

**WEST VALLEY – MISSION COMMUNITY COLLEGE DISTRICT**  
**NOTICE OF PROCUREMENT OF A PRE-FABRICATED STEEL BRIDGE**  
**BID # 9-1112**

PLEASE TAKE NOTICE that the West Valley-Mission Community College District (“District”) has issued bid documents, contract documents and related documents (collectively “Contract Documents”) for the procurement of a Pre-fabricated Steel Bridge (“the Bridge”) for the District’s **West Valley College Campus, ADA Barrier Removal Project, Increment 2 – Pre-Fab Steel Bridge at North Walk**.

1. **The Bridge.** The scope and requirements for the Bridge, including delivery requirements, are set forth in the Contract Documents. The Bridge furnished by the successful Vendor will be installed by others.
2. **Obtaining Contract Documents.** The Contract Documents must be obtained from the District website: <http://wvm.edu/bids/>. If you have difficulty with the website, you may contact the Purchasing Clerk at (408) 741-2504 for assistance.
3. **Submittal of Bid Proposal.**
  - 3.1. District Forms. Bid Proposals must be submitted in strict conformity to the requirements of Contract Documents and on forms furnished by the District where applicable. Bid Proposals must conform with, and be responsive to, the requirements set forth in the Contract Documents.
  - 3.2. Bid Security. Each Bidder must submit Bid Security conforming to the requirements set forth in the Contract Documents concurrently with submission of the Bidder’s Bid Proposal.
  - 3.3. Latest Date/Time for Submission of RFP Responses. The latest date and time for submission of Bid Proposals is **1:00 P.M., Tuesday, January 17, 2012**. The District will only consider Bid Proposals submitted to the District at or prior to the date/time set forth above.
  - 3.4. Location for Submission of RFP Responses. Responses to the RFP must be submitted to:  
West Valley Mission Community College District  
Department of General Services  
Warehouse and Facilities Building  
14000 Fruitvale Ave.  
Saratoga, California 95070  
Bid Proposals will be deemed submitted to the District only if actually delivered to the District’s Department of General Services, at the above-identified address.
  - 3.5. Sealed Bid Proposals. Bid Proposals must be submitted in sealed envelopes with the exterior of such envelope prominently marked to: (i) the Bid Number assigned to this procurement; and (ii) identify the firm submitting the Bid Proposal.
4. **Award of Contract.** The Contract to furnish the Equipment will be awarded only by action of the District’s Board of Trustees. If award of the Contract is made, it will be to the responsible Bidder submitting the lowest priced responsive Bid Proposal for the Bridge subject to this procurement.
5. **District Reservation of Rights.** The District reserves the right to waive minor and inconsequential irregularities or informalities in the bidding process or in a Bid Proposal. The District reserves the right to reject all Bid Proposals.

**Advertise:** San Jose Post December 20, 2011 and December 27, 2011

# INSTRUCTIONS FOR BIDDERS

## 1. Procurement of a Prefabricated Steel Bridge; Proposal and Performance Requirements.

- 1.1. General. The structure, materials and other goods subject to this procurement consists primarily of a Prefabricated Bridge, Approach Railings and related items intended for installation at the District's West Valley College campus. Delivery of the Bridge subject to this procurement shall be completed by the successful Bidder in accordance with the Contract Time set forth in the Purchase Order and to the location indicated in Attachment B. Installation of the Bridge will be by others. The successful bidder is required to prepare Submittals, including shop drawings that will be submitted to the Division of the State Architect DSA for review and approval. Submittal and document requirements are set forth in the Drawings and Specifications in Attachment A.
- 1.2. Pricing and Delivery Commitments of Successful Bidder. In accordance with the terms of the Purchase Order, pricing proposed by the successful Bidder for the Bridge and other goods subject to this procurement shall remain firm through and including July 1, 2012.
- 1.3. Piggyback. Each Bidder must indicate where noted in the form of the Bid Proposal whether or not the Bidder, if awarded the Contract, will extend pricing for the materials, equipment and other goods subject to this procurement to other California public agencies upon the terms and conditions set forth in the Purchase Order from the time of award of the Contract through and including July 1, 2012. The Bid Proposal of a Bidder who elects not to permit such "piggyback" by other California public agencies will **not** be deemed non-responsive. **The Bid Proposal of a Bidder who fails to note in its Bid Proposal whether or not the Bidder will permit other California public agencies to "piggyback" purchase materials, equipment and other goods subject to this procurement will be rejected for non-responsiveness.**

