

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Granite Construction Company
Associate General Counsel
585 West Beach Street
Watsonville, California 95076

Tax Parcel Nos.:

WATER AGREEMENT

This WATER AGREEMENT (“**Agreement**”) is made and entered into by and between GRANITE CONSTRUCTION COMPANY, a California corporation (“**Granite**” or “**Water User**”), and WILLARD CITY, a body corporate and politic of the State of Utah (“**City**”) to be effective on the Close of Escrow under the Purchase Sale Agreement defined below. Granite and the City are hereinafter referred to collectively as the “**Parties**” and individually “**Party**”.

RECITALS

A. Granite owns certain real property located in the City of Willard, County of Box Elder, State of Utah, which Granite desires to develop in the future (as depicted on the proposed plat of subdivision attached as **Attachment 1** hereto and incorporated herein by reference) (the “**Granite Property**”).

B. On or about [REDACTED], 202[REDACTED], Granite (as Seller) and the City (as Buyer) entered into that certain Purchase and Sale Agreement (“**PSA**”) pursuant to which Granite (as Seller) is selling and transferring to the City (as Buyer) certain Property (as further described and defined in the PSA) and pipeline utility easement in exchange for the City’s agreement to provide culinary water to the Granite Property in the event said Granite Property is developed, subject the terms of this Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the PSA and Water Agreement, respectively.

C. Per Section 24.80.140 (Water Rights) of the City’s Zoning Code and the City’s water rights acquisition policy and conveyance requirements (collectively “**City Water Rights Requirements**”), the City Council may, in its discretion and with advice from the City Public Works Director and City Engineer, accept an amount “in lieu of actual conveyance of water rights.” In accordance with the City Water Rights Requirements, the City finds the conveyance of the Property and pipeline utility easement from Granite to the City pursuant to the terms and conditions of the PSA and Easement Agreement qualifies as a sufficient amount “in lieu of actual conveyance of water rights” in the event the Granite Property is developed as contemplated in, and subject to, the terms of this Agreement.

D. The Parties desire to enter into this Agreement whereby the City agrees to provide culinary water to Granite in the event of the proposed future development on the Granite Property, subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, incorporating the above recitals and in consideration of the promises, covenants, representations, and warranties hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Provision of Water. The City agrees to make available for use at the Granite Property a sufficient supply of culinary water at sufficient pressure to service the Granite Property and the lots on the Granite Property as depicted on the proposed plat of subdivision included in **Attachment 1** (up to and not to exceed 110 equivalent residential units). This Agreement does not approve any future rezone or subdivision of the Granite Property. The Parties understand that as of the effective date of this Agreement, the proposed plat of subdivision [with ¼ acres lots] attached as **Attachment 1** has not been approved by the City, and that by this Agreement, the City is not approving such plat or waiving any requirement to obtain such City approval for the proposed development and/or subdivision, or waiving potentially applicable equitable, proportionate and reasonable impact fees pursuant to the Utah Impact Fees Act (U.C.A § 11-36a) and the City's Impact Fee Ordinance. Granite's proposed development depicted in **Attachment 1** remains subject to applicable subdivision law and compliance with governmental requirements (including, obtaining future approval of necessary zoning changes). However, by this Agreement, the City agrees to reserve a sufficient quantity of culinary water to at least supply the proposed lots on the Granite Property (as depicted on **Attachment 1**), subject to City's final approval (in its municipal capacity) of Granite's proposed development. For the avoidance of doubt, the Parties agree that (a) this Agreement will satisfy the water rights requirements applicable to Granite's proposed development depicted in **Attachment 1** under applicable state and local law and the City's Municipal Code, standards, policies, ordinances, and regulations (as such may be amended), including, but not limited to, Section 24.80.140 (Water Rights) of the City's Zoning Code and the City's water rights acquisition policy and conveyance requirements, and (b) Granite (and its successors and assigns) will not be required to furnish any further water rights (by conveyance, dedication, payment, or otherwise) as a condition to, as a requirement of, or as part of the application for or approval of such development.

2. Granite Notice. To exercise its rights under this Agreement, Granite shall notify the City of its intention to commence efforts to develop the Granite Property as contemplated in this Agreement by no later than fifty (50) years after the Effective Date of this Agreement.

3. Rate. The rate charged for the water used at the Granite Property shall be the same rate charged other City users for similar water services from the City's water system as established by the City Council from time to time in accordance with the City Municipal Code, applying any available rebates and/or discounts.

