

**RESOLUTION NO.050415-01
CITY OF WAITE PARK**

**COUNCIL RESOLUTION APPROVING A DONATION OF
PROPERTY FOR 17TH AVENUE SOUTH RIGHT OF WAY, AND
OTHER CITY USES**


WHEREAS, the City of Waite Park is engaged in a public improvement project known as 17th Avenue South, which project requires the acquisition of certain easements and right of way; and

WHEREAS, Meridian Granite Company (Martin Marietta) has proposed to donate property to the City for the project, and other City uses; and

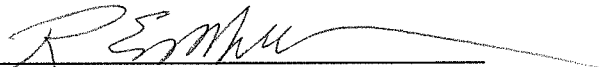
NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF WAITE PARK, MINNESOTA:

1. That the donation is approved by the City Council, subject to a Phase I Environmental Assessment Study to be conducted by our City engineer.
2. That the proposed agreement for donation of the property is attached hereto as Exhibit A.
3. That Rajkowski Hansmeier Ltd. is hereby authorized to prepare documents to complete the donation to acquire the property.
4. That upon completion of the donation, Meridian Granite Company (Martin Marietta) will not be obligated to pay assessments on Parcel 10.

Adopted by the Council this 4th day of May, 2015.



Shaunna Johnson
City Administrator-Clerk-Treasurer

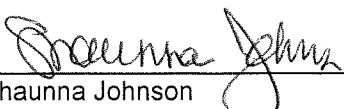


Richard E. Miller
Mayor

ACTION ON THIS RESOLUTION:

Motion for adoption: Member Theisen
Seconded by: Member Schneider
Voted in favor of: Mayor Miller, Members Linqvist, Schneider, Schulz, Theisen
Voted against: None
Abstained: None
Absent: None
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Waite Park City Council at a duly authorized meeting held on 5/4/15.



Shaunna Johnson
City Administrator-Clerk-Treasurer

AGREEMENT FOR DONATION

OF

REAL PROPERTY

This is an Agreement for Donation of Real Property (the "Agreement") entered into effective as of this 4th day of May, 2015 (the "Effective Date"), by and between the City of Waite Park, Minnesota, and Minnesota Municipal Corporation ("Donee") and Meridian Granite Company, a North Carolina Corporation ("Donor").

RECITALS

The property covered by this Agreement is located in Stearns County, Minnesota and contains approximately 16.59 acres, and is more particularly described in Exhibit A (the "Property").

AGREEMENTS

In consideration of the mutual covenants set forth in this Agreement, the agreement of Donee to comply with and follow all requirements of this Agreement both prior to and after closing and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1

Donation

I.1 Donor agrees to convey to Donee (or its designee), and Donee agrees to accept and take title to the following property:

(a) That certain tract or parcel of real property containing approximately 16.59 acres situated in Stearns County, Minnesota and more particularly described in Exhibit A (the "Real Property") and all easements, rights, and appurtenances in any way related to the Real Property, including without limitation any right, title, and interest of Donor, if any, in and to adjacent streets, alleys, and rights-of-way;

(b) All improvements, structures, and fixtures, if any, now constructed and completed or under construction on the Real Property (the "Improvements"); and

(c) All contract rights and all other intangible rights owned by Donor or appurtenant to the Real Property and/or Improvements, including without limitation all permits, licenses, and approvals of governmental authorities (the "Intangible Property").

All of the property described in this paragraph I.1 is collectively referred to in this Agreement as the "Property".

EXHIBIT

A

1.2 Donor agrees at the time of Closing to convey such title to the Property that Donor has to Donee (or its designee) by quit claim deed.

ARTICLE 2
Price

No money is due to Donor for the conveyance of the Property.

ARTICLE 3
Earnest Money

No Earnest Money is required for the conveyance of the Property.

