

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

499



FROM: Executive Office/County Counsel

SUBMITTAL DATE:
November 1, 2012

SUBJECT: Liberty Quarry Indemnification Agreements

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Legal Services Agreement with Derek Cole of Cota Cole Law and authorize the Chairman of the Board to execute said Agreement; and
2. Approve the attached Joint Defense Agreement and authorize County Counsel to execute said Agreement.

Departmental Concurrence

BACKGROUND: Continued on Page 2.


Tina Grande,
Principal Management Analyst


Karin Watts-Bazan, Principal Deputy County Counsel
for Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: **APPROVE**
BY: 
George A. Johnson
County Executive Office Signature

Consent
 Policy

 Consent
 Policy

 Dep't Recomm.:
 Per Exec. Ofc.:

BACKGROUND: At the last meeting of the Board on October 16th, it was requested that staff provide copies of the indemnification agreements for the Liberty Quarry litigation. Included for your review are: a fully executed Consent to Joint Representation Agreement attached as Exhibit A; a Legal Services Agreement with outside legal counsel executed by Derek Cole of Cota Cole Law attached as Exhibit B; and a Joint Defense and Confidentiality Agreement which has been executed by Granite Construction attached as Exhibit C.

As you may recall, Granite Construction, the applicant for the Liberty Quarry project verbally agreed to the imposition of an indemnification condition in the event the Board's certification of the EIR for the Liberty Quarry project was legally challenged. The Consent to Joint Representation Agreement attached as Exhibit A authorizes the law firm of Harrison, Temblador, Hungerford & Johnson to represent the County in such ongoing litigation and requires Granite Construction to pay for the cost of this litigation.

Additionally, Granite Construction has agreed to indemnify the County for legal challenges to the Board's adoption on October 2nd of Ordinance Nos. 348.4750 and 555.19 which allow for surface mining permit applications to receive fast track status. The Legal Services Agreement attached as Exhibit B authorizes Derek Cole of Cota Cole Law to represent the County with respect to the litigation which has recently been filed related to the Board's adoption of these ordinances. Additionally, the Joint Defense and Confidentiality Agreement attached as Exhibit C requires Granite Construction to pay for the cost of this litigation as well.

We are therefore requesting that the Board approve the Legal Services Agreement and authorize the Chairman to execute this agreement and approve the Joint Defense and Confidentiality Agreement and authorize County Counsel to execute this agreement.

EXHIBIT – “A”

HARRISON
TEMLADOR
HUNGERFORD
& JOHNSON

MINING
LAND USE
NATURAL RESOURCES

980 9TH STREET
SUITE 1400
SACRAMENTO, CA 95814
TEL 916.382.4377
FAX 916.382.4380
WWW.HTHJLAW.COM

June 4, 2012

VIA ELECTRONIC AND U.S. MAIL

Mr. Gary Johnson
Granite Construction Company
38000 Monroe Street
Indio, CA 92203

Pamela Walls, Esq.
Office of County Counsel
County of Riverside
3960 Orange Street, 5th Floor
Riverside, CA 92501

Re: Consent to Joint Representation

Dear Mr. Johnson and Ms. Walls:

You have requested that this firm jointly represent Granite Construction Company ("Granite") and the County of Riverside ("County") (collectively, "Parties") in connection with the County's certification of Environmental Impact Report ("EIR") No. 475 in conjunction with Granite's proposed Liberty Quarry Project.

In light of this joint representation, the California Rules of Professional conduct require that we make certain disclosures and obtain the Parties informed written consent of our joint representation of Granite and the County. In relevant part, Rule 3-310(C) of the California Rules of Professional Conduct provides that a member of the State Bar shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

At present, there does not appear to be a potential or actual conflict of interest that would prevent our office from representing both Granite and the County. Both Parties share the same interest with respect to any challenge to EIR No. 475 in that both Parties desire to successfully defend the County's certification of EIR No. 475.

Nevertheless, we cannot rule out the possibility that a conflict could arise during the course of this joint representation. Because changing counsel can be expensive and detrimental to an individual parties' interest, it is important that both of the Parties are comfortable with this joint representation in light of the potential for conflicts to arise. In addition, we will ask that both Parties work with our office through the course of this joint representation to prevent any potential or actual conflicts from arising.

