

SECTION 1300
AGREEMENT

THIS CONTRACT, by and between the CITY OF CATHEDRAL CITY, a municipal corporation, herein referred to as "**City**," and GRANITE CONSTRUCTION COMPANY, herein referred to as, "**Contractor**."

W I T N E S S E T H:

In consideration of their mutual covenants, the parties hereto agree as follows:

1. Contractor shall furnish all necessary labor, material, equipment, transportation and services for **BID NO. B17-02E PROJECT NO. 8654, WHITEWATER NEIGHBORHOOD STREET IMPROVEMENTS**, in the City of Cathedral City, California pursuant to the Invitation to Bid, dated February 17, 2017, and Contractor's Bid, dated March 14, 2017, all of which documents shall be considered a part hereof as though fully set herein.

Should any provisions of Contractor's Bid be in conflict with the Notice Inviting Bids, Specifications, or this Contract, then the provisions of said Contract, Specifications, and Invitation to Bid shall be controlling, in that order of precedence. The time frame for construction work shall be in accordance with that specified in the Invitation to Bid.

2. Contractor shall comply with all Federal, State, County, and Cathedral City Municipal Code, which are, as amended from time to time, incorporated herein by reference.
3. All work shall be done in a manner satisfactory to the City Engineer and Project Manager.
4. Contractor shall commence work after the issuance of a written Notice to Proceed and agrees to have all work completed within the specified **20 working days** completion time period.

5. In consideration of said work, City agrees to pay Contractor such sums as shall be approved by the City Engineer and Project Manager at lump sums and/or unit prices stated in the Contractor's Bid, the base consideration **Six hundred thirty five Thousand Four Hundred Thirty Three Dollars and sixty cents (\$635,433.60)**. All payments shall be subject to approval by the City Engineer and Project Manager and shall be in accordance with the terms, conditions, and procedures provided in the Specifications.

6. The Contractor shall not knowingly pay less than the general prevailing rate for per diem wages, as determined by the State of California Department of Industrial Relations and referred to in the Invitation to Bid, to any workman employed for the work to be performed under this contract; and the Contractor shall forfeit as a penalty to the City the sum of Twenty-Five Dollars (\$25.00) for each calendar day, or fraction thereof, for such workman paid by him or by any subcontractor under him in violation of this provision (Sections 1770-1777, Labor Code of California).

7. Concurrently with the execution of this Contract, Contractor shall furnish bonds of a surety satisfactory to City, as provided in said Specifications or Invitation to Bid, the cost of which shall be paid by Contractor.

8. Contractor agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, the City, its City Council, its Board of Directors, and each member thereof, and its officers, employees, commission members and representatives, from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part are claimed to result from or to arise out of the usage or operation, including the malfunctioning of, or, any injury caused by, any product purchased herein; or any acts, errors or omissions (including, without limitation, professional negligence) of Contractor, its employees, representatives, subcontractors, or agents in connection with the performance of this Contract.

This agreement to indemnify includes, but is not limited to, personal injury (including death at any time) and damage to property (including, but without limitation, contract or tort or patent, copyright, trade secret or trademark infringement) sustained by any person or persons (including, but not limited to, companies, or corporations, Contractor and its employees or agents, and members of the general public).

9. Except as otherwise required, Contractor shall concurrently with the execution of this contract, furnish the City satisfactory evidence of insurance of the kinds and in the amounts provided in said Specifications. This insurance shall be kept in full force and effect by Contractor during this entire contract and all premiums thereon shall be promptly paid by it. Each policy shall further state that it cannot be canceled without 30 days unconditional written notice to the City and shall name the City as additional insured. Contractor shall furnish evidence of having in effect, and shall maintain, Workers Compensation Insurance coverage of not less than the statutory amount or otherwise show a certificate of self-insurance, in accordance with the Workers Compensation laws of the State of California. Failure to maintain the required amounts and types of coverage throughout the duration of this Contract shall constitute a material breach of this Contract.

10. Contractor shall forfeit as a penalty to City \$25.00 for each laborer, workman, or mechanic employed in the execution of this Contract by said Contractor, or any subcontractor under it, upon any of the work herein mentioned, for each calendar day during which such laborer, workman, or mechanic is required or permitted to work at other than a rate of pay provided by law for more than 8 hours in any one calendar day and 40 hours in any one calendar week, in violation of the provisions of Sections 1810-1815 of the Labor Code of the State of California.

