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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

Encroachment Permit

Type of Document

PREPARER INFORMATION: (name, address, phone number)

AT+T Corp
3450 Riverwood Pkwy, SE
Room 162-11
Atlanta, GA 30339 678-627-5342

TAXPAYER INFORMATION: (name and mailing address)

Not Applicable

RETURN DOCUMENT TO: (name and mailing address)

✓ AT+T Corp - Row Dept.
3450 Riverwood Pkwy, SE
Room 162-11
Atlanta, GA 30339

GRANTOR: (name)

American Telephone +
Telegraph Company

GRANTEE: (name)

Martin Marietta Materials, Inc

LEGAL DESCRIPTION: (if applicable)
See page:

West Half of Southeast Quarter
of Section 8, T77N, R28W of 5th P.M.
Madison County

Document or instrument of associated documents previously recorded:
(if applicable)

AFTER RECORDING, RETURN TO:

**AT&T Corp.
RIGHT OF WAY DEPT.
3450 Riverwood Parkway, S.E.
Room 162-11
Atlanta, GA 30339**

**Encroachment: Conveyor Belt/Road
Route: Chicago-Denver NexGen Link
24
Marker #: 112
County: Madison**

ENCROACHMENT PERMIT

THIS PERMIT is issued as of the 13th day of November, 2018 by *AT&T CORP., a.k.a. American Telephone & Telegraph Company* ("AT&T") to Martin Marietta Materials, Inc., having an address at 11252 Aurora Avenue, Des Moines, IA 50322. ("Permittee").

TERMS AND CONDITIONS

1. Purpose and Scope of Permit

AT&T hereby allows and permits Permittee the non-exclusive use of certain lands hereinafter described for the following purpose, subject to the conditions and stipulations herein set forth: To cross AT&T's Right of Way easement to install a Conveyor Belt and 2-way Road from upper and lower areas. Road will be 75 LF in width and 12 LF wide above ground conveyor within that west boundary with 50' multi directional roadway for load transport. There are no below ground appurtenances.

2. Encroachment Location(s)

The crossing of AT&T's cable by Martin Marietta Materials, Inc. (Permittee) on the property owned by Thrailkill-Smith LLC., at 1774 115th Street, Earlham, Iowa in Madison County, will be approximately 350 LF east of marker 112 where AT&T's active fiber is ranging between 4' to 4.5' in depth.

3. Risk of Entry

AT&T makes no warranty whatsoever as to physical conditions which exist now, or may exist hereafter, at said Encroachment Location(s) and Permittee accepts said Encroachment Location(s) "AS IS" and agrees to enter thereupon at Permittee's own risk.

4. Permittee's Duties

By accepting this Permit, Permittee agrees, without qualification or limitation:

- (a) to make no modifications or additions to its facilities at the Encroachment Location(s) without first obtaining AT&T's prior written consent;
- (b) to notify AT&T by telephone at 1-800 252-1133 forty-eight (48) hours prior to performing any construction, demolition or repairs at the Encroachment Location(s);
- (c) to not use at the encroachment location(s) any tool, equipment, or machinery capable of being operated within ten (10) feet of cable lines;
- (d) to perform construction, demolition, repair, modifications, additions and any other activities in compliance with all applicable laws and regulations and in a manner that does not interfere with the operations of AT&T;
- (e) to assume all risks of and relieve AT&T of any and all liability for loss of damage to property or facilities installed by it and any other financial loss sustained by it;
- (f) to indemnify, defend and hold harmless AT&T from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, settlement liabilities, costs and expenses (including, without limitation, interest, penalties, and reasonable attorneys' fees and disbursements) that may from time to time be suffered or incurred by, or asserted against AT&T because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, or for any financial loss of whatever nature, in any way arising out of or in connection with this Permit or activities undertaken pursuant to this Permit, whether caused by the acts, negligence or willful misconduct of Permittee, its agents, employees, representatives, contractors, permitted assigns, or those under Permittee's control or by failure to perform the covenants or conditions of this Permit. Permittee's obligations to indemnify and hold harmless shall survive any termination or abandonment of this Permit. For purposes of indemnifications set forth in this Permit, "AT&T" means AT&T, its affiliates, subsidiaries, parent, successors and assigns and its and their employees, directors, officers, agents, contractors and subcontractors;
- (g) to neither cause nor permit use of the rights herein granted by any other person except Permittee's lawful successors, and if Permittee is a utility company, any transferee of the utility system (or operating component of

a utility system) of which the Permittee's facilities at the Encroachment Location(s) are a part;

- (h) that AT&T retains all of its rights with respect to its property, right-of-way or easement. Specifically, AT&T retains the right to access its telecommunications cable to repair, maintain or augment its telecommunications network. Any damage to Permittee's facilities as a result of AT&T's exercise of its rights with respect to its property, right-of-way or easement shall be the sole responsibility of Permittee;
- (i) to not use, have present nor transport on or about the Encroachment Location(s) any hazardous or toxic materials, wastes or substances or any pollutants or contaminants ("Hazardous Substances"), without the prior express written consent of AT&T. If at any time during the term of this Permit, Permittee knows or has reason to believe that any Hazardous Substances have come, or will come, to be located upon, about, or underneath the Encroachment Location(s), then Permittee shall, as soon as reasonably possible, give verbal and written notice of that condition to AT&T. Permittee covenants to investigate, clean-up and otherwise remediate any release of such Hazardous Substances by Permittee, its agents, employees, representatives, contractors, permitted assigns, or those under Permittee's control at Permittee's cost and expense. Permittee shall notify AT&T prior to commencing any clean-up or remediation; and
- (j) notwithstanding any provision of this permit to the contrary, except as set forth in paragraph 4(f), in no event shall either party be liable to the other party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, including, but not limited to, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers or of any other third parties, occasioned by any cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence or strict liability.

