

MICHELLE "MICKI" UTSLER, COUNTY RECORDER  
MADISON IOWA

COMPUTER	✓
RECORDED	✓
COMPARED	✓

Prepared by: James E. Nervig, Attorney at Law, 550 - 39<sup>th</sup> Street, Suite 200, Des Moines, IA 50312 515-274-1450

### CONSENT TO LICENSE AGREEMENT

THIS CONSENT TO LICENSE AGREEMENT is made and entered into on this 29<sup>th</sup> day of March, 2005 by and between WAYNE E. THRAILKILL and ARDITH E. THRAILKILL, husband and wife, (the "Thrailkills"), MADISON COUNTY, IOWA (the "County"), a political subdivision of the state of Iowa, and MARTIN MARIETTA MATERIALS, INC. ("Martin Marietta"), a North Carolina corporation with business operations in the state of Iowa.

WHEREAS, a sixty-six (66) foot wide strip of land currently is being used and maintained by the County as an open road constituting a portion of 120<sup>th</sup> Street right-of-way, which strip of land is legally described as follows:

The South thirty-three (33) feet of the Northeast Quarter (NE ¼) of Section 17; the South thirty-three (33) feet of the Northwest Quarter (NW ¼) of Section 16, except the East 716 feet thereof; the North thirty-three (33) feet of the Southeast Quarter (SE ¼) of Section 17; and the North thirty-three (33) feet of the Southwest Quarter of Section 16, except the East 716 feet thereof; all of the foregoing being located in Township 77 North Range 28 West of the Fifth P.M., Madison Township, Madison County, Iowa

(hereinafter referred to as the "Subject Property"); and

WHEREAS, the Subject Property is contained within the middle of the area contained within the boundaries set forth in two Special Use Permits previously granted to Martin Marietta by the Madison County Board of Adjustment, which Permits are identified as Permit No. 1119 granted on October 20, 1988, and Permit No. 2448 granted on April 17, 2001; and

WHEREAS, the two Special Use Permits authorize Martin Marietta to conduct limestone quarrying operations within the areas described in the Permits; and

WHEREAS, Martin Marietta has requested the County to temporarily close the Subject Property as a public road for a period of ten (10) years and to grant Martin Marietta a license to use the Subject Property for limestone quarrying purposes under the terms of the said two Special Use Permits during the said ten (10) year period; and

✓*Supervisor*

WHEREAS, the Thrailkills own land immediately north of and adjoining the Subject Property; and

WHEREAS, the Thrailkills consent to the passage by the Board of Supervisors of a resolution temporarily closing the Subject Property as a public road and right-of-way for the proposed ten (10) year period; and

WHEREAS, the Thrailkills consent to the execution of a License Agreement ("the License Agreement"), substantially in the form attached as Exhibit "A" hereto, between the County and Martin Marietta, setting forth the terms of the grant of a license by the County to Martin Marietta to authorize the use of the Subject Property for limestone quarrying purposes under the terms of the said two Special Use Permits during the said ten (10) year period; and

WHEREAS, the Thrailkills agree to waive any rights, claims and objections that they, or either of them, may have to the proposed road closing and licensing arrangement, upon the terms hereinafter provided:

NOW, THEREFORE, IT IS AGREED BY THE THRAILKILLS, THE COUNTY AND MARTIN MARIETTA AS FOLLOWS:

1. Consent and Waiver. For good and valuable consideration delivered to the Thrailkills by Martin Marietta, receipt of which is hereby acknowledged by the Thrailkills, the Thrailkills hereby consent to the closing of the Subject Property as a public road and right-of-way for the proposed ten (10) year period, and to the the grant of a license by the County to Martin Marietta to authorize the use of the Subject Property for limestone quarrying purposes under the terms of the said two Special Use Permits during the said ten (10) year period as set forth in the License Agreement. The Thrailkills waive any rights, claims and objections that they, or either of them, may have to the proposed road closing and licensing arrangements, including, but not limited to, any claim that they may have to object to the re-opening and future use of the Subject Property as a public road and right-of-way after the termination of the License period.

2. Waiver of Right of First Refusal. In consideration of the foregoing, the Thrailkills, and each of them, hereby waive any rights of first refusal that they may have under Iowa Code Section 306.23 to make an offer to the County to enter an agreement to use the Subject Property upon the same terms and conditions proposed by Martin Marietta. The Thrailkills further waive any rights that they, or either of them, may have to receive notice under Iowa Code Section 306.23 or any other statute.