In the unlikely event that an actual conflict of interest arises, we will notify the Parties immediately of that fact. In this event, Granite and the County agree that our office will continue to represent the interests of Granite exclusively, due to this office's long previous relationship with Granite, and that the County will retain its own separate legal counsel, at Granite's expense, to represent the County's individual interests henceforth, unless our office and the Parties agree to a different solution. In addition, the Parties further agree that this office will be permitted to continue to represent the interests of Granite with respect to any future entitlements for the Liberty Quarry Project or any other project that Granite may pursue in the County during the pendency of this joint representation or at any time after this joint representation is concluded.

In addition to the above, during the course of this joint representation, both Parties will have the right to learn the substance of our communications with either Granite or the County regarding this matter. Although attorney-client privilege will bar disclosure of our conversations with third parties, the privilege does not bar disclosure of individual communications between our office and either Granite or the County to all of the Parties. Therefore, we are requesting that both Granite and the County, by this letter, consent to our office's disclosure of all such communications to all of the Parties in this matter.

Finally, during the course of this joint representation, we will be providing all invoicing to Granite for its payment consistent with the terms of our current engagement letter with them. Rule 3-310(F) of the California Rules of Professional Conduct provide that a member of the State Bar shall not accept compensation for representing a client from one other than the client unless:

- (1) There is no interference with member's independence of professional judgment or with the client-lawyer relationship; and
- (2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and
- (3) The member obtains the client's informed written consent

By signing this letter, the Parties will be indicating their informed written consent to this payment arrangement.

In conclusion, we strongly encourage the Parties to seek independent counsel regarding the contents of this letter prior to agreeing to its terms and the joint representation it proposes. Once you have had an opportunity to review this letter and the

disclosures contained herein with independent counsel, please sign and date in the location provided below and return the signed copy to our office by electronic and regular mail.

Very truly yours,

Harrison, Temblador, Hungerford
& Johnson LLP



By
David P. Temblador

DPT/III

APPROVAL AND CONSENT

The undersigned has reviewed and understands the contents of this letter and consents to the joint representation set forth herein.

Dated: June 14, 2012

By: Karin Watts-Bazin for

Name: Pamela Walls

Title: County Counsel

Dated: 6-15-12

By: Scott D. Wolcott

Name: Scott D. Wolcott

Title: Vice President, Land & Quarry
White Construction Company

EXHIBIT – “B”

LEGAL SERVICES AGREEMENT

This Agreement is entered into as of the date written below, and is made by and between the COUNTY OF RIVERSIDE, on behalf of the Transportation and Land Management Agency, hereinafter "COUNTY", and COTA COLE LLP hereinafter "ATTORNEYS". The Parties hereto agree as follows:

1. **TERM OF AGREEMENT.** This Agreement shall commence upon execution by both Parties and continue until completion of all litigation challenging the County's adoption of Ordinance No. 348.4750 and Ordinance No. 555.19 regarding fast track authorization for surface mining permits, whichever occurs first, unless sooner terminated pursuant to Section 5 of this Agreement.

2. **LEGAL SERVICES.** ATTORNEY shall provide legal counsel and services. ATTORNEYS legal representation shall include representation of County in all aspects of the litigation referenced above in Section 1, including but not limited to, an action filed by the City of Temecula designated as Riverside Superior Court Case No. RIC-1215119.

3. **ASSIGNMENT OF PERSONNEL.** The Supervising Attorney for this Agreement will be Derek Cole. The Supervising Attorney shall have full authority to act for ATTORNEY on all matters encompassed by this Agreement and shall be fully responsible for the quality of the work produced. Support attorneys and paralegals shall be designated by the Supervising Attorney. Any changes or substitution of the Supervising Attorney must have the express written approval of COUNTY.

Upon execution of this Agreement, the Supervising Attorney shall provide to COUNTY the names of other professionals (senior partners, junior partners, associates, paralegals, etc.) who will assist in the provision of services under this Agreement. The Supervising Attorney shall also specify the functions to be performed by each professional and shall ensure that services are performed by the level of personnel qualified to perform the service. Any change in personnel assignments shall be made only upon telephonic or written notice to, and written consent by, COUNTY. COUNTY retains the right to approve or disapprove any and all attorney assignments.