## 2. Preparation and Submittal of Bid Proposal.

- 2.1. Completion of Bid Proposal. All information required by the bid forms must be completely and accurately provided. Numbers shall be stated in both words and figures where so indicated in the bid forms; conflicts between a number stated in words and in figures are governed by the words. Partially completed Bid Proposals or Bid Proposals submitted on other than the bid forms included herein are non-responsive and will be rejected.
- 2.2. No Bidder Modifications. Changes to the bid forms which are not specifically called for or permitted may result in the District's rejection of the Bid Proposal as being non-responsive.
- 2.3. Submittal of Bid Proposal. Bid Proposals shall be submitted in sealed envelopes bearing on the outside the Bidder's name and address and identification of the Work for which the Bid Proposal is submitted. Bidders are solely responsible for timely submission of Bid Proposals to the District at the place designated in the Call for Bids. The District will place a date/time stamp machine in a conspicuous location at the place designated for submittal of Bid Proposals. A Bid Proposal is submitted only if the outer envelope containing the Bid Proposal is stamped by the District's date/time stamp machine. The date/time stamp is controlling and determinative as to the date and time of the Bidder's submittal of its Bid Proposal. The foregoing notwithstanding, whether or not Bid Proposals are opened exactly at the time fixed in the Call for Bids, no Bid Proposals shall be received or considered by the District after it has commenced the public opening and reading of Bid Proposals; Bid Proposals submitted after such time are non-responsive and will be returned to the Bidder unopened.
- 2.4. Withdrawal of Submitted Bid Proposal. Any Bidder may withdraw or modify its Bid Proposal by written request actually received by the District prior to the scheduled closing time for the receipt of Bid Proposals and the District's public opening and reading of Bid Proposals.

- 2.5. Incomplete, Illegible Bid Proposals. Bid Proposals must not contain any erasures, interlineations or other corrections unless the same are suitably authenticated by affixing in the margin immediately opposite such erasure, interlineations or correction the surname(s) of the person(s) signing the Bid Proposal. Any Bid Proposal not conforming to the foregoing may be deemed by the District to be non-responsive. If any Bid Proposal or portions thereof, is determined by the District to be incomplete, illegible, ambiguous or inconsistent, whether by virtue of any erasures, interlineations, corrections or otherwise, the District may reject such a Bid Proposal as being non-responsive.
3. **Examination Contract Documents.** Each Bidder shall at its sole cost and expense carefully review the Contract Documents; submission of a Bid Proposal is prima facie evidence of such action by the Bidder. The failure of a Bidder to receive or examine any of the Contract Documents shall not relieve such Bidder from any obligation under the Contract Documents.
4. **Interpretation of Contract Documents.** If the Bidder is in doubt as to the true meaning of any part of the Contract Documents; finds discrepancies, errors or omissions therein; or finds variances in any of the Contract Documents with applicable rules, regulations, ordinances and/or laws, a written request for an interpretation or correction thereof may be submitted to the District. Bidders are solely responsible for submitting to such request not less than **eight (8) days** prior to the scheduled closing date for the receipt of Bid Proposals. Interpretations or corrections of the Contract Documents will be by written addendum issued by or on behalf of the District. No person is authorized to render an oral interpretation or correction of any portion of the Contract Documents to any Bidder, and no Bidder is authorized to rely on any such oral interpretation or correction. Failure to request interpretation or clarification of any portion of the Contract Documents pursuant to the foregoing is a waiver of any discrepancy, defect or conflict therein. Requests of Bidders, pursuant to the foregoing shall be submitted in writing or by email to: Andrew Spiller, Project Manager, Gilbane Building Company, [aspiller@gilbaneco.com](mailto:aspiller@gilbaneco.com).
5. **District's Right to Modify Contract Documents.** Before the public opening and reading of Bid Proposals, the District may modify the scope of materials, equipment or other goods subject to this procurement, the requirements therefor, the Contract Documents, or any portion(s) thereof by the issuance of written addenda disseminated to all Bidders who have obtained the Contract Documents. If the District issues any addenda during the bidding, the failure of any Bidder to acknowledge such addenda in its Bid Proposal will render the Bid Proposal non-responsive and rejected.
6. **Bidders Interested in More Than One Bid Proposal; Non-Collusion Affidavit.** No person or entity shall submit or be interested in more than one Bid Proposal for the Work; provided, however, that a person or entity that has submitted a sub-proposal to a Bidder or who has quoted prices for materials to a Bidder is not thereby disqualified from submitting a sub-proposal, quoting prices to other Bidders or submitting a Bid Proposal for the Work. The form of Non-Collusion Affidavit included in the Contract Documents must be completed and duly executed on behalf of the Bidder; failure of a Bidder to submit a completed and executed Non-Collusion Affidavit with its Bid Proposal will render the Bid Proposal non-responsive.
7. **Award of Contract.** The Contract for the Bridge, materials, products and goods, if awarded, will be by action of the District's Board of Trustees to the responsible Bidder submitting the lowest priced responsive Proposal for the Bridge and all items of materials, products and goods subject to this procurement.
8. **Bid Security Return.** The Bid Security of three or more low Bidders, the number being solely at the discretion of the District, will be held by the District for ten (10) days after the period for which Bid