4. Water User's Cooperation. Water User shall cooperate with the City and be responsible for obtaining all permits, and any and all other necessary approvals and/or extension agreement that may be required for Water User's use of the City's culinary water system. The Parties agree to execute any and all documents which might be reasonably required to implement the provisions of this Agreement.

5. Disclaimer; Force Majeure. Granite acknowledges and agrees that water availability may be determined by factors beyond the City's control, including but not limited to drought. If either Party is delayed in or prevented from the performance of any act required under this Agreement by reasons not the fault of the Party and beyond the control of such Party, performance of the action in question shall be excused for the period of delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

6. Limitation of Damages. Notwithstanding anything to the contrary contained in this Agreement, under no circumstances will Granite or the City be liable under this Agreement or otherwise for lost profits, lost opportunity, indirect, consequential, punitive, or special damages regardless of the nature of the default or the basis of the claim.

7. Rules and Regulations. Water User agrees to follow all rules and/or regulations duly adopted by the City Council, which apply to City water users, subject to any applicable exemptions. Any modifications or amendments subsequently adopted by City Council action shall only be applied to Water User prospectively and not retroactively.

8. Recordation. It is understood and agreed that this Agreement may be recorded in the Official Records of Box Elder County.

9. Effective Date. This Agreement shall become effective upon the Close of Escrow as defined in the PSA.

10. Construction; Severability. Headings used in this Agreement are for convenience or reference only and are not intended to govern, limit, or aid in the construction of any term or provision hereof. The Parties have participated jointly in negotiating and drafting this Agreement. If a question of interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any provision of this Agreement. Unless otherwise specified in this Agreement, the terms "herein," "hereof," "hereunder" and other terms of like or similar import, will be deemed to refer to this Agreement as a whole (including Exhibits) and not to any particular section, subsection or paragraph. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of Utah or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

11. Choice of Law; Venue. This Agreement is to be governed by, and construed in accordance with, the internal laws of the State of Utah, without giving effect to any choice or conflict of law provisions or rule which would cause the application of the laws of any jurisdictions other than the State of Utah. Venue for any legal proceeding shall be in the County of Box Elder.

12. Waiver. The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act under this Agreement, shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement.

13. Legal Advice. Each Party has received independent legal advice from its attorneys with respect to this Agreement.

14. Relationship of Parties. Parties agree that nothing contained herein shall constitute either Party, the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create or constitute any partnership, agency, joint venture, or form of business organization between the parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other Party.

15. Binding on Successors; No Obligations to Third Parties. This Agreement shall be binding upon and shall inure solely to the benefit of the Parties hereto, the owners of the Granite Property, and their respective successors in interest, and this Agreement and all covenants contained herein shall run with the land. This Agreement is made for the sole benefit of the Parties hereto and their respective successors and assigns. Except as otherwise expressly provided herein, this Agreement shall not confer any rights upon, nor obligate any of the Parties hereto, to any other person or entity.

16. Divisibility. In the event that Water User subdivides or sells a portion of the Granite Property, Water User may apportion and allocate the benefits and burdens of this Agreement between such parcels in Water User's discretion provided that the benefits and burdens to the City are not materially affected thereby.

17. Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) e-mail, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon actual receipt or refusal to accept delivery. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Granite: Granite Construction Company
Attn: Resource Development Manager, Brad Sweet
1000 N Warm Springs Road
Salt Lake City, UT 84116
Telephone: (801) 526-6000
Email: brad.sweet@gcinc.com

With a copy to: Granite Construction Incorporated
Attn: Associate General Counsel
585 West Beach Street
Watsonville, California 95076
Telephone: (831) 768-4024
Email: heather.lenhardt@gcinc.com

If to the City: WILLARD CITY
Attn: City Manager
80 W 50 S
P.O. Box 593

Willard, Utah 84340
Phone: (435) 734-9881
Email: jkimpton@willardcity.com

18. Entire Agreement. The PSA, this Agreement and all other Exhibits hereto, as well as the Recitals herein, constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior understandings or agreements with respect to the subject matter hereof, including any prior letter(s) of intent. There are no oral representations, understandings or agreements covering the same subject matter as this Agreement. This Agreement may be modified only by a writing signed by both Parties. All Exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached.

19. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original as against the Party signing such counterpart, but which together shall constitute one and the same instrument.

[signatures on following page]

**GRANITE CONSTRUCTION COMPANY,
a California corporation**

By: _____
Name:

Date

Title:

**WILLARD CITY
a body corporate and politic of the State of Utah**

By: _____
Name:

Date

Title:

Attachment 1
Granite Property (Attached)

