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July 11, 2014

BOARD OF SUPERVISORS

2014 JUL 16 A 10:26

VIA U.S. MAIL

Board of Supervisors
Stanislaus County
Clerk of the Board of Supervisors
1010 10th Street, Suite 6700
Modesto, CA 95354

OF COUNSEL
DEBRA HINSHAW VIERRA

**Re: Provision of Public Contract Documents Required by
Public Contract Code Section 20103.7**

Dear Board Members:

This firm represents the Sacramento Regional Builders Exchange. The Exchange and its contractor plan room provide the valuable public service of providing a central location where contractors can obtain and review public contract documents for projects across much of the State of California. Contractors rely upon the Exchange and its plan room to learn of bidding opportunities, and the plan room helps solicitations by local government entities reach high quality and experienced contractors, thereby encouraging and facilitating competitive bidding for public works projects.

Previously, the Exchange received copies of bid solicitations, requests for proposals, plans, and other public contracting documents directly from Stanislaus County. In 2010, Assembly Bill 2036 added Section 20103.7 to the Public Contract Code, codifying the right of the Exchange and other plan rooms to obtain electronic copies of these documents free of charge. In adopting Section 20103.7, the Legislature explained that the state law sets forth the procedures "pursuant to which state and local agencies may solicit and evaluate bids or proposals for, and award, contracts for the construction of public works." To facilitate the competitive bidding process, Section 20103.7 states that local government entities such as the Stanislaus County "shall, upon request from a contractor plan room service, provide an electronic copy of a project's contract documents at no charge to the contractor plan room." This obviously recognized the vital role that contractor plan rooms such as the Exchange's serve in the competitive bidding process, and sought to encourage and facilitate their distribution of documents regarding public contracting opportunities.

Stanislaus County has designated a third party – Public Purchase – as the exclusive distributor of its public contracting documents, and has indicated

Stanislaus.doex

RESPOND TO:

1851 E. FIRST STREET, SUITE 1440
SANTA ANA, CALIFORNIA 92705-4044
T 714.542.1883 F 714.542.1009

555 CAPITOL MALL, SUITE 425
SACRAMENTO, CALIFORNIA 95814-4503
T 916. 442. 3100 F 916. 442. 4227

450 LINCOLN AVENUE, SUITE 202
SALINAS, CALIFORNIA 93901-2686
T 831.755.7940 F 831.755.7944

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that it will no longer provide them directly to the Exchange. Instead, Stanislaus County requires entities such as the Exchange to register for Public Purchase's services and obtain the documents through them. Public Purchase has in turn also adopted restrictive terms of service that preclude the Exchange from obtaining these public documents and providing them to others. Public Purchase has barred the Exchange from downloading public contract documents precisely because the Exchange intends to fulfill its traditional contractor plan room role – the importance of which has been recognized by the Legislature – and make the public contract documents available to contractors. Public Purchase has further claimed that it owns the copyright and intellectual property in the public contract documents. I understand that Public Purchase has taken similar action with regional builders exchanges in other areas of the State of California, suspending their accounts and barring their access to public contracting documents.

This exclusive relationship with Public Purchase, and Public Purchase's refusal to provide these public documents to the Exchange free of charge and without restriction, fails to fulfill the County's obligations under Public Contract Code section 20103.7. The Public Contract Code mandates that electronic copies of these documents shall be provided to the Exchange free of charge upon request. The Exchange demands that the Stanislaus County provide the electronic copies of project documents directly to the Exchange unless and until San Joaquin County amends its contract with Public Purchase to require it to provide the Exchange with the County's public contracting documents free of charge, and without restriction.

Please respond to confirm that the County will make electronic copies of its public contracting documents available directly to the Exchange as required by Public Contract Code section 20103.7.

Sincerely,

COOK BROWN, LLP



STEPHEN R. McCUTCHEON, JR.

SRM/bp

cc: Sacramento Regional Builders Exchange