4. **PROFESSIONAL CONFLICT OF INTEREST.** ATTORNEYS represent and warrant that no COUNTY employee whose position in COUNTY enables him/her to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such employee is or shall be employed in any capacity by ATTORNEYS, or shall have any direct or indirect financial interest in this Agreement.

Anyone who is a former employee of County at the time of execution of this Agreement or who subsequently becomes affiliated with ATTORNEYS in any capacity (employee, associate or partner) shall not: (i) participate in the services provided by ATTORNEYS to County; or (ii) become a partner, shareholder or otherwise share in the profits of ATTORNEYS for a period of one year from the date the former County employee left County employment.

It is possible that some of the ATTORNEYS' present or future clients will have disputes with COUNTY during the time that ATTORNEYS are representing the COUNTY. COUNTY and ATTORNEYS agree that should the situation arise where a new or existing client engages ATTORNEYS in any matter adverse to COUNTY, or in which COUNTY'S interest may be adversely affected, ATTORNEYS will advise COUNTY in writing. Upon receipt of such notice, COUNTY may determine that the conflict can be waived or may determine that it is in the

COUNTY'S best interest to terminate the services of ATTORNEYS. Should COUNTY determine that it is best to terminate the services of ATTORNEYS, COUNTY will notify ATTORNEYS in writing of such decision. ATTORNEYS may then submit any outstanding invoices for payment up to the date of termination as determined by the notice from COUNTY.

5. TERMINATION. Services performed under this Agreement may be terminated by COUNTY in whole or in part, at any time that COUNTY determines to be in its best interest. COUNTY shall terminate services by delivering to ATTORNEYS a written Termination Notice executed by COUNTY and specifying the extent to which services are terminated and the effective termination date.

After receiving a Termination Notice, and unless otherwise directed by COUNTY, ATTORNEYS shall: (i) take all steps necessary to stop services on the date and to the extent specified in the Termination Notice; and (ii) submit billing for all services performed to date of Termination Notice within thirty (30) days from the effective termination date.

ATTORNEY shall promptly submit a brief report advising of the status of all matters, including any unresolved matters being handled by ATTORNEYS for COUNTY. ATTORNEYS shall give COUNTY copies or originals, as appropriate of all files and attorney work product for all matters on which it has been working. This includes any computerized index, computer programs and document retrieval system created or used for these matters.

6. COMPENSATION. It is understood by ATTORNEYS that Granite Construction, Inc. (Granite) has agreed pursuant to a separate agreement to pay County's costs for defense of the litigation referenced in Sections 1 and 2 of this Agreement. Notwithstanding this separate agreement between COUNTY and Granite, COUNTY understands that ATTORNEYS require that COUNTY remain responsible for payment for ATTORNEYS services should Granite not provide payment or should Granite breach the separate agreement in any manner.

Hourly ATTORNEY rates for services rendered:

Partner	\$275.00
Associate	\$225.00
Paralegal	\$110.00

7. EXPENSES. ATTORNEYS shall be reimbursed for their actual out-of-pocket expenses but without any additional costs for having advanced the funds or for expenses generally considered as overhead already reflected in the ATTORNEYS' hourly rate.

Reimbursable ordinary expenses shall include but not be limited to: (i) postage; (ii) courier service; (iii) in-house photocopies of documents; (iv) long distance phone calls; and (v) travel to Riverside County; provided however, that no single expenditure shall exceed \$500 without the prior consent of the COUNTY.

Reimbursable extraordinary expenses shall include charges for which ATTORNEYS have obtained prior approval of COUNTY, and shall include, but not be limited to: (i) retaining consultants; (ii) investigative services; (iii) and any expense item exceeding Five Hundred Dollars (\$500.00).

Non-reimbursable expenses shall include, but not be limited to: (i) staff time or overtime for performing secretarial, clerical, or word processing functions; (ii) charges for the time spent

to provide necessary information for COUNTY'S audits or billing inquiries; (iii) charges for work performed which had not been authorized by COUNTY.

