

NON-PROSECUTION AGREEMENT BETWEEN  
GRANITE CONSTRUCTION INCORPORATED AND THE UNITED STATES  
ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK

The UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK (the "Office") and GRANITE CONSTRUCTION, INCORPORATED ("GCI") by its undersigned President and Chief Executive Officer, James H. Roberts, and by its undersigned attorney, Jason Brown, Esq., both of whom are acting pursuant to authority granted by GCI's Board of Directors, and acting on behalf of GCI and GCI's predecessor companies and present and former subsidiary companies, including but not limited to Granite Halmar Construction Company, Inc. and Granite Construction Northeast, Inc. ("GCN"), hereby enter into this Agreement (the "Agreement").

I. Introduction

1. The Office has informed GCI that since in or about March 2009, GCN has been the subject of a criminal investigation conducted by the Office, the United States Department of Labor, Office of the Inspector General ("DOL-OIG"), the United States Department of Transportation, Office of the Inspector General ("DOT-OIG"), the Metropolitan Transportation Authority, Office of the Inspector General ("MTA-OIG") and the Internal Revenue

Service, Criminal Investigation ("IRS-CI") (collectively, the "Investigating Agencies").

## II. Acceptance of Responsibility

2. GCN and GCI acknowledge that between 2004 and approximately 2009, as a result of the conduct of certain individuals employed by GCN (hereinafter referred to as the "Unlawful Conduct"), GCN violated Title 18, United States Code, Sections 1341, 1343 and 1349, as set forth in the Joint Statement of Facts (Attachment A, which is attached to the Agreement and incorporated by reference), by engaging in a scheme to defraud the Metropolitan Transportation Authority ("MTA") in connection with Disadvantaged Business Enterprise ("DBE") credit GCN claimed in connection with the construction of the Grand Avenue Bus Depot and Central Maintenance Facility for the Borough of Queens in Maspeth, Queens (the "Bus Depot Project"), an MTA project that was largely federally-funded. GCN was the prime contractor on the Bus Depot Project, and the New York Transit Authority, an agency of the MTA, was the contracting party.

3. GCI accepts responsibility to remediate GCN's commission of the Unlawful Conduct by entering into the Agreement and by, among other things, the proactive and remedial

actions that GCI and GCN have taken to date, GCI's and GCN's continuing full cooperation with the Investigating Agencies and the other undertakings as set forth in the Agreement. The Agreement will be in effect for two years, to begin on the date of execution.

### III. GCI's and GCN's Remedial Measures

4. GCI agrees to execute a Stipulation Of Settlement And Decree Of Forfeiture (Attachment B, which is attached to the Agreement and incorporated by reference), and pay forfeiture to the United States of America in the amount of \$7,250,000. Such payment shall be made by certified check made payable to the "United States Department of the Treasury," and shall be delivered to Assistant U.S. Attorney Brian D. Morris, in the following amounts on or before the specified dates: \$2,500,000 by November 20, 2015, \$2,500,000 by May 20, 2016 and \$2,250,000 by November 20, 2016 (the "Forfeiture Payments"). The Forfeiture Payments do not constitute a fine or penalty. GCI hereby waives all interest in the Forfeiture Payments in any administrative or judicial proceeding, whether criminal or civil, and agrees that the forfeiture may be accomplished either administratively or judicially, by the United States Department of Justice, or any component thereof, or the Department of Treasury, Internal Revenue Service. If the Forfeiture Payments

are sought to be forfeited judicially, GCI hereby consents to the entry of orders of forfeiture and waives the requirement of any and all applicable laws, rules and/or regulations governing the forfeiture of assets, as they apply in any manner to any forfeiture issue. If the Forfeiture Payments are sought to be forfeited administratively, GCI hereby consents to the entry of a declaration of forfeiture and waives the requirements of 18 U.S.C. § 983 regarding notice of seizure in non-judicial forfeiture matters and, in order to effectuate forfeiture of the Forfeiture Payments, shall execute a form to be supplied by the Internal Revenue Service evidencing GCI's consent to forfeiture and waiver of timely notice.

5. GCI further agrees to pay investigative costs to the MTA-OIG in the amount of \$1,000,000, on or before November 20, 2015.

6. GCN and GCI represent that since the Unlawful Conduct began, both in response to, and independent of, the Office's investigation of the Unlawful Conduct, GCI's Board of Directors and senior management have taken numerous proactive and remedial actions designed to ensure effective DBE training and compliance by GCI and GCN, including:

(a) Since in or about March 2009, after being served a Grand Jury subpoena, GCN and GCI have fully cooperated

with the Office's investigation, including by providing documents and making employees of GCI and its subsidiaries available for interviews upon the request of the Office.

