

BID NUMBER PA-02211

TO: CITY OF LONG BEACH
CITY MANAGER
ATTN: CITY CLERK
333 West Ocean Boulevard, Plaza Level
Long Beach, California 90802



INVITATION TO BID
"AS NEEDED" ELECTRIC DOOR AND
ROLLING GATE MAINTENANCE
SERVICE AND PARTS

CONTRACT NO. 32262

1. COMPLETE CONTRACT:

This Invitation to Bid, together with THE NOTICE INVITING BIDS, the entire Bid (including Specifications), or any items(s) thereof, the signature page, Instructions to Bidders, General Conditions, Special Conditions, Bid Section, Addendums, and when required, CONTRACTOR'S BOND shall become the Contract upon its acceptance by the City Manager or designee on behalf of the City of Long Beach, Contractor will be provided with a copy of the executed Contract. All materials or services provided by the Contractor shall comply with the City Charter, and all applicable Federal, State and City Laws.

2. SERVICES TO BE PROVIDED BY THE CONTRACTOR:

Contractor shall upon acceptance of this Bid by the City, furnish the goods and services herein specified according to the terms and conditions set forth herein.

3. AMOUNT TO BE PAID:

The City shall pay Contractor for the goods or services as described in the section entitled "PAYMENT" in the Instructions to Bidders.

4. CHOICE OF ALTERNATE PROVISIONS; OPTIONS; NOTIFICATION:

When alternative provisions are requested, or options are offered, Contractor will be notified as to which provision, or option, is being accepted at the same time that he is notified that he is the successful Bidder.

5. DECLARATION OF NON-COLLUSION:

The undersigned certifies or declares under penalty of perjury that this Bid is genuine and not sham or collusive, or made in the interest or on behalf of any person or entity not herein named; that the Bidder has not directly or indirectly induced or solicited any other Bidder to submit a sham bid, or any other person or entity to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure to himself any advantage over other Bidders.

BIDDER MUST COMPLETE AND SIGN BELOW:

(Signature of Corporate Officers or persons authorized to sign bids and contracts on behalf of the Contractor – refer to page 2 Instructions Concerning Signatures.)

EXECUTED AT: GARDENA, CA ON THE _____ DAY OF _____ 20____
CITY STATE MONTH

COMPANY NAME: R/S Overhead Doors of South Bay, Inc. TIN: _____
(FEDERAL TAX IDENTIFICATION NUMBER)

STREET ADDRESS: 444 E. Alondra Blvd. CITY: GARDENA STATE: CA ZIP: 90248

PHONE: 310 6323484 FAX: 632 3488

SI Steve Lungate (SIGNATURE) _____ V.P. (TITLE)

Steve Lungate (PRINT NAME) _____ R SOUTHDBAY STEVE LUNGATE (EMAIL ADDRESS)

SI Leslie Robinson (SIGNATURE) _____ _____ (TITLE)

Leslie Robinson (PRINT NAME) _____ President (EMAIL ADDRESS)

ALL SIGNATURES MUST BE NOTARIZED FOR ALL COMPANIES LOCATED OUTSIDE THE STATE OF CALIFORNIA.
NO OUT-OF-STATE BID WILL BE CONSIDERED UNLESS A NOTARIAL ACKNOWLEDGMENT IS ATTACHED.
NOTARIES ARE NOT REQUIRED FOR CALIFORNIA BIDDERS.

IN WITNESS WHEREOF the City of Long Beach has caused this contract to be executed as required by law as of the date stated below.

THE CITY OF LONG BEACH
BY _____
Director of Financial Management

8/16/11
Date

APPROVED AS TO FORM 8-15, 2011
ROBERT E. SHANNON
CITY ATTORNEY
Robert Shannon
Deputy

11 AUG 18 AM 10:11
Rev 01.27.10

BID NUMBER PA-02211

The City of Long Beach is committed to provide maximum opportunities for Disadvantaged, Minority, Women and Long Beach Business Enterprises (DBEs, MBEs, WBEs and Local) to compete successfully in supplying our needs for products and services.

The following information is submitted regarding the Bidder:

Legal Form of Bidder:

Corporation State of _____

Partnership State of _____

General Limited

Joint Venture

Individual DBA _____

Limited Liability Company State of _____

Composition of Ownership (more than 51% of ownership of the organization):

OPTIONAL

Ethnic (Check one):

Black Asian Other Non-white

Hispanic American Indian Caucasian

Non-ethnic Factors of Ownership (check all that apply):

Male Yes - Physically Challenged Under 65

Female No - Physically Challenged Over 65

Is the firm certified as a Disadvantaged Business: Yes No

Has firm previously been certified as a minority-owned and/or woman-owned business enterprise by any other agency?

Yes No

Name of certifying agency: _____

INSTRUCTIONS CONCERNING SIGNATURES

Please use the proper notary form, which applies to your type of organization on all Bid documents, attachments and bonds requiring a signature by officers of your company.

NOTE: FAILURE TO COMPLY MAY RESULT IN DISQUALIFICATION OF YOUR BID.

INDIVIDUAL (Doing Business As)

- a. The only acceptable signature is the owner of the company. (Only one signature is required.)
- b. The owner's signature must be notarized if the company is located outside of the state of California.

PARTNERSHIP

- a. The only acceptable signature(s) is/are that of the general partner or partners.
- b. Signature(s) must be notarized if the partnership is located outside of the state of California.

CORPORATION

- a. Two (2) officers of the corporation must sign.
- b. Each signature must be notarized if the corporation is located outside of the state of California.

OR

- a. The signature of one officer or the signature of person other than an officer is acceptable if the Bid is accompanied by a certified corporate resolution granting authority to said person to execute contracts on behalf of the corporation.
- b. Signature(s) must be notarized if the corporation is located outside of the state of California.

LIMITED LIABILITY COMPANY

- a. The signature on the Bid must be a member or, if the Articles provide for a manager, must be the manager. (Only one signature is required.)
- b. Signature must be notarized if the company is located outside of the state of California.

THIS INFORMATION IS AVAILABLE IN AN ALTERNATIVE FORMAT BY CONTACTING 562-570-6200.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of _____

County of _____

On _____ Before me, _____
DATE NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC"

Personally appeared _____
NAME(S) OF SIGNER(S)

personally known to me - OR - 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.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
 - CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
 - GENERAL
 - ATTORNEY-IN-FACT
 - TRUSTEE(S)
 - GUARDIAN/CONSERVATOR
 - OTHER:
- _____

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES):

SIGNER(S) OTHER THAN NAMED ABOVE

INSTRUCTIONS TO BIDDERS

1. PREPARATION OF BID:

The preparation of the Bid, including visits to the Site prior to submittal of the Bid, shall be at the expense of Bidder. All prices and notations must be typewritten or written in ink. Any markings in pencil shall not form part of the Bid and shall be disregarded by the City. Any changes or corrections in the Bid must be initialed in ink by the person signing the Bid. Bidder shall state brand name or make of each item bid. If not bidding on item as described, the manufacturer's name and catalog number of the substitute must be given. Bidder shall also attach specifications and furnish other data to establish the suitability of the substitute. Bidder shall quote separately on each item. Bidder shall quote his lowest price and best delivery date as no changes are permitted after the bid opening. Cash discounts offered for payment within fourteen (14) days or less will not be considered when evaluating bids. No telephonic, telegraphic or fax Bids are acceptable.

NOTE: ALL PAGES OF THE INVITATION TO BID MUST BE RETURNED.

