (818) 409-2800

Approved as to sufficiency this 12 day of April, 2010.

By: [Signature]
City Manager, City Engineer

- NOTE: 1. Execution of the bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and a Notary's certificate of acknowledgment must be attached.
2. A corporation must execute the bond by 2 authorized officers or, if executed by a person not listed in Sec. 213, Calif. Corp. Code, then a certified copy of a resolution of its Board of Directors authorizing execution must be attached.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On 4-01-10 before me, Jan C. Moran, Notary Public

Date

Here Insert Name and Title of the Officer

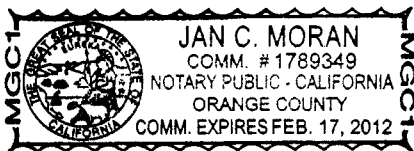
personally appeared Charles L. Flake

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Jan C. Moran
Signature of Notary Public
Jan C. Moran

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Labor and Material Bond

Document Date: 4/1/10 Number of Pages: 1

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Richard A. COON, Charles L. FLAKE, David L. CULBERTSON and Lexie SHERWOOD, all of Anaheim, California, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: ~~any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons.~~ This power of attorney revokes that issued on behalf of Richard A. COON, Charles L. FLAKE, David L. CULBERTSON, Matthew P. FLAKE, Lexie SHERWOOD, dated November 7, 2005.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 15th day of November, A.D. 2006.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Eric D. Barnes Assistant Secretary

William J. Mills

By:

William J. Mills

Vice President

State of Maryland }
City of Baltimore } ss:

On this 15th day of November, A.D. 2006, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn

Notary Public

My Commission Expires: July 14, 2011

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

“Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto.”

CERTIFICATE

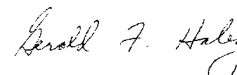
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 1ST day of APRIL, 2010.


Assistant Secretary

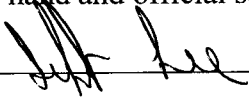
State of California
County of Riverside

On April 1, 2010 before me, Jeff Lee, a notary public, personally appeared Joseph Nanci, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

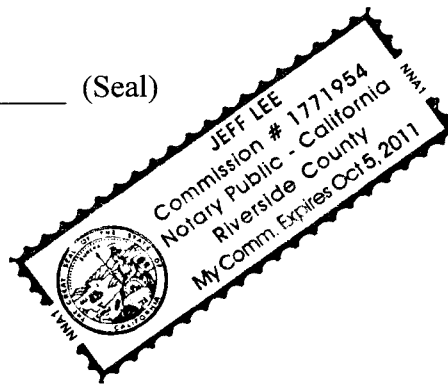
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

Signature



(Seal)



APPENDIX "A"

Please type or print clearly. Read instructions on reverse before completing this form.

SECTION I – BUSINESS INFORMATION

NAME OF BUSINESS OR GOVERNMENTAL ENTITY	SALES/USE TAX PERMIT NUMBER
BUSINESS ADDRESS (street)	CONSUMER USE TAX ACCOUNT NUMBER
CITY, STATE, & ZIP CODE	If applicant is applying for either a sales/use tax permit or a consumer use tax account in addition to a use tax direct payment permit check here <input type="checkbox"/>
MAILING ADDRESS (street address or po box if different from business address)	
CITY, STATE, & ZIP CODE	NAME UNDER WHICH BUSINESS IS TO BE TRANACTED IF DIFFERENT THAN ABOVE

SECTION II – MULTIPLE BUSINESS LOCATIONS

LIST BELOW THE BUSINESS AND MAILING ADDRESSES OF ALL LOCATIONS WHERE PROPERTY PURCHASED UNDER A USE TAX DIRECT PAYMENT CERTIFICATE WILL BE USED. IF ADDITIONAL SPACE IS NEEDED, ATTACH A SEPARATE SHEET

1. BUSINESS ADDRESS	4. BUSINESS ADDRESS
MAILING ADDRESS	MAILING ADDRESS
2. BUSINESS ADDRESS	5. BUSINESS ADDRESS
MAILING ADDRESS	MAILING ADDRESS
3. BUSINESS ADDRESS	6. BUSINESS ADDRESS
MAILING ADDRESS	MAILING ADDRESS

SECTION III – CERTIFICATION STATEMENT

I hereby certify that I qualify for a *Use Tax Direct Payment Permit* for the following reason: *(Please check one of the following)*

- I have purchased or leased for my own use tangible personal property subject to use tax at a cost of five hundred thousand dollars (\$500,000) or more in the aggregate, during the calendar year immediately preceding this application for the permit. I have attached a "Statement of Cash Flows" or other comparable financial statements acceptable to the Board for the calendar year immediately preceding the date of application and a separate statement attesting that the qualifying purchases were purchases that were subject to use tax.
- I am a county, city, city and county, or redevelopment agency.

