

PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT is made and entered into this 21st day of January, 2025, by and between the City of Port Washington, Wisconsin, a Wisconsin municipal corporation (the "City") and Red Granite DevCo LLC, a Delaware limited liability company ("Developer").

RECITALS

The City and Developer acknowledge the following:

A. Developer has contracted to acquire fee simple title to approximately 1900 acres of vacant land primarily in the Town of Port Washington, Ozaukee County, Wisconsin, bounded generally by I-43 on the east and south, a Wisconsin Electric Power Co right-of-way on the west and Dixie Road on the north, as generally depicted on Exhibit A attached hereto (the "Property"). Developer intends to acquire, develop, construct and operate, or convey and accommodate the development, construction and/or operation by others, of a data center campus and related improvements on the Property (the "Project").

B. The City is a Wisconsin municipal corporation with authority to enter into this Agreement, to adopt annexation ordinances under Wisconsin Statute section 66.0217 and to adopt zoning amendments and approve building, site, landscaping and operational plans under Wisconsin Statute section 62.23(7). The Property and adjacent lands in the Town of Port Washington are located contiguous to and may be annexed to the City pursuant to the provisions of Wisconsin Statute section 66.0217. The development, construction and operation of a data center campus and related improvements within the City also is authorized under, and consistent with, a Settlement Agreement Between the City and the Town of Port Washington, Ozaukee County, Wisconsin To Provide For Orderly Land Development, Boundary Agreements and Shared Services entered into November 23rd, 2004 as modified by a Supplemental Agreement entered into by such parties as of January 21st, 2025 (collectively, the "Town/City Agreement").

C. The City and Developer entered into a Pre-Development Agreement on or about December 12, 2024 (the "Pre-Development Agreement") to facilitate the due diligence to develop, construct and operate a data center campus and related improvements on the Property.

D. The planned use of the Project is consistent with the City's Comprehensive Plan for 2035 adopted January 6, 2009 ("Comp Plan") and the City's Zoning Code. The City acknowledges that annexation of the Property (or

portions thereof) and/or adjacent lands will extend the corporate limits and jurisdiction of the City, will permit the extension of urban services, is consistent with the Comp Plan and provides lands for needed growth of the City.

E. The City specifically acknowledges that the proposed development, construction, operation and use of the Property as described herein, is compatible with and will further the City's planning objectives, will be of substantial benefit to the City, will encourage desirable and sustainable businesses and job development, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

F. The City desires to assist in facilitating the development, construction, operation and use of the Project on the Property. In this regard, the City intends to consider and, in its reasonable discretion, to grant various governmental approvals benefiting Developer, its successors and assigns and the Property, subject to the provisions of applicable law, including applicable City ordinances. Necessary governmental approvals include annexation, rezoning, building/site/landscaping/operational plan review and approvals, extension of utilities and creation of a tax incremental district under Wisconsin Statute section 66.1105 which district shall include the Property and make development of the Project feasible.

G. The City and Developer agree to perform their respective obligations in connection with the issuance of various necessary governmental approvals and the construction of certain facilities and related improvements on the Property, in accordance with the terms of this Agreement.

AGREEMENTS

Now, therefore, in consideration of the Recitals and the mutual promises set forth below, the City and Developer agree as follows:

1. Conditions.

(a) Governmental Approvals. The parties acknowledge that the City cannot contract away its governmental powers and that certain approvals may require issuance by or cooperation from government bodies external to the City. The parties also acknowledge that, to be able to develop, construct and operate the Property as intended, Developer must obtain all of the governmental approvals described in this Agreement, including but not limited to, annexation, rezoning, building/site/landscaping/operational plan review and approvals, extension of utilities and creation of a tax incremental district which includes the Property and which makes development of the Project feasible. Subject to applicable City ordinances and other applicable laws, the City shall use its best good faith efforts

to consider any necessary governmental approvals on a timely basis. The City also shall cooperate with and assist Developer in seeking and obtaining permits and approvals from all other governmental authorities with jurisdiction over the Property in connection with Developer's pursuit of any necessary approvals, including, but not limited to approvals from the Wisconsin Department of Natural Resources ("WDNR"), the Wisconsin Public Service Commission ("WPSC"), the Wisconsin Department of Administration ("WDOA"), the Wisconsin Department of Revenue ("WDOR"), Ozaukee County and/or the Town of Port Washington (the "Town").