8. PAYMENT. ATTORNEY shall submit its billing statement monthly, in arrears, no later than the last day of the month following the month(s) for which services were rendered. The original billing statement(s) shall be submitted to:

Karin Watts-Bazan
Principal Deputy County Counsel
Office of County Counsel
3960 Orange Street, Fifth Floor
Riverside, CA 92501
(951) 955-6300

Heather J. Lenhardt
Group Counsel
Granite Construction, Inc.
585 Beach St.
Watsonville, CA 95076

The Supervising Attorney shall certify that the work referenced in each billing statement was performed and each billing statement shall be itemized to include (i) staffing level(s), hourly rates and specific activities for each attorney and/or paralegal; (ii) a listing of each activity as a line item in a time reporting format with a detailed description of specific activities for each attorney and/or paralegal; (iii) total current period fees and total cumulative fees billed for each staffing level; and (iv) current period expenses and total cumulative expenses billed in itemized categories, including all invoices for disbursements paid to others.

ATTORNEYS shall have and maintain all backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and in accordance with generally accepted accounting principles. ATTORNEYS shall make such documentation available to auditors upon request and at such reasonable times and locations as may be agreed to between COUNTY and ATTORNEYS.

Granite shall make payment(s) for services rendered under this Agreement monthly in arrears based on itemized billing statement(s) submitted by ATTORNEYS. Payments shall be made by Granite within thirty (30) days of receipt of billing statements from ATTORNEYS. Interest or finance charges on any outstanding balance(s) shall not be paid.

9. SUPERVISION OF AGREEMENT. The COUNTY Counsel, or his/her designee shall have authority to act for COUNTY on all matters encompassed by this Agreement.

10. CONFIDENTIALITY. ATTORNEYS shall maintain the confidentiality of all information that it may acquire, arising out of or connected with, its provision of services under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. ATTORNEYS shall inform all personnel providing services hereunder of the confidentiality provisions of this Agreement. These confidentiality obligations shall survive the termination or expiration of this Agreement.

11. COMMUNICATIONS WITH COUNTY. ATTORNEYS recognize that their relationship with COUNTY and its agents, employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through COUNTY is confidential and privileged. ATTORNEYS warrant that they shall not disclose or use in any manner whatsoever any of the information from COUNTY and its officers, employees and agents in connection with said relationships or proceedings. ATTORNEYS understand that the Office of County Counsel is the empowered legal representative of COUNTY and its officers and employees and ATTORNEYS shall not without specific direction from the Office of County Counsel communicate with, advise or represent the COUNTY'S legislative body or appointive bodies.

12. LICENSES. ATTORNEY, its employees, agents, contractors and subcontractors shall maintain professional licenses required by the laws of the State of California at all times while performing services under this agreement.

13. LITIGATION. It is understood by ATTORNEYS that even though payment for services will be made by Granite, COUNTY shall have sole control and supervision over the litigation referenced in Sections 1 and 2 above and any services rendered by ATTORNEYS on COUNTY'S behalf.

14. REQUIRED INSURANCE. Without limiting or diminishing ATTORNEY'S obligation to indemnify or hold COUNTY harmless, ATTORNEYS shall procure and maintain or cause to be maintained, at their sole cost and expense, the following insurance coverage during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation:

If ATTORNEYS have employees as defined by the State of California, ATTORNEYS shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employer's Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000.00 per person per accident. The policy shall be endorsed to waive subrogation in favor of COUNTY.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of ATTORNEYS performance of its obligations hereunder. Policy shall name COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000.00 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then ATTORNEYS shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000.00 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this

Agreement or be no less than two (2) times the occurrence limit. Policy shall name COUNTY as Additional Insured.

D. Professional Liability:

ATTORNEYS shall maintain Professional Liability Insurance providing coverage for ATTORNEYS' performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate. If ATTORNEYS' Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and ATTORNEYS shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a date retroactive to the date of or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that ATTORNEYS have maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue as long as the law allows.

E. General Insurance Provisions – All Lines:

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A:VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
- 2) ATTORNEYS must declare its insurance self-insured retention for each coverage required herein. If such self-insured retention(s) exceed \$500,000.00 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of services under this Agreement. Upon notification of self-insured retentions which are deemed unacceptable to the COUNTY, at the election of the County's Risk Manager, ATTORNEYS' carriers shall either 1) reduce or eliminate such self-insured retentions with respect to this Agreement with COUNTY or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.
- 3) ATTORNEYS shall cause their insurance carrier(s) to furnish COUNTY with 1) a properly executed original Certificate(s) of insurance and certified copies of endorsements effecting coverage as required herein and, 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice be given to COUNTY prior to any material modification, cancellation, expiration, or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *ATTORNEYS shall not commence operations until COUNTY has been furnished with original Certificate(s) of Insurance and certified original copies of endorsements and, if requested, certified original*

policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

- 4) It is understood and agreed by the parties hereto and ATTORNEYS' insurance shall be construed as primary insurance and COUNTY'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- 5) If during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the ATTORNEYS has become inadequate.
- 6) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.
- 7) The ATTORNEYS shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 8) ATTORNEYS agree to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

