

ATTACHMENT A TO NON-PROSECUTION AGREEMENT

JOINT STATEMENT OF FACTS

GRANITE CONSTRUCTION INCORPORATED ("GCI"), a Delaware corporation having subsidiaries qualified to do business in the State of New York, 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 stipulate and agree that the following facts are true:

I. Background on GCI Entities

1. GCI is incorporated in Delaware and has its principal office in Watsonville, California. In or about 2001, GCI purchased Halmar Builders of New York, Inc. ("HBNY"), renaming HBNY "Granite Halmar Construction Company, Inc." ("GHCC") and making GHCC a wholly-owned subsidiary of GCI. In or about January 2006, GHCC was renamed Granite Construction Northeast, Inc., which remained a wholly-owned subsidiary of GCI. GHCC served, and GCN serves, as a general contractor on

large public works projects for government contracting agencies on capital projects that include transportation facilities. GCI, acting through other subsidiaries and joint venture entities, also serves as a general contractor on large public works projects and in other capacities in the construction field.

## II. The Bus Depot Project

### A. Prime Contract and DBE Requirements

2. Between 2004 and 2008, GHCC and GCN performed work on a contract for the New York State Metropolitan Transportation Authority ("MTA") that involved 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. GHCC and GCN served as the prime contractor on the Bus Depot Project, and the New York City Transit Authority, an agency of the MTA, was the contracting party. The MTA contract number for the prime contract for the Bus Depot Project (the "Prime Contract") was C40418.

3. The Prime Contract required that GHCC and GCN comply with the federal Disadvantaged Business Enterprise Program (the "DBE Program"). The DBE Program was established

under 49 C.F.R. § 26 to increase participation of certified disadvantaged business enterprises ("DBE Companies") in federal funded public construction projects.

4. Pursuant to the DBE Program, as the prime contractor GHCC and GCN were obligated to make good faith efforts to subcontract a specified percentage of the contract amount with DBE Companies that would perform work on the Bus Depot Project. Under the DBE Program, GHCC and GCN were permitted to count toward the attainment of its DBE percentage goal for the Bus Depot Project only funds it paid to DBE Companies it contracted with that performed a "commercially useful function" in the execution of their respective subcontracts with GHCC and GCN. Under the DBE Program's regulations, a DBE Company performed a "commercially useful function" when, among other things, it (a) was responsible for the execution of a distinct element of the work of a contract; (b) carried out its responsibilities by actually performing, managing and supervising the work involved; and (c) furnished supervision, labor, tools, equipment, materials and supplies necessary to perform that distinct element of the work of the contract.

B. The Scheme to Defraud

5. The Office contends and GCI and GCN stipulate

that in the spring of 2004, two GHCC employees (the "Culpable GHCC Employees") proposed to representatives of a certain DBE Company (the "Front Company") and certain non-DBE Companies (the "Actual Companies") the following: (a) the Front Company would be awarded a subcontract ("the "Subcontract") to furnish and install all structural steel, metal decking and precast wall panels (the "Specified Work") on the Bus Depot Project; (b) the Actual Companies, rather than the Front Company, would perform the Specified Work, but payroll would be "run through" the Front Company, with paperwork arranged to make it appear as if the Front Company was performing the Specified Work; and (c) the Front Company would be paid a \$500,000 "DBE Fee," even though it would not perform a commercially useful function on the Specified Work. The Front Company and the Actual Companies agreed to this proposal. In or about October 2004, GHCC made a written representation to the MTA that GHCC would enter into various subcontracts with DBE Companies to perform work on the Bus Depot Project. On or about December 8, 2004, GHCC and the Front Company entered the Subcontract.

6. During its performance of the Bus Depot Project, GHCC and GCN submitted to officials from the MTA, as required, periodic progress reports ("Reports") that purported to represent the percentage of work being performed by DBE

Companies on the Prime Contract. The Reports listed the amount of contract funds GHCC and GCN had paid to each of the DBE Companies it subcontracted with for the Bus Depot Project during the time period specified on each Report, as well as the percentage of contract funds paid to each DBE Company in comparison to the overall value of the Prime Contract with the MTA for the Bus Depot Project.

7. From 2004 through 2008, GHCC and GCN falsely represented in the Reports, and conspired with others to falsely represent in the Reports, that the Front Company, to which GHCC and GCN had paid funds pursuant to the Subcontract, and which funds GHCC and GCN had received from the MTA, had performed a "commercially useful function" in performing the Specified Work, when in fact, the Specified Work had actually been performed by the Actual Companies, and the Front Company had not performed a commercially useful function on the Specified Work. GHCC and GCN delivered these false Reports, and other documents relating to the Front Company's performance of the Specified Work, to MTA officials using, among other means, the United States Postal Service and private and commercial interstate carriers. Also from 2004 through at least 2008, the MTA paid GHCC and GCN for their work under the Prime Contract in the form of checks transmitted via the United States Postal Service. Further from

2004 through in or about 2009, GHCC and GCN, the Front Company and the Actual Companies engaged in interstate wire communications in furtherance of this scheme.

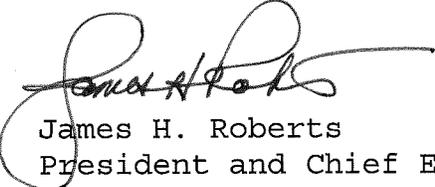
8. By engaging in this scheme, GHCC and GCN deprived the MTA of its rights under the Prime Contract and deprived legitimate DBE companies of the opportunity to perform the Specified Work and be paid for it. In reliance on, among other things, the misrepresentations by GHCC and GCN that the Front Company would perform, and had performed, the Specified Work in the Subcontract, the MTA paid GHCC and GCN approximately \$222 million for its services as prime contractor on the Bus Depot Project, including approximately \$22.2 million for the Specified Work performed pursuant to the Subcontract.

### III. GCI's Remedial Measures

9. The Culpable Employees left GHCC's employ in 2005. In addition, GCN, together with its parent company GCI, have instituted various reforms related to its compliance with DBE and other similar regulations, which reforms would have

likely deterred or prevented this scheme, had those reforms been in place in 2004 and 2005.

Dated: November 16, 2015



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



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