2. EXAMINATION OF BID:

Bidder is responsible for examining the Invitation to Bid and submitting its Bid complete and in conformance with these instructions.

3. CONDITIONS OF WORK:

Bidder shall carefully examine the Site to become fully informed regarding all existing and expected conditions and matters, which could affect performance, cost or time of the Work.

4. DISCREPANCIES IN BID DOCUMENTS:

If Bidder finds discrepancies in or omissions from the Invitation to Bid, if the intent of the Invitation is not clear, or if provisions of the Specifications restrict Bidder from bidding, he may request in writing that the deficiency(s) be modified. Such request must be received by the City Purchasing Agent at least five (5) working days before bid opening date. Bidders will be notified by Addendum of any approved changes in the Invitation to Bid.

5. ORAL STATEMENTS:

The City of Long Beach shall not be bound by oral statements made by any employee or agent concerning this Invitation to Bid. If Bidder requires specific information, Bidder must request it in writing and obtain a reply in writing from the City.

6. BRAND NAMES AND SPECIFICATIONS:

The detailed specifications and/or brand names stated are descriptive only and indicate quality, design and construction of items required. **Offers will be considered to supply articles substantially the same as those described herein but with minor variations. Bidders must describe variations in the Bid.** Substitute items must be equal in quality, utility and performance. **The phrase "or approved equal" throughout the specifications means that the City in its sole and absolute discretion shall make the final determination whether or not the substitute items are equal.**

7. AWARD:

Bid shall be subject to acceptance by the City for a period of three (3) months unless a lesser period is prescribed in the quotation by Bidder. The City reserves the right to award all items to one Bidder, or to award separate items or groups of items to various Bidders, or to increase or decrease the quantities of any item. Bidder may submit alternate prices or name a lump sum or discount conditional on two or more items being awarded to him.

The City's purchases of goods and services are based on the City's actual needs and requirements. The City is obligated under this contract/purchase order to purchase and pay for only those goods and services that the City needs and requires, and that the City actually orders and receives. Any dollar amount identified as a "not to exceed:" amount in any City document is not a guaranteed payment amount to any contractor or service provider. Furthermore, the City may determine that its needs and requirements may be met by City labor or by a second contractor or service provider, even after an award is made to one contractor or service provider. An award is not a promise or guarantee of exclusivity.

Bidders are cautioned that comments and statements, whether oral or written, made by City employees regarding the validity of Bids, the waiver of deviations from Specifications, the possibility or probability of an award being made to a particular Bidder, and other similar matters are NOT binding on the City. Bidders should not order materials, obtain financing or take other actions based on such comments and statements. Only authorization of a Contract by the City Council or issuance of a Purchase Order is conclusive and binding on the City with respect to this Bid and its resulting Contract or Purchase Order. However, prior to authorization by the City Council or issuance of the Purchase Order, Bidders may rely on: (1) approval of an "equal" or "substitute" item which will be issued in writing, and (2) written notice of intent to award by the City Council, which is often issued prior to the authorization by the City Council so that a Bidder can order materials that have a long lead time.

8. PAYMENT:

Payment terms are NET/30 unless Bidder otherwise quotes. All Cash Discounts shall be taken and computed from the date of delivery or completion and acceptance of the material, or from date of receipt of invoice, whichever occurs last. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery & acceptance of goods and on receipt of goods and on receipt of Contractor's invoice.

In the event the Contract to be awarded hereunder, including specifications and other documents incorporated therein by reference, provides for the withholding of moneys by the City to ensure performance of such Contract, Contractor may deposit with the City, as a substitute for said withheld moneys, securities listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit, or both, equivalent to the amount withheld, provided Contractor requests permission to make such substitution and bears all expenses in connection therewith.

9. SAFETY APPROVAL:

Where required by City Regulations, any items delivered must carry Underwriters Laboratories Approval or City of Long Beach City Safety Officer approval. Failure to so comply will be cause to reject Bid. Also, any equipment must conform with the Safety Orders of the California Division of Industrial Safety and OSHA regulations.

10. BUSINESS LICENSE:

The Long Beach Municipal Code (LBMC) requires all businesses operating in the City of Long Beach to pay a business license tax. In some cases the City may require a regulatory permit and/or evidence of a State or Federal license. Prior to issuing a business license, certain business types will require the business license application and/or business location to be reviewed by the Development Services, Fire, Health, and/or Police Departments. For more information, go to www.longbeach.gov/finance/business_license.

INSTRUCTIONS TO BIDDERS

11. PUBLIC WORK AND PREVAILING WAGES:

The Contractor to whom the contract is awarded, along with its subcontractors, shall pay not less than the general prevailing rate of per diem, holiday and overtime wages established by the Department of Industrial Relations (DIR) of the State of California for the locality in which the public work is to be performed for each craft, classification or type of worker needed to execute the contract. Refer to the California DIR's website, <http://www.dir.ca.gov/dlsr> for such prevailing wages and additional information.

The Director of Public Works of the City by and on behalf of the City Council has obtained from the Director of the Department of Industrial Relations of the State of California the general prevailing rate of per diem wages and the general prevailing rate of holiday and overtime work in the locality in which the public work is to be performed for each craft, classifications or type of workers needed to execute the Contract, and the same is on file with the City Engineer, 9th floor, City Hall, 333 W. Ocean Boulevard, Long Beach, California 90802. It shall be mandatory upon the Contractor to whom the Contract is awarded, and his Subcontractors to pay not less than the said prevailing rate of wages to all workers employed by Contractor or said Subcontractors in the execution of the Contract.

12. RIGHT TO REJECT:

The City reserves the right to reject at any time any or all Bids, or parts thereof, and to waive any variances, technicalities and informalities which do not impair the quality, utility, durability or performance of the items.

13. SAMPLES:

Samples of items when requested or required must be furnished to the City free of expense to the City and, if not destroyed by tests, will upon request be returned at Bidder's expense.

14. PRICES:

Prices shall be in accordance with those extended to other governmental agencies. In case of error in extension of prices, unit price will govern. All prices must be firm for the Contract term unless the City specifically provides for adjustment.

15. CITY'S POLICY FOR MINORITY AND WOMEN-OWNED BUSINESSES:

The City of Long Beach is committed to providing maximum opportunities for Disadvantaged, Minority, Women and Long Beach Business Enterprises (DBEs, MBEs, WBEs and Local) to compete successfully in supplying our needs for products and services.

Please visit <http://www.longbeach.gov/purchasing/diversity.asp> for more information on the City's Diversity Outreach Program.

SUBCONTRACTORS

To assist the City in maintaining records of its Minority and Women Outreach Program, Bidder is requested to provide the following information. Answers are optional, and failure to answer will not disqualify Bid. If additional space is required, Bidder shall attach a separate sheet.

The following Minority- or Woman-owned subcontractors are to be utilized to provide equipment, material, supplies and/or services for this Contract requirement:

Company Name: RYS OVERHEAD DOOR OF SO.
 Address: 444 E ALONDRA BLVD 3rd
GARDENA CA 90246

Commodity/Service Provided: _____
 Circle appropriate designation: MBE WBE
 Ethnic Factors of Ownership: (more than 51%)
 Black () American Indian ()
 Hispanic () Other Non-white ()
 Asian () Caucasian ()
 Certified by: _____
 Valid thru: _____
 Dollar value of participation: \$ _____

16. BID SUBMITTAL AND WITHDRAWAL OF BIDS:

Each Bid must be delivered to the location and received on or before the due date and time stated herein. Bids will not be accepted after the date and time stated herein. Bids may be withdrawn without prejudice providing the written request is received by the City Clerk no later than the time set for opening Bids. Withdrawals will be returned to Bidder unopened.

