

FLOOD CONTROL AGENDA ITEM NO: _____ December 16, 2008

**COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY**

399 Elmhurst Street • Hayward, CA 94544-1307
(510) 670-5480

December 8, 2008

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

SUBJECT: APPROVE THE EXECUTION OF AN AGREEMENT, CONTRACT NO. 3686, BETWEEN THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND PARAGON BRIDGE WORKS TO FABRICATE AND INSTALL A PEDESTRIAN BRIDGE AT CASTRO VALLEY CREEK, CONTRACT PERIOD DECEMBER 18, 2008, THROUGH DECEMBER 18, 2009, IN THE AMOUNT NOT TO EXCEED \$70,000.00.

RECOMMENDATION:

Approve the execution of an agreement, Contract No. 3686, between the Alameda County Flood Control and Water Conservation District and Paragon Bridge Works (Principal: Noah Figueroa; Location: Gilcrest, CO) to fabricate and install a pedestrian bridge at the Castro Valley Creek, for the contract period December 18, 2008 through December 18, 2009, in the amount not to exceed \$70,000.00.

SUMMARY/DISCUSSION:

The pedestrian bridge is an important component of the overall plan for the Castro Valley Library site, which will meet the Leadership in Energy and Environmental Design (LEED) program requirement through the use of recycled materials. It will provide an Americans with Disabilities Act (ADA) accessible connection between the playground (i.e., Hayward Area Recreation and Park District proposed facility) on the west side of the creek and the Castro Valley Library on the east side. The pedestrian bridge will be fabricated by Paragon Bridge Works, a specialist in converting used railroad flat cars into bridges and will integrate artistic and interpretive elements designed by local artists who were selected by the Alameda County Art Commission.

The Castro Valley Library and the final phase of the Creek Day Lighting project, that includes creek habitat restoration, public art, pedestrian trails, interpretive elements, a playground, and a pedestrian bridge spanning the creek, will be completed in 2009.

“To Serve and Preserve Our Community”


GSA USE ONLY

SIC CODE: _____

I. TO BE COMPLETED BY FLOOD CONTROL DISTRICT

1. Contract Number	2. Department Name & Number <u>Engineering and Construction #50600</u>
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3. Contract Period <u>12/16/08 to 12/16/09</u>	Initial <input checked="" type="checkbox"/>	Renewal <input type="checkbox"/>
Description	Fabrication and installation of a pedestrian bridge that integrates sculptural and interpretive railing designed and hand-crafted by artists currently under contract with the District.	
Amount	Initial <u>\$ 70,000.00</u>	Renewal \$ _____

Signature of Agency or Department Head or Designee  Date 12-1-08

II. TO BE COMPLETED BY CONTRACTOR

4. Contractor		Type of Organization
Name	<u>Paragon Bridge Works</u>	Individual <input type="checkbox"/>
Address	<u>19240 US Highway 85, Gilcrest, CO 80623</u>	Partnership <input type="checkbox"/>
		Corporation <input checked="" type="checkbox"/>
Phone	<u>970-737-1174</u>	For Profit <input checked="" type="checkbox"/>
		Non-Profit <input type="checkbox"/>
		Government <input type="checkbox"/>

5. Composition of Ownership by Percentage (Must represent 100%)		
White	<u>49%</u>	Male <input checked="" type="checkbox"/> <u>49%</u>
Black	<u>%</u>	
Hispanic	<u>51%</u>	Female <input checked="" type="checkbox"/> <u>51%</u>
Asian-Pacific Islander	<u>%</u>	
American Indian-Alaska Native	<u>%</u>	
Other	<u>%</u>	

6. Certified Minority or Women Owned Business?
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If yes, Certifying Agency/Certificate/Expiration Date _____

7. Is the Contractor a Small Business?* Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Signature of Contractor  Date 11-26/08

*A Small Business Concern: A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is competing for Government contracts and can further qualify under the criteria concerning the number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administrations. (see Code of Federal Regulations, Title 13, Part 21, as amended, which contains detailed industry definitions and related procedures.)

QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS

INSTRUCTIONS: This questionnaire is to be completed by the County department for services contracts and must be included as part of the contract package submitted to Public Works HR, who will forward it to the Human Resource Services Department (HRSD). Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: Paragon Bridge Works, Inc. DEPT #: _____

TITLE/SERVICE: Engineering and Construction

DEPT. CONTACT: Noah Figueroa PHONE: _____

I. INFORMATION ABOUT THE CONTRACTOR

YES NO

- | | | |
|---|-------|-----|
| 1. Is the contractor a corporation or partnership? | (X) | () |
| 2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? | (X) | () |

If the answer to BOTH questions is YES, provide the employer ID number here:
20-3670073.

No other questions need to be answered. Withholding is not required.

If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____

No other questions need to be answered. Withholding is not required.

If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES

YES NO

- | | | |
|---|-----|-----|
| 1. Does the County have the right to control the way in which the work will be done, i.e., will the County be able to specify the sequence of steps or the processes to be followed if it chooses to do so? | () | () |
| 2. Is the contractor restricted from performing similar services for other businesses while he is working for the County? | () | () |
| 3. Will the contractor be working for more than 50% of the time for the County (50% = 20 hrs/wk; 80 hrs/mo)? | () | () |
| 4. Is the relationship between the County and the contractor intended to be ongoing? | () | () |

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS

- 1. Is the contractor being hired for a period of time rather than for a specific project? () ()
- 2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()

IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS

- 1. Will the agreement be with an individual who does not have an outside practice? () ()
- 1.a. Will the contractor work more than an average of ten hours per week? () ()

IF THE ANSWER TO 1.a IS YES, ANSWER QUESTIONS 1.b.

- 1.b. Will the County provide more than 20% of the contractor's income? () ()
- 2. If the answer to either question 1.a, or if required, question 1.b is NO, the entire answer is NO.

A "yes" answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an "employee for withholding purposes."

CERTIFICATIONS:

I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.

Paragon Bridge Works
Contractor

[Signature]
Agency/Department Head or Designee

11-26-08
Date

12-1-08
Date

HRSD APPROVAL REQUIRED FOR ALL STANDARD SERVICES AGREEMENTS:

Signature: _____ Date: _____

Title: _____



OFFICE OF ACQUISITION POLICY (OAP)

Request for Authorization to Use Non-SLEB Contractor/Subcontractor

DIRECTIONS

For Requests over \$3,000 to \$25,000: EITHER complete 1-8 below and submit, with supporting documentation, for approval to GSA Purchasing Procurement Specialist, QIC 26026

OR e-mail justification, with supporting documentation, for approval to the appropriate GSA Purchasing Procurement Specialist. Upon approval, the Specialist will process the procurement(s).

For Requests over \$25,000: Complete 1-10 below and submit, with supporting documentation, for approval to GSA Business Outreach Officer, QIC 26021. Upon approval, a **SLEB Waiver Number** will be issued. (This number is now a mandatory field in order to enter a Procurement contract into ALCOLINK.) OAP will email signed Request approvals (with Waiver Number) and denials to Requesting Departments and GSA Purchasing.

1. Please check appropriate box and complete department/contact information below.

X Requesting Department GSA Purchasing managing the competitive process

Department: Alameda County Flood Control & Water Conservation District (District)

Contact: Paul Modrell Email: paulm@acpwa.org Telephone #: 510-670-5248

2. Recommended Vendor (Name): Paragon Bridge Works

(Street Address): 19240 U.S. Highway 85 (City, State & Zip): Gilcrest, CO

3. Total Contract (or PO/BPO) Value: \$ 70,000.00 Contract (or PO/BPO) Term: 11/18/2008 – 11/18/2009 or One-Time Purchase

4. Date Goods/Services Needed: 03/2009

5. Brief explanation of why goods/services are required: The District needs a pedestrian bridge at the newly daylighted Castro Valley Creek to provide pedestrian access to the Castro Valley library currently under construction. The bridge must be made of recycled materials to compliment the Library construction's LEED rating. The bridge design must be integrated with an artistic fence and railing design already selected by the Alameda County Art Commission for the site.

