

**STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: March 9, 2017**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorizing the Executive Director to execute a construction services contract to Ghilotti Construction Company, Inc. (Ghilotti Construction) as the responsible bidder submitting the lowest responsive bid in the amount of \$21,608,720 with a contract time of 281 working days for the Bus Storage Facility (17-05-BSF-000).

SUMMARY:

- On January 11, 2017, the TJPA issued an Advertisement for Bids for construction of the Bus Storage Facility project. The main scope of work of this project is buildings (mobile modular and concrete masonry), site excavation and off-haul, paving and grading, a bus ramp and utility work. Traffic signal work and revisions to the overhead catenary system are also included.
- Three bids were received and opened on March 1, 2017. Staff recommends awarding Contract 17-05-BSF-000 to Ghilotti Construction as the responsible bidder submitting the lowest bid in the amount of \$21,608,720 and a contract time of 281 working days.
- Funding for this project will be provided primarily through City Financing proceeds. The Cost Review Committee (made up of the City Controller, MTC Executive Director, and TJPA Executive Director) has reviewed and concurred with this use of such proceeds.
- The Bus Storage Facility is subject to oversight by the California Department of Transportation (Caltrans). Caltrans has required a review by the State Fire Marshal, which is in process and expected to complete in early April. A Caltrans encroachment permit will be issued for the initial site work; a subsequent encroachment permit will be issued for the building scope once the State Fire Marshal's approval is received.

EXPLANATION:

Scope of Work

The Bus Storage Facility project is the last construction contract to be awarded for Phase 1 of the Transbay Transit Center Program. The Bus Storage Facility will be located underneath the San Francisco-Oakland Bay Bridge West Approach in the block bounded by Second, Third, Perry and Stillman Streets, providing off-peak storage for up to 49 AC Transit buses. The major items of work include the following:

- AC Transit Administration Building: mobile modular structure with 1-hour-rated construction, with axles and fully sprinkled, measuring approximately 1,500 square feet (sf).
- Support Building: a concrete masonry structure measuring approximately 900 sf.
- Guard Booth: a pre-manufactured structure measuring approximately 50 sf.

- Site Excavation/Off-haul: site excavation and off-haul of material required to provide adequate head clearance for buses as well as the AC Transit administration building.
- Paving/Grading: finish grading and concrete and asphalt paving sections to accommodate bus traffic, as shown on the plans.
- Perimeter Retaining Walls/Sound Walls/Fencing: perimeter retaining walls in conjunction with concrete masonry unit sound walls required for the site in addition to metal fencing and operable gates at designated access points.
- Bus Link Ramp: a pre-stressed concrete box girder bridge spanning over Second Street, a cast-in-place reinforced concrete slab section, and retained earth roadway sections on each end, which connect the Bus Storage Facility to the bus ramp serving the Transbay Transit Center.
- Utility Work: plumbing, fire sprinkler, gas, electrical, communication, and sewer services for the buildings as well as site lighting, security, and CCTV systems.

To ensure the best value for the bid scope, the TJPA used a cost-plus-time (A+B) bid method for the Bus Storage project. The Total Bid Price is equal to the sum of Part A (Cost) and Part B (Time). The Total Bid Price was used to determine the responsible bidder submitting the lowest responsive bid. Parts A and B were evaluated concurrently. Part B (Time) was used for bid evaluation purposes only, and the Bid Price reflected under Part B is not included in the Contract Amount. The total for Part A (Cost) becomes the Contract Amount, and the number of Working Days listed under Part B becomes the Contract duration in the Long Form Contract.

Part A (Cost): The scope of work includes all labor, materials, equipment, tools, transportation, disposal fees, incidentals and any other costs/fees necessary to complete work in accordance with the Contract Documents. All necessary work from mobilization to final completion is included in the scope of work.

Part B (Time): The TJPA requested bidders to bid the number of working days required to complete the work and set the cost for each working day at \$2,500/day, to ensure that each bid reflected an efficient construction period and that bidders bid the required number of working days to complete the work without adding a premium value to their bids. The engineer's estimate for the number of working days was 320 days; the range of allowable working days in the bidding documents was between 280 and 345 days.