15. INDEMNIFICATION. ATTORNEYS shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any services of ATTORNEYS, its officers employees, subcontractors, agents or representatives, arising out of or in any way relating to this Agreement, including but not limited to, property damage, bodily injury, or death, or any other element of any kind or nature whatsoever arising from the performance of ATTORNEYS, its officers, employees, subcontractors, agents or representatives. ATTORNEYS shall defend at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such services and performance.

With respect to any action or claim subject to indemnification herein by ATTORNEYS, ATTORNEYS shall, at their sole cost, have the right to use counsel of their choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes ATTORNEYS' indemnification to Indemnitees as set forth herein.

ATTORNEYS' obligation hereunder shall be satisfied when ATTORNEYS has provided COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe ATTORNEYS' obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

16. NOTICES. Any and all notices and required reports shall be written and hand-delivered or mailed by first class, postage prepaid, addressed to the COUNTY or ATTORNEYS at the following addresses below, or at any other address COUNTY or ATTORNEYS shall provide in writing to each other:

COUNTY:

Office of County Counsel
3960 Orange Street, Fifth Floor
Riverside, CA 92501

ATTORNEYS:

Cota Cole, LLP
2261 Lava Ridge Court
Roseville, CA 95661

17. ASSIGNMENT. No part of this Agreement or any right or obligation arising from it is assignable without the written consent of COUNTY. Any attempt by ATTORNEYS to assign or subcontract services relating to this Agreement without the consent of COUNTY shall constitute a material breach of this Agreement. However, ATTORNEYS may retain consultants and experts as ATTORNEYS deem appropriate after receiving the written approval of COUNTY.

18. NON-DISCRIMINATION. In the performance of the terms of this Agreement, ATTORNEYS shall not engage in nor permit others he may employ to engage in discrimination in the employment of persons because of the race, color, national origin or ancestry, religion, physical handicap, disability as defined by the Americans with Disabilities Act (ADA), medical condition, marital status or sex of such persons, in accordance with the provision of California Labor Code Section 1735.

19. COMPLETE AGREEMENT. This Agreement shall constitute the complete and exclusive statement of understanding between COUNTY and ATTORNEY which supercedes all previous written or oral agreements, and all prior communications between COUNTY and ATTORNEYS relating to the subject matter of this Agreement.

COUNTY OF RIVERSIDE

Dated: _____

By: _____
Chairman, Board of Supervisors

ATTORNEYS
Cota Cole LLP

Dated: 10-24-12

By: _____



APPROVED AS TO FORM
Pamela Walls, County Counsel

Dated: October 25, 12

Karin Watts Bay
By: Principal Deputy County Counsel

EXHIBIT – “C”

JOINT DEFENSE AND CONFIDENTIALITY AGREEMENT

This Joint Defense and Confidentiality Agreement (the "Agreement"), effective October 23, 2012, is entered into by and between the County of Riverside (the "County"), the Board of Supervisors of the County of Riverside (the "Board"), and Granite Construction Company ("Granite"), individually a "Party," and collectively the "Parties," with reference to the following facts:

RECITALS

A. The County and Board are defendants in an action filed on October 10, 2012, by the City of Temecula. The case has been designated County of Riverside Case No. RIC-1215119 (the "Action"). The Action challenges the Board's approval of County Ordinance Numbers 348.4750 and 555.19 (the "Ordinances"). Additionally, it is anticipated that other actions challenging the Board's approval of these Ordinances may be filed.

B. Granite has not at this time been named a party in the Action. However, the Plaintiff has made clear to the County, Board, and Granite that Granite's forthcoming submission of a land-use and mining application pursuant to the Ordinances is the predominant and motivating factor for plaintiff's prosecution of the Action. Granite has also agreed to indemnify the County for the County's costs and expenses associated with the Action and any additional actions challenging the Board's approval of these Ordinances. For these reasons, Granite has a substantial interest in the outcome of the Action and this interest is in common with the County's and Board's interests.