ARTICLE 4
Inspection

At all times prior to Closing, Donee and Donee's employees, agents, engineers, and contractors, at Donee's sole expense, shall have the right to enter upon the Property to inspect, examine, survey, bore, drill, test, analyze, and otherwise do that which Donee may deem desirable as part of its inspection process. Donee shall have the right to conduct soil and other tests on the Property in order to determine the suitability of the Property for use and development for Donee's intended purposes. If Donee determines, in Donee's sole discretion, that the Property is not suitable for such uses and development, then Donee shall notify Donor of such determination. Upon such notification to Donor, this Agreement shall then become null and void, and neither Donee nor Donor shall have any further duty, obligation, or liability whatsoever under this Agreement. Donee shall have the right to place survey stakes and markers on the Property but shall have the right to cut or permit the cutting of trees, timber, or bushes only to the extent reasonably necessary or appropriate for completion of the activities authorized by this Article. Donee shall pay all costs incurred in connection with said activities and shall repair any damage to the Property caused by Donee in pursuing such activities in the event that Donee terminates this Agreement. Donee agrees to indemnify Donor against any liens or liabilities resulting from Donee's entering the Property and exercising its rights pursuant hereto. Donor shall provide Donee with copies of whatever abstracts of title, title reports, environmental site assessments, and surveys it may have in its possession with respect to the Property, but Donor will have no obligation to update, renew, or obtain new versions of any of the same, it being the obligation of Donee to do so, if it desires to do so, at Donee's sole cost and expense.

ARTICLE 5
Closing

5.1 The conveyance described herein shall be closed on or before sixty (60) days following the Effective Date, on the date and at the time and place agreed to by the parties, the "Closing"). The date of Closing is subject to extension by agreement of the parties.

5.2 At the Closing each party shall execute and deliver all documents reasonably necessary to effect and complete the Closing, including without limitation the documents referred to in this Article.

5.3 At the Closing, Donor shall execute and deliver to Donee the following:

- (a) A deed as provided in Article 1.2;
- (b) Appropriate certificates and/or affidavits indicating that Donor is not a foreign citizen or entity; and
- (c) Such other documents reasonably necessary to effect and complete the Closing.

5.4 At Closing, Donee shall execute and deliver to Donor the following:

- (a) A Closing Statement, itemizing and approving all receipts and disbursements, if any, made in connection with Closing;
- (b) A certificate, in a form reasonably requested by Donor, evidencing compliance with pre-Closing covenants, conditions, warranties, and representations, if any; and
- (c) Such other documents reasonably necessary to effect and complete the Closing.

5.5 Donee shall pay any transfer tax, stamp tax, deed tax, grantor's tax, or other tax payable in connection with the transfer of the Property.

5.6 Donee shall pay all costs of recording the deed and all other documents related to this transaction.

5.7 Ad valorem taxes on the Property for the calendar year in which the Closing occurs shall be prorated as of the end of the day of Closing. If tax bills have not been issued for the year of Closing, taxes shall be prorated based on the previous year's tax bills. Donor shall deliver possession of the Property to Donee at Closing.

5.8 Each party shall pay its own attorneys' fees and expenses in connection with this Agreement and the Closing contemplated hereunder.

ARTICLE 6

Commissions

Neither Donee nor Donor has created any liability for any broker's fee or commission in connection with this Agreement or the consummation of the transaction contemplated hereby. Each of Donee and Donor represents to the other party that it has not engaged or dealt with any broker or agent in regard to this Agreement or to the sale and purchase

contemplated hereby, and each party hereto agrees to indemnify, defend, and hold the other party harmless from and against any claim, loss, damage, liability, cost, or expense (including but not limited to reasonable attorney fees and expenses and costs of litigation) which the indemnified party shall suffer, incur, or be threatened with because of any claim by any broker, agent, or other person or entity claiming by, through, or under the indemnifying party, whether or not meritorious, for any fee, commission, or other compensation with respect hereto or the purchase and sale provided herein. This paragraph shall survive the Closing of the purchase and sale hereunder or the cancellation of this Agreement.

ARTICLE 7
Condition of and Title to Property

Donee acknowledges that Donor makes no warranty or representation of any kind with respect to the title to the Property, the environmental condition of the Property, or the condition of any of the Improvements on the Property or any of the electrical, mechanical, plumbing, air conditioning or other systems or fixtures attached to the Property or the Improvements, and that the sale hereby will be strictly on an "AS IS, WHERE IS, WITH ALL FAULTS" basis.

ARTICLE 8
Pre-Closing Liabilities

Donee is not and shall not be deemed to be a successor to Donor. Donee is acquiring only the Property. Donee has not assumed or agreed to assume any liability whatsoever of Donor arising prior to the date of Closing, and Donee does not assume or agree to assume any obligation of Donor under any contract, agreement, indenture, or any other document to which Donor is a party or by which Donor is to be bound or which in any manner affects the Property or any part hereof, except as expressly agreed to herein by Donee.

