

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made by and between the Plaintiff Town of Los Gatos (“Town”), on the one hand, and Defendant Granite Rock Company (“Graniterock”) on the other hand, in recognition of the following facts (collectively, “Parties” and individually each a “Party”):

A. On March 4, 2022, Plaintiff Town of Los Gatos filed a Complaint for Actual Fraud, Breach of Contract, Breach of Implied Warranty, Breach of Covenant of Good Faith and Fair Dealing, and Negligence concerning its annexation of an unincorporated County roadway designated “Shannon Road No. 27” by the Santa Clara Local Agency Formation Commission (“LAFCO”), in the Superior Court for the State of California, County of Santa Clara Case No. 2CV395530 (“Action” or “Case No. 2CV395530”) against the County and Harry Freitas, Herbert Naraval, Ron Jackson, Dangkhua Vo, David Parks, and Steve Wilson. These defendants are hereinafter collectively referred to as the “County Defendants.”

B. In Case No. 2CV395530, Plaintiff Town of Los Gatos also sued Graniterock, Uretek, and the Local Agency Formation Commission of Santa Clara County. As alleged in the Action and pursuant to the terms of a written agreement (“Contract”), the County hired Graniterock, as a general contractor, to perform various construction and repair work for Shannon Road No. 27 (“Work”). Graniterock, in turn and pursuant to the terms of a written subcontract agreement (“Subcontract”), hired Uretek to perform various portions of the Work.

C. On June 22, 2022, Plaintiff Town of Los Gatos filed a First Amended Complaint in Case No. 2CV395530 alleging Promissory Fraud, Fraud in Inducement, Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, and Negligence.

D. On July 11, 2022, Plaintiff Town of Los Gatos dismissed Dangkhua Vo, Steve Wilson, David Parks, and Ron Jackson without prejudice.

E. On August 16, 2022, Plaintiff Town of Los Gatos and LAFCO stipulated to LAFCO’s non-participation in Case No. 2CV395530 subject to LAFCO agreeing to be bound to any stipulation between Plaintiff Town of Los Gatos and some or all of the parties to Case No. 2CV395530.

F. On August 17, 2022, the County, Harry Freitas, and Herbert Naraval demurred to Plaintiff Town of Los Gatos’ First Amended Complaint in Case No. 2CV395530. On October 25, 2022, Graniterock also demurred to Plaintiff Town of Los Gatos’ First Amended Complaint in Case No. 2CV395530. Neither demurrer has yet to be heard and no other responsive pleadings have yet been filed.

G. By and through these pleadings and this Agreement, Graniterock denies any liability to Plaintiff Town of Los Gatos, or any other party whether named in the action or not, and continues to deny any liability to Plaintiff or any other party. The Parties now desire to fully and forever settle each of the claims or disputes which exist between the Parties and which arise out of the matters in controversy in Case No. 2CV395530, and all other known and unknown claims that they have or may have against each other, including all further claims for

contribution or indemnity (whether contractual or equitable), on the terms and conditions set forth below.

Wherefore, in consideration of the conditions, covenants and agreements the Parties do hereby agree as follows:

SETTLEMENT TERMS

1. Payment to Town: Graniterock shall pay to Plaintiff FIFTY THOUSAND DOLLARS and NO CENTS (\$50,000.00).

Said Settlement is expressly conditioned on the prior execution of a written agreement by the County of Santa Clara whereby the County on behalf of itself and its respective successors, assigns, insurers, agents, and all others who may claim through them or take any interest in the matters released herein (hereinafter "Related Persons and Entities"), fully and forever release, discharge, acquit and covenant not to sue Graniterock, and each of its current, former or future officers, directors, managers, members, receivers, insurance carriers, reinsurers, joint venturers, sole proprietors, partners, stockholders, sureties, consultants, employees, agents, subcontractors, attorneys, experts, trusts, subsidiaries, parent corporations, affiliated entities and their heirs, spouses, successors and assigns of any such person or entity, from any and all known or unknown claims, obligations, liabilities, representations, warranties, costs, expenses, damages, attorneys' fees under statute or contract, damages, expert expenses, demands, rights, defense and indemnity claims (whether express, implied, or equitable), and causes of action, whether known or unknown, that arise from or are related in or in any manner connected with the Shannon Road No. 27, any contract, work, or action, which were claimed, stated, or which could have been claimed or stated in Case No. 2CV395530.

The Settlement Payment shall be tendered by check to Plaintiff's counsel within 30 calendar days after full execution of this Agreement and full execution of the written agreement by the County of Santa Clara, whichever is later. Payment shall be made by check payable to "Town of Los Gatos" and delivered to the Town Attorney at Town Hall, 110 East Main Street, Los Gatos, CA 95030.

2. Dismissal of Complaint and Cross-Complaints. Within 10 days of full execution of this Agreement, and payment to Plaintiff, Plaintiff shall cause to be filed a dismissal with prejudice of the complaint against Graniterock. Thereafter, Plaintiff shall provide Graniterock with a copy of the endorsed filed dismissal, in accordance with California Rules of Court, Rule 1.1390.