Proposals must be held open (which is set forth in the Call for Bids) or until posting by the successful Bidder of the bond(s) and certificates of insurance required, whichever first occurs, at which time the Bid Security of such other Bidders will be returned to them.

9. **Forfeiture of Bid Security.** If the Bidder awarded the Contract hereunder fails or refuses to execute the Agreement within five (5) days from the date of receiving notification that it is the Bidder to whom the Contract has been awarded, the District may declare the Bidder's Bid Security forfeited as damages caused by the failure of the Bidder to enter into the Contract and may thereupon award the Contract for the Work to the responsible Bidder submitting the next lowest Bid Proposal or may call for new bids, in its sole and exclusive discretion.
10. **Public Records.** Bid Proposals and other documents responding to the Call for Bids become the exclusive property of the District upon submittal to the District. Upon the District's issuance of the Notice of Intent to award the Contract, all Bid Proposals and other documents submitted in response to the Call for Bids shall thereupon be considered public records, except for information contained in such Bid Proposals deemed to be Trade Secrets (as defined in California Civil Code §3426.1). A Bidder that indiscriminately marks all or most of its Bid Proposal as exempt from disclosure as a public record, whether by the notations of "Trade Secret," "Confidential," "Proprietary," or otherwise, may render the Bid Proposal non-responsive and rejected. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. At such time as Bid Proposals are deemed a matter of public record, pursuant to the above, any Bidder or other party shall be afforded access for inspection and/or copying of such Bid Proposals, by request made to the District in conformity with the California Access to Public Records Act, California Government Code §§6250, et. seq. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a Bid Proposal deemed exempt from disclosure hereunder, the Bidder submitting the materials sought by such action or proceeding agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys' fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; the District's sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.
11. **Notice of Intent to Award Contract.** Following the public opening and reading of Bid Proposals, the District will issue to Bidders timely submitting a Bid Proposal, a Notice of Intent to Award the Contract, identifying the Bidder to whom the District intends to award the Contract, and the date, time and place of the Board of Trustees meeting to consider award of the Contract.
12. **Bid Protest.** Any Bidder submitting a Bid Proposal to the District may file a protest of the District's intent to award the Contract(s) provided that each and all of the following are complied with:
  - (i) The bid protest is in writing;
  - (ii) The bid protest is filed and received by the District's Vice-Chancellor, Administrative Services, not more than five (5) calendar days following the date of issuance of the District's Notice of Intent to Award the Contract; and
  - (iii) The written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.

Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Vice-Chancellor, Administrative Services, or such individual(s) as may be designated by him, shall review and evaluate the basis of the bid protest. Either the District's Vice-Chancellor, Administrative Services, or other individual designated by her/him shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The rendition of a written statement by the Vice-Chancellor, Administrative Services, or his designee, is an express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's award of the Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals. In the event that any such legal or equitable proceedings are instituted and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys' fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom.

**[End of Section]**

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## BID BOND

KNOW ALL MEN BY THESE PRESENT that we, \_\_\_\_\_, as Surety and \_\_\_\_\_, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT, hereinafter "the Obligee," for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

### THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid Proposal to the Obligee for the Work commonly described as **ADA Barrier Removal Project, Increment 2 – Pre-Fab Steel Bridge**.

WHEREAS, subject to the terms of this Bond, the Surety is firmly bound unto the Obligee in the penal sum of ten percent (10%) of the maximum amount of the Bid Proposal submitted by the Principal to the Obligee, as set forth above.

NOW THEREFORE, if the Principal shall not withdraw said Bid Proposal within the period specified therein after the opening of the same, or, if no period be specified, for ninety (90) days after opening of said Bid Proposal; and if the Principal is awarded the Contract, and shall within the period specified therefor enter into a written contract with the Obligee, in accordance with the Bid Proposal as accepted and give such bond(s) with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such, or in the event of the withdrawal of said Bid Proposal within the period specified for the holding open of the Bid Proposal or the failure of the Principal to enter into such Contract and give such bond(s) within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Bid Proposal and the amount for which the Obligee may procure the required Work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the Obligee in again calling for Bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the Call for Bids, the Work to be performed thereunder, the Drawings or the Specifications accompanying the same, or any other portion of the Contract Documents shall in no way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract, the Call for Bids, the Work, the Drawings or the Specifications, or any other portion of the Contract Documents.

In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys fees.

**[CONTINUED ON NEXT PAGE]**

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agents or representatives.

(Principal's Corporate Seal)

\_\_\_\_\_  
(Principal Name)

(Attach Notary Acknowledgement  
Of Principal's Signature)

By: \_\_\_\_\_  
(Typed or Printed Name)

Title: \_\_\_\_\_

\_\_\_\_\_  
(Surety Name)

(Surety's Corporate Seal)

By: \_\_\_\_\_  
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate and  
Notary Acknowledgments)

\_\_\_\_\_  
(Typed or Printed Name)

Contact name, address, telephone number and  
email address for notices to the Surety

\_\_\_\_\_  
(Contact Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone & Fax)

\_\_\_\_\_  
(Email address)



# NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn, deposes and says that I am  
(Typed or Printed Name)  
the \_\_\_\_\_ of \_\_\_\_\_, the party submitting  
(Title) (Bidder Name)  
the foregoing Bid Proposal ("the Bidder") for the **West Valley College: ADA Barrier Removal Project, Increment 2 – Pre-Fab Steel Bridge** procurement in connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.

2. The Bid Proposal is genuine and not collusive or sham.

3. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.

4. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.

5. All statements contained in the Bid Proposal and related documents are true.

6. The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_.  
(City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
(City, County and State)

(\_\_\_\_\_) \_\_\_\_\_  
(Area Code and Telephone Number)

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# BID PROPOSAL

TO: **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**, a California Community College District, acting by and through its Board of Trustees ("the District").

FROM:

\_\_\_\_\_

(Name of Bidder)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, State, Zip Code)

\_\_\_\_\_

(Telephone/Telecopier)

\_\_\_\_\_

(E-Mail Address of Bidder's Representative(s))

\_\_\_\_\_

(Name(s) of Bidder's Authorized Representative(s))

**1. Bid Proposal**

**1.1 Bid Proposal Amount.** The undersigned Bidder proposes and agrees to furnish and deliver a pre-fabricated steel Bridge, approach railings and/or other goods as well as completion of all other obligations of the successful Bidder under the Contract Documents for the procurement described as **West Valley College; ADA Barrier Removal Project, Increment 2 – Pre-Fab Steel Bridge**. The Bidder confirms that it has examined the Drawings and Specifications in Attachment A and understands that neither the District nor any of its agents, employees or representatives shall be responsible for any errors or omissions on the part of the undersigned Bidder in preparing and submitting this Bid Proposal.

