CONTRACT

The COUNTY OF SAN BENITO ("COUNTY") and GRANITEROCK ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. **Duration of Contract.**

   This contract shall commence on November 27, 2017, and end on December 31, 2017, unless sooner terminated as specified herein.

2. **Scope of Services.**

   CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. **Compensation for Services.**

   In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. **General Terms and Conditions.**

   The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. **Insurance Limits.**

   CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

   (a) Comprehensive general liability insurance: $2 Million
   (b) Professional liability insurance: $2 Million
   (c) Comprehensive motor vehicle liability insurance: $2 Million

6. **Termination.**

   The number of days of advance written notice required for termination of this contract is 5 Working Days.

7. **Specific Terms and Conditions** *(check one)*

   [X] There are no additional provisions to this contract.

   [ ] The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.

   [ ] The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.
8. **Information about Contract Administrators.**

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

**Contract Administrator for COUNTY:**

Name: John Guertin
Title: Resource Management Agency Director
Address: 2301 Technology Parkway
Hollister, California 95023
Telephone No.: 831.636.4170
Fax No.: 831.636.4176

**Contract Administrator for CONTRACTOR:**

Name: ______________________
Title: ______________________
Address: ______________________

Telephone No.: ______________________
Fax No.: ______________________

**SIGNATURES**

APPROVED BY COUNTY:

______________________________
Name: Ray Espinosa
County Administrative Officer
Date: ______________________

APPROVED AS TO LEGAL FORM:
Matthew W. Granger, San Benito County Counsel

______________________________
By: ______________________
Date: ______________________
ATTACHMENT A
Scope of Services

Emergency repair of Pacheco Creek Levee in accordance with 100% Design Plans prepared by Natural Resources Conservation Service dated April 2017 and per Contractor’s Revised Proposal dated 11/10/2017 incorporated herein and attached hereto.

END OF ATTACHMENT A.
ATTACHMENT B
Payment Schedule

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis:

[ ] One month in arrears.
[X] Upon the complete performance of the services specified in Attachment A.
[ ] The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR:

[X] a total lump sum payment of $446,500, or
[ ] a total sum not to exceed $ ________________________________

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS:

[X] There are no additional terms of compensation.
[ ] The following specific terms of compensation shall apply: (Specify)

END OF ATTACHMENT B.
ATTACHMENT C
General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

(a) Each policy shall be issued by a company authorized by law to transact business in the State of California.

(b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.

(c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.

(d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

(a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.

(b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.
(c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.

(d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.
C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.
C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

(a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or

(b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
(c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy, until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also
represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.
11/10/2017

Larry Perlin  
County of San Benito  
Resource Management Agency  
Hollister, CA

Project: Pacheco Creek Levee Repair Project, Hollister, CA

We are pleased to offer for your consideration and review the following revised proposal for work at the above-mentioned site. Revisions are in bold italic. Our bid is based on plans prepared by Natural Resources Conservation Service sheets 1-6 dated April 2017, and a site visit with Kevin O’Neill, San Benito County Emergency Services Manager on 11/3/2017.

Our lump sum bid price of $446,500 includes the following items of work:

1. Site #1 $150,500  
2. Site #2 $296,000  
Total $446,500

A. Inclusions:
- Regrade the access roads at both sites utilizing the existing aggregate base where available. Both sites to be accessed from Lover’s Lane.
- Clear existing trees and brush as required to perform the work, and stockpile onsite.
- Load and haul fill provided from a County of San Benito stockpile located at John Smith Landfill. Place and compact fill material to rebuild levees as shown on plans.
- Rip-rap
  - Furnish and place 1-1/2" nominal size gravel bedding.
  - Load, haul, and place County-furnished 1/4-ton rip-rap as available from the John Smith Landfill.

B. Exclusions
- All bonds, fees, permits, engineering, staking, testing.
- Purchase of all fill material and 1/4-ton rip-rap.
- SWPPP plans and implementation.
- Disposal of cleared trees and brush.
- Aggregate base access road at Site #2.
- Removal of existing aggregate base access road for Site #1.
- Erosion control.
- Pump standing water from Site #2.
C. Conditions to this bid
   - CSLB #22, DIR #1000000239
   - One move-in and one continuous operation.
   - Any overtime requested by the owner to expedite completion of this project must be approved prior to the work being done and will be billed as an extra.
   - Graniterock will provide indemnity for its own negligence, but not for the active negligence of other parties.
   - Graniterock Company will provide Commercial General Liability Insurance, including completed operations coverage, naming our customer as an additional insured, using form 829 issued by Contractors Insurance Group. Aggregate limits of $2 Million per occurrence.
   - This proposal remains in effect for (30) days from receipt.
   - The inclusions, exclusions and conditions in this letter shall be made part of any subsequent contract.