(b) GCI has informed the Office that the GCN employees who the Office determined were most responsible for the Unlawful Conduct are no longer employed by GCN, or by GCI or any of its other subsidiaries, and separated from employment with GCN in 2005.

(c) Since 2005, and unrelated to the Unlawful Conduct, GCN, together with its parent company GCI, have implemented and periodically enhanced a new DBE compliance program (the "Compliance Program") at GCN, GCI and GCI's other subsidiaries to provide that, among other things, all DBE credit that GCI and its subsidiaries claim in connection with construction projects throughout the United States is properly taken for work wherein a DBE performs a "commercially useful function." The Compliance Program involves, among other things, construction site visits by Compliance Program staff for major projects of GCI and its subsidiaries, including GCN, to verify that entities performing work for at those construction sites which GCI or its subsidiaries claim DBE credit (i) are bona fide DBE companies that are capable of performing the work specified

in the contract and performing a commercially useful function, (ii) are responsible for the execution of work required under their contract, and (iii) are not "pass-through" or "conduit" companies through which funds are passed in order to obtain the appearance of DBE participation. The Compliance Program also involves mandatory training of all managerial employees at GCI and its subsidiaries who are involved in DBE matters regarding when a contractor can properly take DBE credit for the work of its subcontractors.

#### IV. Continuing Obligation of Cooperation

7. GCN and GCI acknowledge and understand that the cooperation it has provided to date in connection with a criminal investigation by the Office, and its pledge of continuing cooperation, are important and material factors underlying the Office's decision to enter into this Agreement. Accordingly, GCI agrees to cooperate fully and actively with the Investigating Agencies regarding any matter relating to this Office's investigation about which GCI has information. GCI further agrees that its cooperation with the Office's investigation and the Investigating Agencies includes, but is not limited to, the following:

(a) Complete and truthful disclosure of documents, materials or information in the possession of GCI and its subsidiaries that the Office and/or the Investigating Agencies request concerning the Unlawful Conduct or any other matters about which this Office inquires, which information can be used for any purpose. Should any waiver of privilege be required to make such disclosure, the Office notes that it would be handled in conformity with the requirements set forth in the United States Department of Justice Memorandum entitled "Principles of Federal Prosecution of Business Organizations";

(b) Assembling, organizing and/or providing all information, testimony, documents, records or other tangible material that GCI and its subsidiaries possess or have in their custody or control, as may be reasonably requested by the Office and/or the Investigating Agencies;

(c) Using GCI's reasonable best efforts to make available any present and former employees of GCI or its subsidiaries to provide truthful information, statements and/or testimony as requested by the Office and/or the Investigating Agencies, including but not limited to sworn testimony in court or grand jury proceedings, as well as interviews with the Office and law enforcement officials. Cooperation under this paragraph

shall include identification of witnesses who, to the knowledge of GCI, may have material information regarding the Unlawful Conduct, or records which may have material information regarding the Unlawful Conduct. Nothing in this paragraph, however, creates or is intended to create any obligation by GCI to indemnify any current or former officer or employee;

(d) Providing any information, testimony, documents, records or other tangible material deemed necessary by the Office or a court with respect to the Unlawful Conduct to identify or establish the original location, authenticity, or other basis for admission into evidence documents in any criminal or other proceeding as requested by the Office;

(e) Proactively disclosing all information, testimony, documents, records or other tangible material provided by GCI to the Office pursuant to the Agreement, to any other governmental agency designated by the Office as the Office deems appropriate, and with respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, consenting to (i) any order sought by the Office permitting such disclosures, and (ii) the Office's ex parte or in camera application for such orders; and

(f) Self-reporting to the Office, within a reasonable amount of time after such occasion, any occasion where GCI learns or has learned that (i) GCI, (ii) any of GCI's subsidiaries, (iii) any entity in which GCI or any of its subsidiaries was or is a joint venture partner, or (iv) any entities working as either a subcontractor for GCI or for any of its subsidiaries, or as a subcontractor for any entity of which GCI or any of its subsidiaries is a joint venture partner, has violated, or is currently violating, or is being investigated for criminal wrongdoing with respect to any federal, state, or local laws or regulations. Should any waiver of privilege be required to make such disclosure, the Office notes that it would be handled in conformity with the requirements set forth in the United States Department of Justice Memorandum entitled "Principles of Federal Prosecution of Business Organizations."