**1.2 Acknowledgment of Bid Addenda.** The Bidder confirms that this Bid Proposal incorporates and is inclusive of, all items or other matters contained in Bid Addenda issued by or on behalf of the District.

\_\_\_\_\_ **Addenda Nos.** \_\_\_\_\_ received, acknowledged  
(initial) and incorporated into this Bid Proposal.

**2. Documents Accompanying Bid.** The Bidder has submitted with this Bid Proposal the following: (a) Bid Security; (b) Non-Collusion Affidavit. The Bidder acknowledges that if this Bid Proposal and the foregoing documents are not fully in compliance with applicable requirements set forth in the Notice Calling for Bids, the Instructions for Bidders and in each of the foregoing documents, the Bid Proposal may be rejected as non-responsive.

**3. Award of Contract.** If the Bidder submitting this Bid Proposal is awarded the Contract, within five (5) days after notification of award of the Contract, the Bidder awarded the Contract shall deliver to the District the Certificates of Insurance evidencing all insurance coverages required under the Contract Documents. The District shall thereafter submit to the Bidder awarded the Contract a Purchase Order for execution by the Bidder for the equipment, materials, and other goods to be furnished by the Bidder awarded the Contract. Failure of the Bidder awarded the Contract to strictly comply with the preceding may result in the District's rescission of the award of the Contract and/or forfeiture of the Bidder's Bid Security. In such event, the District may, in its sole and

exclusive discretion elect to award the Contract to the responsible Bidder submitting the next lowest Bid Proposal, or to reject all Bid Proposals.

4. **Piggyback Purchases.** Indicate below whether or not the Bidder, if awarded the Contract, agrees to allow other California public agencies to “piggyback” purchase the materials, equipment and other goods subject to this Bid Proposal at the prices proposed and upon the terms and conditions set forth in the Purchase Order. The Bid Proposal of a Bidder who elects not to permit “piggyback” purchases will not be rejected for non-responsive. **The Bid Proposal of a Bidder who fails to indicate below whether or not “piggyback” purchases will be permitted will be rejected for non-responsiveness.**

- The Bidder will permit “piggyback” purchases by other California public agencies if the Bidder is awarded the Contract hereunder. The term of the “piggyback” is from the date of the District’s Board of Trustees action to award the Contract to and including July 1, 2012.
- The Bidder will not permit “piggyback” purchases by other California public agencies if the Bidder is awarded the Contract hereunder.

5. **Attorneys Fees.** By executing this Bid Proposal, the undersigned Bidder expressly acknowledges and agrees that in the event that the Bidder institutes any legal or equitable proceedings in connection with this Bid Proposal and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys’ fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom. This provision shall constitute a binding agreement that shall be enforceable as and against the parties hereto pursuant to and in accordance with California Civil Code §1717. This attorney fee provision shall be solely limited to legal or equitable proceedings arising out of a bid protest and shall not extend to or have any force and effect in connection with the Contract awarded hereunder nor operate to modify, condition or in way affect the terms and conditions of the Contract or Purchase Order awarded hereunder.

\_\_\_\_\_ Acknowledged and Agreed by Bidder.  
(Full Signature)

6. **Acknowledgment and Confirmation.** The undersigned Bidder acknowledges its receipt, review and understanding of the Contract Documents pertaining to the procurement of materials, equipment or other goods under this Bid Proposal. The undersigned Bidder certifies that the Contract Documents are, in its opinion, adequate, feasible and complete for furnishing the Bridge, materials, and other goods specified and intended by the Contract Documents. The undersigned Bidder certifies that it has, or has available, all necessary equipment, personnel, materials, facilities and technical and financial ability to furnish and deliver the materials, and/or goods subject to this Bid Proposal for the amount bid herein within the Contract Time and in accordance with the Contract Documents.

(Corporate Seal) By: \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Typed or Printed Name)

Title: \_\_\_\_\_

## PURCHASE ORDER

This Purchase Order sets forth the terms and conditions relating to purchase of materials, equipment, products and goods generally described as **WEST VALLEY COLLEGE; ADA BARRIER REMOVAL PROJECT, INCREMENT 2 – PRE-FAB STEEL BRIDGE** by the West Valley-Mission Community College District (“District”) from \_\_\_\_\_ (“Vendor”).