SUBMIT TO:
CITY OF LONG BEACH
CITY CLERK
333 W OCEAN BLVD/PLAZA LEVEL
LONG BEACH CA 90802

BID DUE DATE: MAY 10, 2011
TIME: 11:00 am

IF BIDDER HAS ANY QUESTIONS REGARDING THIS INVITATION TO BID PLEASE CONTACT THE FOLLOWING CITY PERSONNEL.

- A. COMMERCIAL (TERMS AND CONDITIONS, ETC)
LENORE BLUEFORD (562) 570-5384
 BUYER TELEPHONE NUMBER
- B. TECHNICAL (SPECIFICATIONS, DRAWINGS, ETC.)
LENORE BLUEFORD (562) 570-5384
 DEPARTMENT CONTACT TELEPHONE NUMBER

17. BID OPENING PROCEDURES:

All Bids will be publicly opened and read at the date and time specified in Instructions to Bidders, item 16.

It is our policy **not** to release price information on these Bids until the department has reviewed them and award has been approved by the City Council and the City Attorney. At that time, the information becomes public. You are welcome to review the results at that time by calling the buyer that handled that Bid and setting up an appointment. Due to the large volume of Bids received, Bid results will **not** be given out by phone and information will not be faxed.

After the Purchasing Division has analyzed the Bids, the name of the apparent low Bidder will be posted on the Internet for a period of one (1) month, together with the rankings of the top three Bidders. These rankings will not contain price information.

CAUTION: Only the City Council has authority to make an award, and a contract is not in effect until the City Council makes an award and contract documents (including insurance and bonds) are signed, submitted and approved.

Bid protest procedures may be obtained from the Buyer. Protests must be submitted within seven (7) calendar days after the date of the Bid opening.

INSTRUCTIONS TO BIDDERS

18. INTER-AGENCY PARTICIPATION:

IF OTHER AGENCIES EXPRESS AN INTEREST IN PARTICIPATING IN THIS BID, WOULD YOU SUPPLY THE SAME ITEMS.

YES X NO

(If yes, any agency electing to participate in this Bid will order its own requirements without regard to the City of Long Beach. The City of Long Beach assumes no liability or payment guarantee on any units sold to participating agencies.)

19. AMERICANS WITH DISABILITIES ACT:

Contractor shall have and be allocated the sole responsibility to comply with the Americans with Disabilities Act of 1990 ("ADA") with respect to performance hereunder and contractor shall defend, indemnify and hold the City, its officials and employees harmless from and against any and all claims of failure to comply with or violation of the ADA as said claim relates to this Contract.

20. EQUAL BENEFITS ORDINANCE:

Bidders/Proposers are advised that any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of Long Beach Municipal Code section 2.73 et seq., the Equal Benefits Ordinance. Bidders/Proposers shall refer to Attachment/Appendix for further information regarding the requirements of the Ordinance.

All Bidders/Proposers shall complete and return, with their bid/proposal, the Equal Benefits Ordinance Compliance form contained in the Attachment/Appendix. Unless otherwise specified in this procurement package, Bidders/Proposers do not need to submit supporting documentation verifying with their bids/proposals. However, supporting documentation verifying that the benefits are provided equally shall be required if the Bidder/Proposer that is selected for award of a contract.

CONTRACT – GENERAL CONDITIONS

1. Acceptance of the offer contained in this Contract is expressly limited to the terms and conditions of such offer as herein stated.
2. No charges for taxes, transportation, boxing, packaging, crating or returnable containers will be allowed and paid by the City unless separately stated hereon. All sales, use, excise or similar taxes to be paid by the City must be itemized separately hereon and on invoices. The City is exempt from payment of Federal Excise Tax under Certificate No. 95-73 0502K and none shall be charged to the City.
3. The City's obligation to pay the sum herein stated for any one fiscal year shall be contingent upon the City Council of the City appropriating the necessary funds for such payment by the City in each fiscal year during the term of this Contract. For the purposes of this section a fiscal year commences on October 1 of the year and continues through September 30 of the following year. In the event that the City Council of the City fails to appropriate the necessary funds for any fiscal year, then, and in that event, the Contract will terminate at no additional cost or obligation to the City.
4. Contractor shall deliver the materials, equipment, supplies or services, or cause the work to be performed, within the time and in the manner specified in the Contract. Times and dates stated herein are of the essence. If at any time Contractor has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay shall be given immediately to the City. Deliveries must be prepaid. C.O.D. shipments will not be accepted.
5. The City reserves the right at any time to make changes in drawings and specifications, in methods of shipment and packaging and in place of delivery as to any articles covered by this Contract. In such event there will be made an equitable adjustment in price and time of performance mutually satisfactory to Contractor and the City; but any claim by Contractor for such an adjustment must be made within thirty (30) days of such change.
6. Contractor warrants that the goods, machinery or equipment delivered or the work performed hereunder shall conform to the specifications, drawings, samples or other description specified by the City and shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, in good working order and free from defect or faulty workmanship for a period of ninety (90) days. When defective goods, machinery, or equipment or faulty workmanship is discovered which requires repair or replacement pursuant to this warranty, Contractor shall provide all labor, materials, parts and equipment to correct such defect at no expense to the City.
7. Contractor shall defend, indemnify and hold the City, its officials and employees harmless from any and all loss, damage, liability, demands, claims, causes of action, costs and expenses (including reasonable attorney' fees) for injuries to persons (including death) or damage or destruction of property connected with or arising from the negligent acts or omissions of Contractor, its officers, agents and employees in the performance of this Contract.
8. The City reserves the right to terminate this Contract at any time in whole or in part even though Contractor is not in default hereunder. In such event there will be made an equitable adjustment of the terms that is mutually satisfactory to the City and Contractor. Upon receipt of any notice of such termination, Contractor shall, unless such notice otherwise directs, immediately discontinue all work on the Contract and deliver, if and as directed, to the City all completed and partially completed articles, work in process and materials purchased or acquired for performance of the Contract. The provisions of this section shall not limit or affect the right of the City to terminate this Contract immediately upon written notice of breach.
9. The City reserves the right to cancel this Contract or any part thereof and reject delivery of goods if delivery is not undertaken and completed when specified and in accordance with specifications. Contractor shall be charged for any direct losses, but not any consequential damages, sustained by the City by reason of such delay or failure, excepting losses caused by a delay for reasons beyond Contractor's reasonable control. Direct losses shall include any costs to the city in excess of the Contract price of obtaining goods from other sources similar to those cancelled or rejected hereunder.
10. The City shall pay to Contractor the price(s) specified in the Contract on delivery of the materials, equipment, supplies or services and acceptance thereof by the City Manager or his designee, or upon completion of the work to be performed and accepted thereof, as specified in the Contract. Defective articles or articles not in accordance with the City's specifications shall be held for Contractor's instructions at Contractor's risk, and if Contractor so directs will be returned at Contractor's expense.
11. No return or exchange of material, equipment or supplies shall be permitted without written approval of the City Purchasing Agent.
12. All royalties for patents, or changes for the use of patents, which may be involved in any article to be furnished under this Contract shall be included in the Contract price.
13. In cases where a price subject to escalation has been agreed upon, the price escalation shall be shown as a separate item on the invoice. Unless an escalator clause has been shown as a specific part of this Contract Contractor shall not be entitled to reimbursement for costs incurred due to escalation.