I also agree to self-assess and pay directly to the Board of Equalization any use tax liability incurred pursuant to my use of a *Use Tax Direct Payment Permit*.

The above statements are hereby certified to be correct to the knowledge and belief of the undersigned, who is duly authorized to sign this application.

SIGNATURE	TITLE
NAME (typed or printed)	DATE

(See reverse side for general information and filing instructions)

USE TAX DIRECT PAYMENT PERMIT
(General Information and Filing Instructions)

Revenue and Taxation Code section 7051.3 authorizes the State Board of Equalization to issue a *Use Tax Direct Payment Permit* to qualified applicants. This permit allows purchasers and lessees of tangible personal property (other than lessees of motor vehicles the lease of which is subject to the terms of section 7205.1 of the Sales and Use Tax Law) to self-assess and pay use taxes directly to the Board instead of to the vendor or lessor from whom the property is purchased or leased.

Permit holders will be provided with a *Use Tax Direct Payment Exemption Certificate* which they can issue to retailers and lessors when they purchase tangible personal property subject to use tax or make qualified leases of tangible personal property. Vendors who timely take the certificate in good faith from a permit holder are relieved of the duty to collect use taxes on the sales for which the certificate was issued. Permit holders who acquire property under a certificate must self-assess and report the use taxes directly to the Board on their tax returns, and allocate the local taxes to the county, city, city and county, or redevelopment agency in which the property is first used. Permit holders who fail to properly pay any use taxes that are due on property for which a certificate was given are subject to interest and penalties assessments in addition to their tax liability.

To qualify for a *Use Tax Direct Payment Permit*, an applicant must meet the following conditions:

- (1) The applicant must agree to self-assess and pay directly to the Board any use tax which is due on property for which a use tax direct payment exemption certificate was given; and
- (2) The applicant must certify to the Board either of the following:
 - (A) The applicant has purchased or leased for its own use tangible personal property subject to use tax which cost five hundred thousand dollars (\$500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit; or
 - (B) The applicant is a county, city, city and county, or redevelopment agency.

Persons wishing to obtain a use tax direct payment permit must be pre-qualified and either hold a California seller's permit or a consumer use tax account.

Persons other than governmental entities who currently hold either a California seller's permit or a consumer use tax account must complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under conditions of Part (2)(A) above, and submit a "Statement of Cash Flows" or other comparable financial statements acceptable to the board for the calendar year immediately preceding the date of application which discloses total purchases of property and equipment for own use and a separate statement under company letterhead certifying that five hundred thousand dollars (\$500,000) or more of such purchases were subject to use tax.

Persons other than governmental entities who are not required to hold a seller's permit and who do not currently hold a consumer use tax account must obtain a consumer use tax account and then complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(A) above and submit a "Statement of Cash Flows" or other comparable financial statements acceptable to the board for the calendar year immediately preceding the date of application which discloses total purchases of property and equipment for own use and a separate statement under company letterhead certifying that five hundred thousand dollars (\$500,000) or more of such purchases were subject to use tax.

Governmental entities who currently hold either a California seller's permit or a consumer use tax account must complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(B) above, and submit an additional statement to that effect under official letterhead and signed by an authorized governmental representative.

Governmental entities who do not hold a California seller's permit or a consumer use tax account must obtain a consumer use tax account and then complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(B) above, and submit an additional statement to that effect under official letterhead and signed by an authorized governmental representative.

The completed *Application for Use Tax Direct Payment Permit*, certification statement, and qualifying documentation should be returned to the address shown below. Upon determination that the applicant qualifies, a *Use Tax Direct Payment Permit* and a *Use Tax Direct Payment Exemption Certificate* will be mailed to the applicant.

If you would like additional information regarding the *Use Tax Direct Payment Permit* or need assistance in completing this application, you can call 916-445-5167, or write to the Board of Equalization, Compliance Policy Unit, P.O. Box 942879, Sacramento, CA 94279-0040.

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1699.6 USE TAX DIRECT PAYMENT PERMITS

Reference: Sections 6007, 6070, and 7051.3, Revenue and Taxation Code

(a) **FOREWORD.** "Use tax direct payment permit" means a permit issued by the board that allows a use tax direct payment permit holder to self-assess and pay state, local, and district use taxes under Part 1 (commencing with Section 6001, Part 1.5 (commencing with Section 7200), and, if applicable, Part 1.6 (commencing with Section 7251) directly to the board. The provisions of this regulation apply only to transactions subject to use tax.