6. What are the consequences if the date goods/services needed (in #5 above) is not met? Bridge may not be able to be built, disconnecting the library from an adjacent park proposed by the Hayward Area Recreation and Park District. The bridge is a required element for the planned integration of the park and library.

7. Explain what attempts were made to locate a SLEB prime or subcontractor(s), including:

a. Detailed statement of efforts made to contact and negotiate with certified businesses, including list of certified business contacted with dates and names of individuals, addresses, dates and phone numbers 1) Reviewed a list of SLEB certified heavy and civil engineering construction contractors provided by GSA and on 10/17/08 contacted four firms likely to be able to perform the required services (1-David Helfant of Bay Area Structural, Inc., 1185 Ocean Ave., Oakland; 2-J.R. of Harris & Assoc., 7700 Edgewater Dr., Oakland; 3-Maynard Crowther of MCE Corp., 6515 Trinity Ct., Dublin; 4-Alan McKean of Oliver De Silva, Inc., 344 High Street, Oakland) which resulted in no estimates or proposals; 2) performed an internet search for pedestrian bridge manufacturers in Alameda County on 10/17/08 (no firms found); expanded internet search and contacted three firms (1-Paul Jacob of Contech, 3363 Sweet Dr., Lafayette, CA; 2-Rick Ackerman of Excel Bridge, 12001 Shoemaker Ave., Santa Fe Springs, CA; 3-Noah Figueroa of Paragon Bridge Works, 19240 U.S. Highway 85, Gilcrest, CO) which resulted in one estimate from Paragon Bridge Works; and 3) asked artists selected by Art Commission to perform an independent search for firms. The artists contacted four firms which resulted in one estimate from Paragon Bridge Works.

b. List of items or selected portions of work proposed to be performed by certified business in order to increase the likelihood of achieving the stated goal: Installation of bridge structure and equipment rental

c. Reasons for contractor's conclusion that a certified subcontractor is not qualified to perform: The design and fabrication of the bridge and the precast concrete bridge abutments will be done out of state. The bridge and bridge abutments will be shipped to and assembled at the site by Paragon Bridge Works and its California affiliates that specialize in the installation of Paragon's unique bridge system.

d. Description of information provided to certified contractors/subcontractors regarding the plans, specifications and anticipated time schedule for portions of the work to be performed (See attached Definition of Services and Figures 1-5)

8. Department Certification for requests over \$3,000 to \$25,000: I certify to the accuracy of the proceeding statements,

Signature of Agency/Department Head or Designee

Print Name

Date

9. If the contract is over \$100,000, is the recommended vendor able to comply with the First Source Program?

Yes:

No:

If No, explain: _____

10. Department Certification for requests over \$25,000: I certify to the accuracy of the proceeding statements,

Signature of Agency/Department Head or Designee
or GSA Purchasing Manager (if GSA Purchasing managed the process)

Print Name

Date

[Handwritten Signature]

DANIEL W. HESBERT

11/3/08

OAP to complete below, for purchases over \$25,000:

A. Request Approved: Waiver Valid Through ___/___/___ SLEB Waiver Number:

B. Request Denied: Reason: _____

Approved by GSA-Office of Acquisition Policy _____ Date _____

Approved by Pedro Valencia, Deputy Director, GSA _____ Date _____

**Alameda County Flood Control & Water Conservation District
October 16, 2008**

**DAYLIGHTING OF CASTRO VALLEY CREEK BETWEEN NORBRIDGE AVE. AND
CASTRO VALLEY BLVD., CASTRO VALLEY, CA**

**DEFINITION OF SERVICES
FOR PEDESTRIAN BRIDGE DESIGN, FABRICATION AND INSTALLATION**

Task 1: Design and fabricate a pedestrian bridge

Vendor shall design and fabricate a pedestrian bridge. Bridge dimensions shall measure approximately 53' long X 8' wide X 2' deep. Main structure shall be a recycled railroad flatcar. Decking material shall be recycled flatcar wood decking in good condition with all sides cleaned, sealed and finished with three coats of clear industrial grade clear polyurethane. Custom hand rails will be installed per District's conceptual drawings and Task 2 below. Surfaces of support structure shall be cleaned, sealed and painted with a minimum of two coats of industrial grade paint. District shall be allowed to choose the paint color. Bridge abutments shall be precast concrete.

Task 2: Integrate artist-designed and fabricated bridge railing

Vendor is required to work with David Fine Art, LLC (Principals: David Duskin and David Whippen; hereinafter, "the Artist"), on the integration of artist-designed and fabricated posts (hereinafter, the "Artistic Elements") into the bridge (see Figures 5 & 6). The Artist is currently under contract with the County. An image of a preliminary rendering of the artist-designed railing and bridge is included.

- a. Vendor agrees to collaborate closely with the Artist through in-person meetings and other necessary means of communication, to successfully integrate the artist-designed railing into the bridge in a way that preserves the artistic integrity of the Artistic Elements.
- b. Vendor agrees to work with Artist and Artist's engineer to determine the specifications and parameters of the Artistic Elements. (Paul: We would like to add a deadline for this. As early as possible.)
- c. Vendor will provide engineering that includes the Artistic Elements and shall be included within the Vendor's warranty.
- d. Vendor will provide labor and material to install the Artistic Elements.
- e. Vendor will provide handrail as specified in this Agreement.
- f. Vendor agrees to consult with the Artist's engineer as needed.
- g. Artist shall provide for the transportation of the Artistic Elements to the Vendor's facility in Colorado.

- h. Vendor agrees to allow the Artist to come to Vendor's facility during the installation of the Artistic Elements and bridge railing; Vendor agrees to allow artists to direct Vendor regarding the placement and installation of Artistic Elements incorporated into bridge and work cooperatively with the Artists during this time; Vendor agrees to follow the specifications within the Artist's scaled shop drawing indicating the layout of the Artistic Elements.
- i. Vendor agrees that the Artistic Elements will not be painted or altered in any way without prior consent of the Artist and District; Vendor agrees to provide labor and materials to protect the Artistic Elements while bridge is being fabricated, stored, transported, and installed.

