



CITY OF SACRAMENTO

ORIGINAL

PROCUREMENT SERVICES DIVISION

Bid Number: B061181093

FILED

MAY 31 2006

By The
Office of The City Clerk

**INVITATION FOR BID
And
Contract Specifications**

FOR: Detectable Warning Tiles (Truncated Domes)

Bids Must Be Received Prior To 2:00 P.M. on May 31, 2006

Submit Bids To: City Clerk's Office
915 "I" Street, First Floor
Sacramento, CA 95814

Pre-Bid Conference: Not Applicable
Mandatory: Yes
 No

NAME AND ADDRESS OF BIDDER SUBMITTING THIS BID:
(Bidder to complete the following information)

Name of Bidder: Bob Atwell c/o White Cap Construction Supply

Address: 1001 Fee Drive

City, State, Zip Code: Sacramento CA 95815

Phone Number: 916-920-4344 ext. 11

Email Address: robertatwell@whitecap.net

ORIGINAL

**CITY OF SACRAMENTO
PROCUREMENT SERVICES DIVISION**

Bid No. B061181093

Table of Contents

<u>Item</u>	<u>Page</u>
"No Bid" Response Form.....	3
Bid Instructions and Requirements.....	5
Bid Signature Page.....	8
Pricing Schedule.....	10
Items Requiring Bidder Response.....	11
Required Submittals.....	13
General Conditions.....	14
Special Provisions.....	21
Equal Benefits Ordinance (EBO).....	EXHIBIT 1

1

BID INSTRUCTIONS AND REQUIREMENTS

No Bid Is In Legal Form Unless the Following Instructions Are Fully Complied With

1. **Additional Copies.** VENDORS ARE REQUIRED TO SUBMIT AN ORIGINAL BID AND 2 ADDITIONAL COPIES OF THIS BID, INCLUDING ALL REQUIRED ATTACHMENTS SUCH AS BROCHURES AND CATALOGS, TO THE CITY CLERK ON THE DATE AND AT THE TIME AND LOCATION SPECIFIED ON THE COVER SHEET. FAILURE TO DO SO MAY CAUSE YOUR BID TO BE REJECTED.
2. **Bid Forms.** Bid must be submitted on these printed forms and sealed in an appropriate envelope or package.
 - a. To obtain an electronic version of this bid go to Procurement's website at www.pwsacramento.com/bids
 - b. All bids shall be delivered to designated recipient not later than the time specified on the Invitation for Bids.
 - c. Bids will be opened, in public, in the City Clerk's Hearing Room, 915 "I" Street, Second Floor, Sacramento, CA, at or after 2:00 P.M., May 31, 2006.

(Note: Bids must be submitted prior to 2:00 P.M. on the above date)

- d. All bids shall be clearly and distinctly written without erasure or modification, and properly signed by an authorized party, who shall indicate the capacity in which the signature is executed.
3. **Alternate Bids.** Alternate bids are invalid unless invited and covered by the specifications
4. **Bid Security.** Bid Security is: Required Not Required

If required, bid security approved by the City must accompany the bid, in the amount of ___ % of the total amount of the bid. Bid security can be in the form of a cashier's check, certified check, or a bid bond from a surety company authorized to do business in the State of California. Bid securities will be returned to all except the three lowest Bidders within ten days after the opening of bids. The bid security of the two unsuccessful Contractors will be returned after the successful Contractor has executed the contract. Bid security of the successful Contractor will be returned when the contract is signed and all other contract award requirements have been met.
5. **Interest in More Than One Bid.** No bidder shall be interested in more than one bid as provided by City Code Section 3.56.130(D).
6. **Rejection of Bids.** The right to reject any and all bids is reserved by the City, in its absolute discretion.
7. **Right to Waive.** The City reserves the right to waive any informallties or minor irregularities, as determined in its sole discretion, in connection with bids received.
8. **City Code.** All provisions of Chapter 3.56 of the City Code are applicable to any bid submitted or contract awarded.
9. **Equipment.** If equipment is bid, it shall be the newest and latest model in current production. Used, re-manufactured, shopworn, demonstrator, prototype or discontinued models are not acceptable unless otherwise stipulated by the City.
10. **Faithful Performance Bond.** A faithful performance bond is: Required Not Required

If required, the successful bidder must submit a faithful performance bond in a form approved by the City Attorney, in the amount of _____.