C. The Parties to this Agreement have a joint and common interest with respect to various allegations made in the Action, including but not limited to a joint and common interest in investigating and responding to any such allegations, a shared desire to defeat the claims asserted against them, and the likely assertion of common claims and defenses.

D. In order to (i) facilitate the preparation of a fair and efficient defense to the Action; (ii) efficiently and expeditiously complete discovery; and (iii) enhance the administration of any proceedings, the Parties and their counsel desire to work together, share communications and information, and coordinate various aspects of discovery relating to matters of common interest without jeopardizing or waiving any attorney-client, work product, or other privileges that would otherwise exist. Counsel have concluded that the mutual interests of their respective clients will be best served by sharing certain documents and information relating to the subject matter of the Action. The information and documents may be proprietary and/or confidential and/or subject to the attorney-client privilege and/or the attorney work-product doctrine, or other applicable privileges, and otherwise not subject to disclosure under applicable law.

E. The Parties believe that their communications are privileged under California Evidence Code section 912(d) and any other applicable law, which protects disclosures made to third persons as privileged communications if reasonably necessary for the accomplishment of the purposes of which the lawyer was retained, but nevertheless enter into this Agreement to confirm their intent and expectations in this regard.

AGREEMENT

In consideration of the promises and undertakings set forth herein, the Parties hereby

agree as follows:

1. Indemnification. Granite shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless County, its officers, agents, employees and independent contractors from any claim, action or proceeding against County, its officers, agents, employees or independent contractors to attack, set aside, rescind, void, or annul the adoption of Ordinance No. 348.4750 and Ordinance No. 555.19. County shall promptly notify Granite of any such claim, action or proceeding, and County shall cooperate in the defense. If County fails to promptly notify Granite of any such claim, action or proceeding, or if County fails to cooperate in the defense, Granite shall not thereafter be responsible to defend, indemnify, or hold harmless County. It is also understood by Granite that this indemnification shall extend to payment for services rendered by the Office of County Counsel in the defense of any such claim, action or proceeding.

2. Exchange of Information. The Parties authorize their respective counsel to cooperate in the defense of this Action. Each Party consents to share, and authorizes the exchange of Confidential Information, by or among its counsel.

3. Voluntary Participation. Nothing in this Agreement shall obligate any Party to share or communicate Confidential Information with any other Party or counsel for a Party. Any communication, sharing or exchange of information under this Agreement shall be purely voluntary and nothing in this Agreement shall be construed as requiring any Party or its counsel to disclose any information protected by the attorney work product or attorney-client doctrines.

4. Confidential and Privileged Communications. This Agreement shall apply to any communications between any Party or their counsel and/or any other Party or such other Party's counsel on matters of common interest in the investigation or defense of the Action, as well as any documents or tangible things prepared in the defense or investigation of the Action as a result of any individual or joint effort of the Parties or their counsel (the "Confidential Information"). For purposes of this Agreement, the term "Confidential Information" shall include any writing, as it is defined in Evidence Code section 250, mental impressions, communications with clients, and all other information, whether oral or written, and whether prepared individually or jointly, that would otherwise be confidential and/or subject to the attorney-client privilege and/or work product doctrine, or other applicable privileges, and not subject to disclosure under applicable law.

5. Disclosure and Exchange of Confidential Information Reasonably Necessary. The Parties agree that the execution of this Agreement and the disclosure and exchange of Confidential Information are reasonably necessary for the accomplishment of the purposes for which counsel for the Parties have been consulted and retained in connection with the Action (California Evidence Code section 912(d)).

6. Use of Confidential Information Exchanged Between the Parties. The Parties agree that the Confidential Information disclosed, and materials prepared, pursuant to this Agreement are to be used solely in the preparation of claims and defenses in the Action, and may not be used or disclosed for any other purpose. If any person or entity requests or demands information or materials disclosed pursuant to this Agreement, by subpoena or otherwise, the Party or Party's legal counsel receiving the request or demand will immediately notify counsel of the Party who supplied the information, and take all steps necessary or appropriate to permit the

assertion of all applicable rights with regard to such information. All Parties and their counsel agree to assert the joint defense privilege in response to any discovery request that seeks privileged information received or generated pursuant to this Agreement and to resist producing or disclosing privileged information unless and until all Parties hereto consent or the subpoenaing/requesting Party obtains a court order for production.