ARTICLE 9
General Indemnification

Donee on its behalf and on behalf of any user of the Property after Closing shall, at its sole cost and expense to the maximum extent allowed by law, including as a result of any act or inaction of Donor, its parents, subsidiaries, officers, directors, employees, agents, assigns, predecessors, or successors, (collectively "Indemnified Parties" and each an "Indemnified Party"), protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all liabilities, obligations, claims, expenses, costs, and other losses imposed upon, or incurred by, or asserted against any Indemnified Parties and directly or indirectly arising out of, or in any way relating to or connected with, any one or more of the following: (a) any accident, injury to or death of persons or loss of, or damage to property occurring in, on or about the Property or any part thereof; (b) any use, nonuse, or condition in, on or about the Property; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; and (d) any failure of the Property to be in compliance with any applicable law. To the extent that the undertaking to indemnify, defend and hold harmless set forth in this Article may be unenforceable because it violates any law or public

policy, Donee shall pay the maximum portion that Donee is permitted to pay and satisfy under applicable law, and this indemnification provision shall be enforced to the maximum extent allowed by law. The obligations and liabilities of Donee under this Article 9 shall survive Closing.

ARTICLE 10
Miscellaneous

I 0.1 Any notice or other communication provided for hereunder shall be in writing and may be (i) served by personal delivery, (ii) made by facsimile transmission, or (iii) sent by overnight courier service (with all fees prepaid) to the receiving party as follows:

If to Donee: City of Waite Park
 19 - 13th Avenue North
 Waite Park, MN 56387
 Attention: City Administrator
 Facsimile No.: (320) 252-6955

with a copy to: Gordon Hansmeier
 Rajkowski Hansmeier Ltd.
 11 - 7th Avenue North
 St. Cloud, MN 56302-1433
 Facsimile No.: (320) 251-5896

If to Donor: Meridian Granite Company
 c/o Martin Marietta
 11252 Aurora Avenue
 Des Moines, IA 50322
 Attention: Neil Grant
 Facsimile No.: (515) 254-0035

with a copy to: Martin Marietta
 2710 Wycliff Road
 Raleigh, NC 27607
 Attention: Vice President and General Counsel
 Facsimile No.: (919) 783-4535

Any such notice or communication shall be deemed to be given, if delivered in person, on the date delivered, if made by facsimile transmission, on the date transmitted, or, if sent by overnight courier service, on the date sent as evidenced by the bill of lading; and shall be deemed received, if delivered in person, on the date of personal delivery, if made by facsimile transmission, upon confirmation of receipt (including electronic confirmation), or if sent by overnight courier, on the first business day after the day sent. Any party sending a notice or other communication by facsimile transmission shall also send a hard copy of such notice or other communication by one of the other means of providing notice set forth in this Article I 0.1.

Any notice or other communication shall be given to such other representative or at such other address as a party to this Agreement may furnish to the other party pursuant to this Article 10.1.

10.2 Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their personal representatives, successors, and assigns, any right or interest whatsoever.

10.3 All references to the Effective Date of this Agreement means the date upon which the last party has executed this Agreement. Such Effective Date shall be inserted on the first page of this Agreement for reference purposes.

10.4 If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall not be affected thereby.

10.5 If any of the provisions of this Agreement might be unlawful, void, or voidable for violation of the rule of law known as the rule against perpetuities, then any such provision shall continue only until the expiration of twenty (20) years following the date of death of the last of the lineal descendants, living on the Effective Date, of any of the following Presidents of the United States: Barack H. Obama, George W. Bush, William Jefferson Clinton, George Herbert Walker Bush, and Jimmy Carter.

10.6 Each party hereto will act as an independent contractor, and nothing contained in or arising out of this Agreement will be construed to imply or create any joint venture, partnership, agency, or other relationship. The parties agree that no fiduciary relationship is created by this Agreement.

10.7 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

10.8 The failure by either party hereto to insist upon strict performance of any term or condition of this Agreement or failure or delay to exercise any right or remedy provided herein or by applicable law, or failure to notify properly the other party upon a breach, or the acceptance of or payments for any services hereunder will not release either party from any of the obligations of this Agreement and will not be deemed a waiver of any right of either party to insist upon strict performance hereof or any of its rights or remedies as to any prior or subsequent default hereunder.

10.9 This Agreement shall be controlled, construed, and enforced in accordance with the laws of the state in which the Property is located, considered without regard to its choice of law rules.