CONTRACT – GENERAL CONDITIONS

14. All materials, supplies and equipment provided under this Contract shall be in full compliance with the Safety Orders and Regulations of the Division of Industrial Safety of the State of California, Title 8, California Code of Regulations (CAL/OSHA) and all applicable OSHA regulations as well as all other applicable California Code of Regulations. Contractor shall indemnify and hold the City, its officials, and employees harmless for, of and from any and all loss, including but not limited to fines, penalties and corrective measures, the City may sustain by reason of Contractor's failure to comply with said laws, rules and regulations in connection with the performance of this Contract.
15. Contractor shall keep confidential and not disclose to others or use in any way to the detriment of the City confidential business or technical information that the City may disclose in conjunction with this Contract or Contractor may learn as a result of performing this Contract.
16. This Contract shall not be assigned in whole or in part, nor any duties delegated without the City's prior written approval.
17. The remedies herein reserved shall be cumulative and additional to any other remedies at law or in equity. The waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach. The City's failure to object to provisions contained in any communication from Contractor shall not be deemed an acceptance of such provisions or a waiver of the provisions of this Contract.
18. This Contract shall not be amended or modified, except by written agreement signed by the parties and expressly referring to this Contract.
19. Contractor shall indemnify, hold harmless and defend the City, its officials and employees from any damage, claim, loss, cost, liability, cause of action or expense, including reasonable attorney's fees, whether or not reduced to judgment, arising from any infringement or claimed infringement of any patent, trademark or copyright, or misappropriation of confidential information or trade secrets of any third party and based on the manufacture, sale or use of goods, machinery or equipment supplied hereunder.
20. Contractor shall furnish further itemization and breakdown of the Contract price when requested by the City.
21. Contractor, in the performance of any work or the furnishing of any labor under this Contract, shall be considered as an independent contractor. Contractor, his agents and employees shall not be considered as employees of the City.
22. Contractor and subcontractor(s) shall not discriminate against any person in the performance of this Contract and shall comply with applicable federal, state and city equal employment opportunity laws, ordinances, rules and regulations. Contractor and subcontractor(s) shall not discriminate against any employee or applicant for employment or against any subcontractor on the basis of race, color, religion, national origin, sex, sexual orientation, AIDS, HIV status, age, disability, or handicap, subject to federal and state laws, rules and regulations.
23. Contractor shall comply with all applicable federal, state and local laws pertaining to the subject matter hereof.
24. Contractor shall submit samples of all documents that Contractor may require the City to execute to complete this transaction. By accepting these samples as part of the bid or by awarding the Contract to a Contractor who has submitted said samples, the City does not agree to the terms stated in said samples. This Invitation to Bid and Contractor's bid shall take priority over said samples and this Invitation and Contractor's bid shall become the Contract between the City and the Contractor.
25. All quantities stated herein are only ESTIMATES. The City reserves the right to increase or decrease these estimated quantities based on its actual needs and funds available.
26. The City reserves the right to exercise, at its option, an increase in expenditures by ten (10) percent annually, but the City does not guarantee such an increase.
27. Contractor shall cooperate with the City in all matters relating to taxation and the collection of taxes, particularly with respect to the self-accrual of use tax. Contractor shall cooperate as follows: (i) for all leases and purchases of materials, equipment, supplies or other tangible personal property totaling over \$100,000 shipped from outside California, a qualified Contractor shall complete and submit to the appropriate governmental entity the form in Appendix "A" attached hereto; and (ii) for construction contracts and subcontracts totaling \$5,000,000 or more, Contractor shall obtain a sub-permit from the California Board of Equalization for the Work site. "Qualified" means that the Contractor purchased at least \$500,000 in tangible personal property that was subject to sales or use tax in the previous calendar year.

In completing the form and obtaining the permit(s), Contractor shall use the address of the Work site as its business address and may use any address for its mailing address. Copies of the form and permit(s) shall also be delivered to the Purchasing Agent. The form must be submitted and the permit(s) obtained as soon as Contractor receives a notice of award. Contractor shall not order any materials or equipment over \$100,000 from vendors outside California until the form is submitted and the permit(s) obtained and, if Contractor does so, it shall be a material breach of the Agreement. In addition, Contractor shall make all purchases from its Long Beach sales office and the Long Beach sales office of its vendors if those vendors have a Long Beach office and all purchases made by Contractor under this Agreement which are subject to use tax of \$500,000 or more shall be allocated to the City of Long Beach. Contractor shall require the same form and permit(s) from its subcontractors.

CONTRACT – GENERAL CONDITIONS

Contractor shall not be entitled to and by signing this Contract waives any claim or damages for delay against City if Contractor does not timely submit these forms to the appropriate governmental entity. Contractor may contact Rosie Bouquin at 562-570-7079 for assistance with the form.

28. The California Integrated Waste Management Act (Public Resources Code, Sec. 40000 et seq.) requires governmental entities to achieve fifty (50) percent diversion of waste. In conjunction with the City's Integrated Resources Bureau, the City is currently developing an Environmentally Preferable Product (EPP) procurement plan. These guidelines enable the City Purchasing Agent to greatly expand procurement programs by moving beyond a singular consideration of "recycled-content". EPP procurement facilitates the purchase of products that qualify within a broad range of "environmentally preferable" criteria, such as: minimal packaging; energy savings; non-toxic; manufactured from sustainably-harvested materials. Contractor shall monitor products that fall within the EPP guidelines and document all criteria that qualifies the product as an EPP. Documentation from the manufacturer will be acceptable and may be required during the term of the Contract.

29. **NOTICE TO BIDDERS REGARDING THE PUBLIC RECORDS ACT:**

Responses to this Invitation to Bid become the exclusive property of the City of Long Beach. All Bids submitted in response to this Invitation to Bid are a matter of public record and shall be regarded as public records. Exceptions will be only those elements in each Bid that are defined by the Bidder as business or trade secrets and are marked as "Trade Secrets", "Confidential" or "Proprietary".

The City shall not be liable or responsible in any way for disclosure of any records not marked as "Trade Secrets", "Confidential" or "Proprietary". The City shall not be liable or responsible in any way for disclosure of any records so marked if disclosure is deemed to be required by law or by a court order.

30. **THE FOLLOWING ADDITIONAL CONDITIONS APPLY ONLY IN CASES WHERE CONTRACTOR IS TO PERFORM WORK ON CITY PROPERTY:**

A. If at any time during the progress of the Work, Contractor shall allow any indebtedness to accrue for labor, equipment or materials, or which may become a claim against the City, Contractor shall immediately upon request from the City pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond or otherwise and, in case of his failure so to do, the City may withhold any money due Contractor until such claim or indebtedness is paid or may apply such money toward the discharge thereof; or in such event the City may, at its option, declare this Contract to be terminated, take possession and control of the Work, and complete the same or cause the same to be completed according to the specifications. Contractor shall pay to the City the difference between the Contract price and the actual cost to the City in completing or causing the Work to be completed.

B. Contractor shall carry on the Work at its own risk until the same is fully completed and accepted and shall, in case of any accident, destruction or injury to the Work or materials before its final completion and acceptance, repair or replace the Work or materials so injured, damaged and destroyed, at his own expense and to the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by Contractor, Contractor shall receive, unload, store and handle same at the Site and become responsible therefore as though such materials and equipment were being furnished by Contractor under the Contract.

C. Contractor shall procure and maintain at Contractor's expense for the duration of the Contract the following insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Contract by Contractor, its agents, representatives, employees or subcontractors:

- (1) Comprehensive General Liability: \$1,000,000 combined single limit for each occurrence or \$2,000,000 General Aggregate for bodily injury, personal injury and property damage, including products and completed operations coverage.