1. **Contract Documents.** The Contract Documents consist of this Purchase Order, the Bid Proposal and other documents submitted by the Vendor to the District as a Bidder, and the Attachments A and B.
2. **Bridge, Approach Railings, Materials and Other Goods Furnished by Vendor.**
  - 2.1 **Material Scope.** The Bridge, Approach Railings and other goods to be furnished by the Vendor hereunder (collectively, “the Bridge”) shall comply with and conform to the Drawings and Specifications set forth in Attachment A which is incorporated herein by this reference. Material not in compliance and conformity to the Drawings and specifications is subject to rejection by the District.
3. **Contract Price** The price for the Vendor to furnish and deliver the Bridge under the Contract Documents along with the Vendor’s performance of all other obligations of the Vendor under the Contract Documents is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The aggregate Contract Price set forth herein is allocated to the specific material requirements, as described in the Drawings and Specifications set forth in Attachment A hereto.
4. **Contract Time.** The Bridge is to be furnished by the Vendor under the Contract Documents shall be delivered to the District no later than July 1, 2012 (“Contract Time”). Submittals and related documentation to be furnished by the Vendor as set forth in the Drawings and Specifications in Attachment A.
5. **Liquidated Damages.** If the Bridge and all other obligations of the Vendor under the Contract Documents are not delivered or otherwise completed in accordance with the terms of this Purchase Order and/or the time/date designated in Contract Time, Vendor will be subject to assessment and withholding of Liquidated Damages in the sum of One Thousand Dollars (\$1,000) per day until delivery of the Bridge is completed and/or other obligations of the Vendor under the Contract Documents are completed. The District may deduct Liquidated Damages assessed hereunder from any portion of the Contract Price then or thereafter due the Vendor.
6. **Delivery; Freight.** The Bridge furnished by the Vendor under this Purchase Order shall be delivered FOB to the District at location designated in Attachment B. All freight, packaging, drayage or other shipping or handling charges shall be included in the Contract Price. The Vendor shall notify the District Representative by email not less than two (2) working days prior to and not more than five (5) working days prior to the Vendor’s delivery of the Bridge. Material delivered to the District shall be subject to District inspection, verification and acceptance. The Vendor shall be responsible for loss, damage, destruction of the Bridge, Approach Railings and other materials until accepted by the District. Delivery routes and the delivery site shall be as set forth in Attachment B.
7. **Taxes.** All sales and/or use taxes of the State of the California or a local jurisdiction on equipment and/or materials furnished under the Contract Documents for which the District is not exempt shall be paid by the District.
8. **Payment of the Contract Price.**

**8.1 Bridge.** The District shall make progress payments of the Contract Price with the Vendor’s submission of a properly itemized invoice. Upon receipt of the Vendor’s invoice, the District shall promptly verify the Vendor’s full performance of all obligations under the Contract Documents relating to the fabrication and delivery of materials. Within thirty (30) days of the District’s confirmation of the Vendor’s performance of all obligations hereunder, the District shall make final payment of the Contract Price.

**9. Inspection.** All materials furnished under the Contract Documents are subject to inspection and rejection for non-compliance with requirements of the Contract Documents; the cost of inspection and the cost to return District rejected Material will be back charged the Vendor and deducted from the Contract Price. If the value of such back charges exceeds the Contract Price due the Vendor, the Vendor shall be liable to the District for all such back charges exceeding the Contract Price. All costs to re-furnish any item of Material not accepted by the District shall be borne solely and exclusively by the Vendor and the Vendor shall be liable to the District for Liquidated Damages relating to an item of Equipment not accepted by the District until the Material delivered to the District is accepted by the District.

**10. Changes.** The District may, by written order, make Changes to the Bridge and subject to this Purchase Order, issue additional instructions and/or to add to or delete Materials subject to this Purchase Order. No Change may be made without the prior written approval and direction of the District. Adjustments of the Contract Price or the Contract Time on account of a Change authorized hereunder will only be made by written Change Order duly executed by the Vendor and the District.