Procurement

On November 2, 2016, the TJPA issued a Request for Qualifications (RFQ) for construction services for the Bus Storage Facility. On December 6, 2016, five firms responded to the RFQ. On December 9, 2016, a selection committee consisting of representatives from the TJPA, Construction Management (CM) consultant, and Program Management/Program Controls (PMPC) consultant reviewed and scored each firm's qualifications for technical merit. A sixth firm submitted a qualifications package during the bidding period and was evaluated by the selection committee on February 28, 2017. Based on its evaluation, the selection committee determined the following bidders to be qualified and free of conflicts of interest:

- Ghilotti Bros., Inc.
- Ghilotti Construction Company, Inc.
- Gordon N. Ball, Inc.
- McGuire and Hester
- Shimmick Construction Company, Inc.

On January 11, 2017, the Bus Storage Facility construction services package was issued for bid. A pre-bid conference was held on January 18, 2017. Addendum No. 1 was issued on February 10, to provide clarifications, including updated specifications and drawings, respond to bidders' questions, and extend the bid date by one week (from February 22 to March 1). Addendum No. 2 was issued on February 24, 2017, to provide clarifications on the specifications and issue a compiled set of responses to bidder questions.

Bidders had the option of submitting value engineering (VE) proposals prior to the bid date; however, no VE proposals were received by the due date of February 17, 2017.

Three bid alternates were included as part of the total bid, and thus were factors in determining the lowest responsible bidder. One allowance for the TJPA's use with a lump-sum value was also included.

- Bid Alternate A1 (Class I RCRA Soil Material Off-Haul and Disposal): This alternate is to include all costs to load, transport, and dispose of site material classified, according to the Resources Conservation and Recovery Act (RCRA), as Class I RCRA Hazardous Waste. The quantity estimated for purposes of the bid is 200 tons.
- Bid Alternate A2 (Class I non-RCRA Soil Material Off-Haul and Disposal): This alternate is to include all costs to load, transport, and dispose of site material classified as Class I non-RCRA Hazardous Waste. The quantity estimated for purposes of the bid is 3,200 tons.
- Bid Alternate A3 (Class II Soil Material Off-Haul and Disposal): This alternate is to include all costs to load, transport, and dispose of site material classified as Class II Hazardous Waste. The quantity estimated for purposes of the bid is 3,000 tons.
- Bid Allowance A4: San Francisco Police Department Traffic control at \$10,000.

Bids Received

On March 1, 2017, three bids were received, opened and evaluated. Below is a summary of the bid results:

	Ghilotti Construction Company, Inc.	Gordon N. Ball, Inc.	Shimmick Construction Company Inc.
Base Bid	\$21,147,720	\$21,390,000	\$23,740,000
Alternate No. A1	\$26,000	\$32,600	\$23,000
Alternate No. A2	\$320,000	\$441,600	\$336,000
Alternate No. A3	\$105,000	\$162,000	\$108,000
Allowance No. A4	\$10,000	\$10,000	\$10,000
Total BID Amount	\$21,608,720	\$22,036,200	\$24,217,000
Working Days	281 days	280 days	345 days
At \$2500/day	\$702,500	\$700,000	\$862,500
Bid Comparison Total only	\$22,311,220	\$22,736,200	\$25,079,500

Ghilotti Construction submitted the lowest responsive bid, based on the total bid amount for the bid selection. The recommended award amount is \$21,608,720, and the contract time is 281 working days. Ghilotti Construction has submitted a balanced and reasonable bid.

Ghilotti Construction's bid included 32% Small Business Enterprise (SBE) participation, meeting the 18% SBE goal on the package. Ghilotti Construction's bid includes 7 SBE firms.

The TJPA's budget for construction of the Bus Storage Facility is \$20,020,000 (which includes \$722,775 in escalation), and the TJPA's estimate is \$20,020,000. The \$1,588,720 balance between the awarded amount and the Bus Storage construction budget will be funded by using Program Reserve. At the request of AC Transit, the TJPA will be responsible for the monthly rental cost during construction. During the time of construction, the monthly rent of \$24,160 will be paid to Caltrans from the Program Reserve. This amount will add up to approximately \$440,000 expended over a maximum of 18 months during the construction period; AC Transit will commence paying rent when they take possession of the Facility. AC Transit will also be responsible, under its sublease, for operations and maintenance of the Facility. Therefore with the approval of the Airspace Lease during construction (\$440,000) and the funds required to award the Bus Storage Facility construction contract (\$1,588,720), the Program Reserve will reduce from \$126,692,598 to \$124,663,878.

As of the date this staff report was written, no bid protests had been received. The bid protest period ends on March 8, 2017.

Staff anticipates that City Financing will fund the initial notices to proceed for this construction contract.