The City, its officials, employees and agents shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; and premises owned, leased or used by Contractor.

- (2) Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.

- (3) Workers' Compensation as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

Any self-insurance program and self-insured retention must be separately approved in writing by the City.

Each insurance policy shall be endorsed to state that coverage shall not be cancelled by either party or reduced in coverage except after thirty (30) days prior written notice to the City.

CONTRACT – GENERAL CONDITIONS

Contractor shall maintain at its expense, until completion of performance and acceptance by City, from an insurer:

- a. Admitted (licensed) in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category (FSC) of V (capital surplus and conditional surplus funds of greater than \$10 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager, or
- b. Non-admitted in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category (FSC) of VIII (capital surplus and conditional surplus funds of greater than \$100 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager.

All coverages for Subcontractors shall be subject to the requirements stated herein and shall be maintained at no expense to the City.

Contractor shall furnish the City with certificates of insurance and original endorsements providing coverage as required above. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Before any of Contractor's or Subcontractor's employees shall do any Work on the City's property, Contractor shall furnish the City with the required certificates evidencing that such insurance is being maintained. Such certificates shall specify the date when such insurance expires. Such insurance shall be maintained until after the Work under the Contract has been completed and accepted.

Such insurance as required herein or in any other documents to be considered a part hereof shall not be deemed to limit Contractor's liability under this Contract.

- D. Contractor shall defend, indemnify and hold harmless the City, its officials and employees from and against any and all liability for claims for bodily injury and property damage arising out of negligent acts, omissions or errors of any employee of Contractor at the Site.
- E. Contractor shall list the name and location of the place of business of each Subcontractor who will perform work, labor or services for Contractor, or who specially fabricates and installs a portion of the Work or improvement in an amount in excess of one-half of one percent of Contractor's total contract cost. The Subcontractor list shall be submitted with Contractor's Bid.

BID SECTION

CONTRACT PERIOD

Twelve months after date of award or after the expiration of the current contract, whichever is the earlier. This Contract may be extended by mutual agreement for up to two additional periods of one year each in accordance with terms and conditions stated herein.

It is agreed that if the City intends to renew this Contract, the City shall so notify the Contractor 90 days prior to the expiration date. Contractor shall be required to submit any price increases to the City Purchasing Agent for approval at least 60 days prior to expiration of Contract. Said notice shall show item number, price, Contract number, and purchase order number. The City reserves the right to accept or reject any price increase, and to cancel the renewal notice if price increases are not acceptable.

PRICE INCREASE

A. Shall not exceed 0 % during the first renewal period.

B. Shall not exceed 0 % during the second renewal period.

ADDENDUM

Bidders shall check the purchasing web page at www.longbeach.gov/purchasing or contact the assigned buyer three (3) days prior to the bid closing date to inquire about and include any addendums incorporated into this bid. Failure to include the addendum(s) with the bid may cause the bid to be rejected.

BASIS OF AWARD

The City reserves the right to award portions of this bid to one or more Contractors or to withdraw this bid at any time.

Without limiting the power and authority with which it is vested, the City shall be the sole authority on determining the lowest responsible Bidder, taking into consideration the experience of the Bidder, references, operations, quality, fitness, capacity, and adaptability in respect to the requirements of these specifications for the services proposed by any Bidder hereunder.

In case of error in extension of unit prices, unit price shall govern. All prices must be firm for the Contract term. The bid shall be subject to acceptance by the City for a period of one hundred-twenty (120) days unless a lesser period is bid by the Bidder.

BOND PROVISIONS: N/A

BID SECTION

VENDOR CONTACT INFORMATION:

Name of a person that will be the City's contact for order placement, order problems or special needs, etc (must have a person's name).

Contact Name: Mel Smith
Contact Direct Phone: (310) 632-3484
Contact Cell: (310) 420-0025
Contact Fax: (310) 632-3488
Contact E-mail: RS'Southbay@yahoo.com

REFERENCES

Contractor shall furnish a list of five current customers, including company name, street address, telephone number and contact person, which have been furnished service quoted. The City intends to contact these customers to determine reliability, contractor performance and other such information. Failure to include customer's references may void bid, if the City has no prior experience with bidder.

The following inventory is provided for information purposes only. The quantities stated herein are only an indication of the City's current inventory the City reserves the right to increase or decrease these quantities without penalty. There is no guarantee or representation that any or all of said inventory will require repair.

MAINTENANCE AND REPAIRS

All repairs shall be completed in an efficient and professional manner. Contractor shall provide labor, materials and replacement parts to maintain and repair for automatic rolling gates and overhead door structures, rollers, springs, applicable hardware, mechanical and electrical controllers and operators. Contractor shall be responsible for clutches, brake assemblies, transmitters, receivers and related equipment not included herein.

A quarterly preventive maintenance and service check of all door or gate-operating mechanisms, including mechanical and electrical components, shall be performed. A written report shall be filed with the appropriate facility on-site representative or designee.

SERVICE

Prices indicated herein shall include journeyman and journeyman with helper, truck, tools and necessary equipment to provide all necessary repairs. All electrical work shall

BID SECTION

be provided by a journeyman electrician and prices indicated herein shall include said journeyman electrician.

HOURS

Contractor shall be available twenty-four hours per day, seven days per week, 365 days per year. Due to site security and facility safety, response time is critical. Emergency response by Contractor to job site shall be made within sixty minutes from notification unless otherwise specified. Non-emergency response shall be made within time frame requested by the department needing service.

WARRANTY / GUARANTEE

All work furnished under these specifications shall be guaranteed by Contractor against defects in materials and/or workmanship for a minimum of ninety days from date of acceptance. The Contractor shall repair or replace any such item(s) necessary during the guarantee period at the Contractors own cost and expense without cost to the City.

LICENSE

The undersigned hereby declares that he is a Contractor and has been in business for ___ years; has a valid State of California Contractor's License sufficient to qualify as Contractor in this case, and a current City of Long Beach Business License; and will obtain all required permits.

California Contractor's License Number: 789 308
Expiration Date: 5/20/12 Classification Number: C 61 / D28
**Long Beach Business License Number: BU99031390
Signature: _____

**** Required upon notification of award.**

SERVICE CONTACT INFORMATION

Contractor shall indicate person and phone number to contact for during normal working hours repairs:

8:00 a.m. TO 4:30 P.M.

Contractor shall indicate person and phone number to contact for after hours repairs:

Answering Service (310) 632-3484 OR MEL SMITH
(CELL) (310) 420-0025

BID SECTION

WE ARE PLEASED TO SUBMIT THIS BID IN ACCORDANCE WITH THE CITY OF LONG BEACH INVITATION TO BID, SPECIFICATIONS AND TERMS AND CONDITIONS TO FURNISH AND DELIVER THE FOLLOWING EQUIPMENT, MATERIAL, SUPPLIES OR SERVICES **FOB DESTINATION** CITY OF LONG BEACH.

SALES TAX: UNIT AND EXTENSION PRICES STATED HEREIN SHALL **NOT** INCLUDE SALES TAX.

SUMMARY OF BID ITEMS

Contractor is required to complete all applicable blanks below. Failure to provide requested information may disqualify bid.