V. Agreement Not To Prosecute

8. In consideration of GCI's (a) acceptance of responsibility to remediate the Unlawful Conduct as set forth in the Joint Statement of Facts (Attachment A); (b) cooperation to date and agreement to continue to cooperate with the Office and the Investigating Agencies as described in paragraph 7; (c) agreement to make payment of \$7,250,000 in forfeiture to the United States of America as set forth in paragraph 4; (d)

agreement to make payment of investigative costs of \$1,000,000 to the MTA-OIG as set forth in paragraph 5; (e) compliance in the future with all applicable laws, including federal, state and local construction contracting laws and regulations, including DBE and Local Business Enterprise program laws and regulations; and (f) agreement otherwise to comply with all of the terms of the Agreement, the Office will not (i) institute or pursue any criminal charges against GCI or its subsidiaries arising out of the Unlawful Conduct or (ii) pursue any civil claims against GCI or its subsidiaries, including but not limited to causes of action pursuant the federal False Claims Act, based on the Unlawful Conduct. This non-prosecution provision binds only the Office. The Office shall bring this Agreement to the attention of other prosecuting or regulatory agencies at GCI's request.

#### VI. Consequences of Breach and Additional Terms

9. GCI understands and agrees that should the Office, in its sole discretion, determine that GCI has deliberately given materially false, incomplete, or misleading information under the Agreement, has otherwise deliberately violated any provisions of the Agreement or has committed, or attempted to commit, subsequent to the date of this Agreement and before the expiration of the effectiveness period of this Agreement, any

crime other than the Unlawful Conduct, then GCI and GCN will be subject to prosecution for any state or federal criminal violation of which the Office has knowledge, including prosecution relating to the Unlawful Conduct. GCI agrees that in the event of such a determination by the Office, any prosecution relating to the Unlawful Conduct that is not time-barred by the applicable statute of limitations on the date of the Agreement, including by reason of tolling agreements between the Office and GCI entered on December 21, 2012, April 19, 2013, December 16, 2013 and December 2, 2014, may be commenced against GCI, or any of its subsidiaries including GCN, between the date of signing the Agreement and two years after that date, in accordance with the Agreement, notwithstanding the expiration of any statute of limitations prior to the end of that two-year period. By this agreement, GCI expressly intends to and does waive any and all rights in this respect. This waiver by GCI is knowing, voluntary and made after consultation with counsel. Moreover, the commission of an additional crime by GCN, or the commission of a crime by GCI, shall constitute a breach of this Agreement.

10. Furthermore, it is agreed that if the Office, in its sole discretion, determines that GCI has committed any crime or otherwise knowingly, intentionally, and materially violated

any provision of the Agreement within two years from the date of the execution of the Agreement: (i) all statements by or on behalf of GCI or any of its subsidiaries to the Office and/or the Investigative Agencies, or other designated law enforcement or regulatory officials, including but not limited to statements regarding the Unlawful Conduct as agreed to by the parties in the Joint Statement of Facts (Attachment A), testimony given by any agent of GCI or any of its subsidiaries before a grand jury or other tribunal, whether prior to or subsequent to the signing of the Agreement, and any leads from such statements or testimony, shall be admissible in any and all criminal proceedings hereafter brought against GCI or any of its subsidiaries; (ii) GCI shall not assert any claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other rule or provision that statements made by or on behalf of GCI or its subsidiaries, prior to or subsequent to the Agreement, or any leads therefrom, should be suppressed; and (iii) in the event of such a determination by the Office, GCI shall waive indictment and proceed by felony information in connection with a prosecution of GCI brought by the Office. However, nothing in the Agreement shall constitute a waiver of any Confrontation Clause rights

under the Sixth Amendment to the U.S. Constitution that GCI may have.

11. GCI agrees that it is within the sole discretion of the Office to decide whether conduct or truthful statements of any individual will be imputed to GCI for the purpose of determining whether GCI has knowingly, intentionally and materially violated any provision of the Agreement. If the Office determines that GCI has committed a knowing, intentional and material breach of any provision of the Agreement, the Office shall provide written notice of the alleged breach to GCI, through its counsel, Jason Brown, Esq., Ropes & Gray, LLP, 1211 Avenue of the Americas, New York, NY 10036, or to any successor counsel that GCI may designate, and provide GCI with a 21-day period from the date of receipt of such notice in which to make a presentation to the Office, or its designee, to demonstrate that no breach has occurred, or, to the extent applicable, that the breach was not knowing, intentional or material, or has been cured. Upon request by GCI, the Office may, in its sole discretion, agree in writing to extend this 21-day period, including to provide GCI with an opportunity to cure any breach of the Agreement. The parties to the Agreement expressly understand and agree that if GCI fails to make a presentation to the Office, or its designee, within the 30-day

period (or other period agreed to by the Office), the Office may, in its sole reasonable discretion, conclusively presume that GCI is in knowing, intentional and material breach of the Agreement.