3. Miscellaneous.

- a. Words of any gender used in this Consent to License Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

- b. The laws of the State of Iowa shall govern the validity, performance and enforcement of this Consent to License Agreement, and it is agreed that the Iowa District Court of Madison County shall be the venue for any suit or action pertaining to this Consent to License Agreement.
- c. The Article headings appearing in this Consent to License Agreement have been inserted for the purpose of convenience and ready reference and do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the provisions to which they appertain.

IN WITNESS WHEREOF, the Thraillkills, the County and Martin Marietta have duly executed this License Agreement by themselves or by their duly authorized representatives.

Wayne E. Thraillkill  
Wayne E. Thraillkill

Ardith E. Thraillkill  
Ardith E. Thraillkill

STATE OF IOWA, COUNTY OF MADISON

This instrument was acknowledged before me on MARCH 29<sup>th</sup>, 2005,  
by Wayne E. Thraillkill and Ardith E. Thraillkill, husband and wife.

Michelle Utsler  
Notary Public

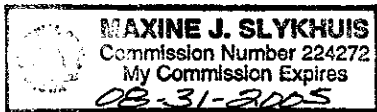


MARTIN MARIETTA MATERIALS, INC.

By: Robert C. Meskimen  
Robert C. Meskimen  
Senior Vice President

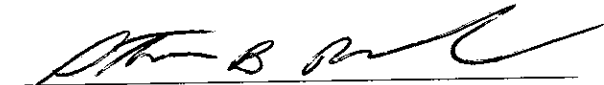
STATE OF IOWA, COUNTY OF Polk

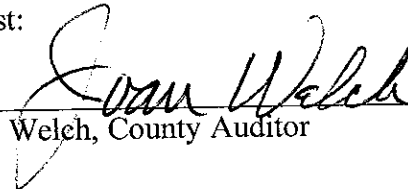
This instrument was acknowledged before me on March 28, 2005,  
by Robert C. Meskimen, as Senior Vice President of Martin Marietta Materials, Inc.



Maxine J. Slykhuis  
\_\_\_\_\_  
Notary Public

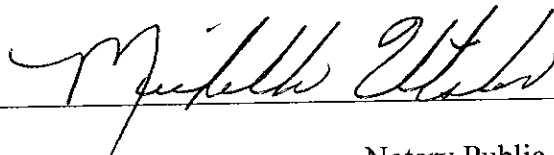
MADISON COUNTY, IOWA

By:   
Steve Raymond  
Chairperson, Board of Supervisors

Attest:   
Joan Welch, County Auditor

STATE OF IOWA, COUNTY OF MADISON

On this 29<sup>th</sup> day of MARCH, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steve Raymond and Joan Welch, to me personally know, who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of Madison, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Resolution No. SR 3-05A passed by Resolution of the Board of Supervisors on the 29th day of March, 2005; and the said Steve Raymond and Joan Welch acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

  
Notary Public



JIMBR:Jim Brick:Madison County:05.3.24. Consent License Thraikill.doc

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into on this 29<sup>th</sup> day of March, 2005, by and between MADISON COUNTY, IOWA (the "County"), a political subdivision of the state of Iowa, and MARTIN MARIETTA MATERIALS, INC. ("Martin Marietta"), a North Carolina corporation with business operations in the state of Iowa.

WHEREAS, a sixty-six (66) foot wide strip of land currently is being used and maintained by the County as an open road constituting a portion of 120<sup>th</sup> Street right-of-way, which strip of land is legally described as follows:

The South thirty-three (33) feet of the Northeast Quarter (NE ¼) of Section 17; the South thirty-three (33) feet of the Northwest Quarter (NW ¼) of Section 16, except the East 716 feet thereof; the North thirty-three (33) feet of the Southeast Quarter (SE ¼) of Section 17; and the North thirty-three (33) feet of the Southwest Quarter of Section 16, except the East 716 feet thereof; all of the foregoing being located in Township 77 North Range 28 West of the Fifth P.M., Madison Township, Madison County, Iowa