(b) (1) **APPLICATION FOR PERMIT.** Persons seeking to pay use taxes directly to the board shall file an application for a use tax direct payment permit. An application for a use tax direct payment permit shall be made on Board of Equalization Form BOE-400-DP (no revision date). The application shall be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(2) Within 30 days of receipt of an application for a direct payment permit the board shall inform the applicant in writing either that the application is complete and has been accepted or that the application is deficient and what additional specific information is required to make the application complete. Within 60 days of acceptance of a complete application the board shall approve or deny the issuance of a direct payment permit and notify the applicant in writing of its decision.

(c) **REQUIREMENTS FOR PERMIT.** Pursuant to an application, a use tax direct payment permit shall be issued to any person who meets all of the following conditions:

(1) The applicant agrees to self-assess and pay directly to the board any use tax liability incurred under this regulation.

(2) The applicant certifies to the board either of the following:

(A) The applicant is the purchaser for its own use or is the lessee of tangible personal property subject to the use tax at a cost of five hundred thousand dollars (\$500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit. Tangible personal property purchased for own use includes both property subject to use tax and property exempt from use tax except that it does not include property purchased for resale; or

(B) The applicant is a county, city, city and county, or redevelopment agency.

(d) **REPORTING OF LOCAL USE TAX.** Any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the board with each return the use taxes due under Division 2, Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), and, if applicable, Part 1.6 (commencing with Section 7251), for all purchases subject to use tax for which a use tax direct payment exemption certificate was issued, and shall report the local use tax component to the jurisdiction in which the property is located at the time the state imposed use tax must be reported. Temporary storage for the purpose of reporting local tax shall be disregarded. Any tax so reported may be redistributed in accordance with law.

(e) **RETURNS.** On or before the last day of the month following each quarterly period, a holder of a direct payment permit shall file a return with the board. The person required to file the return shall deliver it together with a remittance for the amount of tax due to the board. The return shall show the aggregate sales price of tangible personal property purchased during the reporting period with respect to which the person filing the return has issued a use tax direct payment exemption certificate relieving the retailer of liability for reporting and paying use tax, and such other information as the board may require.

(f) **EXEMPTION CERTIFICATES.** The board shall allow any holder of a use tax direct payment permit to issue a use tax direct payment certificate to any registered retailer or seller subject to all of the following:

Regulation 1699.6 (Continued)

(1) The use tax direct payment exemption certificate shall be in a form prescribed by the board, and shall be signed by, and bear the name, address, and permit number of, the holder of the use tax direct payment permit.

(2) Once a use tax direct payment exemption certificate has been issued by a holder of a use tax direct payment permit, it shall remain effective until revised or withdrawn by the holder of the permit or until the retailer or seller has received written notice that the permit has been revoked by the board.

(3) A use tax direct payment certificate relieves a person selling property from the duty of collecting use tax only if taken timely and in good faith from a person who holds a use tax direct payment permit. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser.

(4) A purchaser who issues a use tax direct payment certificate that is accepted in good faith by a seller or retailer of tangible personal property shall be the sole person liable for any sales tax and related interest and penalties with respect to any transaction that is subsequently determined by the board to be subject to sales tax and not use tax. The local sales tax portion so determined shall be allocated to the city, county, city and county, or redevelopment agency to which the tax would have been allocated if it had been reported and paid by the retailer in accordance with Part 1.5 (commencing with Section 7200). Such allocation shall be based on the place of sale as provided in Regulation 1802 and Regulation 1822.

(5) Any person who holds a use tax direct payment permit and gives a use tax direct payment certificate to a seller or retailer shall, in addition to any applicable use tax liabilities, be subject to the same penalty provisions that apply to a seller or retailer.

(g) RESALE TRANSACTIONS. A use tax direct payment exemption certificate shall not be substituted for a resale certificate, because the tax consequences are different. Resale certificates shall only be issued with respect to property which the purchaser intends to resell, and use tax direct payment exemption certificates shall be issued only for property purchased for use or other consumption. If a retailer makes sales under both a use tax direct payment exemption certificate and a resale certificate to the same customer, an audit trail must be maintained to identify which property is sold pursuant to each certificate.

(h) REVOCATION OF PERMIT. The board may revoke the use tax direct payment permit of any person who fails to purchase tangible personal property for own use of at least \$500,000 per year. The permit shall remain valid for all transactions taking place prior to the date the permit is revoked.