3. Town's Release of Claims. In consideration for the settlement to Plaintiff, and in consideration for each Settling Parties' agreement to bear their own fees and costs in Case No. 2CV395530, Plaintiff hereby fully and forever releases and discharges Graniterock, and each of its respective affiliated and subsidiary companies, all of its respective owners, principals, shareholders, partners, joint venturers, officers, directors, servants, employees, predecessors, heirs, successors, and insurers, of and from each and every claim, demand, action, cause of action, loss, cost, expense or element of damage, of every kind and character, whether known or

unknown, contingent or certain, past, present or future, which arises out of, relates to, or in any way concerns any of the following matters:

All claims raised by, alleged by, or made by, or which could have been raised by, alleged by, or made by, Plaintiff in Case No. 2CV395530.

In entering into this Agreement and the release provided for herein, Plaintiff intends to, and hereby does, waive all rights or benefits which Plaintiff may have had under California Civil Code Section 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff acknowledges that there is a risk that the damages which Plaintiff believes it may have suffered, or will suffer, may later turn out to be other than, or a different character from, or greater than, those damages now known, suspected, or believed to be true. Further, other facts on which the Plaintiff may be relying upon in entering into this Agreement, may later turn out to be other than, or different from, those now known, suspected, or believed to be true.

Plaintiff further acknowledges that in entering into this settlement and the release provided for in this Agreement, Plaintiff have expressly agreed to accept the risk of such possible unknown damages, claims, demands, actions or causes of action. Plaintiff acknowledges, represents, and warrants, that in waiving all rights or benefits which it may have had under California Civil Code Section 1542, Plaintiff have had the advice of counsel, and it further represents, warrants and agrees that this Agreement shall remain in full force, and in effect, notwithstanding the occurrence of any such possible changes or differences in material facts.

4. Authority; No Representations: Each person executing this Agreement represents that he or she has authority to execute this Agreement on behalf of the entity for which they are signing. Each of the Parties hereto executes this Agreement, acting upon their independent judgment and/or upon the advice of their respective counsel without any representations or inducements, express or implied, of any kind or nature, from each to the other, except as specifically set forth herein.

5. Covenant Not to Sue: Except to enforce the terms of this Agreement, the Parties agree and represent that they shall not, at any time hereafter, commence, maintain or prosecute any action, suit, proceeding, investigation, claim, grievance or charge with any court, administrative agency, arbitrator or any other body or person, or aid or assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or charge, except in response to governmental agency or court inquiries or as compelled by legal process, against any other Party related to any of the released claims.

6. No Admission of Fault, Liability or Wrongdoing. Each Party acknowledges that such Party is entering into this Agreement voluntarily, solely for the purpose of bringing the subject claims to a conclusion, and to avoid further costs, risks and expenses associated with continued litigation. This Agreement is the result of a compromise, and by entering into this Agreement, or by agreeing to pay any sum of money or to provide any other form of consideration for the execution of this Agreement, no Party is admitting any fault, liability or wrongdoing, or any matter of fact, nor shall this Agreement ever be construed as such or as evidence or proof of the existence of any damages at the Subject Property.

7. Enforcement. Pursuant to California *Code of Civil Procedure* section 664.6, the Santa Clara County Superior Court shall retain jurisdiction over this Agreement in the event any action at law or in equity is required to enforce any of the provisions or rights under this Agreement.

8. Attorneys' Fees. In the event of any litigation arising under or concerning this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs from the non-prevailing party in such litigation. Except as expressly stated herein, each Party hereto shall be responsible for its own attorneys' fees and court costs incurred and/or accrued, and specifically waive any and all claim(s) against any other Party hereto for the recovery of the same.

9. Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral and written agreements and discussions between or among any of them. The Parties hereto acknowledge and agree that there are no conditions, covenants, agreements, or understandings between or among any of them except as set forth in this Agreement. This Agreement may be amended only by a further signed writing.

10. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of each of the Parties hereto and their respective parent companies, subsidiaries, affiliates, predecessors, successors, divisions, shareholders, directors, officers, employees, attorneys, agents, representatives, heirs, and assigns.

11. Joint Drafting. Each of the Parties hereto has cooperated and participated in the drafting and preparation of this Agreement. Accordingly, the Parties hereby acknowledge and agree that this Agreement shall not be construed or interpreted in favor of or against any Party by virtue of the identity of its preparer.

12. Governing Law. This Agreement is to be executed and delivered within the State of California, and its validity, construction, and performance, as well as the rights and obligations of the Parties hereunder, shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to principles of choice of law.

13. Counterparts. This Agreement may be executed in counterparts and when signed by each of the Parties hereto with signed copies delivered to the other Parties, or their attorney(s), shall be deemed in full force and effect executed as set forth below. Further, a

signature received by facsimile or e-mail (in PDF or other electronic form) is as binding as an original signature.

14. Severability. If any provision, or any part of any provision, of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

15. Headings. Paragraphs, titles, or captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against any Party because that Party or its legal representative drafted such provision.

Dated: January __, 2023

TOWN OF LOS GATOS

By: _____
Name: Gabrielle Whelan
Title: Town Attorney,
Town of Los Gatos

Dated: January __, 2023

GRANITE ROCK COMPANY

By: _____
Name:
Title: