

CITY OF CAPITOLA
PROFESSIONAL SERVICES AGREEMENT
Emergency Storm Drain Repair Project in Noble Gulch Park
Graniterock Construction

THIS AGREEMENT is entered into on March 30, 2022, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Graniterock Construction, Inc., hereinafter called "Contractor".

WHEREAS, City desires certain services described in Appendix One and Contractor is capable of providing and desires to provide these services.

NOW, THEREFORE, City and Contractor for the consideration and upon the terms and conditions hereinafter specified agree as follows:

SECTION 1
Scope of Services

The services to be performed under this Agreement are for emergency repairs to a storm drain pipe located in Noble Gulch Park at the intersection of Bay Avenue and Monterey Avenue and further detailed in Appendix One.

SECTION 2
Duties of Contractor

All work performed by Contractor, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Contractor's profession.

Contractor shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Contractor by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Contractor's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Contractor's control.

Contractor shall meet with Director of Public Works, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Contractor's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

SECTION 3
Duties of the City

City shall make available to Contractor all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Contractor in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Contractor relative to Contractor's services. The work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Contractor. If the work is satisfactory, it will

be approved. If the work is not satisfactory, City will inform Contractor of the changes or revisions necessary to secure approval.

SECTION 4 **Fees and Payment**

Payment for the Contractor's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Contractor in carrying out the work. If Contractor is compensated on an hourly basis, Contractor shall track the number of hours Contractor, and each of Contractor's employees, has worked under this Agreement during each fiscal year (July 1 through June 30) and Contractor shall immediately notify City if the number of hours worked during any fiscal year by any of Contractor's employees reaches 900 hours. In addition, each invoice submitted by Contractor to City shall specify the number of hours to date Contractor, and each of Contractor's employees, has worked under this Agreement during the current fiscal year.

SECTION 5 **Changes in Work**

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Contractor's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

SECTION 6 **Time of Beginning and Schedule for Completion**

This Agreement will become effective on Wednesday March 20, 2022 and will terminate on the earlier of:

- The date Contractor completes the services required by this Agreement, as agreed by the City; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about March 20, 2022.

In the event that major changes are ordered, or Contractor is delayed in performance of its services by circumstances beyond its control, the City will grant Contractor a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. Contractor must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

SECTION 7 **Termination**

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Contractor. Contractor may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Contractor for all services performed and accepted under this Agreement up to the date of termination.

**SECTION 8
Insurance**

Contractor shall procure and maintain for the duration of the contract and for 2 years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence and **\$2,000,000** in aggregate (including operations, products and completed operations) for bodily injury, personal and property damage.
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability Insurance **\$1,000,000 per accident for bodily injury and property damage.**
4. Blank

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Capitola, its officers, officials, employees, and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Contractor or automobiles owned, leased, hired, or borrowed by the Contractor.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after prior written notice has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Capitola** for all work performed by the Contractor, its employees, agents, and subcontractors.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 9 Indemnification

For General Services: To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless the City, its directors, officers, employees from and against any and all claims, demands, actions, liabilities, damages, judgments, or expenses (including attorneys' fees and costs) arising from the acts or omissions of Contractor's employees or agents in any way related to the obligations or in the performance of services under this Agreement, except for design professional services as defined in Civil Code § 2782.8, and except where caused by the sole or active negligence, or willful misconduct of the City.

For Design Professional Services under Civil Code §2782.8: To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless the City, its directors, officers, and employees from and against any and all claims, demands, actions, liabilities, damages, or expenses (including attorneys' fees and costs) arising from the negligence, recklessness, or willful misconduct of the Contractor,

Contractor's employees, or agents in any way related to the obligations or in the performance of design professional services under this Agreement as defined in Civil Code §2782.8, except where caused by the sole or active negligence, or willful misconduct of the City. The costs to defend charged to the Contractor relating to design professional services shall not exceed the Contractor's proportionate percentage of fault per Civil Code §2782.8 and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Contractor, Contractor's employees, agents or subcontractors, except where caused by the active negligence, sole negligence, or willful misconduct of the City.

SECTION 10
Civil Rights Compliance/Equal Opportunity Assurance

Every supplier of materials and services and all contractors doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990 and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, contractor shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age, or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Contractor agrees to abide by all of the foregoing statutes and regulations.

SECTION 11
Legal Action/Attorneys' Fees

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Contractor and the City.

SECTION 12
Assignment

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

SECTION 13
Amendments

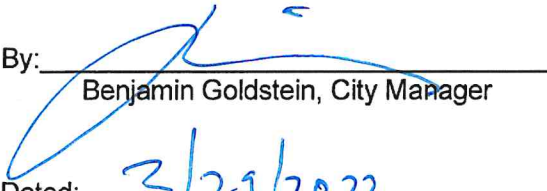
This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Contractor. Contractor acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Contractor's compensation shall be limited to that set forth in Appendix Two.


SECTION 14
Miscellaneous Provisions

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Contractor to said work. No change in assignment may occur without prior written approval of the City.
2. *Contractor Service.* Contractor is employed to render professional services only and any payments made to Contractor are compensation solely for such professional services.
3. *Licensure.* Contractor warrants that he or she has complied with any and all applicable governmental licensing requirements.
4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.
5. *City Property.* Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Contractor pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Contractor shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Contractor's other work product shall not be used by the Contractor on other projects, except by agreement in writing and with appropriate compensation to the City.
6. *Contractor's Records.* Contractor shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Contractor's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Contractor's services.
7. *Independent Contractor.* In the performance of its work, it is expressly understood that Contractor, including Contractor's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Contractor shall not be considered an employee of the City for any purpose.
8. *Conflicts of Interest.* Contractor stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Contractor's work product prepared pursuant to this Agreement.
9. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY
CITY OF CAPITOLA
420 Capitola Avenue
Capitola, CA 95010
831-475-7300

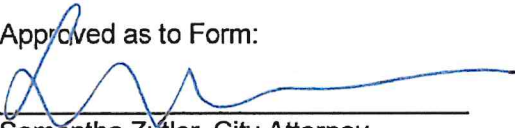
CONTRACTOR
Graniterock
350 Technology Drive
Watsonville, CA 95076
831-768-2700

By: 
Benjamin Goldstein, City Manager

By:  K. PHILPOVITCH
_____, Graniterock Construction

Dated: 3/29/2022

Dated: MAR 29 2022

Approved as to Form:

Samantha Zutler, City Attorney

APPENDIX ONE
Scope of Services

A sink hole has developed under a grass area in Noble Gulch Park at the corner of Bay Avenue and Monterey Avenue. A video inspection of the line completed by the City indicates that failed corrugated metal pipe (CMP) needs replacement. This work shall consist of replacing the CMP from an upstream manhole to a downstream connection to a 76-inch pipe. Replacement pipe will be PVC.

Contractor shall coordinate all work with Department of Public Works personnel to ensure inspections of the work are completed. It is anticipated that decisions and directions to the final layout and construction will be made by City and Contractor personnel in the field.

Time is of the essence in completing this work and the contractor shall diligently work to complete this project as quickly as possible.

APPENDIX TWO
Fees and Payments

For the services performed, City will pay contractor on a force account basis for time, materials, and equipment needed to satisfactory complete the services and delivery of work products. Payments will be issued monthly as charges accrue, the sum of contractor's salary expenses and non-salary expenses. For work that is performed payments under this contract the Contractor will be made per the markups specified in the attached Daily Extra Work Report (DEWR).

Contractor hereby represents and warrants, based upon Contractor's independent determination of the time and labor, including overtime, which will be required to perform said services, that Contractor will provide all said services. Contractor shall provide daily reports on labor, materials, and equipment used on the job site for verification by the City.

Salary expenses include the actual direct pay of personnel assigned to the project (except for routine secretarial and account services) plus payroll taxes, insurance, sick leave, holidays, vacation, and other fringe benefits. The percentage of compensation attributable to salary expenses includes all of Contractor's indirect overhead costs and fees. For purposes of this Agreement, Contractor's salary expenses and non-salary expenses will be compensated at the rates set forth in the fee schedule attached to this appendix and in accordance with the terms set forth therein. Non-salary expenses include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of subcontractors or subcontractors, and other identifiable job expenses. The use of Contractor's vehicles for travel shall be paid at the current Internal Revenue Service published mileage rate.

Payments shall be made monthly by the City, based on itemized invoices from the Contractor which list actual costs and expenses. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Contractor's firm:

"I hereby certify as principal of the firm of _____, that the charge of \$_____ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated _____, __, and has not been previously paid."