(i) SUCCESSOR ENTITIES. A successor entity to a use tax direct payment permit holder shall qualify to obtain a use tax direct payment permit if the predecessor entity so qualified in the calendar year in which the succession occurred but must obtain its own permit.

(j) OPERATIVE DATE. The provisions of this regulation apply only to purchases that occur on or after January 1, 1998.

History: Adopted September 23, 1998, effective July 9, 1998.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.



Notice

STATE BOARD OF EQUALIZATION

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Sacramento
California 95814

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Sales Tax Jobsite Sub-Permits for Construction Contractors

Some construction contractors are liable for sales or use tax on materials and fixtures consumed or sold on construction contracts. A portion of that tax, the local tax, is distributed to the county government, and city governments within the county, of the jobsite location. The allocation of the local tax is performed by listing the amount of local tax due to each county on Schedule B of the sales and use tax return.

Effective January 1, 1995, construction contractors may elect to allocate the local sales and use tax derived from construction contracts of \$5,000,000 (five million dollars) or more directly to the local jurisdiction where the jobsite is located. This is accomplished by obtaining a sub-permit of their seller's permit for a specific jobsite and allocating the local tax to that jobsite on Schedule C of their sales and use tax return. This qualifying contract price applies to each contract or sub-contract for work performed at the jobsite. Contractors who are already fulfilling a construction contract on January 1, 1995, must have work remaining with a value of \$5,000,000 or more. The sub-permit will be automatically closed-out six months after the estimated completion date of the contract. If delays extend the completion date, contractors should contact the Board of Equalization to extend the active period of the sub-permit.

Permits will not be issued to contractors who are not normally sellers of materials. Contractors may not purchase tangible personal property for resale, including materials, which they will install or consume at the jobsite.

Contractors may not purchase machinery and equipment, to be used on the construction job, without payment of sales tax in order to allocate the use tax to the specific jobsite.

Local tax on sales of machinery and equipment by the contractor as part of the contract, should continue to be allocated to the contractor's permanent place of business where the principal negotiations of the contract take place in accordance with Regulation 1802.

In accordance with Regulation 1806, where the contractor has not elected to obtain a sub-permit, local tax must still be allocated countywide using Schedule B for jobsites which have contracts of \$5,000,000 or more along with smaller contracts of less than \$5,000,000.

If you have any questions regarding a sub-permit for construction jobsites, please contact the nearest Board of Equalization office.

January 1995



State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1699. PERMITS

Reference: Sections 6066-6075, Revenue and Taxation Code.

(a) **IN GENERAL – NUMBER OF PERMITS REQUIRED.** Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:

A permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale. However, permits are required for warehouses or other places at which merchandise is stored and from which retail sales of such merchandise negotiated out of state are delivered or fulfilled.

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one permit is required. For example:

A service station operator having a restaurant in addition to the station on the same premises requires only one permit for both activities.

(b) **PERSONS SELLING IN INTERSTATE COMMERCE OR TO UNITED STATES GOVERNMENT.** A permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

(c) **PERSONS SELLING FEED.** Effective April 1, 1996, a permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

If a seller of hay is also the grower of the hay, this exemption shall apply only if either:

1. The hay is produced for sale only to beef cattle feedlots or dairies, or
2. The hay is sold exclusively through a farmer-owned cooperative.

(d) **CONCESSIONAIRES.** For the purposes of this regulation, the term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer's own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is *not* operating as a concessionaire are that he or she:

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer's premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.
- Maintains separate business records, particularly with respect to sales.

Regulation 1699. (Cont.)

- Establishes his or her own selling prices.
- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.
- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is *not* liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

- The permit number of the concessionaire
- The location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location)
- Signature of the concessionaire
- Date

While any statement, taken timely, in good faith and containing all of these essential elements will relieve a prime retailer of his or her liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Appendix A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on his or her retail sales.

In instances where the lessor, or grantor of permission to occupy space, is not a retailer himself or herself, he or she is not liable for any sales or use taxes owed by his or her lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate his or her business within the perimeter of the lessor's or grantor's own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owed by the lessee or grantee.

(e) AGENTS. If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a permit.

(f) INACTIVE PERMITS. A seller's permit may only be held by a person actively engaged in business as a seller of tangible personal property. The Board may revoke a seller's permit where it finds that the person holding the permit is not actively engaged in business as a seller of tangible personal property.

(1) Any person who holds a seller's permit but is not actively engaged in business as a seller of tangible personal property shall promptly surrender the permit by notifying the Board to cancel it.