12. GCI agrees that GCI and its subsidiaries shall not, through their attorneys, Boards of Directors (or such successor as may be adopted hereafter), agents, or employees, make any public statement, in litigation or otherwise, contradicting its acceptance of responsibility for the Unlawful Conduct as set forth in the Joint Statement of Facts (Attachment A). Any such contradictory statement by GCI, its present or future attorneys, directors, agents, or employees shall constitute a breach of the Agreement and GCI thereafter shall be subject to prosecution as specified in paragraphs 9-11. The decision as to whether any such contradictory statement will be imputed to GCI for the purpose of determining whether GCI has breached the Agreement shall be at the sole discretion of the Office. Upon the Office's notifying GCI of any such contradictory statement, GCI may avoid a finding of a breach of the Agreement by publicly repudiating such statement within 72 hours after receipt of notice by the Office. This paragraph shall not apply to any statement made by any current or former

GCI officer or employee who has been charged with a crime or other wrongdoing by the Office, any other federal agency or the MTA.

13. The parties understand and agree that the exercise of discretion by the Office or its designee is not subject to review in any court or tribunal outside the Office.

14. Except to the extent permitted by the Office, GCI agrees that, if it sells or merges all or substantially all of its business operations as they exist as of the date of the Agreement to or into a single purchaser or group of affiliated purchasers during the term of the Agreement, GCI shall include in any contract for sale, plan of reorganization, or merger, a provision binding the purchaser/successor to GCI's obligations described in the Agreement, provided however that the obligations imposed by the Agreement will not extend to the governance and operation of a purchasing or investing entity that acquires some or all of GCI's stock, as long as that entity maintains GCI as a separate corporate entity. The Office agrees that if a mortgagee that is wholly independent of GCI's current Board of Directors, officers, employees and shareholders takes ownership of GCI through foreclosure, the obligations imposed by the Agreement will not extend to that mortgagee.

15. It is understood that the Agreement is binding on GCI and the Office, but specifically does not bind any other Federal agencies, any state or local law enforcement agencies, any licensing authorities, or any regulatory authorities. However, if requested by GCI or its attorneys, the Office will bring to the attention of any such agencies, including but not limited to any licensing authorities, the Agreement, the cooperation of GCI and its compliance with its obligations under the Agreement, and any reforms specified in the Agreement. It is the intent of the parties to the Agreement that the Agreement does not confer or provide any benefits, privileges or rights to any individual or entity other than the parties hereto, and that the Agreement, including its attachments, shall be admissible in any proceeding against GCI or any of its subsidiaries brought by the Office. Moreover, GCI may raise defenses or assert affirmative claims in any civil proceedings brought by private parties or public agencies as long as doing so does not otherwise violate any term of the Agreement.

16. Except as set forth herein, the Agreement in no way limits or affects any right, including right of inspection and/or enforcement, held by the United States, the MTA or any

other governmental body, pursuant to applicable federal, state, or local laws, regulations, or permits. In addition, nothing herein shall be read in any way to alter, affect, abrogate, or impair the ability and obligation of the United States or the MTA to take any investigative or enforcement action for any future conduct, including but not limited to any administrative, civil, or criminal enforcement action, or to make any inquiry of GCI or any of its subsidiaries concerning any present or future alleged violation of federal law, regulation, or order.

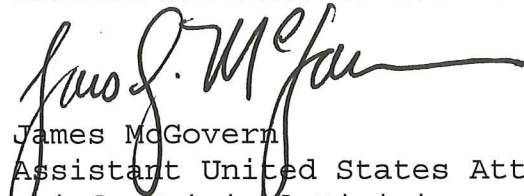
17. The Agreement sets forth all the terms of the agreement between GCI and the Office. No modifications or additions to the Agreement shall be valid unless they are in writing and signed by the Office, GCI's attorney, and a duly authorized representative of GCI. The Agreement supersedes all prior promises, agreements or conditions between the parties.

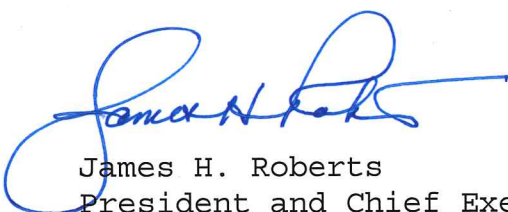
To become effective, the Agreement must be signed by all signatories listed below. The Agreement may be signed in counterparts.


Dated: Brooklyn, New York  
November 24, 2015

ROBERT L. CAPERS  
United States Attorney  
Eastern District of New York

By:

  
James McGovern  
Assistant United States Attorney  
Chief, Criminal Division

  
James H. Roberts  
President and Chief Executive Officer  
GRANITE CONSTRUCTION INCORPORATED

  
Jason Brown, Esq.  
Ropes & Gray, LLP  
Counsel for GCI