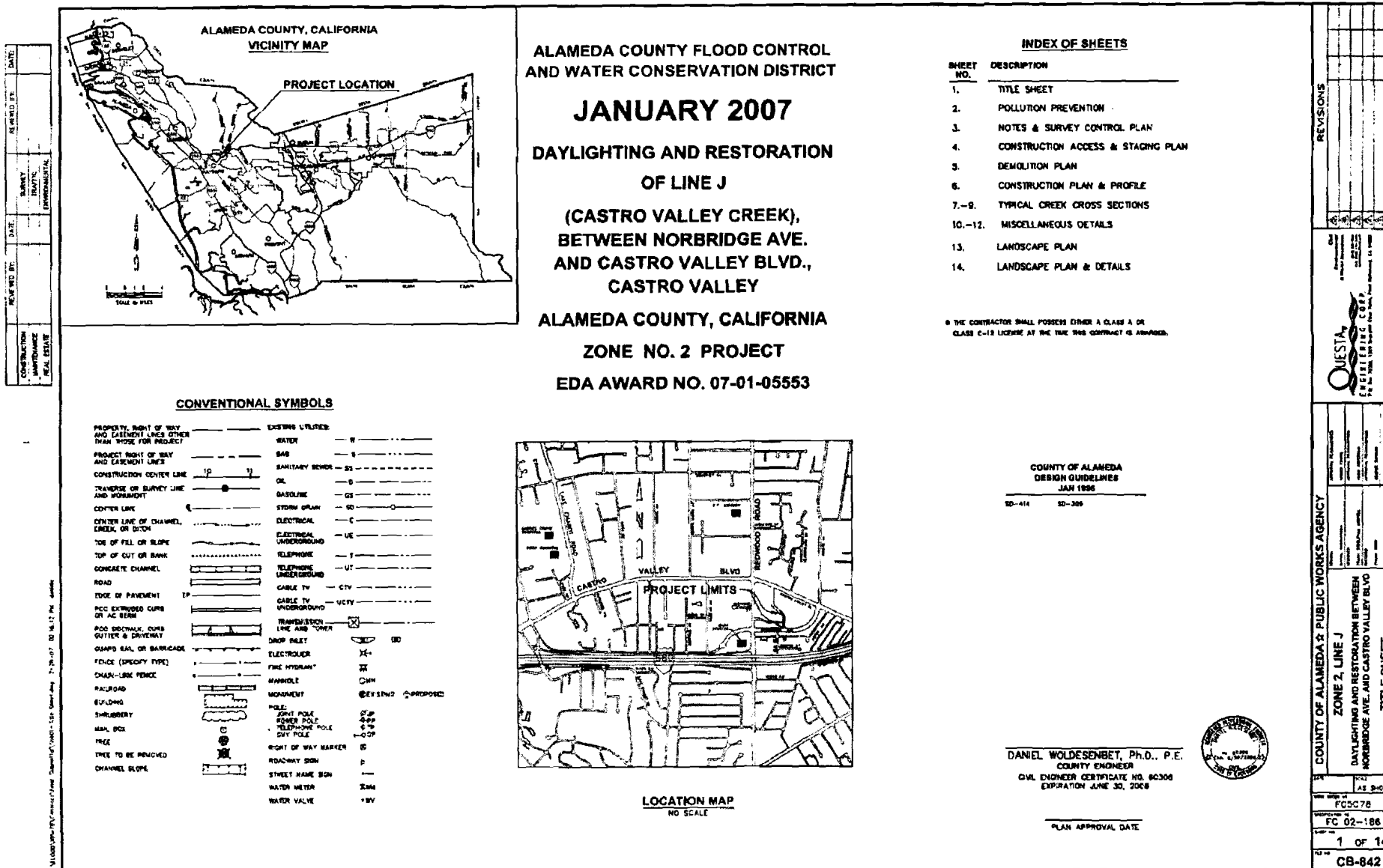
Task 3: Deliver bridge and bridge components to the Castro Valley, CA site

Vendor shall make all arrangements to have the bridge and bridge components, including precast bridge abutments and custom railing, delivered to Castro Valley Creek at Norbridge Ave., Castro Valley, CA (see Figures 1-3).

Task 4: Install bridge

Vendor shall install the bridge structure which will include excavation and placement of abutments, setting bridge in place, securing the bridge to the abutments, connecting units together as needed, assembling the custom railing, backfilling around abutments and restoring surfaces to the original grade. Vendor shall direct the bridge installation activities and supply all equipment and labor.

FIGURE 1



FOR REDUCED ENGLISH PLANS
ORIGINAL SCALE IS 1" = 40'

FIGURE 2

Alameda County Flood Control and Water Conservation District
October 16, 2008

**Daylighting of Castro Valley Creek between Norbridge Ave. and Castro
Valley Blvd., Castro Valley, California**

Site photo of approximate pedestrian bridge location



FIGURE 3

CASTRO VALLEY CREEK PEDESTRIAN BRIDGE
CASTRO VALLEY, ALAMEDA CO., CA

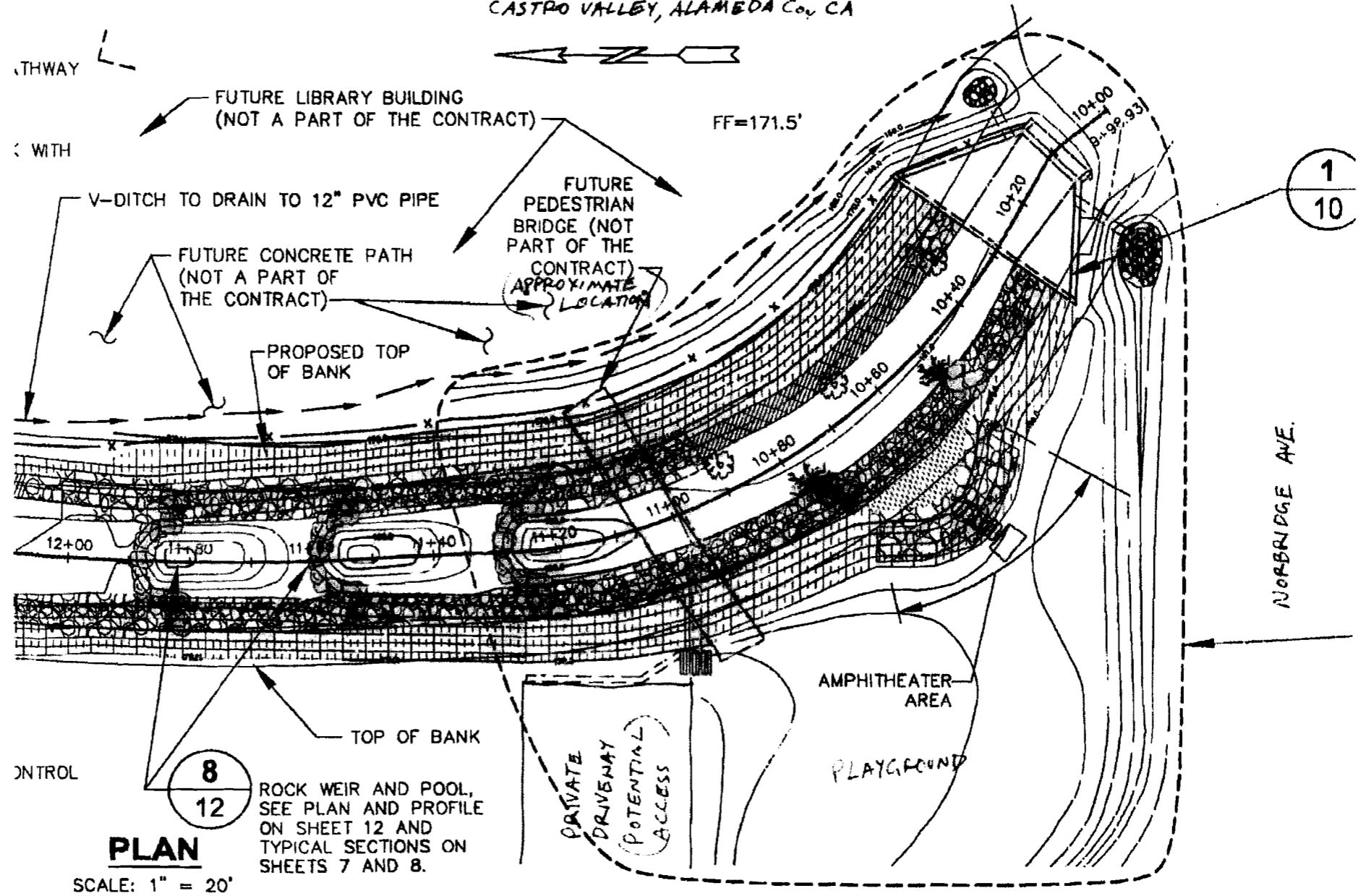


FIGURE 4

ELEVATED FENCE ADDITIONAL ELEMENTS

Alameda County Castro Valley Library
Public Art Proposal

David Duskin & David Whippen

Bridges, Path Design, Benches, Trash and Recycle, Drinking Fountains, Boulders

BRIDGE PROPOSAL:

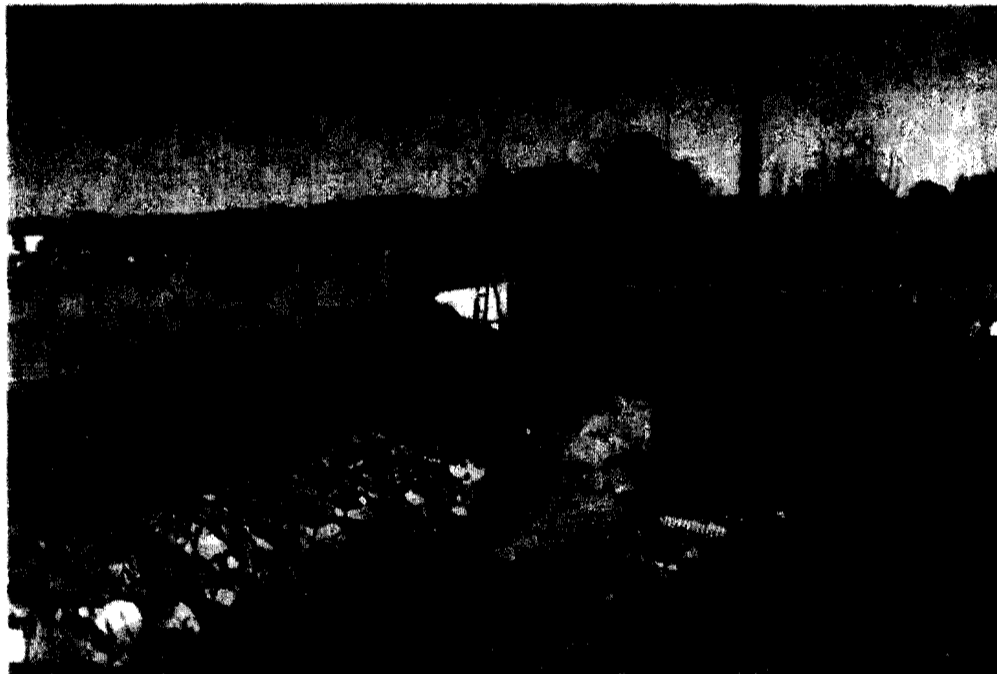
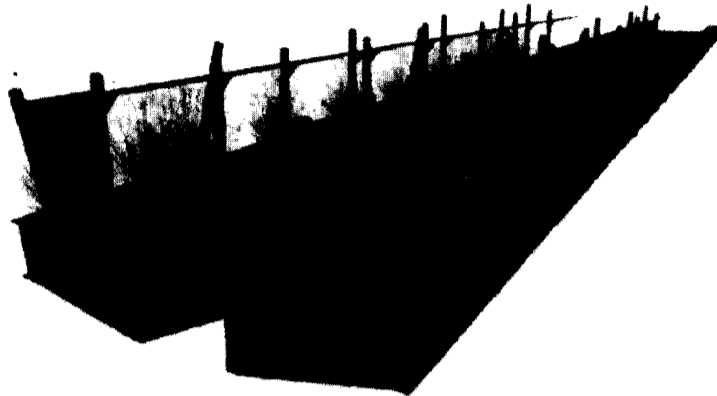
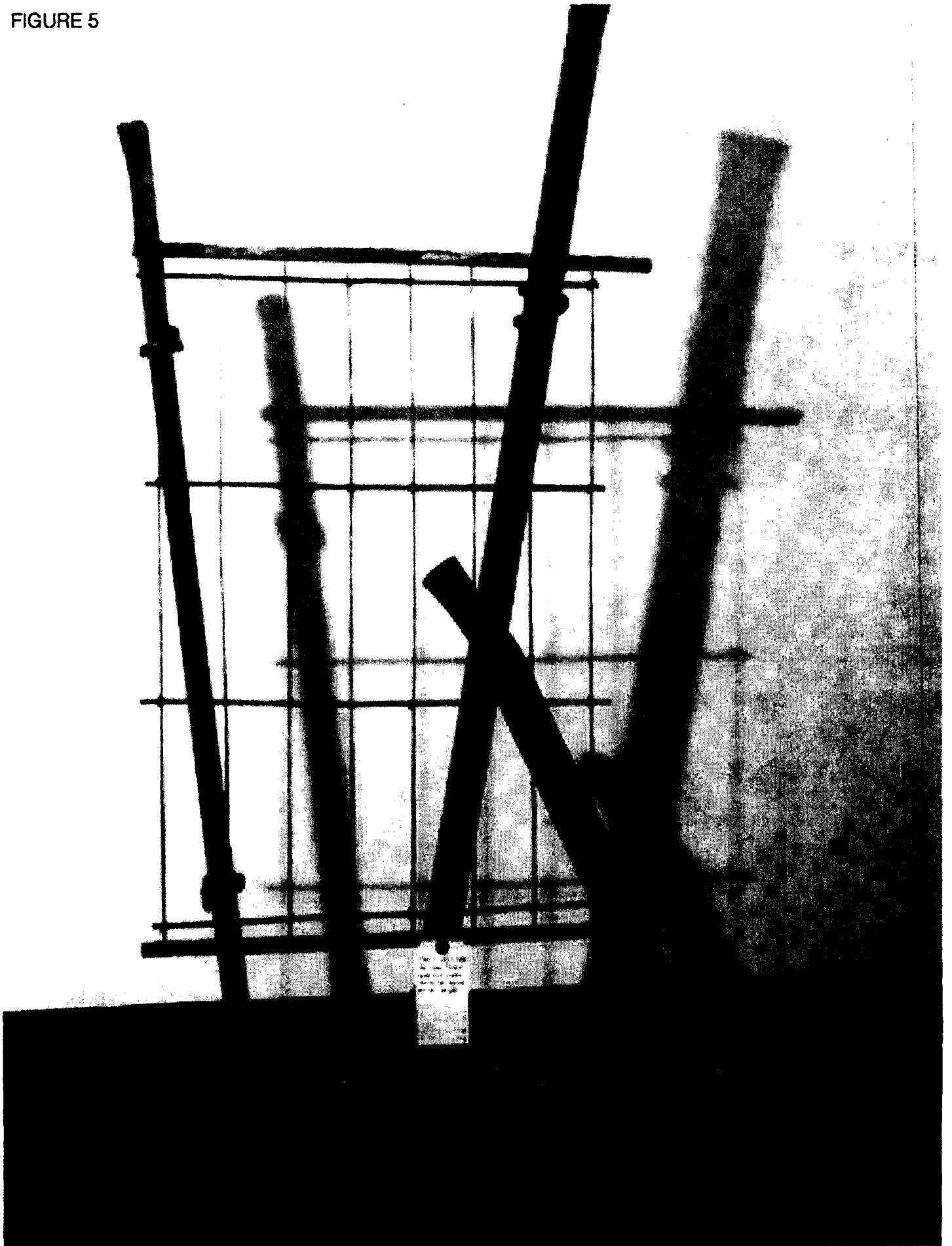


FIGURE 5



**ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of December 16, 2008, is by and between the ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as the "DISTRICT," and Paragon Bridge Works, hereinafter referred to as the "CONTRACTOR."

WITNESSETH

Whereas, DISTRICT desires to obtain Pedestrian bridge fabrication installation services which are more fully described in Exhibit A hereto ("Bridge Services"); and

Whereas, CONTRACTOR is professionally qualified to provide such services and is willing to provide same to DISTRICT; and

Now, therefore it is agreed that DISTRICT does hereby retain CONTRACTOR to provide Bridge Services, and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Debarment and Suspension Certification
Exhibit E	Contract Compliance Reporting Requirements

The term of this Agreement shall be from 12/16/2008 through 12/16/2009.