(b) Contingencies. The parties acknowledge that Developer must do all of the following in order to develop, construct and operate the Project on the Property:

(i) acquire fee simple title to at least a substantial portion of the Property, as well as obtain certain easement rights appurtenant to the Property;

(ii) enter into development agreement(s) with the City (and/or other governmental authorities with jurisdiction thereover) to make the development, construction and operation of the Project on the Property and, in particular, the extension of utilities therefor, feasible; and

(iii) enter into an agreement with an end user of a data center campus on the Property which agreements may include conditions to be satisfied.

Accordingly, all rights and obligations of the City and Developer under this Agreement are contingent upon Developer's satisfaction or waiver, in Developer's sole discretion, of the contingencies set forth in this section. In the event that any contingencies in this section are not satisfied or waived, this Agreement and any governmental approvals issued for the Property may be declared null and void by written notice from Developer to the City, and the City shall assist Developer in terminating, reversing and/or unwinding any governmental approvals that may have been issued, including but not limited to detaching any portions of the Property annexed to the City and re-attaching those portions of the Property to the Town.

(c) Time of the Essence. The City and Developer recognize that time is of the essence and agree to use commercially reasonable efforts to satisfy all of the conditions under this Agreement in a timely manner.

(d) General Outline. The parties intend that this Agreement will serve as a general outline governing the development, construction and operation

of the Project on the Property. Plans and specifications for any improvements shall be, subject to confirmation by Developer and the City's third party professional consultants of compliance with Developer's intended plans and applicable City standards.

(e) No Covenant to Construct or Operate. Developer shall have no obligation to construct the improvements described herein. The parties acknowledge that the improvements are only necessary if Developer proceeds to develop the Project on the Property. The parties acknowledge that this Agreement creates no obligation for Developer or its successors or assigns to construct, open or operate a data center campus and related improvements or any other improvements on the Property.

2. Representations and Warranties.

(a) Representations and Warranties of Developer. Developer makes the following representations and warranties which the City may rely upon in entering into this Agreement and upon which the City may rely in granting approvals and permits for the Property:

(i) Developer is a duly organized and existing limited liability company under the laws of the State of Delaware, qualified to do business in the State of Wisconsin.

(ii) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by Developer.

(iii) Developer intends to circulate petitions to annex substantial portions of the Property and adjacent lands to the City voluntarily and of its own accord. Developer seeks annexation to make utility services available, feasible and affordable at the Property. The City has not required annexation of the Property or adjacent lands, and in no way has the City influenced or induced Developer to annex any portions of the Property and/or adjacent lands to the City.

(b) Representations and Warranties of the City. The City makes the following representations and warranties which Developer may rely upon in entering into this Agreement and in developing the Property:

(i) The City is a duly organized and existing municipal corporation under the laws of the State of Wisconsin.

(ii) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the City.

(iii) The City has a present and demonstrable need for annexation of the Property and adjacent lands to extend urban services, promote development consistent with the City's Comp Plan, make available lands for needed growth of the City, encourage desirable and sustainable businesses and job development, increase the tax base of the City, and otherwise promote the general welfare of the City and its residents.

(iv) This Agreement and the intended development, construction and operation of the Property under the City's jurisdiction are authorized by, and consistent with, the Town/City Agreement.

(v) The City is drafting and intends to consider and adopt a new industrial zoning district (the "New Zoning District") to permit the development, construction and operation of the Project at the Property. Such New Zoning District, including building/site/landscaping/operational plan review and approvals for the Property, will permit the development, construction and operation of the Project on the Property. Upon issuance of those governmental approvals described in Section 1(a) above, Developer and its successors and assigns will have vested rights to develop, construct and operate a data center campus and all ancillary uses and additional uses permitted in the New Zoning District.