7. No Waiver by Disclosure and Exchange of Confidential Information. All communications by and between the Parties and their counsel regarding Confidential Information are intended to be and shall constitute privileged communications. The disclosure and exchange of Confidential Information among the Parties and their counsel is not intended to be, nor shall it be, construed as a waiver of confidentiality and/or the attorney-client privilege and/or the work product privilege, or other applicable privileges, or other protections against disclosure available under applicable law.

8. Retention of Experts or Consultants. The Parties or their counsel may deem it necessary to jointly and/or independently retain experts or consultants to assist in the defense of the Action. Any information obtained from any such experts or consultants shall be deemed Confidential Information under this Agreement as thus may be shared between the Parties and their counsel as provided herein.

9. Non-Disclosure and Confidentiality of Agreement. The Parties to this Agreement agree to treat the terms and existence of this Agreement as confidential, and shall not disclose this Agreement, or the terms thereof, except as may be reasonably necessary to enforce the Agreement or preserve the privileges as set forth herein.

10. Withdrawal From Agreement. Any Party may withdraw from this Agreement upon advance written notice of at least three (3) business days to the other Parties. Notwithstanding any such withdrawal, or a party's dismissal from the Action by reason of settlement or otherwise, this Agreement shall continue to apply to and protect from disclosure all Confidential Information disclosed to, and exchanged by, the withdrawing Party prior to withdrawal.

11. Marking Confidential Information. Any information or material exchanged between the parties or their counsel, unless a matter of public record, presumptively shall be deemed Confidential Information. The Parties and their counsel may expressly designate Confidential Information as "Confidential and Privileged." However, the failure to so mark Confidential Information shall not operate as a waiver of any claim that such information or material is indeed Confidential Information, as defined herein.

12. Representations and Warranties. Each and every counsel for the Parties has performed a thorough conflict check that confirms the absence of a conflict of interest with another Party or attorney, either in connection with the Action or any potentially related matter.

13. Authority and Binding Effect. Each and every counsel for the Parties has the authority to sign this Agreement on behalf of his or her respective client or clients. This Agreement shall be binding on all Parties who have signed the Agreement or whose counsel have signed the Agreement. The absence of signatures on this Agreement by one or more Parties shall not effect the binding nature of this Agreement on all Parties who have signed the Agreement through counsel or otherwise.

14. No Waiver. Nothing in this Agreement shall be construed as barring, limiting, waiving or in any way affecting any Party's right or ability to pursue any claim it may have against any other Party, including but not limited to indemnification claims or enforcement of other agreements between any Party hereto.

15. Disclaimers and Waivers.

a. Attorneys Represent Clients Only. Notwithstanding any other provision or term in this Agreement, this Agreement is not intended to be, nor shall it be, construed to create a joint attorney-client relationship as between the Parties and their counsel. Each attorney does, and shall, represent its pre-existing client(s) only and no other relationship with any other Party shall arise by implication from this Agreement. No duty of loyalty (as opposed to a duty of confidentiality) between the Parties or an attorney for anyone other than the attorney's own client(s) shall arise expressly, or by implication, from this Agreement.

b. No Disqualification. Each Party hereby waives the right to seek the disqualification of any attorney representing any Party to this Agreement in this Action based on such attorney's access to Confidential Information which is disclosed or exchanged by and among the Parties and/or their counsel.

16. Remedy for Breach of Agreement. No adequate remedy is available at law for breach of this Agreement and that, in addition to any other remedies available, performance of this Agreement may be specifically ordered or breach hereof may be enjoined, or both.

17. Severability. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

19. Interpretation. This Agreement has been and shall be construed to have been drafted by all Parties to it, so that any rule of construing ambiguities against the drafter shall have no force and effect.

20. Counterparts. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original.

21. Facsimile Signatures. This Agreement may be executed via facsimile. Facsimile or .pdf signatures shall constitute originals for any and all purposes herein.

Dated: _____, 2012

County of Riverside

By: _____

Dated: October 30, 2012

Granite Construction Company
a California corporation

By 

Kent H. Marshall, Vice President