BID NO. B061181093

11. **Payment Discounts.** Payment discounts offered for payment in less than twenty (20) days will not be considered as a basis of award. Payment discounts offered for payment in twenty (20) or more days will be subtracted from the total bid price for the purposes of bid evaluation. Any payment discount offered by the successful bidder will be accepted by the City of Sacramento, whether or not it was considered as a basis of award.
12. **Pre-Bid Conference.** If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, all bidders are required to attend the conference. Failure to attend this conference will result in rejection of your bid. If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, bid packages will be made available only through the time and date of the conference. Subsequent addenda, if applicable, will be furnished only to those bidders who attended the Pre-Bid Conference.
13. **Bid Inquiries.** Questions regarding this bid should be referred to:

General Questions:
Procurement Services Division
915 I Street, 2nd Floor
Sacramento, CA 95814
Attention: Marc Robles
(916) 808-6240

Technical Questions
Street Maintenance Division
5730 24th St., Bldg. 9
Sacramento, CA 95822
Attention: Juan Montanez
(916) 808-2254

These inquiries must be submitted at least 10 days prior to the bid opening date. Any interpretations by the City will be made in the form of a written amendment. The receipt of such an amendment must be acknowledged in accordance with the directions on the amendment. Oral explanations or instructions given before the award of the contract will not be binding.

14. **Bid Evaluation.** In determining the amount bid by each bidder, the City shall disregard mathematical errors in addition, subtraction, multiplication and division that appear obvious on the face of the Bid. When such a mathematical error appears on the face of the Bid, the City shall have the right to correct such error and to compute the total amount bid by the bidder on the basis of the corrected figure or figures.

When an item price is required to be set forth in the Bid, and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times the City's estimate of the quantity to be provided or performed for said item, the item price shall prevail over the sum set forth as the total for the item unless, in the sole discretion of the City, such a procedure would be inconsistent with the intent of the bid process. The total paid for each such item of work shall be based upon the item price and not the total price.

Should the Bid contain only a total price for the item and the item price is omitted, the City shall determine the item price by dividing the total price for the item by City's estimate of the estimated quantities to be provided or performed.

If the Bid contains neither the item price nor the total price for the item, then it shall be deemed incomplete and the Bid shall be disregarded.

15. **Determination of Lowest Responsible Bidder.** Sacramento City Code §3.56.020 provides that the lowest responsible bidder shall be determined as follows:
 - a. In determining whether a bidder is responsible, consideration shall be given to: (i) the quality and performance of the supplies to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract or effectuate the transaction; (iii) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (v) the quality of the bidder's performance on previous purchases by, or contracts with, the City; (vi) the ability of the bidder to provide future maintenance, repair parts and services for the supplies provided.
 - b. Based on the information provided in the bids, the City Council or the City Manager, as the case may be, shall identify those bids that are subject at the time of bid opening to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. This deduction shall be in addition to the application of any bid price preferences authorized by subsection c, below.

- c. The City Council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including but not limited to, preferences to promote the participation and utilization of small and emerging business enterprises in the City's contracting for supplies and nonprofessional services. The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences. The calculation of such preferences shall be in addition to any deduction of sales or use tax required by subsection b, above
16. **Pre-Award Conference.** The apparent lowest responsible bidder may be required to attend a pre-award conference at a mutually acceptable time at which requirements of the Contract will be reviewed. At that time, samples of forms, reports etc , will be submitted by the Contractor for final approval.
17. **Award by Item or Group.** The City reserves the right to make separate awards for any item or category/group of items to the lowest responsible bidders for such items or category/groups of items.
18. **Multiple Awards.** The City reserves the right to make multiple awards in order to provide for back-up, to insure continuity of supply if meeting the City's requirements within an acceptable time period exceeds the capacity or capability of the primary contractor(s).
19. **Contract Award.** Within thirty (30) days after the bid opening a contract will be awarded by the City to the lowest responsible bidder, subject to the right of the City to reject all bids or waive informalities or minor irregularities, as it may deem proper. The time for awarding a contract may be extended in the sole discretion of the City, if required to evaluate bids or for such other purposes as the City may determine, unless the Bidder objects to such extension in writing with his/her bid

