

**San Mateo County – Project Development Unit
Sanchez-Adobe Visitor Center Project**

DOCUMENT 00 5201

AGREEMENT

THIS AGREEMENT, dated this 3rd day of May, 2019, is by and between Granite Rock Company, whose place of business is located at 5225 Hellyer Avenue, Suite 220, San Jose, CA 95138 and the County of San Mateo (Owner), a county established under the laws of the State of California.

WHEREAS, Owner, by its Resolution No. 076531 adopted on the 9th day of April, 2019 (a copy of which is attached and part of this Agreement), awarded to Contractor the following contract:

THE SANCHEZ-ADOBE VISITOR CENTER PROJECT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

ARTICLE I - WORK OF THE CONTRACT AND CONTRACT SUM

1.01. Work of the Contract

- A. Contractor shall complete all Work specified in the Contract Documents, including without limitation, the Specifications, Drawings, Document 01 1000 (Summary of Work) and all other terms and conditions of the Contract Documents (**Work**).

1.02. Contract Sum

- A. Owner shall pay Contractor the amounts indicated in paragraphs 1.03 and 1.04 below (together, **Contract Sum**) for completion of Work in accordance with Contract Documents and (as applicable) as set forth in Contractor's Proposal (Document 00 4001 [Proposal Price Form]), attached hereto.
- B. The Contract Sum includes all allowances (if any).

1.03. Contract Sum

- A. Owner shall pay Contractor \$ 944,752.00, for completion of all services required for the Project. The Contract Sum amount reflects full compensation for all work related with this contract.
- B. The Contract Sum will be payable progressively based upon progressive work, as set forth in the Contract Documents, commencing only following issuance of Document 00 5501 (Notice to Proceed).

Bonds, Insurance and Taxes identified in Contractor's Proposal Form, in full compensation for bonds, insurance and taxes as required per Document 00 6113.12, Document 00 6113.18 and Document 00 7311.

- 1.04. No Duplication.** There shall be no duplication of costs or expenses among Cost Items. Duplication is subject to correction whenever discovered. Contractor shall compare carefully its scope of work with the scope of work of trade subcontractors and monitor the work to assure that duplication does not occur, for example, and not by way of limitation, in costs of cleanup, document management, modeling, bonds, mock-ups, and supervision.

ARTICLE II - CONTRACT TIME; COMMENCEMENT AND COMPLETION OF WORK

2.01. Contract Duration

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- A. Contractor shall commence the services under this contract on the date indicated in Document 00 5501 (Notice to Proceed) – **Tentative Commencement Date for Notice to Proceed is 04/29/2019 (date is subject to change).**
- B. Contractor shall achieve completion of the project **no later than 9/13/2019.**
- C. Contractor shall achieve Final Completion of the all work **one hundred and thirty seven (137) calendar days** from the Commencement Date as provided within Document 00 5501 (Notice to Proceed).

2.02. General Matters

- A. Conditions to Owner's issuance of Document 00 5501 (Notice to Proceed) include all matters described in Document 00 5105 (Notice of Award), and such other matters as Owner may reasonably request.
- B. Conditions to Owner's issuance of Document 00 5501 (Notice to Proceed), to be issued for the Work, include the following, which Owner may waive or modify in its sole discretion:
 - 1. Contractor has awarded all trade subcontracts and authorized self-perform subtrade work contracts required to execute the Work of the Contract Documents.
 - 2. Contractor has provided evidence of all insurance, bonds and bond amounts required by Contract Documents to complete the entire scope of work.
- C. Owner reserves the right to modify or alter the Commencement Date in its sole discretion.

ARTICLE III - PROJECT REPRESENTATIVES

3.01. Owner's Project Manager

- A. Owner, acting through the San Mateo County Project Development Unit, has designated Sam Lin and/or Sam Garcia as its PDU Assistant Director/Project Manager to act as Owner's Authorized Representative in all matters relating to the Contract Documents.
- B. To the extent Board of Supervisors approval is not required and authorized by law, Project Manager shall have authority over various matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner, subject however to the limits in the Public Contract Code sections 20137 and 20142, as stated in Document 00 7200, and limits supplied by law and County policies.
- C. Owner may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager, or other Owner Representative, or change the Project Manager, Construction Manager or other Owner Representative at any time.