(2) Except as explained in paragraph (3) of this subdivision, a person holding a seller's permit will be held liable for any taxes, interest, and penalties incurred, through the date on which the Board is notified to cancel the permit, by any other person who, with the permit holder's actual or constructive knowledge, uses the permit in any way. For example, a permit holder may be held liable for tax, interest, and penalty actually incurred by his or her transferee where the transferee displays the permit in his or her place of business, or uses the permit number on a resale certificate, or files sales and use tax returns under the permit number. The permit holder has the burden of establishing that the Board received notice to cancel the permit.

(A) The permit holder may notify the Board by delivering the actual seller's permit to the Board with the clear request that the permit be canceled. Where the reason for cancellation is that the permit holder transferred the business, the permit holder should identify the name and address of the transferee at the time the permit is surrendered to the Board. The permit holder may also notify the Board by delivering a written statement or email to

Regulation 1699. (Cont.)

the Board that the permit holder has transferred or otherwise ceased the business, or will do so at a specified time, and requesting that the permit be canceled. The statement should identify the name and address of the transferee, if any. The permit holder may also provide this notice to the Board orally, but it will be presumed that such notice was *not* provided unless the Board's records reflect that the permit holder clearly notified the Board of the cessation or transfer of the business for which the permit was held.

(B) The Board will also be regarded as having received notice of cancellation of the permit, and the permit holder will be excused from liability for the tax, interest, and penalty incurred by another person using the permit, as of the date the Board receives actual notice of transfer of the business for which the permit was issued. It will be presumed such notice was *not* received by the Board unless the Board's records reflect that the Board received a clear notice of the cessation or transfer of the business for which the permit was held. For example, the Board's receipt of an application for a seller's permit from the transferee constitutes sufficient notice if it contains adequate information to show that the application pertains to the same business for which the permit was held. Notice to another state agency of a transfer or cessation of a business does *not* constitute notice to the Board. Rather, the Board must itself receive actual notice of the transfer or cessation of business.

(3) Where the permit holder does not establish that the Board received actual notice of the transfer of the business for which the permit was held and is thus liable for the taxes, interest, and penalties incurred by another person using that permit, that liability is limited to the quarter in which the business was transferred and the three subsequent quarters, and shall not include any penalties imposed on the other person for fraud or intent to evade the tax. However, these limitations (liability only for the quarter in which the business was transferred and the three subsequent quarters and no fraud or intent to evade penalty) do *not* apply where, after the transfer of the business, 80 percent or more of the real or ultimate ownership of that business is held by the permit holder. For these purposes, stockholders, bondholders, partners, or other persons holding an ownership interest in an entity are regarded as having the "real or ultimate ownership" of that entity.

(g) **DUE DATE OF RETURNS - CLOSEOUT OF ACCOUNT ON YEARLY REPORTING BASIS.** Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

(h) **BUYING COMPANIES - GENERAL.**

(1) **DEFINITION.** For the purpose of this regulation, a buying company is a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services, for the other entity. It is presumed that the buying company is formed for the operational reasons of the entity which owns or controls it or to which it is otherwise related. A buying company formed, however, for the sole purpose of purchasing tangible personal property ex-tax for resale to the entity which owns or controls it or to which it is otherwise related in order to re-direct local sales tax from the location(s) of the vendor(s) to the location of the buying company shall not be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall not be issued a seller's permit. Sales of tangible personal property to third parties will be regarded as having been made by the entity owning, controlling, or otherwise related to the buying company. A buying company that is not formed for the sole purpose of so re-directing local sales tax shall be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall be issued a seller's permit and shall be regarded as the seller of tangible personal property it sells or leases.

(2) **ELEMENTS.** A buying company is not formed for the sole purpose of re-directing local sales tax if it has one or more of the following elements:

(A) Adds a markup to its cost of goods sold in an amount sufficient to cover its operating and overhead expenses.

(B) Issues an invoice or otherwise accounts for the transaction.

The absence of any of these elements is not indicative of a sole purpose to redirect local sales tax.

(i) **WEB SITES.** The location of a computer server on which a web site resides may not be issued a seller's permit for sales tax purposes except when the retailer has a proprietary interest in the server and the activities at that location otherwise qualify for a seller's permit under this regulation.

Regulation 1699. (Cont.)

History: Effective July 1, 1939.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended August 2, 1965, applicable on and after August 1, 1965.

Amended and renumbered November 3, 1969, effective December 5, 1969.

Amended May 25, 1977, effective June 24, 1977.