The Bus Storage Facility is subject to oversight by Caltrans. Caltrans, as part of its design review, required a review by the State Fire Marshal, which is in process and expected to complete in early April. A Caltrans encroachment permit will be issued for the initial site work; a subsequent encroachment permit will be issued for the building scope once the State Fire Marshal's approval is received.

RECOMMENDATION:

TJPA staff recommends that the Board of Directors authorize the Executive Director to execute a construction services contract to Ghilotti Construction as the responsible bidder submitting the lowest responsive bid in the amount of \$21,608,720 with a contract time of 281 working days for the Bus Storage Facility (17-05-BSF-000).

ENCLOSURES:

1. Resolution
2. Contract

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On November 2, 2016, the TJPA issued a Request for Qualifications for construction services for the Bus Storage Facility (Contract No. 17-05-BSF-000); six firms responded of which five were pre-qualified to bid on the contract.

WHEREAS, On January 11, 2017, the TJPA issued an Invitation for Bids for Contract No. 17-05-BSF-000 to construct the Bus Storage Facility in accordance with the Contract Documents; and

WHEREAS, Under Contract No. 17-05-BSF-000, the Contractor will perform all construction related activities for the Bus Storage Facility; and

WHEREAS, On March 1, 2017, three bids were received and opened publicly, and staff has determined that Ghilotti Construction Company, Inc., is the responsible bidder submitting the lowest responsive bid, with a bid of \$21,608,720 and a contract time of 281 working days; and

WHEREAS, A Caltrans encroachment permit will be issued for the initial site work, and upon completion of the State Fire Marshal's review and approval of the documents, an encroachment permit will be issued for the building scope.

WHEREAS, Funds for this contract are available from City Financing with concurrence from the Cost Review Committee received; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a contract for Contract No. 17-05-BSF-000 with Ghilotti Construction as the responsible bidder submitting the lowest responsive bid in the amount of \$21,608,720 and a contract time of 281 working days.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 9, 2017.

Secretary, Transbay Joint Powers Authority

SECTION 00 05 20 - AGREEMENT

THIS AGREEMENT is made for the convenience of the parties this ___ day of _____, 2017, by and between Ghilotti Construction Company, located at 246 Ghilotti Avenue, Santa Rosa, CA. 95407 (the "Contractor"), and the Transbay Joint Powers Authority, located in San Francisco, California (the "TJPA"), acting through its Executive Director (the "EXECUTIVE DIRECTOR"), under and by virtue of the Joint Powers Agreement, the rules of the TJPA Board, the laws of the State of California, the Administrative Code of the City and County of San Francisco, and the rules and regulations of the Federal Transit Administration.

WHEREAS, the TJPA awarded this AGREEMENT to the Contractor on the __- day of __, 2017, under TJPA Resolution No. _____, as more fully appears in the formal record of the proceedings of the TJPA Board:

AGREEMENT FOR SERVICES

CONTRACT NO. _____

NOW, THEREFORE, the Contractor, in consideration of the mutual covenants set forth in this AGREEMENT, promises and agrees to provide all services to construct the Bus Storage Facility (the "Project") in accordance with the requirements of the Contract Documents, to perform the Work in good and workmanlike manner to the satisfaction of the EXECUTIVE DIRECTOR, to prosecute the Work with diligence from day to day to Final Completion, to furnish all construction work, labor, and materials to be used in the execution and completion of the Work in accordance with the Contract Documents, and to otherwise fulfill all of the Contractor's obligations under the Contract Documents, as and when required under the Contract Documents to the satisfaction of the EXECUTIVE DIRECTOR.

ARTICLE 1 – WORK

- 1.01 The Project. The Project shall consist of all work indicated in the Contract Documents required to construct the Bus Storage Facility located beneath the I-80 approach to the Bay Bridge and within the block bounded by Second, Third, Stillman, and Perry streets.
- 1.02 Contract Documents. The Contractor shall provide all Work in conformance with the Contract Documents, which are incorporated into and made a part of this AGREEMENT by this reference as if set forth here in full, and all labor and materials used in providing the Work shall comply with the Contract Documents. The Contract Documents, which comprise the entire agreement between the Contractor and the TJPA concerning the provision of the Work, are defined in the General Conditions (Section 00 07 00). Any undefined term used in this AGREEMENT will be given the definition set forth in the General Conditions (Section 00 07 00).
- 1.03 Contractor's General Responsibilities. The Contractor will provide a fully functional, complete and operational Project constructed in accordance with the Contract Documents, including but not limited to, all investigations, analyses, surveys, engineering, procurement, pre-construction work, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals, which work will be phased as described in Article 2 and Article 3, below.
- 1.04 Compliance with Laws.
 - A. CONTRACTOR shall keep itself fully informed of and comply with the Charter, ordinances and regulations of the City and County of San Francisco ("CITY") and other local agencies having jurisdiction over the Work, and all federal and state laws and regulations in any manner affecting the Contract Documents, the performance of the Work, or those persons engaged therein.
 - B. All construction and materials provided under the Contract Documents shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from time to time, of the Code specified in the Contract Documents, Americans with Disability Act Accessibility Guidelines, CAL-

OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by CONTRACTOR and any and all persons, firms and corporations employed by or under it.