3.02. General Contractor's Project Manager

- A. Contractor has designated Hector Corona as its Project Manager to act as Contractor's Representative in all matters relating to the Contract Documents. Contractor's Project Manager must be approved in writing by the Owner prior to execution of this Agreement.
- B. Contractor may not change the identity of its Project Manager, Superintendent or any other Key Personnel without prior Owner written approval, which approval shall not be unreasonably withheld, provided such replacement has similar or greater experience and qualifications.

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3.03. Architects/Engineers

- A. Willscot/Modspace & Fall Creek Engineering, Inc. will furnish the Drawings and Specifications for all work associated with the project. Willscot/Modspace & Fall Creek Engineering. shall have the rights assigned to Architect(s)/Engineer(s) in the Contract Documents.

ARTICLE IV - TERMS, CONDITIONS AND SCOPE OF LIMITATIONS ON DELAY DAMAGES

4.01. Identification and Limitation on Delay Damages.

- A. Owner and Contractor recognize that time is of the essence of this Contract and that both Owner and Contractor (including Subcontractors) will suffer financial loss in the form of contract administration expenses (including without limitations extended General Conditions, General Requirements, lost profit, lost opportunities, consequences to bonding costs for Contractor; and disruption, extended project management and consultant expenses, interest expense, and loss of revenues, damages to third parties and costs of substitute facilities for Owner) (collectively, **delay damages**), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents.
- B. Consistent with Public Contract Code 7203, delay damages are liquidated as follows:
1. Liquidated Damages - **Owner's liquidated damages of the delay period attributable to Contractor, shall be the amount of \$1,000 per day.**
- C. Measures of liquidated damages shall apply cumulatively.

4.02. Delays Covered. This mutual waiver and limit to liquidated damages includes delay damages resulting from delays which in turn result from ordinary, alleged breaches of contract; or errors, omissions, or alleged defects in the design; and force majeure events. Such delays include:

1. Contractor failure to achieve Final Completion of any portion of the Work within the times required in the Contract Documents, plus any permitted extensions;
2. Owner's failure to respond to any Contractor inquiry, submittal or other request in a timely manner;
3. Delays caused by any expected construction interruptions, inspections, rejection of work and rework;
4. Delays caused by any differing site conditions (including hazardous waste or undisclosed Underground Facility), such as those contemplated in Document 00 7200 (General Conditions);
5. Errors or omissions amounting to ordinary negligence, including without limitation Contractor negligence in performing its services.
6. Delays resulting from forces and/or causes beyond the reasonable control of Owner, Contractor or any Subcontractor, including without limitation force majeure events, Acts of God, disruptions in supply and other unexpected difficulties in the progress of the Work.

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4.03. Subcontractor Consent. Subcontractors must expressly agree to be bound to this Article IV, to the extent of their scope of Work. Under no circumstances may any Subcontractor make a claim against Owner for delay damages suffered by a Subcontractor. To the extent that this Document 00 5201 (Agreement) otherwise expressly entitles Subcontractors to receive delay damages, all Subcontractor claims for delay damages (i) must be prosecuted through Contractor as provided in Document 00 7200 (General Conditions) and (ii) are subject to all limitations and waivers otherwise contained in this Document 00 5201 and the other Contract Documents.

4.04. Exclusions. The foregoing mutual waiver of delay damages excludes the following:

- A. Any damages arising from or relating to personal injury, death, defective work, property damage, or to the extent covered by insurance maintained by Owner, Contractor or any Subcontractor.
- B. Any damages resulting from Contractor's or any Subcontractor's failure to maintain the minimum staffing levels required to prosecute the Work with reasonable diligence, defective work or failure to remedy defective work.
- C. Any damages resulting from any party's gross negligence or intentional misconduct.
- D. Any delay damages otherwise payable under paragraph 4.01 above; provided that under no circumstance shall Owner, Contractor or any Subcontractor be paid twice for the same delay damages.
- E. Indemnity or defense obligations under Contract Documents.
- F. Under no circumstances may this mutual waiver be construed to limit liability for any damages covered by insurance maintained by Owner, Contractor or any Subcontractor, to the extent of such coverage available and recovered after exercise of reasonable efforts.