Amended May 1, 1985, effective May 31, 1985. Subdivision (e)(2) has been changed to provide that penalties for intent to evade the tax are excluded from the type of penalty the permit holder would be liable for if the permit holder fails to notify the Board of the transfer of a business.

Amended June 22, 1995, effective July 22, 1995. Amended subdivision (e) as provided in Statutes of 1993, Chapter 1109.

Amended April 25, 1996, effective May 25, 1996. Added new (c) to incorporate provisions of Chapter 696, Statutes of 1995 and renumbered the following subdivisions.

Amended May 30, 2001, effective September 7, 2001. Subdivision (d)—Existing language deleted—Four new unnumbered paragraphs added to define "concessionaire" and clarify the relationship between concessionaire and prime retailer. New Appendix A was added to provide a suggested form for the Certification of Permit—Concessionaire.

Amended February 6, 2002, effective June 14, 2002. Subdivisions (h) and (i) added.

Amended November 15, 2005, effective December 13, 2006. Added sentence to subdivision (a) to explain that permits are required for locations at which merchandise is stored when the retailer negotiates sales out of state but fulfills such sales from stocks of goods located in this state.

Amended November 15, 2007, effective February 23, 2008. Amended subdivision (f) to clarify the methods for notifying the Board when a seller's permit becomes inactive. The amendments also explain the limitation on predecessor's liability set forth in Revenue and Taxation Code section 6071.1 and make it clear that the fraud penalty can be imposed on a predecessor when the ownership of the successor who committed fraud is substantially the same as the predecessor ownership.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1802. PLACE OF SALE AND USE FOR PURPOSES OF BRADLEY-BURNS UNIFORM LOCAL SALES AND USE TAXES.

Reference: Sections 6012.6, 6015, 6359, 6359.45, 7202, 7203, 7203.1, 7204.03 and 7205, Revenue and Taxation Code.

(a) IN GENERAL

(1) **RETAILERS HAVING ONE PLACE OF BUSINESS.** For the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law, if a retailer has only one place of business in this state, all California retail sales of that retailer in which that place of business participates occur at that place of business unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-state destination, or to a common carrier for delivery to an out-of-state destination.

(2) **RETAILERS HAVING MORE THAN ONE PLACE OF BUSINESS.**

(A) If a retailer has more than one place of business in this state but only one place of business participates in the sale, the sale occurs at that place of business.

(B) If a retailer has more than one place of business in this state which participate in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. For the purposes of this regulation, an employee's activities will be attributed to the place of business out of which he or she works.

(3) **PLACE OF PASSAGE OF TITLE IMMATERIAL.** If title to the tangible personal property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer's place of business is located, or that the property sold is never within the local taxing jurisdiction in which the retailer's place of business is located.

(b) PLACE OF SALE IN SPECIFIC INSTANCES.

(1) **VENDING MACHINE OPERATORS.** The place of sale is the place at which the vending machine is located. If an operator purchases property under a resale certificate or from an out-of-state seller without payment of tax and the operator is the consumer of the property, for purposes of the use tax, the use occurs at the place where the vending machine is located.

(2) **ITINERANT MERCHANTS.** The place of sale with respect to sales made by sellers who have no permanent place of business and who sell from door to door for their own account shall be deemed to be in the county in which is located the seller's permanent address as shown on the seller's permit issued to him or her. If this address is in a county imposing sales and use taxes, sales tax applies with respect to all sales unless otherwise exempt. If this address is not in a county imposing sales and use taxes, he or she must collect the use tax with respect to property sold and delivered or shipped to customers located in a county imposing sales and use taxes.

(3) **RETAILERS UNDER SECTION 6015.** Persons regarded by the Board as retailers under Section 6015(b) of the Revenue and Taxation Code are regarded as selling tangible personal property through salespersons, representatives, peddlers, canvassers or agents who operate under or obtain the property from them. The place of sale shall be deemed to be:

(A) the business location of the retailer if the retailer has only one place of business in this state, exclusive of any door-to-door solicitations of orders, or

(B) the business location of the retailer where the principal negotiations are carried on, exclusive of any door-to-door solicitations of orders, if more than one in-state place of business of the retailer participates in the sale.

The amendments to paragraph (b)(3) apply only to transactions entered into on or after July 1, 1990.

Regulation 1802. (Contd.)

(4) **AUCTIONEERS.** The place of sale by an auctioneer is the place at which the auction is held. Operative July 1, 1996, auctioneers shall report local sales tax revenue to the participating jurisdiction (as defined in subdivision (d) below) in which the sales take place, with respect to auction events which result in taxable sales in an aggregate amount of \$500,000 or more.