The compensation payable to CONTRACTOR hereunder shall not exceed seventy thousand dollars (\$70,000.00) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

CONTRACTOR:
PARAGON BRIDGE WORKS

By: _____
Signature

By:  _____
Signature

Name: _____
(Printed)

Name: Noah Figueroa
(Printed)

Title: President of the Board of Supervisors

Title: Manager

Date: 11-26-08

Approved as to Form:

By:  _____
District Counsel Signature

Date: _____

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an independent CONTRACTOR. CONTRACTOR is not the agent or employee of the DISTRICT in any capacity whatsoever, and DISTRICT shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold DISTRICT harmless from any and all liability which DISTRICT may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent CONTRACTORS and shall not be treated or considered in any way as officers, agents and/or employees of DISTRICT.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of DISTRICT is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the DISTRICT agency concerned.

Notwithstanding the foregoing, if the DISTRICT determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, DISTRICT may upon two week's notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend and indemnify the DISTRICT, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or

municipal law or regulation, which arises out of or is in any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The DISTRICT may participate in the defense of any such claim without relieving CONTRACTOR of any obligation hereunder.

In the event that CONTRACTOR or any employee, agent, or sub-contractor of CONTRACTOR providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda DISTRICT Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of DISTRICT, CONTRACTOR shall indemnify, defend, and hold harmless DISTRICT for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of CONTRACTOR or its employees, agents, or sub-contractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of DISTRICT.

3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the DISTRICT maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., CONTRACTOR shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from DISTRICT any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold DISTRICT harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify the Alameda DISTRICT Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to DISTRICT a written report, in such form as may be required by DISTRICT of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of DISTRICT's equipment, tools, material, or staff were involved.
 - c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the DISTRICT the opportunity to review and inspect such evidence, including the scene of the accident.
7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, CONTRACTOR/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: CONTRACTOR shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
11. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby assigns to the DISTRICT and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models,

reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the DISTRICT, the CONTRACTOR, the CONTRACTOR's sub-contractors or third parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR also hereby assigns to the DISTRICT and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in CONTRACTOR's Information System, respecting in any way the subject matter of this Agreement.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by DISTRICT to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the DISTRICT and any assignee of the DISTRICT an express royalty – free license to retain and use said Documents and Materials. The DISTRICT's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In CONTRACTOR's contracts with other CONTRACTORS, CONTRACTOR shall expressly obligate its Sub-contractors to grant the DISTRICT the aforesaid assignment and license rights as to that CONTRACTOR's Documents and Materials. CONTRACTOR agrees to defend, indemnify and hold the DISTRICT harmless from any damage caused by a failure of the CONTRACTOR to obtain such rights from its CONTRACTORS and/or Sub-contractors.

CONTRACTOR shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the CONTRACTOR and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the DISTRICT harmless from any claims for infringement of patent or copyright arising out of such selection. The DISTRICT's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, CONTRACTOR represents to and agrees with the DISTRICT that CONTRACTOR has no present, and will have no future, conflict of interest between providing the DISTRICT services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the DISTRICT, as determined in the reasonable judgment of the Board of Supervisors of the DISTRICT.

The CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the DISTRICT, will be kept confidential and not be disclosed to any other person. The CONTRACTOR agrees to immediately notify the DISTRICT by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the DISTRICT hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To DISTRICT: ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
399 Elmhurst St.
Hayward, CA 94544
Attn: Moses Tsang

To CONTRACTOR: PARAGON BRIDGE WORKS
Location address: 19240 US Highway 85, Gilcrest, CO 80623
US Mailing address: PO Box 200753, Evans, CO 80620
Attn: Noah Figueroa, Manager

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. **USE OF DISTRICT PROPERTY:** CONTRACTOR shall not use DISTRICT property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** CONTRACTOR assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. CONTRACTOR shall, if requested to so do by the DISTRICT, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the DISTRICT, CONTRACTOR shall provide the DISTRICT with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. CONTRACTOR shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The CONTRACTOR shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. **DRUG-FREE WORKPLACE:** CONTRACTOR and CONTRACTOR's employees shall comply with the DISTRICT's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any DISTRICT facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a DISTRICT facility or work site, the CONTRACTOR within five days thereafter shall notify the head of the DISTRICT department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The CONTRACTOR shall make available to the DISTRICT, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the DISTRICT, and shall furnish to the DISTRICT, its authorized agents, officers or employees such other evidence or information as the DISTRICT may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.
- The CONTRACTOR shall maintain full and adequate records in accordance with DISTRICT requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the COUNTY OF ALAMEDA, California, CONTRACTOR shall, upon request of the DISTRICT, make such books and records available to the DISTRICT for inspection at a location within DISTRICT or CONTRACTOR shall pay to the DISTRICT the reasonable, and necessary costs incurred by the DISTRICT in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The DISTRICT further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the DISTRICT, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the DISTRICT makes the final or last payment or within three (3) years after any pending issues between the DISTRICT and CONTRACTOR with respect to this Agreement are closed, whichever is later.
18. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to DISTRICT for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by DISTRICT), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the DISTRICT's last payment to CONTRACTOR under this Agreement.

19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The DISTRICT has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR prior written notice. In the event that the DISTRICT should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its Bridge Services shall not exceed \$70,000.00 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS PARTICIPATION:** See attached "Request for Authorization to Use Non-SLEB Contractor/Subcontractor".
22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, CONTRACTOR shall provide DISTRICT ten (10) working days to refer to CONTRACTOR, potential candidates to be considered by CONTRACTOR to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the DISTRICT that CONTRACTOR has available during the contract term before advertising to the general public.
23. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between DISTRICT and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject

matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: CONTRACTOR shall not use the name of DISTRICT, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of DISTRICT in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time DISTRICT believes CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, DISTRICT may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to DISTRICT, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of DISTRICT's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the DISTRICT's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. CONTRACTOR shall use the sub-contractors identified in Exhibit A and shall not substitute sub-contractors without DISTRICT's prior written approval.
 - c. CONTRACTOR shall remain fully responsible for compliance by its sub-contractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its sub-contractors.
31. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.

32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. **PATENT AND COPYRIGHT INDEMNITY:** CONTRACTOR represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software (“CONTRACTOR Products”) provided to DISTRICT under this Agreement infringe any patent, copyright or other proprietary right. CONTRACTOR shall defend, indemnify and hold harmless DISTRICT of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, “Losses”) arising out of or in connection with an assertion that any CONTRACTOR Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. DISTRICT will: (1) notify CONTRACTOR promptly of such claim, suit or assertion; (2) permit CONTRACTOR to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable CONTRACTOR to do so. CONTRACTOR shall not agree without DISTRICT’s prior written consent, to any settlement, which would require DISTRICT to pay money or perform some affirmative act in order to continue using the CONTRACTOR Products.
- a. If CONTRACTOR is obligated to defend DISTRICT pursuant to this Section 33 and fails to do so after reasonable notice from DISTRICT, DISTRICT may defend itself and/or settle such proceeding, and CONTRACTOR shall pay to DISTRICT any and all losses, damages and expenses (including attorney’s fees and costs) incurred in relationship with DISTRICT’s defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for DISTRICT the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, DISTRICT retains the right and ability to defend itself, at its own expense, against any claims that CONTRACTOR Products infringe any patent, copyright, or other intellectual property right.
34. **OTHER AGENCIES:** Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The CONTRACTOR is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the CONTRACTOR elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

35. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

ADDITIONAL PROVISIONS

Instructions:

- *The following Additional Provisions must be approved by DISTRICT Counsel:*
 1. **TERMINATION OF AGREEMENT FOR CAUSE:** If at any time DISTRICT believes CONTRACTOR may not be adequately performing its obligations under this Agreement, that CONTRACTOR may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in CONTRACTOR's performance, DISTRICT may request from CONTRACTOR prompt written assurances of performance and a written plan to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within ten calendar days of receipt of written request. CONTRACTOR acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.
 2. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.
 3. **MODIFICATION:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, including but not limited to any alteration or variation to CONTRACTOR's Project Team, as specified in CONTRACTOR's Proposal submitted for this project.
 4. No alteration or changes may be made in CONTRACTOR's Project Team, as specified in CONTRACTOR's Proposal submitted for this project, without the prior written approval of DISTRICT.
- *Additional Provisions must be approved by DISTRICT Counsel.*
- *(Delete this page "Additional Provisions" if there are no additional provisions or changes to the General Terms and Conditions)*

District Counsel Signature: Corey P. Berman Date: _____

EXHIBIT A
DEFINITION OF SERVICES

1. CONTRACTOR shall provide Pedestrian bridge fabrication and installation Services (“Bridge Services”) in accordance with the “Description of Services”. CONTRACTOR’s proposal, dated October 13, 2008 is attached hereto as Exhibits A-1.
 - a. In the event of any conflict (direct or indirect) among any of the above-referenced exhibits, the more stringent requirements providing the DISTRICT with the broader scope of services shall have precedence, such that the scope of work described in the RFP sections and the scope of work described in CONTRACTOR’s proposal shall both be performed to the greatest extent feasible.
 - b. DISTRICT and CONTRACTOR agree that the following Supplemental Provisions are incorporated into this Agreement, and that the Additional Provisions shall take precedence over inconsistent or conflicting provisions contained in the above-referenced exhibits.
2. CONTRACTOR project team will consist of the following Key Personnel and sub-contractors, as applicable during the contract term:

Noah Figueroa	Paragon Bridge Works
Brian Dillon	Paragon Bridge Works
Jim Freethy	Jim Freethy Excavating, Danville, CA
Michael McDonald	JVA Consulting Engineers, Fort Collins, CO

CONTRACTOR agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute sub-contractors without the express written agreement of DISTRICT, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of CONTRACTOR no longer be employed by CONTRACTOR during the term of this Agreement, CONTRACTOR shall make a good faith effort to present to DISTRICT an individual with greater or equal qualifications as a replacement subject to DISTRICT’s approval, which approval shall not be unreasonably withheld.

3. The approval of DISTRICT to a requested change shall not release CONTRACTOR from its obligations under this Agreement.

DESCRIPTION OF SERVICES:

Task 1: Fabrication of a pedestrian bridge and supporting abutments

CONTRACTOR shall fabricate a pedestrian bridge. Bridge dimensions shall measure approximately 53' long X 8' wide X 2' deep. Main structure shall be primarily of recycled content. Decking material shall be recycled flatcar wood decking in good condition. Bridge and decking must comply with local codes and ADA requirements. CONTRACTOR shall provide samples of wood decking finish options; DISTRICT to specify finish choice. If wood decking fails within the warranty period specified in this Agreement, CONTRACTOR shall replace the decking with an alternate material of similar cost chosen by the DISTRICT and at no cost to the DISTRICT. Replacement decking, if necessary, after the expiration of warranty period may be obtained through Paragon Railcar Salvage. Custom hand rails shall be installed per DISTRICT's conceptual drawings and Task 2 below. Surfaces of support structure shall be cleaned, sealed and painted with a minimum of two coats of industrial grade paint prior to delivery of the bridge to the site. DISTRICT shall be allowed to choose the paint color. Bridge abutments shall be precast concrete.

CONTRACTOR shall provide written documentation, prior to delivery and installation, stating the structural loading specifications for the pedestrian bridge, including the wood decking, meet the local codes, and signed and wet-stamped by a licensed structural engineer registered in the State of California. The document shall include maximum loading capacity and restrictions for the pedestrian bridge installed.

Task 2: Integrate artist-designed and fabricated bridge railing

CONTRACTOR shall coordinate and work with David Fine Art, LLC (Principals: David Duskin and David Whippen; hereinafter, "the Artist"), on the integration of artist-designed and fabricated posts (hereinafter, the "Artistic Elements") into the bridge. The Artist is currently under contract to provide Artistic Elements to the DISTRICT. An image of a preliminary rendering of the artist-designed railing and bridge is included for reference. CONTRACTOR shall:

- a. Collaborate closely with the Artist through in-person meetings and other necessary means of communication, to successfully integrate the artist-designed railing into the bridge in a way that preserves the artistic integrity of the Artistic Elements while meeting minimum local bridge, pedestrian and bicycle safety codes.
- b. Work with Artist and Artist's engineer to determine the specifications and parameters of the Artistic Elements.
- c. Provide structural engineering services that incorporates the Artistic Elements into the bridge structural elements. CONTRACTOR's structural engineering services shall be included within CONTRACTOR's warranty.
- d. Furnish and provide all necessary labor and material to install the Artistic Elements on the pedestrian bridge as designed.
- e. Fabricate, furnish and provide handrail as specified in this Agreement.
- f. Fabricate, furnish and install steel rail under the wooden handrail and brackets to attach steel rail to Artistic Elements. Steel rail and brackets shall be fabricated from A588 weatherproof steel. This

rail shall be considered to be the horizontal member that is attached to the Artistic Elements which allows Artistic Elements to conform to applicable codes.

- g. Consult with the Artist's engineer as needed.
- h. Allow the Artist access to CONTRACTOR's facility during the installation of the Artistic Elements and bridge railing and allow Artist to direct CONTRACTOR regarding the placement and installation of Artistic Elements incorporated into bridge. CONTRACTOR shall work cooperatively with the Artist during this time; CONTRACTOR shall follow the specifications within the Artist's scaled shop drawing indicating the layout of the Artistic Elements.
- i. Not paint or alter in any way without prior consent of the Artist and DISTRICT; CONTRACTOR shall be responsible for Artistic Elements until bridge is accepted by DISTRICT after installation.

Task 3: Deliver pre-fabricated pedestrian bridge and bridge components to the job site in Castro Valley, Alameda DISTRICT, California. CONTRACTOR shall make all arrangements to have the bridge and bridge components, including precast bridge abutments and custom railing, delivered to the project site. DISTRICT will make available DISTRICT property, located at A Street and Charlene Way in Castro Valley, to CONTRACTOR for storage of bridge and bridge abutments prior to installation.

CONTRACTOR shall secure any and all applicable hauling permits as required by Caltrans and/or local jurisdictions. CONTRACTOR shall evaluate, plan and assure him/herself that the hauling and delivery route (including height clearances) is appropriate for the transportation of this prefabricated bridge. CONTRACTOR shall furnish any equipment (including but not limited to pilot cars for oversize cargo hauling, etc.) and any traffic control required to safely haul and deliver the bridge to the job site. CONTRACTOR shall not lay claim against the DISTRICT for any incidents or damages incurred during the hauling and delivery process.

CONTRACTOR shall examine the roadway system within close proximity of the installation site. CONTRACTOR shall examine the site condition for delivery, temporary storage, lifting and installation of the bridge. The closest street adjacent to the installation site is Norbridge Avenue. CONTRACTOR shall furnish and provide appropriate construction equipment for construction of the pre-cast concrete abutments supporting the bridge, and lifting and setting the bridge in place. There are no construction access from the Library site (under construction). DISTRICT will make site accessible from Norbridge Avenue to CONTRACTOR. CONTRACTOR is not responsible for removing and/or reapplying fences, rocks, shrubs, or other obstacles while at site when delivering and/or installing bridge.

