

Contract

This public works contract ("Contract") is entered into by and between the City of San Pablo ("City") and Ghilotti Brothers, Inc. ("Contractor"), for work on the FY 2019-20 Pavement Repair Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On July 6, 2020, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto as may be mutually revised;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Plans and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Contract;
 - 2.12 Notice to Proceed; and
 - 2.13 The following:
Appendix A – Construction Waste Management Form

_____.
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents, and in full compliance with Laws.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$1,066,199.50 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 65 working days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.

6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$2,000.00 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.
7. **Labor Code Compliance.**
- 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
- 7.3 **DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
9. **Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
10. **Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
11. **Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

	City	Contractor
Name	City of San Pablo	Ghilotti Brothers, Inc.
Address	1000 Gateway Avenue	525 Jacoby Street
City/state/zip	San Pablo, California 94806	San Rafael, CA 94901
Phone	(510) 215-3060	(415) 454-7011

Fax	(510) 215-3013	(415) 454-8376
Attn:	City Clerk	
Email	jimmyz@sanpabloca.gov	lanceb@ghilottibros.com
Copy to:	Jimmy Zhou, Assistant Engineer	Larry A. Bushnell, Vice President

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Contra Costa County, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Contra Costa County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313.

SPACE INTENTIONALLY LEFT BLANK

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

City of San Pablo

s/ _____
Matt Rodriguez
City Manager

s/ _____
Lynn Tracy Nerland
City Attorney

Date: _____

Date: _____

Attest:

s/ _____
Patricia Ponce
City Clerk

Date: _____

CONTRACTOR:

Ghilotti Brothers, Inc.
a California corporation

s/ _____
Larry A. Bushnell
Vice President

Date: _____

Second Signature (See Section 12.8):

s/ _____
Daniel Y. Chin
Chief Finance Officer

Date: _____

132128
Contractor's California License Number(s)

Seal:

12-31-2021
Expiration Date(s)

END OF CONTRACT

Payment Bond

The City of San Pablo ("City") and Ghilotti Brothers, Inc. ("Contractor") have entered into a contract, dated July 6, 2020 ("Contract") for work on the FY 2019-20 Pavement Repair Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than \$_____, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court of Contra Costa County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____, 20_____. Three identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY CITY:

s/ _____

Date

Name, Title

END OF PAYMENT BOND

Performance Bond

The City of San Pablo ("City") and Ghilotti Brothers, Inc. ("Contractor") have entered into a contract, dated July 6, 2020 ("Contract") for work on the FY 2019-20 Pavement Repair Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than \$ _____ to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, and Contractor has timely provided a warranty bond as required under the Contract, Surety's obligations under this Bond will become null and void upon City's acceptance of the Project, excluding any exceptions to acceptance, if any. Otherwise, Surety's obligations will remain in full force and effect until expiration of the one-year warranty period under the Contract.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
5. **Contractor Default.** Upon written notification from City of Contractor's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or
 - 5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____

Address: _____

City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

8. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court for Contra Costa County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
9. **Effective Date; Execution.** This Bond is entered into and effective on _____, 20____. Three identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY CITY:

s/ _____

Date

Name, Title

END OF PERFORMANCE BOND