(5) **FACTORY-BUILT SCHOOL BUILDINGS.** The place of sale or purchase of a factory-built school building (relocatable classroom) as defined in paragraph (c)(4)(B) of Regulation 1521 (18 CCR 1521), Construction Contractors, is the place of business of the retailer of the factory-built school building regardless of whether sale of the building includes installation or whether the building is placed upon a permanent foundation.

(6) **JET FUEL.**

(A) For sales of jet fuel prior to January 1, 2008, the place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft, if both of the following conditions are met:

1. The principal negotiations for the sale are conducted at the retailer's place of business in this state; and
2. The retailer has more than one place of business in the state.

(B) For sales of jet fuel on or after January 1, 2008, the place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft.

(C) The local sales or use tax revenue derived from the sale or purchase of jet fuel under the conditions set forth in this subdivision shall be transmitted by the Board, to the city, county, or city and county where the airport is located at which such delivery occurs.

(D) **Multi-Jurisdictional Airports.** For the purposes of this regulation, the term "multi-jurisdictional airport" means and includes an airport that is owned or operated by a city, county, or city and county, that has enacted a state-administered local sales and use tax ordinance and as to which the owning or operating city, county, or city and county is different from the city, county, or city and county in which the airport is located. Through June 30, 2004, the local tax rate is imposed at 1.25% by Revenue and Taxation Code section 7202 (a). Operative July 1, 2004, the local tax rate is imposed at 1% by Revenue and Taxation Code section 7203.1. The local tax revenue derived from sales of jet fuel at a "multi-jurisdictional airport" shall, notwithstanding subdivision (B), be transmitted by the Board as follows:

1. In the case of the 0.25% local sales tax imposed by counties under Government Code section 29530 and Revenue and Taxation Code section 7202(a), or operative July 1, 2004, imposed by counties under Revenue and Taxation Code section 7203.1(a)(1), half of the revenue to the county which owns or operates the airport (or in which the city which owns or operates the airport is located) and half to the county in which the airport is located.

2. In the case of the remaining 1% of the local sales tax imposed by counties under Revenue and Taxation Code section 7202(a), or operative July 1, 2004, the remaining 0.75%, imposed by counties under Revenue and Taxation Code section 7203.1(a)(2), and in the case of the local sales tax imposed by cities at a rate of up to 1%, or operative July 1, 2004, at a rate of up to 0.75% under Revenue and Taxation Code section 7203.1(a)(2), and offset against the local sales tax of the county in which the city is located under Revenue and Taxation Code section 7202(h), half of the revenue to the city which owns or operates the airport and half to the city in which the airport is located. If the airport is either owned or operated by a county or is located in the unincorporated area of a county, or is owned or operated by a county and is located in the unincorporated area of a different county, the local sales tax revenue which would have been transmitted to a city under this subdivision shall be transmitted to the corresponding county.

3. Notwithstanding the rules specified in subdivisions 1. and 2., the following special rules apply:

- a. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft and place of sale or purchase, as described in subdivision (A) or (B), is San Francisco International Airport, the Board shall transmit one-half of the local sales tax revenues derived from such sales to the City and County of San Francisco, and the other half to the County of San Mateo.

Regulation 1802. (Contd.)

b. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft and place of sale or purchase, as described in subdivision (A) or (B), is Ontario International Airport, the Board shall transmit local sales taxes with respect to those sales in accordance with both of the following:

c. All of the revenues that are derived from a local sales tax imposed by the City of Ontario shall be transmitted to that city.

d. All of the revenues that are derived from a local sales tax imposed by the County of San Bernardino shall be allocated to that county.

(E) Otherwise, as provided elsewhere in this regulation.

(c) TRANSACTIONS NEGOTIATED OUT OF STATE AND DELIVERED FROM THE RETAILER'S STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA

(1) If an out-of-state retailer does not have a permanent place of business in this state other than a stock of tangible personal property, the place of sale is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to that city, county, or city and county.

(2) If a retailer has a permanent place of business in this state in addition to its stocks of tangible personal property, the place of sale, in cases where the sale is negotiated out of state and there is no participation by the retailer's permanent place of business in this state, is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to the city, county, or city and county from which delivery or shipment is made.

(d) ALLOCATION OF SALES TAX AND APPLICATION OF USE TAX.

Local sales tax is allocated to the place where the sale is deemed to take place under the above rules. The local use tax ordinance of the jurisdiction where the property at issue is put to its first functional use applies to such use. As used in this subdivision, the term "participating jurisdiction" means any city, city and county, or county which has entered into a contract with the Board for administration of that entity's local sales and use tax.