- C. Authorized persons may at any time enter upon any part of the Work to ascertain whether such laws, ordinances, regulations or orders are being complied with.
- D. No additional costs will be paid or extensions of time granted as a result of such compliance.

ARTICLE 4 - CONTRACT TIME

4.01 Completion Dates. The Work will be Substantially Complete within 281 consecutive calendar days, beginning with and including the official date of the Notice To Proceed, as established by the EXECUTIVE DIRECTOR, and Finally Complete in accordance with Article 9 of the General Conditions (Section 00 07 00) within 25 consecutive calendar days after the TJPA issues a Notice of Substantial Completion.

4.02 Liquidated Damages. The TJPA and the Contractor understand and agree that time is of the essence in all matters relating to the Contract Documents and that the TJPA will suffer financial loss if the Work is not completed within the above-stated Contract Time, as may be extended in accordance with Article 7 of the General Conditions (Section 00 07 00). The TJPA and the Contractor further understand and agree that the actual cost to the TJPA which would result from Contractor’s failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, the TJPA and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor will pay the TJPA the amount of \$3,000 for each day that expires after the above contract times and the work remains incomplete.

ARTICLE 5 – CONTRACT SUM

5.01 Contract Sum.

A. CONTRACTOR and the TJPA agree that, upon performance and fulfillment of the mutual covenants set forth herein, the TJPA will, in the manner provided by law and as set forth in the Contract Documents, pay or cause to be paid to CONTRACTOR the following price(s), as indicated in the Schedule of Bid Prices (Document 00410):

- 1. Lump sums for specified portions of the Work.
- 2. The total of all Unit Price Items bid.
- 3. The allowance specified.
- 4. Selected additive/deductive Alternate Bid Items.

Total awarded contract amount:_____

The price(s) and amount set forth above shall be adjusted during performance or upon final completion of the Work in accordance with the Contract Documents.

- B. CONTRACTOR understands and agrees that the CONTRACTOR shall be solely responsible for providing all resources that may be necessary to provide the Work, and that the TJPA shall have no obligation whatsoever to finance any part of such costs except with respect to those amounts which become due under the terms and conditions of the Contract Documents.
- 5.02 Progress Payments. The Contractor shall submit payments requests for Construction Services, in an invoicing procedure to be approved by the TJPA. The TJPA will endeavor to make progress payments for undisputed amounts within fifteen (15) days, but not later than forty-five (45) days, of receiving a payment request and the required documentation including, without limitation, certified payrolls. Under no circumstances, however, shall the TJPA be liable for interest or late fees for failure to issue timely any progress payment. Progress payments involving the work of the Subcontractors shall include a retention as provided in the General Conditions for Construction (Section 00 07 00), Article 9.
- 5.03 Certification by Chief Financial Officer. This AGREEMENT is subject to the budget and fiscal provisions of the TJPA. Charges will accrue only after prior written authorization certified by the TJPA Chief Financial Officer, and the amount of the TJPA's obligation under this AGREEMENT will not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Upon written request from the Contractor for the status of funds allocated for the Project, TJPA shall respond within fifteen (15) days. If the TJPA becomes aware of any material changes to its ability to fund services to be provided by the Contractor, it shall promptly notify the Contractor.
- 5.04 Prompt Payment to Subcontractors.
- A. Requirement. The Contractor shall comply with the prompt payment to subcontractors requirements set forth in 49 CFR Section 26.29 and with all provisions of State law relating to the payment of subcontractors.
- B. Payment for Satisfactory Work. The Contractor shall make payment to each Subcontractor for satisfactory performance of its subcontract no later than ten (10) days after receipt of payment from the TJPA.
- C. Payment of Retainage. The Contractor shall make full payment to each Subcontractor, within thirty (30) days after the subcontractor's Work is satisfactorily completed, of all retainage withheld by the Contractor pursuant to the relevant subcontract. Accordingly, the TJPA shall pay to the Contractor the incremental retainage held under the Contract General Conditions (Section 00 07 00), Article 9, for the Work of such Subcontractor upon certification by the Contractor as to the retainage amount. (49 CFR 26.29(b)(3).)
- D. Reduced retainage. If the TJPA reduces retainage under the Contract General Conditions (Section 00 07 00), Article 9, the Contractor must proportionately reduce retainage for its Subcontractors.

