Contract

This public works contract ("Contract") is entered into by and between City of Cupertino ("City") and Granite Rock Company ("Contractor"), for work on the **Bubb Road Separated Bikeway Improvements** ("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 February 2, 2021, 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;
 - 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 Potential Award;
 - 2.12 Notice to Proceed; and
 - 2.13 The following:
 - No other documents
- 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.
- 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 \$663,247.50 ("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 75 calendar 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 \$1,500.00 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 <u>http://www.dir.ca.gov/DLSR</u>.
- **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, 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:

City of Cupertino Public Works Department 10300 Torre Avenue Cupertino, California, 95014 Phone: (408) 777-3354 Attn: Director of Public Works Email: marlona@cupertino.org Copy to: PWInvoices@cupertino.org

Contractor:

Name: Granite Rock Company Address: 5225 Hellyer Avenue, Suite 220 City/State/Zip: San Jose, CA 95138 Phone: (408) 574-1400 Attn: Rodney Jenny, Executive Vice President Email: rjenny@graniterock.com, ssnodgrass@graniterock.com Copy to: Stephen Snodgrass, VP & CFO

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 Santa Clara County Superior Court, 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 Santa Clara 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.

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

CITY: City of Cupertino		Approved as to form:
s/	s/	
Deborah Fong, City Manager		Heather Minner, City Attorney
Date:	Date:	
Attest:		
s/		
Kirsten Squarcia, City Clerk		
Date:		
CONTRACTOR: GRANITE ROCK COMP	ANY	
s Codney Jenny	Seal:	
Rodney Jenny EVP		
Name, Title		
Date: Jan 26, 2021		
Second Signature (See Section 12.8): <i>Stephen Snodgrass, CFO</i> s/		
Stephen Snodgrass, CFO CFO		
Name, Title		
Date: Jan 26, 2021		

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT

ACORD	

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

									1/	26/2021
	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.									
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed.										
lf	SUBROGATION IS WAIVED, subject	to th	ne tei	rms and conditions of th	e polic	y, certain po	olicies may r			
t	nis certificate does not confer rights t	o the	cert	ificate holder in lieu of su).			
					CONTA NAME:	CT Christian F	Kelley			
	oodruff-Sawyer & Co. California Street, Floor 12				PHONE (A/C, No	o, Ext): 415-402	2-6521	FAX (A/C, No):	415-98	9-9923
	n Francisco CA 94111						woodruffsawy	ver.com		
			INSURER(S) AFFORDING COVERAGE				NAIC #			
			INSURER A: American Contractors Insurance Co RRG				12300			
	JRED			GRANCOM-01	INSURER B : Allied World Assurance Company, Ltd					
	anite Rock Company						surance Com			19984
	0 Technology Dr. atsonville, CA 95076						Assurance Co			39462
					INSURE			mpuny		00402
					INSURE					
	VERAGES CER		^ATE	NUMBER: 1044548428	INSURE	K F :		REVISION NUMBER:		L
	HIS IS TO CERTIFY THAT THE POLICIES		-		/F BEE	N ISSUED TO			HE POI	
ll C	IDICATED. NOTWITHSTANDING ANY RE ERTIFICATE MAY BE ISSUED OR MAY XCLUSIONS AND CONDITIONS OF SUCH	equif Pert	REMEI AIN,	NT, TERM OR CONDITION THE INSURANCE AFFORDE	OF ANY	(CONTRACT THE POLICIE	OR OTHER D	OCUMENT WITH RESPE	ст то у	WHICH THIS
INSR LTR	TYPE OF INSURANCE		SUBR WVD	POLICY NUMBER		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	s	
Α	X COMMERCIAL GENERAL LIABILITY	Y	Y	GL20A00056		6/1/2020	6/1/2021	EACH OCCURRENCE	\$ 10,00	0,000
A A	CLAIMS-MADE X OCCUR			GL20B00056 (GL EXCESS) GL20C00056 (GL EXCESS)		6/1/2020 6/1/2020	6/1/2021 6/1/2021	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,0	000
								MED EXP (Any one person)	\$ 5,000)
								PERSONAL & ADV INJURY	, , , , , , , , , , , , , , , , , , , ,	
	GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$ 10,00	
	POLICY X PRO- JECT LOC							PRODUCTS - COMP/OP AGG	\$ 10,00 \$	0,000
A		Y	Y	AL20000019		6/1/2020	6/1/2021	COMBINED SINGLE LIMIT	\$ 5,000	0.000
	X ANY AUTO					0	0,0	(Ea accident) BODILY INJURY (Per person)	\$	
	OWNED SCHEDULED							BODILY INJURY (Per accident)		
	AUTOS ONLY AUTOS HIRED NON-OWNED							PROPERTY DAMAGE	\$	
	AUTOS ONLY AUTOS ONLY							(Per accident)	\$	
В	UMBRELLA LIAB X OCCUR			03086260		6/1/2020	6/1/2021			
	V EXECUTE			03080200		0/1/2020	0/1/2021	EACH OCCURRENCE	\$ 10,00	
	X EXCESS LIAB CLAIMS-MADE	-						AGGREGATE	\$ 10,00	0,000
	DED RETENTION \$					01110000	0///000/	X PER OTH-	\$	
С	AND EMPLOYERS' LIABILITY Y / N		Y	WCA000019020		6/1/2020	6/1/2021	X PER OTH- STATUTE ER		
	ANYPROPRIETOR/PARTNER/EXECUTIVE N	N/A						E.L. EACH ACCIDENT	\$1,000	
	(Mandatory in NH)							E.L. DISEASE - EA EMPLOYEE	\$1,000	,000
L	DÉSCRIPTION OF OPERATIONS below		<u> </u>					E.L. DISEASE - POLICY LIMIT	\$ 1,000	
D	Pollution/Professional Liability			PCAB50125330620		6/1/2020	6/1/2021	Per Claim/*Aggregate	\$10,0	000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Professional/Pollution *Aggregate limit is total insurance available for all claims presented within the policy period for operations of insured. Limit will be reduced by payments of indemnity and/or expenses. Re: GR job #7231 - Bubb Road Separated Bikeway Improvements. The City of Cupertino, it's City Council, officers, officials, employees, agents servants and volunteers and all public agencies from whom permits will be obtained and their officers, officials, employees, agents, servants and volunteers are additional insured per the attached endorsements, wherein coverage is primary and non-contributory. Policies contain a 30 day notice of cancellation and a 10 day notice of cancellation for non-payment of premium.										
CE	CERTIFICATE HOLDER CANCELLATION									
	City of Cupertino 10300 Torre Avenue Cupertino CA 95014				THE ACC AUTHOI	EXPIRATION	N DATE THE TH THE POLIC	ESCRIBED POLICIES BE C REOF, NOTICE WILL I Y PROVISIONS.		
	1				In	ough n	eng			