**11. Indemnification.** Unless arising solely out of the active negligence or willful misconduct of the District, the Vendor shall indemnify, defend and hold harmless the District, the District’s Board of Trustees and all members thereof and the District’s employees, officers, agents and representatives from all claims, demands and liabilities, including without limitation, attorney fees, which arise out of or related in any manner to the Contract Documents. The Vendor’s obligations shall include without limitation: (a) injury to, or death of, persons; (b) damage to property; (c) theft or loss of property; and (d) other losses, damages or costs arising out of, in whole or in part, of the acts, omissions or other conduct of the Vendor, or its employees, officers, agents or representatives.

**12. Vendor Insurance.** At all times during performance of obligations hereunder, the Vendor shall obtain and maintain the policies of insurance set forth below:

Workers Compensation	Per applicable law
Employer’s Liability	One Million Dollars (\$1,000,000)
Commercial General Liability	
Per Occurrence	One Million Dollars (\$1,000,000)
Aggregate	Two Million Dollars (\$2,000,000)

Vendor shall deliver to the District Certificates of Insurance evidencing the foregoing policies of insurance with at least the minimum coverage amount set forth above.

**13. District Right to Terminate.** The Vendor’s failure to comply with any term or condition of the Contract Documents shall constitute default of the Vendor; in such event, the District may terminate the Purchase Order, in whole or in part, upon seven (7) days written notice to the Vendor. Unless the Vendor shall have commenced, and diligently thereafter prosecute to completion, all required actions to cure such default(s), the Purchase Order (or portions thereof as designated by the District) shall be deemed terminated without further action of the District; such

termination shall be effective, without further action of the District or the Vendor, the seventh (7th) day after the date of the District's written notice. If the District terminates the Purchase Order for default of the Vendor, the Contract Price due the Vendor shall be the value of the Material actually delivered to the District and accepted by the District prior to the effective date of such termination, as reduced by all losses, costs and damages incurred by the District as a result of the Vendor's default and costs to complete the Vendor's obligations under this Purchase Order. If losses, costs and damages incurred by the District as a result of the Vendor's default and costs to complete the Vendor's obligations under this Purchase Order exceed the Contract Price due the Vendor, the Vendor shall make payment of such excess amount to the District within ten (10) days of the District's demand therefor. In addition to the preceding, the District may terminate the Purchase Order, in whole or in part, at any time for the convenience of the District by written notice to the Vendor, in which case, the payment of the Contract Price shall be limited to the value of the materials, or other goods actually furnished and delivered by the Vendor to the District at the time of the termination for the District's convenience.

#### 14. **Warranties.**

- 14.1 Vendor Warranties.** In addition to warranties arising by operation of law, the Vendor and the manufacturer of the fabricated material expressly warrants to the District that the materials and other goods subject to this Purchase Order are: (i) fit for intended use(s) thereof; (ii) free of defects in materials or workmanship; and (iii) conform to all requirements of the Contract Documents. Upon delivery of an item of fabricated material to the District, the Vendor shall concurrently deliver to the District Representative the written warranties of the Bridge manufacturers which conform to the foregoing requirements.
- 14.2 Warranty Durations.** Warranty obligations of the Vendor and Bridge manufacturer and/or components there are to be a minimum of ten (10) years.
- 14.3 Commencement of Warranties.** The Bridge warranty set forth herein commence upon delivery of the Bridge.
- 14.4 District Remedies.** If any Equipment furnished under the Contract Documents, or portions thereof, do not conform to warranty requirements set forth herein, the District shall give the Vendor written notice of the failure of such materials, equipment or other goods to conform to warranty requirements and may: (i) require the Vendor, at the Vendor's sole cost and expense, to provide labor, materials and other goods or services necessary to promptly correct or replace any material or other portions thereof not conforming to warranty requirements (including preservation, packaging, packing, marking and transportation); (ii) cause material not conforming to warranty requirements to be corrected or replaced, with all costs, expenses, charges and fees associated or arising out of such corrections or replacements being charged to, and the sole responsibility of the Vendor; (iii) retain such material and reduce the Contract Price by an amount equitable under the circumstances.
- 14.5 Non-Exclusive Remedies.** The rights and remedies of the District under this Paragraph 15 are in addition to, and not in lieu of, any other rights or remedies of the District arising out or related to the failure of materials, or other goods furnished hereunder to conform to warranty requirements, whether such other rights and remedies arise under the Contract Documents or by operation of law.