ARTICLE 7 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) OPPORTUNITIES

- 7.01 Disadvantaged Business Enterprise (DBE) Program: The TJPA has not established a DBE advisory availability percentage for this Contract. The DBE Program requirements are set forth in Contract Document Section 00 08 21.

ARTICLE 8 – LABOR REQUIREMENTS

- 8.01 Applicable Laws and Agreements. Compensation and working conditions for labor performed or services rendered under this AGREEMENT will be in accordance with the Contract Documents, the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22E.

8.02 Prevailing Wages. The latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and, when federal funds are involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as same may be changed during the term of this AGREEMENT, will be included in this AGREEMENT and are hereby incorporated by this reference. The Contractor agrees that any person performing labor in the provision of the Work will be paid not less than the highest general prevailing rate of wages as so determined. Because federal funds are involved, where the minimum rate of pay for any classification may differ among State, City and Federal wage rate determinations, the highest of the three rates of pay will prevail. The Contractor will include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract will be paid not less than the highest prevailing rate of wages for the labor so performed. The Contractor will require any contractor to provide, and will deliver to TJPA every month during any construction period, certified payroll reports with respect to all persons performing labor in the Provision of the Work.

Copies of the latest prevailing wage rates are on file at the TJPA, 201 Mission Street, Suite 2100, San Francisco, CA 94105.

- 8.03 Penalties. Contractor will forfeit to the TJPA back wages due plus fifty dollars (\$50.00) for:
- A. Each laborer, workman, or mechanic employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or
 - B. Each laborer, mechanic or artisan employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

ARTICLE 9 – INDEMNITY, INSURANCE, BONDS, AND DAMAGES

9.01 Indemnification. To the fullest extent permitted by law, and consistent with California Civil Code section 2782 and Contract General Conditions (Section 00 07 00), Article 3, the Contractor will assume the defense of, indemnify and hold harmless the TJPA, the TJPA Board, TJPA Board members, agency members of the TJPA, the Federal Transit Administration, Caltrans, and the City and County of San Francisco, and all of their officers, directors, employees, and authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, damages, actions, losses and liabilities of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance or nonperformance of the Work.

- A. The liability of the Contractor will not be limited to the amount of insurance coverages required under the Contract Documents.
- B. This indemnification will not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.

9.02 Insurance. The Contractor shall at all times under this AGREEMENT maintain the insurance coverages as required under Contract Document Section 00 07 00 Article 10 and Section 00 08 05. The TJPA will not fund or participate in any owner-controlled (OCIP) or contractor-controlled (CCIP) insurance program.

9.03 Bonds. The Contractor shall furnish and maintain (1) a corporate surety bond to guarantee the faithful performance of the Contract ("Performance Bond") and (2) a corporate surety bond to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond"), each in an amount not less than 100 percent of the Contract Sum, with the Contractor as Principal and the TJPA as sole obligee, in the form provided by the TJPA (Contract Document Section 00 61 00), in conformance with the bond requirements under the General Conditions (Section 00 07 00, Article 10) (together, the "Performance and Payment Bonds"). The Contractor shall furnish the Performance and Payment Bonds at the time of execution of the Contract. Failure to

submit timely Performance and Payments Bonds shall result in a forfeiture of the Contractor's Bid Bond.

- 9.04 Damages. The TJPA and the Contractor mutually waive claims against each other for incidental or consequential damages arising out of or relating to the Contract. This mutual waiver includes (a) damages incurred by the TJPA for rental expenses, for losses of use, revenue, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (b) damages incurred by the Contractor for principal office expenses including the compensation of personnel, for losses of revenue (including profit), financing, business and reputation, and for loss of management or employee productivity or of the services of such persons. (See also General Conditions (Section 00700), paragraph 3.21B.) For the purposes of these Contract Documents, liquidated damages are direct damages and nothing contained in this Article shall preclude an award of liquidated damages, when applicable, in accordance with the terms and conditions of the Contract Documents.