3. City Obligations. Subject to the contingencies set forth in Section 1 above, the City shall be obligated as follows:

(a) Annexation. The City shall consider adoption of an ordinance annexing any portions of the Property and adjacent lands for which it receives annexation petitions as presented by owners and electors under contract with Developer. The City hereby acknowledges and agrees that the City's Comp Plan supports findings that annexation of the Property to the City serves the public interest and promotes and enhances the general welfare of the City and its residents.

(b) Rezoning and Building/Site/Landscaping/Operational Plan Review and Approval. Upon annexation, the City shall consider rezoning the Property to the New Zoning District. Upon submittal of detailed plans by Developer, the City also shall issue building/site/landscaping/operational plan approvals for the Project.

(c) Reasonable Reviews. All reviews and inspections to be conducted and approvals to be granted by the City's engineers and/or building inspectors shall be prompt and shall extend only to reasonable confirmation of compliance with applicable City regulations and approved plans.

(d) Infrastructure. The City shall cooperate with Developer to design, construct, install and operate all public infrastructure deemed necessary by Developer to render the Project feasible, including but not limited to upgrades to roads and traffic improvements, municipal sanitary sewer improvements sufficient in quality and quantity to service the Project and municipal water improvements sufficient in quality and quantity to service the Project.

(e) Tax Incremental District. The City represents and warrants to Developer that the City intends to create a tax incremental district under Wisconsin Statutes section 66.1105, including the Property, to fund and pay for various public infrastructure to the Property as well as to provide other project costs and/or incentives to make the development, construction and operation of the Project feasible. The City shall, in good faith, negotiate a development agreement with Developer to accommodate funding and payment of project costs and/or incentives to render development, construction and operation of the Project feasible.

4. Developer's Obligations. If Developer determines that all conditions under Section 1 above are satisfied and Developer decides to undertake the Project, Developer shall undertake the following obligations, at Developer's sole cost and expense:

(a) Development of the Property. Developer or its successor or assign shall design and construct the Project as agreed upon in a development agreement negotiated with the City.

(b) Feasibility. Developer shall, in good faith, negotiate a development agreement with the City to accommodate funding and payment of project costs and/or incentives necessary to render feasible the development, construction and operation of the Project. The parties recognize that the long-term feasibility and viability of the development, construction and operation of the Project depends, among other factors, on predictable property tax assessment under Wisconsin Statute ch. 70 et. seq.

(c) Manner of Construction. Any public improvement work shall be subject to review of plans and specifications and periodic inspections by the City's engineers and/or building inspectors to confirm compliance with applicable City regulations and approved plans. The City shall not accept final dedication of any public improvements until the public improvement work described above is complete.

5. Hold Harmless and Indemnification Agreement. Subject to Wisconsin's comparative negligence law and the laws of contribution and indemnification, Developer agrees to indemnify and hold harmless the City, and

all of its officers, employees, agents, and attorneys, from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, which arise out of, relate to or result from, this Agreement, except to the extent caused by the City. This Section shall survive any termination of this Agreement for a period of three years. This Section does not waive or forfeit any governmental or sovereign immunity of the City with respect to Developer or any third parties. The City retains all applicable governmental immunities, defenses, and statutory limitations available, including but not limited to, Wis. Stat. §§ 893.80, 895.52, and 345.05.

6. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement between the parties. This Agreement shall not be altered or amended, except by agreement in writing, executed by the parties.

(b) Severability. If any provisions, or portions thereof, of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected hereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) Binding Effect. This Agreement and each and all of the terms, covenants, and conditions hereof, shall be binding upon and inure to the benefit of the parties and their respective successors and/or assigns, and no third party, other than such successors and/or assigns, shall be entitled to enforce any term, covenant or condition of this Agreement or have any rights hereunder. Until this Agreement is terminated, all of the covenants, agreements, terms and conditions of this Agreement shall inure to the benefit of and be binding upon the City and Developer, their respective agents or affiliates, and their respective successors and assigns. Notwithstanding the foregoing, the parties acknowledge that Developer may transfer the Property to another entity that may construct and commence operations at the Property and that Developer may assign this Agreement to such entity, and, if so assigned, such entity will assume, Developer's rights and obligations under this Agreement and any development agreement.