#### 15. **Miscellaneous.**

##### 15.1 **Disputes.**

- 15.1.1 Claims Under \$375,000.** In the event of disputes, disagreements or other matters in controversy between the District and the Vendor and the value of each such dispute, disagreement or matter in controversy is \$375,000 or less, the dispute resolution procedures set forth in Public Contract Code §20104 et seq.

15.1.2 **Claims Over \$375,000.** If any dispute, disagreement or other matter in controversy between the District and the Vendor is greater than \$375,000, each such dispute, disagreement or other matter in controversy shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association and its Construction Industry Arbitration Rules in effect at the time that a Demand for Arbitration is filed. Arbitration proceedings shall be conducted in Sacramento, California.

15.1.3 **Vendor Obligation to Perform.** Notwithstanding any dispute, disagreement or other matter in controversy arising out of this Purchase Order, the Vendor shall continue to diligently perform its obligations hereunder and prosecute the same to completion, subject to a subsequent resolution of such dispute, disagreement or other matter in controversy.

**15.2 Governing Law; Interpretation.** This Purchase Order and the Contract Documents shall be governed by the laws of the State of California. This Contract Documents shall be interpreted as a whole and not in favor of the District or the Vendor.

**15.3 Successors.** The Contract Documents shall be binding upon and inure to the benefit of the respective successors-in-interest of the District and the Vendor. The foregoing notwithstanding, the Vendor shall not assign the Purchase Order, any right or obligation thereunder or any portion thereof without the prior written consent of the District, which may be granted, denied or conditioned in the sole discretion of the District.

**15.4 Permits; Approvals.** Unless otherwise expressly provided in the Contract Documents, the District shall obtain and pay for fees, permits and approvals from the Division of the State Architect DSA. All other fees, permits or approvals necessary to complete its obligations hereunder, shall be paid for by the Vendor without adjustment of the Contract Time or the Contract Price.

**15.5 Days.** Unless otherwise stated in the Contract Documents, all references to “days” shall be deemed references to calendar days.

**15.6 Severability.** If any term, condition or provision of the Contract Documents deemed invalid, illegal or unenforceable by a Court of competent jurisdiction, such term, condition or provision shall be deemed severed herefrom, but all other terms, conditions and provisions hereof shall remain unaffected and in full force and effect.

**15.7 Notices.** Notices of the Vendor and the District to the other shall be effective only if in writing and transmitted to the other by Certified, Return Receipt Requested United States Mail with postage fully prepaid, overnight courier service requiring a written confirmation of receipt or messenger service requiring a written confirmation of receipt. Notices delivered by United States Mail shall be effective the third (3<sup>rd</sup>) day after the postmark date; notices delivered by overnight courier service or messenger shall be effective upon delivery. Notice shall be addressed as follows:

If to District:

West Valley Mission Community College District  
Director, General Services  
14000 Fruitvale Avenue  
Saratoga, CA 95070

If to Vendor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



- 15.8 District Representative.** For purposes of this Purchase Order, the District Representative is Javier Castruita, telephone: (408) 741-2042, email: javier.castruita@wvm.edu.
  
- 15.9 Entire Agreement.** This Purchase Order, the Vendor’s Bid Proposal, Attachment A (Drawings and Specifications) and Attachment B (Site Delivery) constitute the entire agreement and understanding of the District and the Vendor concerning the subject matter hereof. This Purchase Order may be amended only by written instrument duly executed on behalf of the District and the Vendor by their respective authorized employees. No other purported amendment hereof shall be valid or enforceable.

In witness hereof, the District and the Vendor have executed this Purchase Order as of the date set forth above.

**District  
West Valley-Mission  
Community College District**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Vendor  
[Name]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