DOORS	Field Straight Time	Field Overtime	Field Sunday, Holiday
1. Door Repair Journeyman	\$ <u>44.50</u> /hr	\$ <u>66.75</u> /hr	\$ <u>89.00</u> /hr
2. Door Repair Helper	\$ <u>44.50</u> /hr	\$ <u>66.75</u> /hr	\$ <u>89.00</u> /hr
3. Electrician Journeyman	\$ <u>44.50</u> /hr	\$ <u>66.75</u> /hr	\$ <u>89.00</u> /hr

Electrician services provided by (check one): Contractor Subcontractor

4. Overhead	Manufacturer's Net Cost Plus <u>15</u> %	Price List Number:	Dated: <u>10/07</u>
5. Windsor	Manufacturer's Net Cost Plus <u>15</u> %	Price List Number:	Dated: <u>3/07</u>
6. Kinnear	Manufacturer's Net Cost Plus <u>15</u> %	Price List Number:	Dated: <u>8/07</u>

GATES	Field Straight Time	Field Overtime	Field Sunday, Holiday
7. Gate Repair Journeyman	\$ <u>44.50</u> /hr	\$ <u>66.75</u> /hr	\$ <u>89.00</u> /hr
8. Gate Repair Helper	\$ <u>44.50</u> /hr	\$ <u>66.75</u> /hr	\$ <u>89.00</u> /hr
9. Electrician Journeyman	\$ <u>44.50</u> /hr	\$ <u>66.75</u> /hr	\$ <u>89.00</u> /hr

Electrician services provided by (check one): Contractor Subcontractor

10. Gates	Manufacturer's Net Cost Plus <u>15</u> %	Price List Number:	Dated: <u>10/07</u>
11. Minimum Hours	<u>1.00</u>		
12. Mileage	\$ <u>0</u>		

BID SECTION

13. Additional Cost	Indicate the Cost and Justification
\$ <u>Ø</u>	<u>N/A</u>
\$ <u>Ø</u>	<u>N/A</u>
14. Contractor shall indicate hours that "Straight Time" applies: <u>8:00 A.M. - 4:30 P.M.</u>	
15. Contractor shall indicate hours that "Overtime" applies: <u>4:30 P.M. - 8:00 A.M.</u>	

Emergency Response Time: 60 minutes
(Response time by contractor shall be made within 60 minutes from notification)

Contractor shall furnish parts as listed in current manufacturers catalogs and / or price lists for the following manufacturers. This list is not intended to be all-inclusive.

PAYMENT TERMS: 2% 25 days / Net 30

City of Long Beach, CA

Commonly Made Errors

The following are commonly made errors when submitting a bid to the City of Long Beach:

It is essential that all requirements of the bid are completed as specified.

- Instructions concerning signatures (page 2 on bid) are NOT followed.
- **Bid must be signed by two corporate officers if the bidder is a corporation unless accompanied by a corporate resolution. Link to samples of acceptable documentation to allow other signature.**
- All pages of the Invitation to Bid are not returned as required.
- Invitation to Bid document is not fully completed as required.
- Notarial Acknowledgment is not submitted when required; i.e., companies located outside of the state of California or companies that do not have a business operation with an established address within California (must be same address as shown on Invitation to Bid; P.O. Boxes are not acceptable) are required to submit a Notarial Acknowledgment of Corporate Officer or of the authorized person that has signed the bid.
NOTE: Only one signature will be required of the "Principal" if the principal is a partnership, sole proprietary (individuals) or limited liability company.
- When bonds are required (Labor & Material or Performance Bonds), and Notarial Acknowledgments are not submitted. Three acknowledgments are required; two for the Principal (company submitting the bid), and one for the Surety (bonding company). If the Principal is a corporation, the signatures of two corporate officers are required for Labor & Material and Performance Bonds. Labor & Material and Performance Bonds are only required of companies that are being considered for an award (they are not required when Invitation to Bid is submitted).
NOTE: Bid Bonds require only two acknowledgments; one for the Principal (company submitting the bid), and one for the Surety (bonding company).
- Bonds are not submitted on City of Long Beach forms.
- The title of the individual signing the Invitation to Bid does not match the title shown on the Notarial Acknowledgment; (i.e., the signature on the Invitation to Bid appears to be the President. The same signature appears on the Notarial Acknowledgment, but the title differs (Vice President).
- The person that signed the Invitation to bid differs from that of the Notarial Acknowledgment.
- When references are required, they are not submitted with bid.
- Bids are not submitted on time (11:00 am) to the proper location (City Clerk's Office - Plaza Level of City Hall).
- Contractor does not allow for firm pricing when submitting Invitation to Bid as required.
- The Invitation to Bid is not signed.

ATTACHMENT "2"

EQUAL BENEFITS ORDINANCE DISCLOSURE

As a condition of being awarded a contract with the City of Long Beach ("City"), the selected Contractor/Vendor ("Contractor") may be required during the performance of the Contract, to comply with the City's nondiscrimination provisions of the Equal Benefits Ordinance ("EBO") set forth in the Long Beach Municipal Code section 2.73 et seq. The EBO requires that during the performance of the contract, the Contractor shall provide equal benefits to its employees with spouses and employees with domestic partners. Benefits include but are not limited to, health benefits, bereavement leave, family medical leave, membership and membership discounts, moving expenses, retirement benefits and travel benefits. A cash equivalent payment is permitted if an employer has made all reasonable efforts to provide domestic partners with access to benefits but is unable to do so. A situation in which a cash equivalent payment might be used if where the employer has difficulty finding an insurance provider that is willing to provide domestic partner benefits.

The EBO is applicable to the following employers:

- For-profit employers that have a contract with the City for the purchase of goods, services, public works or improvements and other construction projects in the amount of \$100,000 or more
- For-profit entities that generate \$350,000 or more in annual gross receipts leasing City property pursuant to a written agreement for a term exceeding 29 days in any calendar year

Contractors who are subject to the EBO must certify to the City before execution of the contract that they are in compliance with the EBO by completing the EBO Certification Form, attached, or that they have been issued a waiver by the City. Contractors must also allow authorized City representatives access to records so the City can verify compliance with the EBO.

The EBO includes provisions that address difficulties associated with implementing procedures to comply with the EBO. Contractors can delay implementation of procedures to comply with the EBO in the following circumstances:

- 1) By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/vendor submits evidence of taking reasonable measures to comply with the EBO; or
- 2) At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or
- 3) Upon expiration of the contractor's current collective bargaining agreement(s).

Compliance with the EBO

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE

Section 1. CONTRACTOR/VENDOR INFORMATION

Name: R&S Overhead Doors of South Bay Federal Tax ID No. [REDACTED]
Address: 444 E. Alondra Blvd.
City: GARDENA State: CA ZIP: 90248
Contact Person: STEVE TUNGATE Telephone: (310) 632-3484
Email: RS.South.Bay@yahoo.com Fax: (310) 632-3488

Section 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this Contract because the Contractor/Vendor has no employees. Yes No
- B. Does your company provide (or make available at the employees' expense) any employee benefits? Yes No
(If "yes," proceed to Question C. If "no," proceed to section 5, as the EBO does not apply to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee?
 Yes No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee?
 Yes No (If you answered "no" to both questions C and D, proceed to section 5, as the EBO is not applicable to this contract. If you answered "yes" to both Questions C and D, please continue to Question E. If you answered "yes" to Question C and "no" to Question D, please continue to section 3.)
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of an employee?
 Yes No
(If "yes," proceed to section 4, as you are in compliance with the EBO. If "no," continue to section 3.)

Section 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:

_____ By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/vendor submits evidence of taking reasonable measures to comply with the EBO; or

_____ At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or

_____ Upon expiration of the contractor's current collective bargaining agreement(s).

- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? (The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.)