Task 4: Install bridge

CONTRACTOR shall install the bridge structure which will include excavation and construction of abutments, setting bridge in place, securing the bridge to the abutments, connecting units together as needed, assembling the custom railing, and backfilling around abutments. CONTRACTOR shall direct the bridge installation activities and supply all necessary equipment and labor. CONTRACTOR shall be responsible for the bridge including the Artistic Elements installed on the bridge, until the bridge is installed and accepted by the DISTRICT. CONTRACTOR is not responsible and does not need to be available when connecting Artistic Elements on the bridge with Artistic Elements beyond the bridge.

**EXHIBIT A-1
CONTRACTOR'S PROPOSAL**

(SEE ATTACHMENT)



Actual Physical Address:
 19240 US Highway 85
 Gilcrest, CO 80623
 US Mailing Address:
 PO Box 200753
 Evans, CO 80620

ESTIMATE

Date	Estimate #
10/13/08	AAAQ1505-02

Sold To: Alameda County Flood Control Distri
 Paul Modrell
 Hayward, CA 94544

Phone: 510-670-5248
Fax:


Ship To: Alameda County Flood Control Distri
 Paul Modrell
 Hayward, CA 94544

Phone: 510-670-5248
Fax:

Terms	Rep	P.O. Number	Ship Via
TBD	Brian Dillon		Truck

Ln #	Qty	Description	Unit Price	Ext. Price
1	1	Bridge structure, 53' X 8' X 2' unit (measurements are not exact), second hand/reconditioned. Typical sub-decking consists of wood. Additional parts, pieces, modifications, and/or alterations may need to be made in order to achieve Buyers desired usage at an additional cost.	\$15,500.00	\$15,500.00
2	1	Estimated truck freight charges. Actual price may vary and will be adjusted after load is booked which typically does not happen until goods are ready to ship. Paragon utilizes third party carriers. We will do everything we can in order to have goods delivered as close to clients desired date/time as possible but we can not guarantee it. Certain loads are only allowed on the road between 9am to 3pm and certain cities have more stringent restrictions. Please add \$50,000 to estimate if you absolutely need goods delivered at an exact date/time.	\$3,500.00	\$3,500.00
3	212	Labor & material to paint sides of bridge structure (or any other flat surface) with Sherwin Williams industrial grade DTM paint. Client to supply SW paint number. Priced per square foot of each bridge structure. Paint to be applied in Colorado.	\$14.56	\$3,086.72
4	1	Custom handrail design and installation. Client to provide materials, Paragon to provide installation as well as reclaimed wood for top hand rail.	\$8,500.00	\$8,500.00
5	1	Reclaimed wood decking with sealant applied.	\$4,500.00	\$4,500.00
6	4	Bearing assembly, single slot, simple design.	\$200.00	\$800.00
7	2	Travel accommodations while driving from/to building site. Weather conditions, road closures, etc. might add additional per day travel accommodations as necessary billable to Buyer.	\$750.00	\$1,500.00
8	1	Travel accommodations while building bridge, up to 5 days. Building complications will add additional per day travel accommodations as necessary billable to Buyer.	\$2,950.00	\$2,950.00
9	1	Installation of bridge structure. Includes digging for abutments, setting bridge in place, securing bridge to abutments, connecting units together (as needed). Others to: backfill, build ramps/approaches, erecting necessary signage.	\$10,350.00	\$10,350.00

Ln #	Qty	Description	Unit Price	Ext. Price
10	1	Equipment charge, such as backhoes, loaders, excavators, skid steers, fork lifts, etc. This is only an estimate and may fluctuate based on availability near job site.	\$1,500.00	\$1,500.00
11	1	Heavy equipment rental, such as large excavators & cranes. This is only an estimate and may fluctuate based on availability near job site.	\$3,000.00	\$3,000.00
12	2	Pre-cast concrete abutment. Top row: 18" high X 11' 6" wide X 41". 2nd row: 18" high X 15' 4" wide X 41". 3rd row: 18" high X 23' wide X 41". Overall height = 54". This package has a typical weight capacity of 70,000+ lbs.	\$2,200.00	\$4,400.00
13	1	One year warranty purchased per Schedule F, Type C. Includes "standard" construction blue prints for bridge and abutments. Assumed minimum soil bearing pressure is 1,500 psf. Paragon is not responsible for verifying soil conditions. Custom abutment designs may be required and will be billed at an additional hourly rate of \$125 per hour.	\$4,000.00	\$4,000.00

I have read, understood, and agree to the items listed on this estimate and Paragon's Sales & Installation Contract. Fax to 970-737-1175  ----- Signature		Date
---	--	------

SubTotal	\$63,586.72
Sales Tax	\$0.00
Deposit	\$0.00
Balance Due	\$63,586.72

EXHIBIT B
PAYMENT TERMS

1. Upon successful completion and acceptance of all the work as outlined in Exhibit A-1, CONTRACTOR shall invoice the DISTRICT for payment. Upon receipt of the invoice showing the description of the completed work and the amount to be paid, DISTRICT shall process payment within thirty (30) days.
DISTRICT has included in this Agreement a contingency, in the amount of \$6,413.78, to anticipate unforeseen work. This amount is not for or available to the CONTRACTOR's use. DISTRICT has sole right to the use or non-use of the contingency funds.
2. Invoices will be reviewed and approved by Hank Ackerman, Flood Control Program Manager, with the Alameda County Public Works Agency.
3. Total payment under the terms of this Agreement shall not exceed the total amount of \$70,000.00. This cost includes all taxes and all other charges.
4. Upon approval by the Alameda County Board of Supervisors and final execution of this Agreement, CONTRACTOR shall perform in accordance with the following schedule:

By December 17, 2008

DISTRICT will supply conceptual design of Artistic Elements with notes to CONTRACTOR.

By February 2, 2009

CONTRACTOR shall supply DISTRICT with sample of wood decking material. CONTRACTOR will submit engineering documents for Artistic Elements. CONTRACTOR shall prepare and provide detailed plans regarding bridge abutment supports and installation, including work plans showing structural design, bridge loading specifications, site access and storage plans, and identify anticipated construction issues.

By March 10, 2009

Artist shall deliver Artistic Elements to CONTRACTOR; exact delivery date to be coordinated with CONTRACTOR.

March 10 – 20, 2009

Artist shall work with CONTRACTOR to ensure appropriate placement and installation of Artistic Elements.

April 15 – May 15th, 2009

CONTRACTOR shall complete construction of the bridge supporting abutments and installation of the pre-fabricated pedestrian bridge, on-site in Castro Valley, Alameda County, California. Once the pedestrian bridge is installed, DISTRICT staff will conduct a final inspection of all the completed work as required by this Agreement. DISTRICT shall notify the CONTRACTOR if there will be punch list items that require repair/replacement due to construction defects or workmanship. Once all the punch list items (if any) are completed, inspected and accepted by the DISTRICT, DISTRICT shall provide a written notice of final acceptance. The warranty period shall begin from the date of final acceptance.

5. Modification of Schedule. The parties agree that the schedule of performance set forth above may, by mutual agreement, be modified in writing without the necessity of a formal amendment to this Agreement.