ARTICLE 10 – RIGHTS AND REMEDIES

- 10.01 General. The provisions of the Contract Documents shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the Parties to the Contract Documents, or condone a breach thereunder, unless expressly agreed to by the Parties in writing. All remedies provided in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the TJPA shall have any and all equitable and legal remedies that it would in any case have.
- 10.02 No Waiver. No waiver of any breach of any provision of the Contract Documents shall be held to be a waiver of any other or subsequent breach. The only waiver by the TJPA shall be a waiver in writing that explicitly states the item or right being waived.
- 10.03 TJPA's Remedies for False Claims and Other Violations. Under San Francisco Administrative Code section 6.22M, the Contractor or any Subcontractor or Supplier who fails to comply with the terms of this AGREEMENT, who violates any provision of San Francisco Administrative Code Chapter 6, who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the AGREEMENT, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, *et seq.*
- A. Additionally, the Contractor or its Subcontractor or Supplier who submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in San Francisco Administrative Code section 6.80, *et seq.*, California Government Code section 12650, *et seq.*, and the Federal False Claims Act.
 - B. Contractor shall include in each subcontract and purchase order for Work a clause incorporating the provisions of this Article 10.03.

ARTICLE 11 – COMPLETE AGREEMENT; MODIFICATIONS IN WRITING

- 11.01 This AGREEMENT and the Contract Documents as set forth in General Conditions (Section 00700) constitute the complete agreement between the TJPA and the Contractor. This AGREEMENT supersedes and shall control over any other agreement written or oral as between the TJPA and the Contractor.
- 11.02 This AGREEMENT and all of the terms and conditions of the Contract Documents shall remain in full force and effect through expiration unless modified in writing and approved by the TJPA or the TJPA Board, as appropriate.

ARTICLE 12 – RESOLUTION OF CONFLICTING TERMS

- 12.01 The Contract Documents and any other agreements between the Parties relating to the Project are intended to be read together and integrated as a whole, and will be construed and interpreted in a manner so as to avoid any conflicts to the extent possible. Supplementary provisions in the Contract

Documents will not be deemed to be in conflict. It is expressly agreed by and between the TJPA and the Contractor that should there be any conflict between the terms of this AGREEMENT and the Contractor's Proposal, then this AGREEMENT will control and nothing herein will be considered as an acceptance of any terms of the Proposal which conflict with this AGREEMENT.

ARTICLE 13 – GOVERNING LAW AND VENUE

- 13.01 Governing Law. The Contract Documents shall be interpreted in accordance with the laws of the State of California, the TJPA By-Laws, and applicable provisions of the San Francisco Administrative Code.
- 13.02 Venue. All Claims, counter-claims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this AGREEMENT or its breach will be decided by a court of competent jurisdiction with the State of California.

ARTICLE 14 – NOTICES TO PARTIES

- 14.01 Unless otherwise indicated in the Contract Documents, all written communications sent by the Parties may be by U.S. mail, e-mail, or facsimile, and shall be address as follows:

To TJPA: Mark Zabaneh
Executive Director
201 Mission Street, Suite 2100
San Francisco, CA 94105
MZabaneh@TransbayCenter.org
(415) 597-4615 fax

To Contractor: Richard W. Ghilotti
President
Ghilotti Construction Company
246 Ghilotti Avenue
Santa Rosa, CA 95407
dick@ghilotti.com
(707)585-0129 fax

- 14.02 From time to time, the Parties may designate new address information by notice in writing, delivered to the other Party.
- 14.03 The delivery to the Contractor at the legal address listed above, as it may be amended upon written notice, or the depositing in any United States Post Office or Post Office Box regularly maintained by the United States Postal Service in a postage-paid wrapper directed to the Contractor at such address, of any drawing, notice, letter or other communication shall be deemed legal and sufficient service thereof upon the Contractor.

ARTICLE 15 – PROPRIETARY OR CONFIDENTIAL INFORMATION OF TJPA

- 15.01 Contractor understands and agrees that, in the performance of the Work under this AGREEMENT or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the TJPA and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the TJPA. The Contractor agrees that all information disclosed by the TJPA to Contractor and marked or otherwise identified as "confidential" shall be held in confidence and used only in performance of the AGREEMENT. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.
- 15.02 Contractor shall retain all confidential information and maintain such confidentiality for a period of not less than four years from the date of Final Completion. The TJPA at its sole option and discretion may, within the four-year period, notify the Contractor in writing that it must preserve the information and its confidentiality for longer than four years. At the expiration of the confidentiality period, Contractor shall request direction from the TJPA as to