**SUBJECT TO PARAGRAPH 7 ABOVE, THE CITY CANNOT ACCEPT A
BID FAILING TO COMPLY WITH ANY OF THE ABOVE REQUIREMENTS.**

BID

BID NO. B061181093

FOR SERVICES/SUPPLIES: Detectable Warning Tiles (Truncated Domes)

To the City of Sacramento:

The undersigned bidder (hereafter referred to as the "bidder" or the "Contractor") submits the attached bid, and certifies as follows: that the only persons or parties interested in this bid as principals are those named herein as bidder; that this bid is made without collusion with any other person, firm, or corporation; that in submitting this bid the bidder has examined all of the Contract Documents identified below; that the bidder proposes and agrees that if this bid is accepted, the bidder will execute and fully perform the contract for which bids are called; that the bidder shall perform all the work and/or furnish all the materials specified in the Contract Documents, in the manner and time therein prescribed, and according to the requirements as therein set forth; and that the bidder shall take in full payment therefor, the prices set forth in the attached Pricing Schedule.

CONTRACT DOCUMENTS

Performance of and payment for the contract for which bids are called shall be subject to all terms and conditions of the Invitation for Bid, the Bid Instructions and Requirements, the Bid, the Pricing Schedule(s), the Items Requiring Bidder Response, the Required Submittals, the General Conditions, and any Addenda, Amendments, Special Provisions, Specifications, Plans or other requirements applicable to performance of the work and/or furnishing the materials specified herein. Such documents, referred to herein as the "Contract Documents," are fully incorporated herein by this reference and are collectively referred to as the "Contract". By submitting this Bid, the Contractor agrees to fully perform each and every provision of the Contract, provided that City awards the Contract to the Contractor, and provided further that City shall have no obligation hereunder unless and until such award is made. Contractor shall not make any changes to this form without City's written approval, and any changes made without such approval shall be void.

To Be Filled Out By Bidder

NAME OF CONTRACTOR: White Cap Construction Supply

ADDRESS: 1001 Fee Dr. Sacramento CA 95815

PHONE #: 916-920-4344 FAX #: 916-927-4207

STATE TAX I.D. #: 21EAA24-084897 FED. TAX I.D. #: 95-3043400

City of Sacramento Business Operation Tax Certificate #: 107088
(Contract award will not be processed if Certificate Number is missing)

TYPE OF BUSINESS ENTITY (check one): Individual/Sole Proprietor Partnership
 Corporation Limited Liability Company
 Other (please specify: _____)

BY: (signature of authorized person) Bob Atwell

PRINT NAME: BOB ATWELL

TITLE: DIVISION SALES MANAGER

Note: All information submitted in or in connection with a bid is submitted under penalty of perjury. The City shall have the right to terminate at any time any contract awarded pursuant to a bid that contains false information

FOR CITY USE ONLY

The Bid was opened on May 31, 2006

Bid Bond Required: No; Yes - Amount: \$ _____

Received: Cashiers or Certified Check drawn on a California bank; Surety Bond

City Clerk/Procurement Services Manager

CONTRACT AWARD

Bid Items Included in the Contract: All Items, unless otherwise specified below

Specify: _____

Contract Not-to-Exceed Amount: \$ 750,000.00

Award Date: August 8, 2006

CONTRACT APPROVAL

Approved as to Form:



City Attorney

Approved:

City Manager
(Or Authorized Designee)

Attest:

City Clerk

PRICING SCHEDULE

CITY OF SACRAMENTO
SACRAMENTO, CALIFORNIA

For furnishing to the City of Sacramento prices in accordance with the provisions and specifications contained herein:

<u>Item No.</u>	<u>Qty.</u>	<u>Description</u>	<u>Year 1</u>	<u>Extension</u>	<u>Year 2</u>	<u>Extension</u>	<u>Year 3</u>	<u>Extension</u>
1	600	Armor Tile Detectable Warning Tiles, Product No. ADA-C-3648S-YW	\$ 210 ⁰⁰	\$ 126,000	\$ 210 ⁰⁰	\$ 126,000	\$ 210 ⁰⁰	\$ 126,000
2	200	Armor Tile Detectable Warning Tiles, Product No. ADA-S-3648-YW	\$ 199 ⁵⁰	\$ 39,900	\$ 199 ⁵⁰	\$ 39,900	\$ 199 ⁵⁰	\$ 39,900

Note: The quantities listed above are estimates of the City's annual requirements. Vendor agrees to supply more or less as required on an annual basis at the prices quoted above.