(hereinafter referred to as the "Subject Property"); and

WHEREAS, the Subject Property is contained within the middle of the area contained within the boundaries set forth in two Special Use Permits previously granted to Martin Marietta by the Madison County Board of Adjustment, which Permits are identified as Permit No. 1119 granted on October 20, 1988, and Permit No. 2448 granted on April 17, 2001; and

WHEREAS, the two Special Use Permits authorize Martin Marietta to conduct limestone quarrying operations within the areas described in the Permits; and

WHEREAS, Martin Marietta has requested the County to temporarily close the Subject Property as a public road for a period of no longer than ten (10) years and to grant Martin Marietta a license to use the Subject Property for limestone quarrying purposes under the terms of the said two Special Use Permits during the period the road is closed; and

WHEREAS, after a public hearing, and based on the report and recommendations of the County Engineer that the Subject Property is not necessary for use as a public road and right-of-way during the proposed closure period of no longer than ten (10) years, the Board of Supervisors has passed a resolution temporarily closing the Subject Property as a public road and right-of-way for the proposed period of no longer ten (10) years; and

WHEREAS, the County and Martin Marietta are in agreement that Martin Marietta should be authorized to use the Subject Property for the requested period of no longer than ten (10) years, subject to all of the terms and conditions hereinafter set forth:

NOW, THEREFORE, IT IS AGREED BY THE COUNTY AND MARTIN MARIETTA AS FOLLOWS:

1. Premises. In consideration of the obligation of Martin Marietta to pay the license fees as herein provided, and in consideration of Martin Marietta's covenant and agreement to honor and follow all of the other terms and conditions imposed on Martin Marietta herein, the County hereby grants to Martin Marietta a License only for the use of the Subject Property for limestone quarrying purposes for the term herein provided.

2. Term. This License is granted for the term of up to, but no longer than, ten (10) years, commencing on the date of this License Agreement set forth at the beginning hereof (the "Commencement Date"). Provided, however, that, during each of the final nine (9) years of the maximum ten (10) year term of this License, this License shall be subject to termination on the first day immediately following the anniversary of the Commencement Date, in the event that Martin Marietta fails to make the annual license fee installment that is due on the anniversary of the Commencement Date and which is applicable to the following License year, in accordance with the provisions of Section 5 hereof. In the event of such failure by Martin Marietta to timely make the annual license fee installment for the following License year, either the County or Martin Marietta shall have the right to terminate this License for the following License year, and all remaining License years, by delivery of written notice of termination to the other party. Provided, however, that Martin Marietta shall remain obligated to pay the full annual license fee to the County for the year following the termination of this License in the event (a) that Martin Marietta holds over in possession of the Subject Property during the License year immediately following the termination of this License, or (b) that Martin Marietta surrenders possession of the Subject Property prior to the commencement of the License year following the termination of this License without fully discharging its obligations to rehabilitate and restore the Subject Property in accordance with Section 6 hereof.

3. Possession. Martin Marietta shall be entitled to possession and use of the Subject Property on the first day of the term of this License and shall yield possession to the County on the date of expiration or termination of the term of this License.

4. Use. The use of the Subject Property by Martin Marietta shall be strictly limited to limestone quarrying only. In its use of the Subject Property, Martin Marietta shall be subject to all of the terms and conditions set forth in Special Use Permits No.

1119 and 2448. Martin Marietta shall not abandon or vacate the Subject Property during the term of this License, without the express written consent of the County Board of Supervisors.

5. License Fees. As consideration for the License granted to Martin Marietta to use the Subject Property, Martin Marietta covenants and agrees to pay license fees to the County in the amount of \$7,654.18 per year for each of the first eight (8) years of the term of this License, and \$15,308.36 per year for each of the last two (2) years of the term of this Lease. All such annual license fee installments shall be paid by Martin Marietta to the County in advance of the License year for which the annual installment is applicable. The first annual license fee installment of \$7,654.18 has been paid by Martin Marietta to the County, and the County hereby acknowledges receipt thereof. The next annual license fee installment of \$7,654.18, applicable to the second License year, shall be paid by Martin Marietta to the County on or before the first anniversary of the Commencement Date of this License. Each \$7,654.18 annual license fee installment for License years three through eight shall be paid by Martin Marietta to the County on or before the anniversary of the Commencement Date that constitutes the beginning of the applicable License year. Each \$15,308.36 annual license fee installment for License years nine and ten shall be paid by Martin Marietta to the County on or before the anniversary of the Commencement Date that constitutes the beginning of the applicable License year.