The staff and employees of Graniterock look forward to working with you on this project.

Sincerely,
Graniterock
Construction Division

Rob Snyder
Chief Estimator
T (408) 574-1434
F (408) 365-9548

5225 Hellyer Avenue, Suite ZZ0
San Jose, CA 95138
T (408) 574-1400 F (408) 365-8349
GENERAL NOTES

1. All construction shall be in accordance with final design drawings and attached specifications: Critical Area Planting (342A), Dike (356), Access Road (560), Rock Riprap (907), and Control of Water (909).

2. Sponsor shall be responsible for obtaining any needed permits, easements, and/or right-of-ways, and for meeting all local, state, and federal regulations.

3. Sponsor and contractor shall be responsible for locating and protecting all utilities and shall call Northern California Underground Service Alert at '811' or '800-227-2800' within a reasonable timeframe (72 hours minimum) prior to all digging activities. Special safety precautions shall be taken when working in the vicinity of gas, oil, and electrical lines.

4. Sponsor and contractor shall be responsible for implementing and maintaining proper construction season and revegetation season for the project. All excavation and grading shall occur during dry weather periods.

5. No herbicides or soil amendments shall be used on the project site without the prior written approval of participating agencies.

6. The use and/or storage of petroleum-powered equipment shall be accomplished in a manner to prevent the potential release of petroleum materials into waters of the state. A contained area shall be designated for equipment storage, short-term maintenance, and refueling.

7. Cal-OSHA safety requirements shall be in effect during all construction activities.

8. All lines and grades shown in these drawings are approximate. The proposed structure's location, excavation limits, and fill limits will be staked in the field by the Project Surveyor. County's engineer shall provide construction layout for all structures.

9. Staging will occur within the designated work area only.

10. Topsoil and excavated material shall be stockpiled with adequate erosion control measures until it is can be replaced or used as fill.
New access road - 1300' to driveway

Extent of scour

Compacted fill

Pacheco Creek

Levee breach 60°
Assume elevation of top of existing levee is 100.0'.
Horizontal scale: 1" = 20', Vertical scale: 1" = 10'

**Site #1 Levee Profile**
- Top of levee
- Levee height 8'
- Levee height
- Bottom of levee (field level)
- Top of levee
- Breach length 60'
- Scour depth appx. 17'
- Compacted fill
- Step back at 1:1
- 4' x 4' keyway through middle of levee and up sides
- Compacted fill
- Bottom of scour

**Site #1 Typical Cross Section**
- Levee width
- Levee height 8'
- Scour extends appx. 60' into field
- Slope slightly away from levee
- Field Level
- Pacheco Creek
- Compacted fill
- Scour depth appx. 9'
- 4' x 4' keyway
New access road - 1400' to driveway

Existing debris pile

Compacted fill

Levee breach

100'

Riprap at toe of bank. Key-in to trees at either end.

Appx. extent of scour. Filling/regrading this section is beyond the scope of this project.

Filling/regrading this section is beyond the scope of this project.
Assume elevation of top of existing levee is 100.0'.
Horizontal scale: 1" = 20', Vertical scale: 1" = 10'

4' x 4' keyway through middle of levee and up sides

Levee height 8'
Bottom of levee (field level)
Levee width 10'

Scour depth appx. 10'
Original field level

Pacheco Creek
Levee height 8'
Slope slightly away from levee

Scoured depth

4' x 4' keyway

Riprap toe protection.

See Details on Sheet 6
Access Road
Typical Cross Section
Not to Scale

Notes:
1. Access road shall be crowned or graded with a 1% slope away from levee.
2. Road material shall be 4" post-compaction of 2" base rock and 2" post-compaction of driving surface aggregate.

Site #2: Riprap Detail
Not to Scale

Cross Section
Notes:
1. The levee streambank shall be graded to 2:1 slope.
2. The riprap must not infringe upon the channel cross section as compared to upstream of the project.
3. Riprap shall extend uninterrupted the entire length of the rebuilt levee. This length is approximately 100' and shall be keyed around the trees at either end.
4. The nominal size of a rock is that dimension (middle or average) which passes through a square opening with the same dimension; i.e. it is not the longest dimension.
5. Riprap dimensions apply to all three dimensions of the rock. Flat 2D rock will not be accepted.
6. At least 15% of the gradation, by weight, must be smaller than the D50 size.