ITEMS REQUIRING BIDDER RESPONSE

NOTE: Bidders must provide responses where indicated to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of bid.

1. SBE/EBE FIVE PERCENT (5%) BID EVALUATION PREFERENCE

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. Any bid or quotation submitted by a firm that is certified as a SBE by either the State of California or the City of Sacramento, or that is certified as an EBE by the City of Sacramento, will receive a five percent (5%) bid evaluation preference for the purpose of determining the lowest responsible bidder. If, after applying the 5% bid evaluation preference, the bid of an SBE/EBE firm receiving such preference is determined to be the lowest responsible bid, the award will be made for the actual amount bid. To receive this bid evaluation preference, a firm must be certified as a SBE or EBE at the time of bid opening. Questions regarding eligibility for SBE/EBE certification should be addressed to the City of Sacramento Office of Small Business Development at (916) 808-6747.

A. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION

Is the firm submitting the bid certified by the State of California and/or the City of Sacramento as a small business enterprise? Check the appropriate block below:

- YES - the firm submitting the bid is certified by the State of California and/or the City of Sacramento as a small business enterprise.
- NO - the firm submitting the bid is not certified by the State of California or the City of Sacramento as a small business enterprise.

If the response to the above is YES, provide the State of California and/or City of Sacramento Certification Number _____.

B. EMERGING BUSINESS ENTERPRISE (EBE) CERTIFICATION

Is the firm submitting the bid certified by the City of Sacramento as an *emerging* business enterprise? Check the appropriate block below:

- YES - the firm submitting the bid is certified by the City of Sacramento as an emerging business enterprise.
- NO - the firm submitting the bid is not certified by the City of Sacramento as an emerging business enterprise.

If the response to the above is YES, provide the City of Sacramento Certification Number: _____.

2. LOCAL BUSINESS SALES/USE TAX DEDUCTION

The Sacramento City Code requires the City to identify those bids that are subject to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3 24 of the Sacramento City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. The current rate at which such local sales or use tax is received by the City is one percent (1%). Therefore, in evaluating bids to determine the lowest responsible bidder, bids that are subject to this tax at the time of bid opening shall have an amount equal to one percent (1%) of the taxable total deducted from the bids. This deduction shall be in addition to the application of any bid price preferences or other deductions authorized by the City Code. Such deductions shall be made for bid evaluation purposes only. Contract awards shall be made at the actual bid amount.

In order to identify those bids that are subject to the City's local sales or use tax, all bidders shall respond to the following:

- 1) Does the bidder have fixed offices or locally taxable distribution points within the boundaries of the City of Sacramento? Yes; or No
- 2) If the answer to Question #1 is "Yes":

a) Provide the address of the bidder's fixed offices or locally taxable distribution point(s):

1001 Fee Drive
Sacramento CA 95815

b) Provide the bidder's current, valid City of Sacramento Business Operations Tax Certificate Number:

107088

3. PAYMENT TERMS

Will you offer a prompt payment discount? Yes [] or No (Net 30 days)

If Yes, the Payment Discount is _____% for payment within _____ calendar days, which will be computed from the date delivery is made and is accepted by the City, or the date a proper invoice is received, whichever is later.

PAYMENT DISCOUNTS SHALL BE CONSIDERED IN AWARDING THE CONTRACT AS SET FORTH IN THE "BID INSTRUCTIONS AND REQUIREMENTS", PARAGRAPH 11 (ENTITLED "PAYMENT DISCOUNTS").

Payment terms are net 30 unless Contractor offers a prompt payment discount. All prompt payment discounts, if taken, shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, which ever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of Contractor's invoice.

**ITEMS THAT MUST BE SUBMITTED BY SUCCESSFUL
BIDDER PRIOR TO START OF CONTRACT**

The following documents are required to be completed and submitted by the successful bidder prior to the start of the contract:

1. CERTIFICATE OF INSURANCE

Successful bidders are REQUIRED to submit the necessary Certificate(s) of Insurance as called for in the General Conditions prior to award of the contract.