___ Yes ___ No

Section 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statement, etc.) to verify that you do not discriminate in the provision of benefits.

Section 5. CERTIFICATION

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 this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Long Beach Municipal Code and in the terms of the contract of purchase order with the City.

Executed this 28 day of APRIL, 2011, at 444 E ALONDRA GARDENA
CA
Name Steve Jungo Signature Steve Jungo
Title Manager Federal Tax ID No. 

Section 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:

_____ By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/vendor submits evidence of taking reasonable measures to comply with the EBO; or

_____ At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or

_____ Upon expiration of the contractor's current collective bargaining agreement(s).

- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? (The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.)

___ Yes ___ No

Section 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statement, etc.) to verify that you do not discriminate in the provision of benefits.

Section 5. CERTIFICATION

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 this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Long Beach Municipal Code and in the terms of the contract of purchase order with the City.

Executed this 28 day of APRIL, 2011, at 444 E Alcañdra Blvd. Gardena

Name Steve Turgate Signature Steve Turgate

Title General Manager Federal Tax ID No. 

If a contractor has not received a waiver from complying with the EBO and the timeframe within which it can delay implementation has expired but it has failed to comply with the EBO, the Contractor may be deemed to be in material breach of the Contract. In the event of a material breach, the City may cancel, terminate or suspend the City agreement, in whole or in part. The City also may deem the Contractor an irresponsible bidder and disqualify the Contractor from contracting with the City for a period of three years. In addition, the City may assess liquidated damages against the Contractor which may be deducted from money otherwise due the Contractor. The City may also pursue any other remedies available at law or in equity.

By my signature below, I acknowledge that the Contractor understands that to the extent it is subject to the provisions of the Long Beach Municipal Code section 2.73, the Contractor shall comply with this provision.

Printed Name: Steve Tungate Title: General Manager

Signature: *Steve Tungate* Date: 4-28-11

Business Entity Name: R & S Overhead Doors of South Bay, Inc.

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

1 ORDINANCE NO. ORD-09-0036

2
3 AN ORDINANCE OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AMENDING THE LONG BEACH
5 MUNICIPAL CODE BY ADDING CHAPTER 2.73
6 ESTABLISHING AN "EQUAL BENEFITS ORDINANCE"
7 REQUIRING CONTRACTORS ON CITY CONTRACTS TO
8 PROVIDE EMPLOYEE BENEFITS TO THEIR EMPLOYEES
9 WITH DOMESTIC PARTNERS EQUIVALENT TO THOSE
10 PROVIDED TO THEIR EMPLOYEES WITH SPOUSES

11
12 WHEREAS, employee benefits comprise a significant portion of total
13 employee compensation; and

14 WHEREAS, discrimination in the provision of employee benefits between
15 employees with domestic partners and employees with spouses results in unequal pay
16 for equal work; and

17 WHEREAS, the City of Long Beach prohibits discrimination based on
18 marital status and/or sexual orientation; and

19 WHEREAS, contractors with the City of Long Beach are required to comply
20 with the City's nondiscrimination laws; and

21 WHEREAS, the City Council finds and determines that the public, health,
22 safety and welfare will be furthered by requiring that public funds be expended in such a
23 manner as to prohibit discrimination in the provision of employee benefits by City
24 contractors between employees with spouses and employees with domestic partners,
25 and between domestic partners and spouses of such employees;

26 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
27 follows:

28 ///

1 Section 1. Chapter 2.73 is added to the Long Beach Municipal Code to
2 read as follows:

3 Chapter 2.73

4 **EQUAL BENEFITS TO EMPLOYEES OF CITY CONTRACTORS**

5
6 2.73.010 Title and purpose.

7 This ordinance shall be known as the "Long Beach Equal Benefits
8 Ordinance". The purpose of this Chapter is to protect the public health,
9 safety and welfare by requiring that public funds be expended in such a
10 manner as to prohibit discrimination in the provision of employee benefits by
11 City contractors between employees with spouses and employees with
12 domestic partners, and/or between domestic partners and spouses of such
13 employees.

14
15 2.73.020 Definitions.

16 A. "Contractor" shall mean any person or persons, firm,
17 partnership, corporation, or combination thereof, who enters into a contract
18 with the City.

19 B. "Domestic partner" shall mean any person who has a currently
20 registered domestic partnership with a governmental body pursuant to state
21 or local law authorizing such registration or with his or her employer or his or
22 her domestic partner's employer.

23 C. "Non-profit" shall mean a non-profit organization described in
24 Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt
25 from taxation under Section 501(c)(3) of that Code, or any nonprofit
26 educational organization qualified under Section 23701(d) of the Revenue
27 and Taxation Code.

28 ///

- 1 2.73.030 Contractors subject to requirements.
- 2 A. The following contractors are subject to this Chapter:
- 3 1. For-profit entities which enter into an agreement with
- 4 the City for public works or improvements to be performed, or for goods or
- 5 services to be purchased, for an amount of One Hundred Thousand Dollars
- 6 (\$100,000) or more; and
- 7 2. For-profit entities which generate Three Hundred Fifty
- 8 Thousand Dollars (\$350,000) or more in annual gross receipts and which
- 9 occupy City property pursuant to a written agreement for the exclusive use
- 10 or occupancy of said property for a term exceeding twenty-nine (29) days in
- 11 any calendar year.
- 12 B. The requirements of this Chapter shall only apply to those
- 13 portions of a contractor's operations that occur (i) within the City; (ii) on real
- 14 property outside the City if the property is owned by the City or if the City
- 15 has a right to occupy the property, and if the contractor's presence at that
- 16 location is connected to a contract with the City; and (iii) elsewhere in the
- 17 United States where work related to a City contract is being performed. The
- 18 requirements of this Chapter shall not apply to subcontracts or
- 19 subcontractors of any contract or contractor.
- 20 C. The City Manager or designee will provide a report to the City
- 21 Council regarding the implementation of this ordinance no later than one
- 22 year following the effective date of this Ordinance, and will consider among
- 23 other items, whether the dollar thresholds set forth in subsections (A) and
- 24 (B) should be modified.
- 25
- 26 2.73.040 Non-discrimination in provision of benefits.
- 27 A. No contractor subject to this Chapter pursuant to Section
- 28 2.73.030 shall discriminate in the provision of bereavement leave, family

1 medical leave, health benefits, membership or membership discounts,
2 moving expenses, pensions and retirement benefits or travel benefits or in
3 the provision of any benefits other than bereavement leave, family medical
4 leave, health benefits, membership or membership discounts, moving
5 expenses, pensions and retirement benefits or travel benefits between
6 employees with domestic partners and employees with spouses, and/or
7 between the domestic partners and spouses of such employees except as
8 set forth in Subsections 2.73.040.A.1 and 2 below;

9 1. In the event that the contractor's actual cost of
10 providing a particular benefit for the domestic partner of an employee
11 exceeds that of providing it for the spouse of an employee, or the
12 contractor's actual cost of providing a particular benefit for the spouse of an
13 employee exceeds that of providing it for the domestic partner of an
14 employee, the contractor shall not be deemed to discriminate in the
15 provision of employee benefits if the contractor conditions providing such
16 benefit upon the employee agreeing to pay the excess costs.

17 2. The contractor shall not be deemed to discriminate in
18 the provision of employee benefits if, despite taking reasonable measure to
19 do so, the contractor is unable to extend a particular employee benefit to
20 domestic partners, so long as the contractor provides the employee with a
21 cash equivalent.

22 B. Provided that a contractor does not discriminate in the
23 provision of benefits between employees with spouses and employees with
24 domestic partners, a contractor may:

25 1. Elect to provide benefits to individuals in addition to
26 employees' spouses and employees' domestic partners;

27 2. Allow each employee to designate a legally domiciled
28 member of the employee's household as being eligible for spousal

- 1 equivalent benefits; or
- 2 3. Provide benefits neither to employees' spouses nor to
- 3 employees' domestic partners.
- 4 C. A contractor will not be deemed to be discriminating in the
- 5 provision of benefits where the implementation of policies ending
- 6 discrimination in benefits is delayed following the first award of a City
- 7 contract to a contractor after the effective date of this Chapter:
- 8 1. Until the first effective date after the first open
- 9 enrollment process following the date the contract with the City is executed,
- 10 provided that the contractor submits evidence that it is making reasonable
- 11 efforts to end discrimination in benefits. This delay may not exceed two (2)
- 12 years from the date the contract with the City is executed and only applies
- 13 to benefits for which an open enrollment process is applicable.
- 14 2. Until administrative steps can be taken to incorporate
- 15 nondiscrimination in benefits in the contractor's infrastructure. The timer
- 16 allotted for these administrative steps shall apply only to those benefits for
- 17 which administrative steps are necessary and may not exceed three (3)
- 18 months. An extension of this time may be granted at the discretion of the
- 19 City Manager upon the written request of a contractor, setting forth the
- 20 reasons that additional time is required.
- 21 3. Until the expiration of a contractor's current collective
- 22 bargaining agreement(s) where all of the following conditions have been
- 23 met:
- 24 a. The provision of benefits is governed by one or
- 25 more collective bargaining agreement(s); and
- 26 b. The contractor takes all reasonable measures to
- 27 end discrimination in benefits by either requesting that the union(s) involved
- 28 agree to reopen the agreement(s) in order for the contractor to take

1 whatever steps are necessary to end discrimination in benefits or by ending
2 discrimination in benefits without reopening the collective bargaining
3 agreement(s); and

4 c. In the event that the contractor cannot end
5 discrimination in benefits despite taking all reasonable measure to do so,
6 the contractor provides a cash equivalent to eligible employees for whom
7 benefits are not available. Unless otherwise authorized, in writing by the
8 City Manager, this cash equivalent payment must begin at the time the
9 union(s) refuse to allow the collective bargaining agreement(s) to be
10 reopened, or in any case no longer than three (3) months from the date the
11 contract with the City was executed. This cash equivalent payment shall not
12 be required where it is prohibited by federal labor law.

13 D. Employers subject to this Chapter pursuant to Section
14 2.73.030 shall give written notification to each current and new employee of
15 his or her potential rights under this Chapter in a form specified by the City.
16 Such notice shall also be posted prominently in areas where it may be seen
17 by all employees.

18
19 2.73.050 Required contract provisions.

20 Every contract subject to this Chapter shall contain provisions
21 requiring it to comply with the provisions of this Chapter as they exist on the
22 date when the contractor entered the contract with the City or when such
23 contract is amended. Such contract provisions may include but need not be
24 limited to the contractor's duty to promptly provide to the City documents
25 and information verifying its compliance with the requirements of this
26 Chapter and sanctions for noncompliance.

27 ///

28 ///

1 2.73.060 Waivers and exemptions.

2 A. The City may waive the requirements of this Chapter where
3 the City Manager makes one or more of the following findings:

- 4 1. Award of a contract or amendment is necessary to
5 respond to an emergency;
- 6 2. The contractor is a sole source;
- 7 3. The contractor is a non-profit entity as defined in
8 Section 2.73.020, above;
- 9 4. Non compliant contractors are capable of providing
10 goods or services that respond to the City's requirements;
- 11 5. The contractor is a public entity;
- 12 6. The requirements of this Chapter are inconsistent with
13 a grant, subvention or agreement with a public agency;
- 14 7. The City is purchasing through a cooperative or joint
15 purchasing agreement;
- 16 8. The contract involves specialized legal services such
17 that it would be in the best interests of the City to waive the requirements of
18 this Chapter, as determined by the City Attorney;
- 19 9. The contract involves investment of trust moneys or
20 agreements relating to the management of trust assets, City moneys
21 invested in U.S. government securities or under pre-existing investment
22 agreements, or the investment of City moneys where no person, entity or
23 financial institution doing business with the City which is in compliance with
24 this Chapter is capable of performing the desired transactions or the City will
25 incur financial loss if the requirements of this Chapter are enforced;
- 26 10. After taking all reasonable measures to find an entity
27 that complies with this Chapter, the City may waive any or all requirements
28 of this Chapter for any contract or bid package advertised and made

1 available to the public, or any competitive or sealed bids received by the
2 City as of the effective date of this Chapter under the following
3 circumstances:

4 a. There are no qualified responsive bidders or
5 prospective contractors who comply with this Chapter and the contract is for
6 goods, a service or a project that is essential to the City or City residents; or

7 b. The requirements of this Chapter would result in
8 the City's entering into a contract with an entity that was set up, or is being
9 used for the purpose of evading the intent of this Chapter.

10 B. The requirements of this Chapter shall not be applicable to
11 contracts executed or amended prior to the effective date of this Chapter, or
12 to bid packages advertised and made available to the public, or any
13 competitive or sealed bids received by the City prior to the effective date of
14 this Chapter, unless and until such contracts are amended after the effective
15 date of this Chapter and would otherwise be subject to this Chapter.

16 C. The City Manager or designee may issue regulations from
17 time to time implementing the provisions of this ordinance.

18 D. The City Manager shall report to the City Council annually on
19 the status of waivers and exemptions.

20
21 **2.73.070 Retaliation and discrimination prohibited.**

22 A. No employer shall retaliate or discriminate against an
23 employee in his or her terms and conditions of employment by reason of the
24 person's status as an employee protected by the requirements of this
25 Chapter.

26 B. No employer shall retaliate or discriminate against a person in
27 his or her terms and conditions of employment by reason of the person
28 reporting a violation of this Chapter or for prosecuting an action for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

enforcement of this Chapter.

2.73.080 Employee complaints to City.

A. An employee who alleges violation of any provision of the requirements of this Chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. The City shall have the power to examine contractors' benefit programs covered by this Chapter.

C. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code Sections 6254 and 6255.

2.73.090 Remedies.

A. Upon a finding by the City Manager that a contractor has violated the requirements of this Chapter, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided at law or in equity.

1. The City Manager shall be authorized to terminate said contract and bar the contractor from bidding on future contracts with the City for three (3) years from the effective date of the contract termination.

2. In the City Manager's sole discretion, a contractor found to have willfully violated the requirements of this Chapter may be required to pay liquidated damages.

3. The City may seek recovery of reasonable attorneys' fees and costs necessary for enforcement of this Chapter.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- B. Notwithstanding any provision of this Chapter or any other Chapter to the contrary, no criminal penalties shall attach for any violation of this Chapter.
- C. No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a cause of action to enforce any rights hereunder in a court of law. This Chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.
- D. Nothing in this Chapter shall be interpreted to authorize a right of action against the City.

Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

///
///
///
///
///
///
///
///
///
///
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of December 8, 2009, by the following vote:

Ayes: Councilmembers: Garcia, Lowenthal, DeLong,
O'Donnell, Schipske, Andrews,
Reyes Uranga, Gabelich, Lerch.


Noes: Councilmembers: None.

Absent: Councilmembers: None.



City Clerk

Approved: 12/11/09
(Date)



Mayor

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