(d) Survival. All of the terms, conditions, covenants and provisions of Sections 5 and 6 are intended to survive termination of this Agreement.

(e) Waiver. No delay or omission by any of the parties, or their successors and/or assigns, to exercise any right or power accruing upon any

noncompliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party, or its successors and/or assigns, of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

(f) Force Majeure. Performance of the obligations of either party hereunder shall be suspended to the extent that such party is hindered or prevented from complying therewith because of labor disturbances, including strikes and lockouts, acts of God, pandemics, fires, storms, accidents or any cause whatsoever beyond the reasonable control of such party. Matters of Developer's finances shall not be considered a Force Majeure.

(g) Headings. The headings in this Agreement are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any affect its provisions.

(h) Nondiscrimination. Each party agrees that neither the Property nor any portion thereof shall be sold to, leased or used by any party in a manner to permit discrimination or restriction on the basis of race, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin, and that the development of and construction and operations on the Property shall be in compliance with all applicable laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

(i) No Personal Liability. Under no circumstances shall any City Common Council member, officer, official, director, member, partner or employee of the City or Developer have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

(j) Remedies. In the event of a party's default under this Agreement which is not cured within thirty (30) days after written notice thereof to the other party (or such longer time as may be reasonably required so long as a cure is being diligently pursued), the nondefaulting party shall have all rights and remedies available under law or equity with respect to said default, including but not limited to, the right to obtain specific performance.

All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies. Failure of a party to enforce any provision contained herein shall not be deemed a waiver of such party's rights to enforce such provision or any other provision in the event of a subsequent default.

(k) Notices. All notices, demands or other communications under this Agreement shall be sufficiently given and shall be deemed given when: [i] hand delivered, [ii] mailed by first-class mail, postage prepaid or [iii] sent by overnight courier with proper address as indicated below or such other address as may be designated by the party by written notice:

To the City: Melissa Pingel, City Administrator
City of Port Washington
100 West Grand Avenue
Port Washington, WI 53074

With a copy to: Christopher R. Smith
von Briesen & Roper, S.C.
411 East Wisconsin Avenue, Suite 1000
Milwaukee, WI 53202

To Developer: Aaron Bilyeu and Parin Patel
Red Granite DevCo LLC
712 Main Street, Suite 3100
Houston, TX 77002

With a copy to: Deborah C. Tomczyk
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

(l) Change of Address. Any party may change the address set forth above to which notices to such party shall be sent, by written notice to the other party given in accordance with this Agreement. At such time as a party assigns this Agreement to a third party, such party or third party shall send notice to the other party of the name and address to which notice to such third party shall be sent or delivered. Until such time as such notice is given, the assigning party shall be deemed to be the agent for such third party for purposes of receipt of service of notices.

(m) Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Any action to enforce or concerning this Agreement shall be brought in the Circuit Court for Ozaukee County, Wisconsin.

(n) Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign or governmental immunities under applicable law.

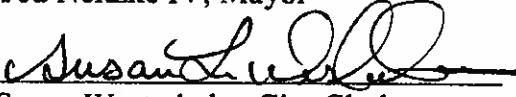
(o) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

(p) Recording of Agreement. This Agreement must be recorded with the Ozaukee County Register of Deeds upon annexation of the Property.

IN WITNESS, WHEREOF, the parties have executed this Agreement as of January 22, 2025.

CITY OF PORT WASHINGTON

BY 
Ted Neitzke IV, Mayor

BY 
Susan Westerbeke, City Clerk

DEVELOPER:

RED GRANITE DEVCO LLC


BY 
Its CEO

EXHIBIT A

Description of the Property

EXHIBIT A

Map of Project Site