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ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO LIABILITY COVERAGE PART

Any person or organization you are required by contract to include as an additional insured on this policy is an "insured" but only with respect to liability arising out of the ownership, maintenance or use of an "auto" in the operations incidental to the contract and to the extent set forth below:

- (1) The limit of insurance will not be greater than that required by such contract.
- (2) The coverage provided to the additional insured will not be greater than that customarily provided by the policy forms specified in and required by the contract.
- (3) All insuring agreements, exclusions and conditions of this policy will apply.
- (4) In no event shall the coverage or limit of insurance in this coverage form be increased by such contract.

This insurance is excess to any other insurance, whether primary, excess, contingent or on any other basis, available to the additional insured unless a written contract requires that this insurance be primary or primary and non-contributing. However, this insurance is always excess to other insurance, whether primary, excess, contingent or on any other basis, when the additional insured has been added to the other insurance as an additional insured.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned Policy, other than as above stated.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: same as policy eff. date unless otherwise indicated above.

Policy Effective: 6/1/2020 Policy No.: AL20000019

Insured: Granite Rock Company

No.: AL20000019

Endorsement No.: Premium \$

Insurance Company: American Contractors Insurance Co RRG

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

BUSINESS AUTO LIABILITY COVERAGE PART

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section III - BUSINESS AUTO CONDITIONS) is amended by the addition of the following:

All rights of recovery against others are waived hereunder to the extent required by contract executed prior to "accident" or "loss" and with respect to such insurance provided by this policy.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned Policy, other than as above stated.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: same as policy eff. date unless otherwise indicated above.

Policy Effective: 6/1/2020

Insured: Granite Rock Company

Policy No.: AL20000019

Endorsement No.: Premium \$ 441

Insurance Company: American Contractors Insurance Co RRG

ADDITIONAL INSURED – AUTOMATIC STATUS AS REQUIRED BY CONTRACT – BLANKET

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Any person or organization that you are required by written contract to include as an additional insured on this policy if the contract is executed prior to the loss.