(1) **DIRECT REPORTING BY RETAILERS.** Operative July 1, 1996, for transactions of \$500,000 or more, except with respect to persons who register with the Board to collect use tax under Regulation 1684(c) (18 CCR 1684), the seller shall report the local use tax revenues derived therefrom directly to the participating jurisdiction where the first functional use is made.

Persons who voluntarily collect use tax under Regulation 1684(c) may, solely at their own discretion, report the local use tax revenues on transactions of \$500,000 or more directly to the participating jurisdiction where first functional use is made.

(2) **DIRECT REPORTING BY PURCHASERS.** Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.

The amendments to paragraph (b)(4) and paragraph (d) shall apply prospectively only to transactions entered into on or after July 1, 1996. Paragraph (d) shall not apply to lease transactions.

History: Adopted March 27, 1956, effective April 1, 1956.

Amended and renumbered January 6, 1970, effective February 25, 1970.

Amended May 9, 1984, effective September 12, 1984. Subdivision (b)(1) completely revised.

Amended November 29, 1988, effective February 4, 1990. Minor corrections made to (a)(1), (a)(2) and (b)(2) for clarification purposes, completely revised (b)(3) and added subparagraphs (A) and (B) to (b)(3).

Amended June 5, 1991, effective August 18, 1991. Amended paragraph (b) to reference Regulation 1521(c)(4)(B) and to explain place of sale.

Amended August 1, 1991, effective August 30, 1991. Amended pursuant to Chapter 85, Statutes of 1991, and Chapter 88, Statutes of 1991, to provide that a newspaper carrier is not a retailer. The retailer is the publisher or distributor for whom the carrier delivers the newspaper. Chapter 85, Stats. of 1991, was effective July 1, 1991; Chapter 88, Stats. of 1991, changed the effective date to July 15, 1991.

Regulation 1802. (Contd.)

Amended May 26, 1993, effective October 1, 1993. Amended paragraph (b)(5) to be operative October 1, 1993, to provide that if an out-of-state retailer does not have a permanent place of business in this state other than a stock of merchandise, the place of sale is the city, county, or city and county from which delivery or shipment is made. Local tax collected for such sales will be distributed to that city, county, or city and county.

Amended May 15, 1996, effective August 11, 1996. Words "and Use" added to title to reflect inclusion of use tax rules. Subdivision (b)(4) is amended to provide for reporting of local sales tax revenues to specific jurisdictions by auctioneers under specified conditions. New subdivision (c) is added to promulgate rules regarding application of use tax in regulatory form.

Amended April 6, 2000, effective May 26, 2000. Added subdivision (b)(7). Added section "7204.03" to the References section.

Amended August 6, 2003, effective November 28, 2003. Subdivision (a)(1): phrase "in which that place of business participates" added. Subdivision (a)(2): current language re-designated (a)(2)(B); new subdivision (a)(2)(A) added.

Amended November 15, 2005, effective December 13, 2005. Deleted subdivision (b)(5); subdivisions (b)(6) and (7) re-designated (5) and (6) accordingly. Added new subdivision (c); former subdivision (c) re-designated (d) accordingly. Added language of former subdivision (b)(5) as new subdivision (c)(1), but deleted the operative date of October 1, 1993, as no longer necessary. Added new subdivision (c)(2) to provide for direct distribution of local sales tax revenues, specifically for sales negotiated out of state, to the location of the stock of goods that fulfills the order when the retailer has sales offices in the state and where there is no participation by the retailer's in-state sales office.

Amended March 20, 2007, effective May 17, 2007. Amended subdivision (b)(6) to incorporate a statutory change regarding the place of sale or purchase of jet fuel; operative January 1, 2008.

Amended October 24, 2007, effective February 1, 2008. Added headings to paragraphs (d)(1) and (d)(2), and amended paragraph (d)(1) to clarify the jurisdiction to which use tax on a transaction of \$500,000 or more should be reported.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.

Appendix A

Certification of Permit – Concessionaires

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller's permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the Board of Equalization:

Name of retailer on whose premises I operate my business: _____

Location of premises: _____

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

Certifier's Signature: _____ Date: _____

Certifier's Printed Name: _____

Certifier's Seller's Permit Number: _____

Certifier's Business Name and Address:* _____

Certifier's Telephone Number: _____

* Please Note: The certifier *must* be registered to do business at the location of the retailer upon whose premises he or she is making retail sales.