11. In accepting this Contract, Contractor certifies that in the conduct of its business it does not deny the right of any individual to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age as provided in the California Fair Employment Practice Act (Government Code Sections 12900, et seq.) Contractor agrees that a finding by the State Fair Employment Practices Commission that Contractor has engaged during the term of this Contract in any unlawful employment practice shall be deemed a breach of this Contract and Contractor shall pay to City \$500.00 liquidated damages for each such breach committed under this contract.

12. Contractor also agrees that for contracts in excess of \$30,000 and more than 20 calendar days duration, that apprentices will be employed without discrimination in an approved program in a ratio established in the apprenticeship standards of the craft involved (Sections 1777.5 and 1777.6, Labor Code of California). Contractors who willfully fail to comply will be denied the right to bid on public projects for a period of six months in addition to other penalties provided by law.

13. This Contract shall not be assignable by Contractor without the written consent of City.

14. Contractor shall notify the City Engineer and Project Manager (in writing) forthwith when the Contract is deemed completed.

15. In accepting this Contract, Contractor certifies that no member or officer of the firm or corporation is an officer or employee of the City except to the extent permitted by law.

16. Contractor certifies that it is the holder of any necessary California State Contractor's License and authorized to undertake the above work.

17. The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Contractor records to the extent the City deems necessary to insure it is receiving all money to which it is entitled under the contract and/or is paying only the amounts to which Contractor is properly entitled under the Contract or for other purposes relating to the Contract.

18. The Contractor shall maintain and preserve all such records for a period of at least four years after expiration of the term of the agreement.

19. The Contractor shall maintain all such records in the City of Cathedral City. If not, the Contractor shall, upon request, promptly deliver the records to the City or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than at City offices including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

20. The further terms, conditions, and covenants of the Contract are set forth in the Contract Documents, each of which is by this reference made a part hereof.

21. Special Federal Requirements

- A. Contractor and Owner do hereby acknowledge that this project will be fully funded with Community Development Block Grant (CDBG) funds [24 CFR 570] and is therefore subject to applicable Federal procurement, labor, environmental, equal opportunity, and other regulations.
- B. Contractor shall maintain and keep books and records on a current basis, recording all transactions pertaining to this agreement in a form in accordance with generally acceptable accounting principles. Said books and records shall be made available to the County, the State of California, the Federal government, and to any authorized representative thereof for the purposes of audit at all reasonable times and places. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of retention, all books, records, and supporting detail shall be retained for a period of at least four (4) years after the expiration of the term of this Agreement.
- C. Contractor shall comply with the Davis-Bacon Fair Labor Standards Act (40 USC a-276, a-5) and the implementation regulations thereof. Contractor shall comply with the U.S. Department of Housing and Urban Development's Federal Labor Standards Provisions (HUD 4010). Contractor acknowledges that the applicable Wage Determination for this project is the most recent Federal Prevailing Wage Decision in effect for Riverside County less than 10 day prior to the bid opening.
- D. **Section 3 Compliance:** The Contractor hereby acknowledges that this federally-funded project is subject to Section 3 of the *Housing and Urban Development Act of 1968* [12 U.S.C. 1701u and 24 CFR Part 135] and agrees to the following:
 - a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
 - c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
 - d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any

subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

- e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

22. Contractor shall hold the City of Cathedral City, its officers, agents and employees free and harmless from any liability whatsoever, including wrongful death, based or asserted upon any act or omission of principal, its officers, agents, employees or Sub-Contractors relating to or in any way connected with or arising from the accomplishment of the work, whether or not such acts or omissions were in furtherance of the work required by the Contract Documents and agrees to defend at his expense, including attorney fees, Owner, City of Cathedral City, its officers, agents, employees and Independent Architect in any legal action based on any alleged acts or omissions.

23. The Federal minimum wage rate requirements, as predetermined by the Secretary of Labor, are set forth in the books issued for bidding purposes, referred to herein as Project Bid Documents (Special Federal Provisions), and in copies of this book which may be examined at the office described above where the project plans, special provisions, and proposal forms may be seen. Addenda to modify the minimum wage rates, if necessary, will be issued to holders of the Project Bid Documents.

24. If at any time the Contractor is determined to be in material breach of the Contract, notice thereof in writing will be served upon the Contractor and its sureties, and should the Contractor neglect or refuse to provide means for a satisfactory compliance with the Contract, as directed by the City Engineer, and Project Manager, within the time specified in such notice, the City shall have the authority to terminate the operation of the Contract.