2. BUSINESS OPERATIONS TAX CERTIFICATE

Chapter 3.08 of the Sacramento City Code requires that anyone conducting business in the City of Sacramento obtain a **Business Operations Tax Certificate** and pay the applicable tax if necessary. Successful bidders will be REQUIRED to show compliance with this requirement prior to award of the contract.

To obtain information about the Business Operations Tax Certificate, contact the City of Sacramento, Revenue Division, 915 I Street, Room 1214, Sacramento, CA 95814, or telephone (916) 808-8500.

GENERAL CONDITIONS**1. Independent Contractor.**

- A. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Contract, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance of any work and/or the furnishing of any materials under this Contract.
- B. It is further understood and agreed by the parties hereto that Contractor, in the performance of its obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Contract, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contract, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Contract.
- C. If, in the performance of this Contract, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Contract, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Contract. Nothing in this Contract shall be construed as to create an exclusive relationship between City and Contractor.
2. **Licenses; Permits, Etc.** Contractor represents and warrants that Contractor has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature which are legally required for Contractor to perform any work or furnish any materials under the Contract. Contractor represents and warrants that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any legally required licenses, permits and approvals. Without limiting the generality of the foregoing, if Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Contractor Not Agent.** Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.
4. **Confidentiality of City Information.** During performance of this Contract, Contractor may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the City. Contractor agrees to protect all City Information and treat it as strictly confidential, and further agrees that Contractor shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City. A violation by Contractor of this Section 4 shall be a material violation of this Contract and shall justify legal and/or equitable relief.

5. Contractor Information.

- A. Contractor shall fully defend, indemnify and hold harmless City, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor pursuant to this Contract infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Contractor not later than ten (10) days after City is served with any such claim, action, lawsuit or other proceeding, provided that City's failure to provide such notice within such time period shall not relieve Contractor of its obligations hereunder, which shall survive any termination or expiration of this Contract. In this Contract, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Contractor shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.
- B. All proprietary and other information received from Contractor by City, whether received in connection with Contractor's bid to City or in connection with any Services performed by Contractor, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City shall give notice to Contractor of any request for the disclosure of such information. The Contractor shall then have five (5) days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by City in any legal action to compel the disclosure of such information under the California Public Records Act. The Contractor shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- C. The parties understand and agree that any failure by Contractor to respond to the notice provided by City and/or to enter into an agreement with City, in accordance with the provisions of subsection B, above, shall constitute a complete waiver by Contractor of any rights regarding the information designated "trade secret" by Contractor, and such information shall be disclosed by City pursuant to applicable procedures required by the Public Records Act.

6. Indemnity.

- A. Indemnity: Contractor shall fully indemnify and save harmless, City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of Contractor, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Contract, whether or not the City, its officers or employees reviewed, accepted or approved any work performed or materials provided by the Contractor, and whether or not such Liabilities are litigated, settled or reduced to judgement
- B. Obligation to Defend: Contractor shall, upon City's request, defend at Contractor's sole cost any action, claim, suit, cause of action or portion thereof which asserts or alleges Liabilities to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of Contractor, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Contract, whether such action, claim, suit, cause of action or portion thereof is well founded or not
- C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section 6, the existence or acceptance by City of any of the insurance policies or coverages described in this Contract shall not affect or limit any of City's rights under this Section 6, nor shall the limits of such Insurance limit the liability of Contractor hereunder. This Section 6 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 5.A., above. The provisions of this Section 6 shall survive any expiration or termination of this Contract.

7. **Insurance Requirements.** During the entire term of this Contract, Contractor shall maintain the following insurance.

A. Minimum Scope of Insurance: Coverage should be at least as broad as:

1. Insurance Services Office Form No. CG 0001 (Commercial General Liability);
2. Insurance Services Office Form No.: CA 0001 (Ed 1/87) (Automobile Liability, Code "any auto");
3. Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability Insurance:

B. Minimum Limits of Insurance: Contractor shall maintain limits no less than:

1. Commercial General Liability; \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages:

- a. City, its officials, employees and volunteers shall be covered as insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to City, its officials, employees or volunteers.
- b. Contractor's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
- d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

Each insurance policy require by this Contract shall be endorsed to state that coverages shall not be canceled except after thirty (30) days prior written notice has been given to City. In addition, Contractor agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been give to City and City approves the reduction in coverage or limits. Contractor further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to City and City approves such increase.

E. Acceptability of Insurers: Insurance shall be placed with Insurers with a Bests' rating of no less than A:VII. This requirement may, however, be waived in individual cases for Errors and Omissions Coverages only; provided, however, that in no event shall a carrier with a rating below B:IX be acceptable.

- F. Verification of Coverage: Contractor shall furnish City with certificates of insurance showing compliance with the above requirements and with original endorsements effecting all coverages required by this Contract. The certificates and/or endorsements shall set forth a valid policy number for City, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be forwarded to the City contract representative.
- G. Payment Withhold: City shall withhold payments to Contractor if the certificates of insurance and endorsements required in subsection F, above, are canceled or Contractor otherwise ceases to be insured as required herein.
8. **Equal Employment Opportunity.** During the performance of this Contract, Contractor, for itself, its assignees and successors in interest, agrees as follows:
- A. Compliance With Regulations: Contractor shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: Contractor, with regards to the work performed by it after award and prior to completion of the work pursuant to this Contract, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligation under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by Contractor with the nondiscrimination provisions of this Contract, the City shall impose such sanctions as it may determine to be appropriate including, but not limited to:
1. Withholding of payments to Contractor under this Contract until Contractor complies;
 2. Cancellation, termination, or suspension of the Contract, in whole or in part
- F. Incorporation of Provisions: Contractor shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request City to enter such litigation to protect the interests of City.
9. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of

California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.

10. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for reinspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.
11. **Funding Availability.**
 - A. The Contract is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
 - B. The City's payment obligation under the Contract shall not at any time exceed the amount of funds appropriated and approved for such purpose by the Sacramento City Council
 - C. The Contract shall terminate without penalty at the end of the fiscal year in the event funds to make payment under the Contract are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Contract shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject, further, to the limitation in subsection 11.B. of these General Conditions.
 - D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.
12. **Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under the Contract will be accomplished.
13. **Material Safety Data Sheets (MSDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a MSDS with the first shipment of any hazardous material. Also at any time the content of an MSDS is revised, the Contractor shall provide new information relevant to the specific material.
14. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the Contract either for cause or for convenience as provided in Section 17 of these General Conditions.
15. **Payment and Invoicing.** Unless otherwise specified in the Contract Documents, payment for services rendered or materials provided and accepted by City will be made monthly, in arrears, after receipt of a proper invoice.
16. **Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of the Contract. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.
17. **Termination.**
 - A. Termination for Cause. If the Procurement Services Manager determines that the Contractor's performance is not satisfactory, and notifies the Contractor of such determination in writing, the Contractor shall correct the unsatisfactory condition(s) within 5 days after receiving such notification. If the Contractor fails to correct the unsatisfactory condition(s) within 5 days, the Procurement Services Manager may declare the Contract terminated upon 30 days written notice and may, in the Procurement Services Manager's sole discretion,

demand performance by the Contractor's surety, if any, or contract for performance of all or part of the remainder of Contract with another contractor. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor shall again fail to satisfactorily perform pursuant to the Contract, City may thereupon terminate the Contract immediately, with no prior notice. In the event of termination hereunder, the Contractor and/or its surety shall be liable and assessed for any and all costs for re-procurement and completion of the Contract.

- B. Termination for Convenience. The City may terminate the Contract, in whole or in part, for its convenience and without cause upon giving written notice to the Contractor. The City shall pay all reasonable costs associated with the Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with such termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits which have not been earned, or any other costs which have not been incurred, as of the date of termination.
- C. Termination After Completion Date. If the Contractor fails to complete its performance of the Contract within the time specified in the Contract (including any approved extension of such time), if any, the Contract may be terminated and, in the event of such termination, the Contractor shall not be paid or allowed any further compensation for any costs incurred after such termination. The City may thereafter proceed to complete the Contract either by rebidding or otherwise, and the Contractor and its surety, if any, shall be liable to the City for all loss or damage that the City may suffer on account of the Contractor's failure to complete the Contract on time.