10.10 The headings in this Agreement are for convenience of reference only and will not limit or otherwise affect any of the terms hereof. All exhibits hereto and all other documents and instruments referred to herein or in any exhibit hereto are hereby incorporated

herein by reference. Any gender used herein shall be deemed to refer to any other gender more grammatically applicable to the party or parties to whom it relates, and the use of the singular shall where appropriate be deemed to include the plural or the plural to include the singular.

10.11 This Agreement sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, promises, covenants, arrangements, or communications, whether oral or written, by any officer, employee, or representative of any party hereto with respect thereto. No amendment hereto will be valid unless made in writing and signed by the parties hereto. This Agreement may be executed in multiple counterparts, each of which will be deemed an original hereof, and all counterparts collectively are to be deemed but one instrument. Time is of the essence of this Agreement.

I 0.12 The parties agree: (i) that "applicable law" means all provisions of any constitution, statute, law, ordinance, rule, regulation, decision, order, decree, judgment, release, license, permit, stipulation, or other official pronouncement enacted, promulgated, or issued by any governmental authority or arbitrator or arbitration panel; (ii) "governmental authority" means any legislative, executive, judicial, quasi-judicial, administrative, or other public authority, agency, department, bureau, division, unit, court, or other public body, person, or entity; (iii) an "affiliate" of, or person "affiliated" with a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified, (iv) "control" (including the term "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise; and (v) "including" and other words or phrases of inclusion, if any, shall not be construed as terms of limitation, so that references to "included" matters shall be regarded as non-exclusive, non-characterizing illustrations.

10.13 (a) The parties shall attempt in good faith to resolve through negotiation any dispute, claim, or controversy arising out of, relating to, or in connection with this Agreement, whether regarding the formation or terms of this Agreement, the performance of the parties hereunder, or otherwise (collectively a "Dispute"). Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the Dispute and the relief requested. The recipient of such notice shall respond in writing within fifteen (15) days with a statement of its position on and recommended solution to the Dispute. If the Dispute is not resolved by this exchange of correspondence, then a representative of each party, with full settlement authority, shall meet at a mutually agreeable time and place within thirty (30) days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the Dispute.

(b) If the parties are unable to resolve the Dispute by negotiation, pursuant to Subsection (a) above, they shall discuss the desirability of submitting the Dispute to mediation or binding arbitration before a single mediator or arbitrator who has had at least ten (10) years' relevant industry experience in the field that is the subject matter of the Dispute. This discussion shall take place prior to either party commencing an action in a court of competent jurisdiction in accordance with subsection (c) below. If any Dispute is submitted to binding arbitration, the

arbitrator may not through the award compromise any difference between the positions of the parties. Instead, the parties shall each submit to the arbitrator a proposed award at least three (3) days before any arbitration is scheduled to commence. The arbitrator shall endorse as the final award either the award proposed by one party or the other. No other award may be made. The non-prevailing party shall pay the fees of the arbitrator and the reasonable expenses incurred in connection with the arbitration, including without limitation the prevailing party's reasonable attorneys' fees.

(c) If within fifteen (15) days after the meeting described in Subsection (a) above, the parties have not reached agreement on resolution of the Dispute, or on the submission of the Dispute to mediation or binding arbitration, then the Dispute may be settled by litigation in accordance with the following provisions. **Any litigation by the parties over any Dispute under this Agreement shall be brought in federal district court, if jurisdiction and venue are otherwise proper in such court. Each party hereby irrevocably submits to personal jurisdiction in any federal district court in the state in which the Property is located and waives any and all objections as to venue, inconvenient forum, and the like, and further waives any right to trial by jury that might otherwise be available to the party.** The decision of such court of competent jurisdiction that is either not subject to appeal or not appealed within ninety (90) days of any judgment or, if sooner, the period in which an appeal may be filed under applicable law, shall be final and binding on the parties as to any matter submitted under this Agreement. The prevailing party shall be entitled to receive its reasonable attorneys' fees. Notwithstanding anything contained herein to the contrary, Donee agrees that none of Donor, its parents, subsidiaries, assigns, or their agents or employees shall be liable to it for any monetary damages (including any special, consequential or punitive damages whatsoever), whether in contract, tort (including negligence and strict liability) or any other legal or equitable principle, and its sole remedies shall be limited to commencing an action for specific performance.