6. Rehabilitation and Restoration. Before surrendering possession of the Subject Property to the County at the end of the License term, Martin Marietta shall complete all action and work required to rehabilitate and restore the Subject Property for use as a public road and right-of-way. Martin Marietta shall rebuild 120<sup>th</sup> Street along its current path through the entire length of the Subject Property. The road shall be rebuilt to the current standards followed by the County for roads of the same type. All road rebuilding work by Martin Marietta shall be subject to inspection and approval by the County Engineer. At the time it surrenders possession of the Subject Property to the County at the end of the License term, Martin Marietta shall leave the Subject Property in an environmentally clean condition, free from contamination, and free from trash, scrap or other personal property. Martin Marietta shall seed the shoulders and slopes of the roadway.

7. Reclamation Bond. Prior to commencement of its mining on the Subject Property under the terms of this License, Martin Marietta shall post a Five Hundred Thousand Dollar (\$500,000.00) bond to secure its obligation to rehabilitate and restore the Subject Property for use as a public road under Section 6 hereof. This reclamation bond is in addition to any reclamation bond required for a mining permit under Iowa law.

8. Indemnity. Martin Marietta covenants with the County that Martin Marietta shall indemnify the County, and hold the County harmless, from any damage or liability of any kind or for any injury or death of a person or damage to property of Martin Marietta or any other person during the term of this License from any cause whatsoever related to the use, occupancy and enjoyment of the Subject Property by Martin Marietta



or any person claiming by, through or under Martin Marietta. Martin Marietta shall indemnify, defend, save and hold the County harmless from and against all losses, damages, injuries, claims, demands, actions, suits, judgments, decrees and expenses, including legal expenses, attorney fees and investigation costs of the County, of whatsoever nature, arising by reason of the use of, or operation on, the Subject Property by Martin Marietta and not caused by the act(s) or omission(s) of the County, or its agents or employees. Martin Marietta shall indemnify, defend, save and hold the County harmless from and against all losses, damages, claims, demands, actions, suits, judgments, decrees and expenses, including legal expenses, attorney fees and investigation costs of the County, of whatsoever nature, arising by reason of any damage to the person or any property of Martin Marietta, its agents, employees, invitees or customers, resulting from fire or any other casualty arising from the activities on the Subject Property by Martin Marietta and not caused by the act(s) or omission(s) of the County, or its agents or employees. This obligation of indemnify shall include payment by Martin Marietta of all reasonable attorneys' fees and investigations costs of the County and all other reasonable costs, expenses and liabilities from the first notice that any claim or demand is to be made or may be made.

9. Liability Insurance. Martin Marietta shall, at its expense, carry broad-form public liability and property damage insurance, covering both the County and Martin Marietta, as their interest may appear, against injury to person and property, including personal injury and loss of life sustained in or upon the Subject Property, with a combined single limit of at least Three Million Dollars (\$3,000,000.00). The proceeds of such insurance shall be payable first to the County to the extent of its liability, if any, and the balance to Martin Marietta. All policies of insurance required by this License shall be issued by insurance companies licensed to do business in the State of Iowa.

10. Real Estate Taxes and Assessments. Upon receipt of written notice or a tax bill from the County, Martin Marietta shall timely pay (i.e., before the date of delinquency) any and all taxes, assessments, water and sewer charges, and other governmental levies against the Subject Property, or the fixtures, furnishings, equipment and personal property located on the Subject Property, which become due and payable during the term of this License.

11. No Rock Crushing Plants or Batch Plants. Under no circumstances shall Martin Marietta conduct any batch or rock crushing plant operations on the Subject Property during the term of this License.

12. No Assignment. Martin Marietta shall not assign or transfer any of its rights or obligations under this License to any other person or entity, unless it receives prior written approval from the County for such assignment.

13. Compliance with Law. In using the Subject Property under the terms of this License, Martin Marietta shall comply with all applicable County, State and Federal laws, included, but not limited to, any hereinafter-enacted noise or air pollution regulations.