18. **Guarantee.** By submitting its bid, the Contractor guarantees that all merchandise delivered and/or work or services performed under the Contract shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed does not meet the minimum requirements of the Contract, the Contractor shall be required to correct the same at Contractor's sole expense.

19. **Entire Agreement; Order of Precedence.** The Contract Documents contain the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Sacramento City Code. In the event of any conflict among the provisions of different Contract Documents, the conflict shall be resolved by giving precedence to the Contract Documents in the following order:

- A. Post-Award Amendments.
- B. Pricing Schedule(s), as corrected by City, if applicable.
- C. Pre-Award Addenda.
- D. Special Provisions.
- E. Bid Instructions and Requirements.
- F. General Conditions.
- G. Technical Specifications and/or Plans.

20. **Waiver.** Neither City acceptance of, or payment for, any work performed or material supplied by Contractor, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Contract, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

21. **Enforcement of Contract.** This Contract shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Contract shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

22. **Assignment Prohibited.** The expertise and experience of Contractor are material considerations for this Contract. City has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on Contractor under this Contract. In recognition of this interest, Contractor shall not assign any right or obligation pursuant to this Contract without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.

23. Binding Effect. This Contract shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 22, above.

SPECIAL PROVISIONS

SCOPE

Vendor shall provide detectable warning tiles (truncated domes) used in the construction of A.D.A. curb ramps by the City. Detectable warning tiles (truncated domes) for curb ramps are required pursuant to Federal Law, CFR 28, Part 36, and Appendix A, ADA Accessibility Guidelines (ADAAG), 4.7.7. This applies to all new and retrofitted curb ramps.

Detectable Warning Tiles shall be Armor Tile, as manufactured by Engineered Plastics Inc: Product (#1) #ADA-C3648S-YW, Cast in Place, 36"x 48", Sound Amplifying, Color Yellow and Product (#2) #ADA-S-3648-YW, Surface Applied, 36"x 48", Color Yellow

QUANTITIES (ESTIMATED)

The quantities stated in the pricing schedule are estimates only of the City's annual requirements. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period.

DELIVERY GUARANTEE

Vendors must have a minimum of 300 detectable warning tiles (truncated domes) of the cast in place type (#1) and 100 detectable warning tiles (truncated domes) of the surface mounted type (#2) as specified above, in stock and available for delivery to the City within five (5) working days of a request for the product by the City.

CONTRACT PERIOD

Any contract(s) resulting from this proposal shall be effective from date of award through December 31, 2009.

BRAND NAMES

Unless otherwise indicated, brand names are listed to indicate that all parts must be compatible with current equipment. Alternate bids are not invited.

F.O.B./FREIGHT

All items are to be supplied F.O.B., Delivered, freight prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and will hold title to goods up until they are received by the City of Sacramento at the shipping destination. Contractor will be responsible for filing all claims for damaged or lost goods.

DELIVERY METHOD

Delivery must be by truck. Palletized shipments will be accepted. Unpalletized shipments must be off-loaded by delivering carrier. The carrier must unpack and set the material in place as directed and remove all debris and packing material.

DEFAULT BY CONTRACTOR

In case of default by Contractor, the City reserves the right to procure the articles or services from other sources and to hold the Contractor responsible for any excess costs occasioned to the City thereby.

INVOICING AND PAYMENT

Invoices shall be mailed or delivered to the City of Sacramento, Street Services Division, Attn: Juan Montanez, 5730 24th Street, Bldg. 9, Sacramento, CA 95822

CONTRACT REPRESENTATIVE

During performance of the contract, the City will be represented by Juan Montanez, General Supervisor, Telephone (916) 916-808-2254.

MODIFICATION OF CONTRACT

The City may order changes in the work herein required and may order extra work in connection with the performance of the contract and the Contractor may comply with such orders, except that:

- A. If changes in requirements, reports, or materials are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the contract will be increased or decreased by such amount as the Contractor and the Procurement Services Manager may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of work.
- B. No order for any alteration, modification, or extra work which will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Procurement Services Manager. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract, including the requirements of the specifications.

WARRANTY (COMMERCIAL)

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this contract.