ARTICLE 11

Quiet Enjoyment

Donee acknowledges that Donor operates a quarry on an adjacent parcel(s) to the Property and that Donor, and its successors-in-interest, will continue to operate such quarry and may expand their operations at the quarry following the conveyance of the Property. Donee also acknowledges that Donor leases or may in the future lease a portion of the adjacent parcel(s) to others for use in related industries that use products of the quarry, such as the production of ready-mix concrete and asphalt. Donee acknowledges that the quarry operations and any such related industries may subject Donee and the Property to noise, dust, truck traffic, blasting, vibrations and other inconveniences, whether or not they constitute a nuisance or result in any damage to any improvements on the Property. As an inducement to Donor's execution and delivery of this Agreement and conveyance of the Property to Donee, Donee covenants, on behalf of itself and its successors-in-interest, that it shall not initiate any proceeding or take any action, or participate in any proceeding or action, to limit, prohibit, or restrict Donor's, and its successors' -in-interest, operation of the quarry or their lessees' operation of related industries located at the quarry on any ground whatsoever, including, but not limited to, nuisance or trespass. By means of illustration, and not limitation, Donee shall not initiate or participate in

any proceeding or action to limit or restrict the hours of operation of the quarry, to prohibit expansion of the quarry or to oppose or otherwise object to the issuance or continuance of any permits or approvals from governmental authorities necessary for the development, operation, and expansion of Donor's quarry. Any structure built on the Property by Donee shall be built at Donee's risk of damage from blasting; provided, however, that Donor shall be required to comply with all laws and regulations regulating blasting. Donee, on behalf of itself and its successors-in-interest, does hereby waive, release, forever discharge and covenant not to sue Donor, its successors-in-interest, their lessees' and their respective shareholders, officers, directors, and employees from any and all claims, demands, injuries, actions, and causes of action at law or in equity, past, present, or future, for any damages, personal injuries, property damage, diminution in property value, emotional distress, loss of peace of mind and happiness, discomfort, inconvenience, annoyance, disruption, nuisance, trespass, or any such claims or injuries arising from or related to Donor's, or its successors' -in-interest, operation of the quarry or their lessees' operation of any related industry at the quarry, except for damages, personal injury, or property damage occurring at or on the Property caused by any fly rock produced from blasting at the quarry. For purposes of this Article 11, the term proceedings means any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal. Furthermore, Donee shall cooperate with Donor in assuring that all persons are off the Property when Donor advises that blasting will be at a location near the Property such that in Donor's good faith opinion, a safety hazard may exist with respect to persons on the Property. Donee acknowledges and agrees that the foregoing covenants shall run with the Property and that the foregoing covenants shall be reflected in the deed to be delivered by Donor to Donee pursuant to Article 1.2 of this Agreement. Donee further covenants and warrants to Donor that it will be solely responsible for taking all steps necessary to protect any user of the Property from any injury or damage associated with the use of the Property and the activities of Donor as set forth herein. The obligations and liabilities of Donee under this Article 11 shall survive Closing.

ARTICLE 12
Deed Restriction

Donee hereby agrees that the Property will be retained for public use and not sold for private development. Donee consents to Donor inserting a deed restriction in the Quit Claim Deed, in accordance with Minnesota law, to formally establish this agreement. The restriction in the deed will also contain a right of reentry by the Donor for the return of the property if the property is not used for public use or in the event of Grantee conveys the property including donating or leasing of the property.

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[Signatures on the following page]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal effective as of the Effective Date.

DONOR:

Meridian Granite Company,
a North Carolina Corporation

Date of execution by
Donor:

May 15, 2015

By: Roselyn Bar
Name: Roselyn Bar
Its: ~~Senior~~ Vice President and Corporate Secretary



DONEE:

City of Waite Park, Minnesota
a Minnesota Municipal Corporation

Date of execution by
Donee:

5/8/15

By: Richard E. Miller
Name: Richard E. Miller, Mayor

Attest:

By: Shaunna Johnson
Name: Shaunna Johnson, City Administrator
(CORPORATE SEAL)

EXHIBIT A

Legal Description of Property

Tract 1:

The West 200 feet of the South 289.08 feet of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 17, Township 124 North, Range 28 West of the 5th P.M. LESS PARCEL #7 WAITE PARK ROW PLAT #4 comprising approximately 1.26 acres;

and

Tract 2:

The North 770 feet of the West 863.26 feet of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW 1/4) of Section 20, Township 124 North, Range 28 West of the 5th P.M. comprising approximately 15.26 acres;

All subject to any and all easements, restrictions, encumbrances, and other items reflected of record with respect to the Property.