ARTICLE V - NOT USED

ARTICLE VI - CONTRACT DOCUMENTS

- 6.01.** The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the Work consist of all the documents, including all changes, Addenda, and Modifications thereto as listed on Document 00 0111 Table of Contents
- 6.02.** There are no Contract Documents other than those listed above in this Article VI. Document 00 3020 Geotechnical Data and Existing Conditions and the information supplied through those documents, are not Contract Documents and describe conditions of construction only. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 7200 General Conditions.

ARTICLE VII - TRADE SUBCONTRACTOR BIDDING AND BONDS

- 7.01.** Subcontracts bidding shall comply with all public contracting requirements applicable to the County of San Mateo, including without limitation, the following requirements:
- A. Contractor shall provide a fixed date and time on which the subcontracted work will be awarded.
 - B. In any contract between Contractor and any trade subcontractor, or any contract between a trade subcontractor and a subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between Owner and Contractor. If the Contractor provides written notice to any trade subcontractor or subcontractor thereunder that is not a member of the Contractor entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the Contractor, then the Contractor may withhold

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retention proceeds in excess of the percentage specified in the contract between Owner and Contractor from any payment made by the Contractor to the trade subcontractor or subcontractor thereunder.

- C. Contractor shall award subcontracts to the low, responsive and responsible trade bidder for each trade package.
- 7.02.** Subcontracts bid shall encompass a complete scope of work for their respective trade. Contractor shall not include duplicate scope in any Cost Item or trade subcontract and if such is discovered subsequently then the Contractor shall so notify Owner for calculation and implementation of the appropriate deductive change order for the value of any such duplication.
- 7.03.** As a condition to the Notice to Proceed and as a material term of this Contract, Contractor shall provide a performance bond and a payment bond in the forms provided in the Contract Documents as Document 00 6113.12 (Construction Performance Bond) and Document 00 6113.18 (Construction Labor and Material Payment Bond). Such Bonds shall be in the penal sum of the agreed price.
- 7.04.** Except as otherwise provided in this Article VII or upon written consent of Owner, the Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code § 4100 *et seq.*

ARTICLE VIII - MISCELLANEOUS

- 8.01.** Terms and abbreviations used in this Agreement are defined in Document 00 7200 (General Conditions) and will have the meaning indicated therein.
- 8.02.** It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 8.03.** In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders the final payment to Contractor, without further acknowledgment by the parties.
- 8.04.** Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code 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 Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 8.05.** In order to induce Owner to enter into this Agreement, Contractor represents that it is duly organized, existing and in good standing under applicable state law; is licensed to perform all

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aspects of the Work; will employ only persons and subcontractors and designers with all required licenses and certifications; that Contractor is duly qualified to conduct business in the State of California; that Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents, and Work to be performed herein; and that the Contract Documents do not violate or create a default under any instrument, agreement, order, or decree binding on Contractor.

- 8.06.** Contractor shall not assign any portion of the Contract Documents.
- 8.07.** This Agreement and the Contract Documents shall be deemed to have been entered into in the City of Redwood City, County of San Mateo, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of San Mateo.

IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

GENERAL CONTRACTOR:

Granite Rock Company

By: 
(Signature)

Its: EVP
Title (If Corporation: Chairman, President
or Vice President)

By: _____
(Signature)

Its: _____
Title (If Corporation: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer)

OWNER:

COUNTY OF SAN MATEO



Director, Project Development Unit

RESOLUTION NO.

END OF DOCUMENT 00 5201

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Appendix A

TRADE SUBCONTRACTORS LIST (Contractor to list all Subcontractors for the Project)

SubContractor	Trade	phone	Address
Fusion Electric Inc	Electrical	916-878-9514 DIR # 1000057195 (LT)	Rancho Cordova CA
Camblin Steel	Rebar	916-644-1300 DIR # 1000003852 (LT)	Rocklin, CA

Prepared by Contractor on 3/21, 2019.

END OF APPENDIX A

END OF DOCUMENT 00 5201