- A. Who is an Insured (Section II) is amended to include as an insured any person or organization shown in the above SCHEDULE (called additional insured), but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your premises or your operations for the additional insured, and only to the extent and for the minimum limits required in the written contract.
- B. The insurance provided to the additional insured is subject to the following limitations:
 - 1. Unless required by written contract, this insurance does not apply to "bodily injury" or "property damage" occurring after "your work" for the additional insured has been completed or after that portion of "your work" out of which the "bodily injury" or "property damage" arises has been put to its intended use by any person or organization, whichever occurs first.
 - 2. Unless specifically required by written contract, this insurance does not apply to "bodily injury" or "property damage" arising out of the sole negligence, act or omission of the additional insured.
 - 3. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" for which the additional insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement except to the extent that the additional insured would have been obligated to pay such damages in the absence of the contract or agreement.
 - 4. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional services by any insured or on any insured's behalf, including:
 - a) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, drawings or specifications; and
 - b) Supervisory, inspection, architectural or engineering services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- 5. This endorsement shall not apply to a person or organization if any other additional insured endorsement attached to this policy specifically applies to that person or organization.
- 6. The insurance afforded herein only applies to the extent permitted by applicable state law, including statutes governing additional insured coverage in the construction industry.
- 7. The insurance afforded to the additional insured shall not exceed the minimum limits required in the written contract.
- C. In no event shall the insurance provided to the additional insured exceed the scope of coverage, including minimum limits, required by the contract. If a written contract or agreement requires that additional insured status be provided by the use of specified edition dates of the ISO CG2010 and/or CG2037, then the terms of that endorsement are incorporated into this endorsement as respects such additional insured and shall supersede the coverage grant and limitations in Sections A. and B. of this endorsement. In the event that CG2010 and/or CG2037 are required but no edition dates are specified, the 04/13 editions shall apply.
- D. This insurance is excess to any other insurance, whether primary, excess, contingent or on any other basis, available to the additional insured unless a written contract requires that this insurance be primary or primary and non-contributing. However, this insurance is always excess to other insurance, whether primary, excess, contingent or on any other basis, when the additional insured has been added to the other insurance as an additional insured.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned Policy, other than as above stated.

Policy No.: GL20A00056

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Same as policy effective date unless otherwise indicated above.

Policy Effective: 6/1/2020

Insured: Granite Rock Company

Insurance Company: American Contractors Insurance Co. RRG

Endorsement No.: Premium \$

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person(s) or Organization(s):

Any person or organization for whom you have agreed by written contract to furnish this waiver.

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned Policy, other than as above stated.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Same as policy effective date unless otherwise indicated above.

Policy Effective Date: 6/1/2020

Policy No.: GL20A00056

Endorsement No.:

Premium \$

Insured: Granite Rock Company

Insurance Company: American Contractors Insurance Co RRG

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be _____% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

Whomever the named insured is required by written contract executed prior to loss to waive rights of recovery against.

★ No Additional Premium to be applied

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Same as Policy Effective Date unless otherwise indicated above. Policy Effective Date: 6/1/2020 Policy No. WCA000019020

Endorsement No. Premium \$

Insured Granite Rock Company

Carrier Name/Code: ACIG Insurance Company

WC 04 03 06 (Ed. 04-84)

Draft Contract-City of Cupertino & Granite Rock for Bubb Rd Separated Bikeway Improvements

Final Audit Report

2021-01-26

Created:	2021-01-26
By:	Julia Kinst (juliak@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA8eNUO-QWNAcFXSXdbogAJFr3AV4Jxnbe

"Draft Contract-City of Cupertino & Granite Rock for Bubb Rd Se parated Bikeway Improvements" History

- Document created by Julia Kinst (juliak@cupertino.org) 2021-01-26 - 9:01:05 PM GMT- IP address: 64.178.242.15
- Document emailed to Rodney Jenny (rjenny@graniterock.com) for signature 2021-01-26 - 9:03:01 PM GMT
- Email sent to marlona@graniterock.com bounced and could not be delivered 2021-01-26 9:03:09 PM GMT
- Email viewed by Rodney Jenny (rjenny@graniterock.com) 2021-01-26 - 10:38:14 PM GMT- IP address: 104.47.37.254
- Document e-signed by Rodney Jenny (rjenny@graniterock.com) Signature Date: 2021-01-26 - 10:38:56 PM GMT - Time Source: server- IP address: 108.247.124.155
- Document emailed to Stephen Snodgrass, CFO (ssnodgrass@graniterock.com) for signature 2021-01-26 - 10:38:57 PM GMT
- Email viewed by Stephen Snodgrass, CFO (ssnodgrass@graniterock.com) 2021-01-26 - 10:40:06 PM GMT- IP address: 68.113.60.178
- Document e-signed by Stephen Snodgrass, CFO (ssnodgrass@graniterock.com) Signature Date: 2021-01-26 - 10:53:00 PM GMT - Time Source: server- IP address: 68.113.60.178

Agreement completed.
2021-01-26 - 10:53:00 PM GMT