EXHIBIT C
CONTRACTOR'S CERTIFICATE OF LIABILITY INSURANCE

(SEE ATTACHMENT)

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)
10/9/2008

PRODUCER (303)442-1484 FAX: (303)442-8822
Taggart & Associates, Inc.
 1600 Canyon Boulevard
 P. O. Box 147
Boulder CO 80306

INSURED
United Capital LLC, DBA: Paragon Bridgeworks,
 PO Box 200753
Evans CO 80620

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Catlin Specialty Ins. Co.	
INSURER B: Pinnacol Assurance	41190
INSURER C: Hartford Insurance	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY	0500200685	4/1/2008	4/1/2009	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 1,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
		<input type="checkbox"/> HIRED AUTOS				
		<input type="checkbox"/> NON-OWNED AUTOS				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
						AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
		<input type="checkbox"/> DEDUCTIBLE				\$
		<input type="checkbox"/> RETENTION \$				\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	40865540	11/1/2008	11/1/2009	WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C		OTHER Inland Marine	34MSCXR5871	3/15/2008	3/15/2009	Leased Equipment \$50,000 Ded. \$500

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 All insurance required, with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: Alameda County Flood Control and Water Conservation District, its Board of Supervisors, the individual members thereof, and all DISTRICT officers, agents, employees and representatives. All insurance policies are primary insurance to any insurance available.

CERTIFICATE HOLDER	CANCELLATION
Alameda County Public Works Agency Attn: Paul Modrell 399 Elmhurst St. Hayward, CA 94544	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Connie Arellano/KNI <i>Connie L. Arellano</i>

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT D

**ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
DEBARMENT AND SUSPENSION CERTIFICATION
For Procurements Over \$25,000**

The CONTRACTOR, under penalty of perjury, certifies that, except as noted below, CONTRACTOR, its principals, and any named and unnamed sub-contractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining CONTRACTOR responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

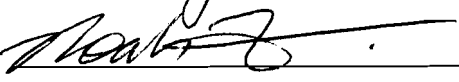
CONTRACTOR: Paragon Bridge Works
PRINCIPAL: Noah Figueroa TITLE: Manager
SIGNATURE:  DATE: 11-26-08

EXHIBIT E

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT CONTRACT COMPLIANCE REPORTING REQUIREMENTS

Upon receipt of signed contract documents, prime CONTRACTOR shall immediately enter/assign sub-contractors in the System, confirm payments received from the DISTRICT within 5 business days in the System, immediately enter payments made to sub-contractors and ensure that sub-contractors confirm they received payments within 5 business days in the System. Sub-contractors shall confirm their payments received from the prime CONTRACTOR within 5 business days in the System.

DISTRICT Contract Compliance System training and ongoing support are provided at no charge to CONTRACTORS and participating sub-contractors awarded a contract as a result of this bid process for this project. CONTRACTORS having contracts with the DISTRICT which have a start date on or after July 1, 2007 should schedule a representative from their office/company, along with each of their sub-contractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (510) 764-1870. A special access code will be provided to CONTRACTORS and sub-contractors participating in this contract awarded to allow use of the System free of charge.

It is the CONTRACTOR's responsibility to ensure that they and their sub-contractors are registered and trained as required to utilize the DISTRICT Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.



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OFFICE OF ACQUISITION POLICY (OAP)

Request for Authorization to Use Non-SLEB Contractor/Subcontractor

DIRECTIONS

For Requests over \$3,000 to \$25,000: EITHER complete 1-8 below and submit, with supporting documentation, for approval to GSA Purchasing Procurement Specialist, QIC 26026

OR e-mail justification, with supporting documentation, for approval to the appropriate GSA Purchasing Procurement Specialist. Upon approval, the Specialist will process the procurement(s).

For Requests over \$25,000: Complete 1-10 below and submit, with supporting documentation, for approval to GSA Business Outreach Officer, QIC 26021. Upon approval, a SLEB Waiver Number will be issued. (This number is now a mandatory field in order to enter a Procurement contract into ALCOLINK.) OAP will email signed Request approvals (with Waiver Number) and denials to Requesting Departments and GSA Purchasing.

1. Please check appropriate box and complete department/contact information below.

X Requesting Department GSA Purchasing managing the competitive process

Department: Alameda County Flood Control & Water Conservation District (District)

Contact: Paul Modrell Email: paulm@acpwa.org Telephone #: 510-670-5248

2. Recommended Vendor (Name): Paragon Bridge Works

(Street Address): 19240 U.S. Highway 85 (City, State & Zip): Gilcrest, CO

3. Total Contract (or PO/BPO) Value: \$ 70,000.00 Contract (or PO/BPO) Term: 11/18/2008 – 11/18/2009 or One-Time Purchase

4. Date Goods/Services Needed: 03/2009

5. Brief explanation of why goods/services are required: The District needs a pedestrian bridge at the newly daylighted Castro Valley Creek to provide pedestrian access to the Castro Valley library currently under construction. The bridge must be made of recycled materials to compliment the Library construction's LEED rating. The bridge design must be integrated with an artistic fence and railing design already selected by the Alameda County Art Commission for the site.

6. What are the consequences if the date goods/services needed (in #5 above) is not met? Bridge may not be able to be built, disconnecting the library from an adjacent park proposed by the Hayward Area Recreation and Park District. The bridge is a required element for the planned integration of the park and library.

7. Explain what attempts were made to locate a SLEB prime or subcontractor(s), including:

a. Detailed statement of efforts made to contact and negotiate with certified businesses, including list of certified business contacted with dates and names of individuals, addresses, dates and phone numbers 1) Reviewed a list of SLEB certified heavy and civil engineering construction contractors provided by GSA and on 10/17/08 contacted four firms likely to be able to perform the required services (1-David Helfant of Bay Area Structural, Inc., 1185 Ocean Ave., Oakland; 2-J.R. of Harris & Assoc., 7700 Edgewater Dr., Oakland; 3-Maynard Crowther of MCE Corp., 6515 Trinity Ct., Dublin; 4-Alan McKean of Oliver De Silva, Inc., 344 High Street, Oakland) which resulted in no estimates or proposals; 2) performed an internet search for pedestrian bridge manufacturers in Alameda County on 10/17/08 (no firms found); expanded internet search and contacted three firms (1-Paul Jacob of Contech, 3363 Sweet Dr., Lafayette, CA; 2-Rick Ackerman of Excel Bridge, 12001 Shoemaker Ave., Santa Fe Springs, CA; 3-Noah Figueroa of Paragon Bridge Works, 19240 U.S. Highway 85, Gilcrest, CO) which resulted in one estimate from Paragon Bridge Works; and 3) asked artists selected by Art Commission to perform an independent search for firms. The artists contacted four firms which resulted in one estimate from Paragon Bridge Works.

b. List of items or selected portions of work proposed to be performed by certified business in order to increase the likelihood of achieving the stated goal: Installation of bridge structure and equipment rental

c. Reasons for contractor's conclusion that a certified subcontractor is not qualified to perform: The design and fabrication of the bridge and the precast concrete bridge abutments will be done out of state. The bridge and bridge abutments will be shipped to and assembled at the site by Paragon Bridge Works and its California affiliates that specialize in the installation of Paragon's unique bridge system.

d. Description of information provided to certified contractors/subcontractors regarding the plans, specifications and anticipated time schedule for portions of the work to be performed (See attached Definition of Services and Figures 1-5)

8. Department Certification for requests over \$3,000 to \$25,000: I certify to the accuracy of the proceeding statements,

Signature of Agency/Department Head or Designee Print Name Date

9. If the contract is over \$100,000, is the recommended vendor able to comply with the First Source Program?

Yes: No: If No, explain: _____

10. Department Certification for requests over \$25,000: I certify to the accuracy of the proceeding statements,

Signature of Agency/Department Head or Designee
or GSA Purchasing Manager (if GSA Purchasing managed the process)

David W. Hesse, Sr.
Print Name

11/3/08
Date

OAP to complete below, for purchases over \$25,000:

A. Request Approved: Waiver Valid Through *11/30/09* SLEB Waiver Number: *249*

B. Request Denied: Reason: *NO SLEB available*

Linda Moore
Approved by GSA-Office of Acquisition Policy

11/24/08
Date

Pedro Valencia
Approved by Pedro Valencia, Deputy Director, GSA

12/5/08
Date