5. Incompatible Facilities

This Permit is issued by AT&T and accepted by Permittee with the mutual belief that the facilities of each can exist at the Encroachment Location(s) in the form contemplated when this Permit was issued without disruption to the other. If at anytime for any reason Permittee's facilities are determined in AT&T's judgment to be incompatible with AT&T's then existing or then proposed facilities, Permittee agrees it shall cure any such incompatibility by modifying its facilities, by removing its facilities or by taking whatever other action which in AT&T's judgment is necessary.

6. Fee Title: Superiority of Prior Interest

If neither AT&T nor Permittee own fee simple title to the lands at the Encroachment Location(s), the authorization required by Permittee from the fee simple owner shall be obtained at Permittee's sole cost. In any judicial construction of this Permit, it shall be recognized that AT&T, by virtue of prior rights and prior possession and by virtue of this Permit, shall enjoy with respect to the Encroachment Location(s) rights superior to those of Permittee.

7. Cost

This permit is issued by AT&T and accepted by Permittee with the understanding that Permittee's use of the permission herein granted shall not result in any cost to AT&T. No claims for payment or performance shall be made of AT&T by Permittee and any expenses incurred by AT&T related to Permittee's exercise of the rights herein permitted shall be promptly reimbursed to AT&T by Permittee. In enforcing this permit against Permittee, AT&T shall be entitled to collect reasonable attorney's fees, court costs and interest on the principal sum.

8. Notices

Except as expressly otherwise provided, any demand, notice or other communication to be given to a party in connection with this Permit shall be given in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, or by commercial overnight delivery service addressed to the recipient as set forth below or to such other address or individual, as may be designated by notice given by the party to the other.

AT&T:

AT&T CORP.
3450 Riverwood Parkway, S.E.
Atlanta, GA 30339
Room 162-11
Right of Way Dept.

Permittee:

Martin Marietta Materials, Inc.
11252 Aurora Avenue
Des Moines, Iowa 50322

with a copy to:

AT&T CORP.
One AT&T Way
Bedminster, New Jersey 07921
Attention: Chief Counsel-Network Services

with a copy to:

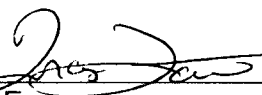
Thraikill-Smith, LLC
1774 115th Street
Earlham, Iowa 50072

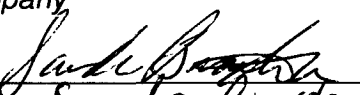
Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and if given commercial overnight delivery service on the date of receipt thereof.

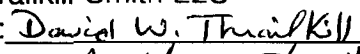
9. Successors and Assigns

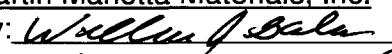
The permission hereby given shall be binding upon the heirs, administrators, executors and assigns of both parties.

IN WITNESS WHEREOF, the parties have executed this Permit as of the date first above set forth.

Concurred By: 
Name: Tracy Favors
Title: Right of Way Manager
Date: 11/13/18

AT&T CORP.
a.k.a. American Telephone & Telegraph
Company
By: 
Name: Sandra Braxton
Title: Senior Technical Project Manager
Date: 11/13/18

Consent of Property Owner:
Thrailkill-Smith LLC
By: 
Name: David W. Thrailkill
Title: MANAGER
Date: 11/7/18

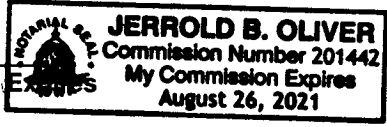
Permitee:
Martin Marietta Materials, Inc.
By: 
Name: WILLIAM J. GAHAN
Title: MIDWEST DIV. PRES
Date: 11/7/18

Acknowledgement

STATE OF Iowa)
COUNTY OF Madison) SS:

On this 5 day of Nov., 2018, before me personally appeared to me David W. Thraikill and _____ who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

Jerrold B. Oliver
Notary Public



My Commission Expires

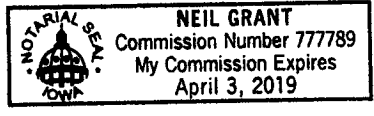
Acknowledgement

STATE OF Iowa)
COUNTY OF Polk) SS:

On this 7th day of November, 2018, before me personally appeared to me William J. Gahan and _____ who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

Neil Grant
Notary Public

4-3-2019
My Commission Expires



AT&T ACKNOWLEDGEMENT

STATE OF GEORGIA _____)
COUNTY OF Cobb _____) SS:

On this 13th day of November, 2018, before me, personally appeared Sandra Braxton to me known, who, being by me duly sworn, did depose and say that she is the Senior Technical Project Manager of the corporation described in, and which executed the foregoing instrument, and that she signed her name thereto by authority of the Board of Directors.

Carla Y. Jordan
Notary Public

4-18-21
My Commission Expires