14. County's Remedies Upon Default. For purposes of this License Agreement, Martin Marietta shall be in "default" if any of the following events occurs:

- a. Martin Marietta fails to timely pay the County any installment of license fees when the same become due and such failure continues for ten (10) days after receipt of written notice thereof to Martin Marietta from the County; or
- b. Martin Marietta fails to perform or observe any other covenant, agreement or condition to be performed or kept by Martin Marietta under the terms and provisions of this License Agreement, and such failure continues for thirty (30) days after receipt of written notice thereof to Martin Marietta from the County or, if the default is of a nature that the same cannot practicably be cured within said thirty (30) day period and Martin Marietta shall not within said thirty (30) day period commence and be proceeding with due diligence and dispatch to cure and perform such default, covenant, agreement, or condition.

Upon the occurrence of an event of default, the County shall have the right, at its option, then or at any time thereafter and while such default shall continue, to re-enter and take complete and peaceful possession of the Subject Property and declare this License forfeited and the term thereof ended, and with or without process of law remove all persons therefrom. Martin Marietta in such event shall peacefully and quietly yield up and surrender the Subject Property to the County and execute and deliver to the County such instrument or instruments as will properly evidence termination of Martin Marietta's rights and interest under this License, and as may be required by the County. The foregoing rights granted to the County in the event of default by Martin Marietta shall be in addition to, and not in limitation of, any other rights that the County may have under the law, including, but not limited to, the rights of the County to recover all license fees due from Martin Marietta under Section 5 hereof and not paid, to seek specific performance of Martin Marietta's rehabilitation and restoration obligations under Section 6 hereof, and to make demand upon the reclamation bond under Section 7 hereof if rehabilitation and restoration is not performed.

15. Miscellaneous.

- a. Words of any gender used in this License Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- b. Failure of the County to insist, in one or more instances, upon strict performance of any term, covenant or condition of this License Agreement, or to exercise any option herein contained shall not be construed as a waiver, or a relinquishment for the future, of such term, covenant, condition or option, but the same shall continue and remain in full force and effect. The receipt by the County of any license fees with knowledge of a breach in any of the terms, covenants or conditions of the

License Agreement to be kept or performed by Martin Marietta shall not be deemed waiver of such breach, and the County shall not be deemed to have waived any provision of this License Agreement unless expressed in writing and signed by the County.

- c. The laws of the State of Iowa shall govern the validity, performance and enforcement of this License Agreement, and it is agreed that the Iowa District Court of Madison County shall be the venue for any suit or action pertaining to this License Agreement.
- d. The Article headings appearing in this License Agreement have been inserted for the purpose of convenience and ready reference and do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the provisions to which they appertain.

IN WITNESS WHEREOF, the County and Martin Marietta have duly executed this License Agreement by their duly authorized representatives.

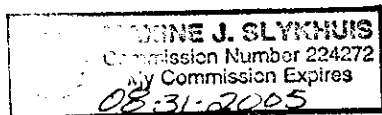
MARTIN MARIETTA MATERIALS, INC.

By: Robert C. Meskimen

Robert C. Meskimen  
Senior Vice President

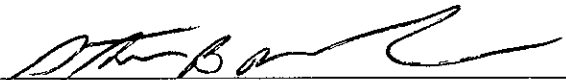
STATE OF IOWA, COUNTY OF Polk

This instrument was acknowledged before me on March 28, 2005, by Robert C. Meskimen, as Senior Vice President of Martin Marietta Materials, Inc.



Maxine J. Slykhuis  
Notary Public

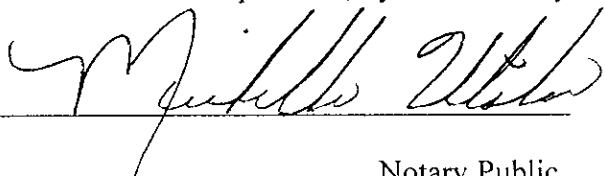
MADISON COUNTY, IOWA

By:   
Steve Raymond  
Chairperson, Board of Supervisors

Attest:   
Joan Welch, County Auditor

STATE OF IOWA, COUNTY OF MADISON

On this 29<sup>th</sup> day of MARCH, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steve Raymond and Joan Welch, to me personally know, who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of Madison, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Resolution No. SR 3-05A passed by Resolution of the Board of Supervisors on the 29<sup>th</sup> day of March, 2005; and the said Steve Raymond and Joan Welch acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

  
Notary Public

JIMBR:Jim Brick:Madison County:05.3.28.License Agreement.doc