PURCHASE ORDER

1. A Purchase Order will be issued to the Contractor on behalf of the City organization(s) who will be ordering items/services covered in the contract. The Purchase Order will be enclosed with the resulting contract or will be issued shortly thereafter, and will become an integral part of the resulting contract. Each Purchase Order will cite a specific dollar value to cover a particular item or specified period of time. If a contract is for a specific period of time and extends beyond the close of the City's fiscal year of June 30th, a second purchase order may be issued.
2. The Purchase Order does not supersede any provision of the resulting contract. Performance time and dates are determined solely by the contract, and any modification thereto.
3. Delivery of material and/or services are not to begin until receipt of the Purchase Order and/or other notification by the City Procurement Services Manager.

COOPERATIVE PURCHASING

If mutually agreeable to both parties, the use of any result contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

DRUG-FREE WORKPLACE POLICY

The City of Sacramento is committed to providing a safe workplace for its employees and citizens alike. An essential part of this commitment is keeping the work environment free from drugs. In 1989, to assist in the achievement of this end, the City established a Drug-Free Workplace Policy.

As a contractor doing business with the City, it is expected that your firm will also implement a drug-free policy that informs your employees of the dangers and prohibition of drug abuse and that you will join with the City in maintaining a drug-free workplace.

If, in the performance of work under this contract, any employee of the Contractor exhibits unacceptable behavior that may be related to use of drugs or alcohol, the City reserves the right to discuss the employee's behavior with the Contractor. If the unacceptable behavior persists, the City may require that the employee be removed from all work under this contract.

EXHIBIT 1

REQUIREMENTS FOR THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS ORDINANCE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits By City Contractors Ordinance (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed. The provisions apply only to those employee(s) actually working on the City contract and only for the actual amount of time the employee(s) spend working on such contract.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

EXHIBIT 1

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form (attachment "A"), signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as attachment "B."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as attachment "C."

EXHIBIT 1

Attachment A

DECLARATION OF COMPLIANCE Equal Benefits Ordinance

White Cap Construction Supply
Name of Contractor

1001 Foe Drive Sacramento CA 95815
Address

The above named contractor ("Contractor") hereby declares and agrees as follows:

1. I have read and understand the Non-Discrimination In Employee Benefits By City Contractors Ordinance ("Ordinance") provided to me by the City of Sacramento ("City") in connection with the City's request for proposals or other solicitations for the performance of services, or for the provision of commodities, under a City contract or agreement ("Contract").
2. As a condition of receiving the City Contract, I agree to fully comply with the requirements of the Ordinance, codified as Chapter 3. 54 of the Sacramento City Code.
3. If the face amount of this City Contract is less than \$25,000, as a condition of receiving this Contract, I agree to notify the City in writing if the aggregate value of the City Contract referenced herein, after changes, modifications, or similar actions, equals or exceeds \$25,000 in total value.
4. I understand, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance, are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

I agree that should I offer any of the above listed employee benefits, that I will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

EXHIBIT 1

Attachment A

DECLARATION OF COMPLIANCE Equal Benefits Ordinance

5. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

- a. In the event that the actual cost of providing a benefit to a domestic partner or spouse, exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, I will not be required to provide the benefit, nor shall it be deemed discriminatory, if I require the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
- b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.
- c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.
- d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner status.
- e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate, in the infrastructure, nondiscrimination in employee benefits

The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date the Contract is executed with the City.

- g. Until the expiration of a current collective bargaining agreement(s) where, in fact, employee benefits are governed by a collective bargaining agreement(s).
- h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the agreement(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

EXHIBIT 1

Attachment A

DECLARATION OF COMPLIANCE Equal Benefits Ordinance

- i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

6. I understand that failure to comply with the provisions of Section 5. (a) through 4. (l), above, will subject me to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full; deemed ineligible for future contracts for up to two (2) years; the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
7. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.
8. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one contractor is available to enter into a contract or agreement to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the EBO requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

9. In consideration of the foregoing, I shall defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the City's Equal Benefits Requirements or of the Ordinance by me.

EXHIBIT 1

Attachment A

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.

Bob Atwell
Signature of Authorized Representative

05-31-06
Date

BOB ATWELL
Print Name

DIVISION SALES MGR
Title