Upon such termination, the Contractor shall discontinue the Work, or such parts of it as the City may designate. Upon such termination, the Contractor's control shall terminate and thereupon the City or its fully authorized representative may take possession of all or any part of the Contractor's materials, tools, equipment, and appliances upon the premises and use the same for the purposes of completing the Work and hire such force and buy or rent such additional machinery, tools, appliances, and equipment, and buy such additional materials and supplies at the Contractor's expense as may be necessary for the proper conduct of the Work and for the completion thereof; or the City may employ other parties to carry the Contract to completion, employ the necessary workers, substitute other machinery or materials and purchase the materials contracted for, in such manner as the City may deem proper; or the City may annul and cancel the Contract and relet the Work or any part thereof. Any excess of cost arising therefrom over and above the Contract price will be charged against the Contractor and its sureties, who will be liable therefore.

In the event of such termination, all monies due the Contractor or retained under the terms of this Contract shall be held by the City in an escrow account. However, such holdings shall not release the Contractor or its sureties from liability for failure to fulfill the Contract. Any excess cost over and above the Contract Amount incurred by the City arising from the termination of the operations of the Contract and the completion of the Work by the City as above provided shall be paid for by any available funds in the escrow account. The Contractor will be so credited with any surplus remaining after all just claims for such completion have been paid.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

"CITY"

CITY OF CATHEDRAL CITY,
a California Municipal Corporation

By: _____
Charles P. McClendon, City Manager

Dated: _____

ATTEST:

Gary F. Howell, City Clerk

Dated: _____

APPROVED AS TO FORM:

City Attorney

Dated: _____

"CONTRACTOR"

Dated: _____

By: _____

Name:

Title:

Dated: _____

By: _____

Name:

Title:

"CONTRACTOR"

(If corporation, affix seal)

**SECTION 1310
FAITHFUL PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

THAT the City of Cathedral City, a municipal corporation, hereinafter designated the City, has, on June 11, 2014, awarded to **Granite Construction Company**, hereinafter designated as the Principal, a Contract for **BID NO. B14-156E COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND PROJECT NO. 1019, SOUTH CITY STREET IMPROVEMENTS** and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract:

NOW, THEREFORE, we, the Principal, and _____, as Surety, are held and firmly bound unto the City in the just and full amount of **Five Hundred Thirty Four Thousand Five Hundred Twenty Dollars (\$534,520.00)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the said contract and any alterations made as therein provided, on his or their part to be kept and performed, at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless, the City, its officers and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

It is acknowledged that the Contract provides for one-year guarantee period, during which time this bond remains in full force and effort.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument under their seals this _____ day of _____, 2014, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Seal)

Principal

Signature for Principal

Title of Signatory

(Seal)

Surety

Signature for Surety

Title of Signatory

Address of Surety

Phone # of Surety

Contact Person For Surety

**SECTION 1320
PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS:

THAT the City of Cathedral City, a municipal corporation, hereinafter designated the "City", has, on June 11, 2014, awarded to **Granite Construction Company**, hereinafter designated as the Principal, a Contract for **BID NO. B14-156E COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND PROJECT NO. 1019, SOUTH CITY STREET IMPROVEMENTS**, and

WHEREAS, said Principal is required to furnish a bond in connection and with said Contract, providing that if said Principal, or any of it or its subcontractors shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth:

NOW, THEREFORE, we, the Principal, and _____, as Surety, are held and firmly bound unto the City in the just and full amount of **Five Hundred Thirty Four Thousand Five Hundred Twenty Dollars (\$534,520.00)**, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, it or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind or for amount due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts due, or to be withheld pursuant to Sections 18806 of the Revenue and Taxation Code of the State of California with respect to such work or labor, then said surety will pay the same in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney's fees to the City as shall be fixed by the court.

This bond shall insure to the benefit of any and all persons, companies, and corporations named in Section 3181 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition of the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations of this bond, and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the contract or to the work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument under their seals this _____ day of _____, 2014, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Seal)

Principal

Signature for Principal

Title of Signatory

(Seal)

Surety

Signature for Surety

Title of Signatory

Address of Surety

Phone # of Surety

Contact Person For Surety

SECTION 1330
WORKERS' COMPENSATION INSURANCE CERTIFICATE

In accordance with California Labor Code Section 1861, prior to commencement of work on the Contract, the Contractor shall sign and file with the City the following certification:

"I am 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 I will comply with such provisions before commencing the performance of the work of this contract."

Signature

Title

Date