

**WHEN RECORDED, RETURN TO:**

Martin Marietta Materials, Inc.  
10170 Church Ranch Way, Suite 201  
Westminster, Colorado 80021  
Attn: James Sharn

**ACCESS AND EASEMENT AGREEMENT**

THIS ACCESS AND EASEMENT AGREEMENT (this "Agreement") is made and entered into effective this 3 day of July, 2014 (the "Effective Date"), by and between PAULETTE M. SEAWORTH AND WILLIAM O. SEAWORTH, each an individual (collectively, "Seaworth") and MARTIN MARIETTA MATERIALS, INC., a North Carolina corporation ("MMM"). Seaworth and MMM may be referred to herein individually as a "Party" and collectively as "Parties."

**RECITALS**

WHEREAS, Seaworth is the owner of that certain parcel of real property located at 2305 North Taft Hill Road, Fort Collins 80524, situated in Larimer County, State of Colorado as more particularly described on Exhibit A hereto (the "Easement Property").

WHEREAS, MMM desires an easement on and through the Easement Property for the installation of two structures that include (2) headgates, two (2) flumes, data loggers and all necessary and related structures (collectively, the "Headgates"), and for the right to use the Headgates, and the existing ditches, recharge basins and ponds on the Easement Property to divert water to which MMM is entitled from the Taylor & Gill Ditch and to measure, deliver, store, recharge and discharge such water for the benefit of MMM.

WHEREAS, MMM is the owner of certain real property also situated in Larimer County which property MMM conveyed to Seaworth pursuant to a general warranty deed dated the same date as this Agreement (the "Conveyance") in consideration of and conditioned on Seaworth's grant of the Easement (as defined below) and other rights provided for under this Agreement, along with certain other licenses and easements granted pursuant to separate documents.

WHEREAS, Seaworth is willing to grant MMM an easement over the Easement Property for the Headgates on the terms and conditions set forth herein to accomplish the foregoing.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the Conveyance and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby confessed and acknowledged, Seaworth and MMM agree as follows:

1. Grant of Easements. Seaworth, by these presents, does hereby declare, establish, create and grant to MMM non-exclusive easements (the "Easements") over, across, and under the Easement Property to divert, measure, monitor, convey, store, recharge and discharge water to

which MMM is entitled from the Taylor & Gill Ditch, now or in the future, for all purposes reasonably necessary to utilize such water including, without limitation, to meet the requirements of the Upper Poudre Substitute Water Supply Plan issued for the benefit of MMM, including any renewals thereof or amendments or additions thereto (the "SWSP"), and to use any of said water not needed for the SWSP to sell, lease, convey to third parties or augment stream depletions associated with other MMM operations. The rights included within the Easements include all things reasonably necessary or convenient to achieve the purposes of the Easements, including but not limited to the following: (a) to install, mark, operate, monitor, maintain, repair, replace and abandon in place or remove the Headgates; (b) to divert, convey, deliver, store, recharge and discharge such water through the existing ditches, recharge basins and ponds on the Easement Property (collectively, "Ditches and Ponds"); (c) to monitor and measure the flow of water through the Headgates and into and out of the Ditches and Ponds and to maintain, repair and improve the Ditches and Ponds as necessary or convenient for the exercise of the Easements; and (d) for access, ingress, and egress reasonably necessary or convenient to accomplish the foregoing.

2. Term of Easement. The term of this Agreement shall commence as of the Effective Date and shall end on the earlier to occur of (a) the termination of MMM's business operations at certain adjacent mines as determined by MMM and evidenced by MMM's written notice to Seaworth, or (b) twenty (20) years after the Effective Date (the "Easement Term"), unless earlier terminated pursuant to any other provision of this Agreement.

3. Installation and Maintenance of the Headgates.

3.1 The Headgates shall be installed by MMM, at MMM's sole cost and expense, subject to and in accordance with the covenants contained in this Agreement.

3.2 MMM shall maintain and repair the Headgates, at MMM's sole cost and expense, subject to and in accordance with the covenants contained in this Agreement.

3.3 Seaworth shall give notice to MMM at any time that it believes that maintenance or repair may be required on any portion or all of the Headgates.

4. Restoration Work. To the extent reasonably practicable and within a reasonable period of time after completion of construction-related work on the Headgates or the Ditches and Ponds, MMM agrees to restore the portions of the Easement Property disturbed by MMM's activities pursuant to this Agreement. Upon the end of the Easement Term, MMM shall not be required to remove any of the Headgates.

5. Covenants of MMM. In exercising the rights and responsibilities granted hereunder, MMM agrees to each of the following covenants:

5.1 In all actions undertaken on the Easement Property by MMM, all work shall be completed in a prompt, good and workmanlike manner, free of all liens (including mechanic's liens) and encumbrances on the Easement Property.

5.2 MM shall comply with all applicable federal, state and local laws, rules and ordinances in connection with its use of the Easement Property and shall obtain all

permits and approvals required by applicable governmental or quasi-governmental entities in connection with MMM's use of the Easement Property as permitted hereunder.

6. Covenants of Seaworth. In exercising the rights and responsibilities granted hereunder, Seaworth agrees to each of the following covenants:

6.1 Seaworth represents and warrants to MMM that Seaworth is the sole owner in fee simple of the Easement Property subject to the burden of the Easements and that Seaworth has full right, power and authority to enter into this Agreement.

6.2 Seaworth agrees that Seaworth will not alter the Easement Property, nor build, create, or construct, or permit to be built, created or constructed, any obstruction, building, fence, reservoir, engineering works or other structures or improvements over, under, on or across the Easement Property in a manner that could obstruct MMM's access to the Headgates or the Ditches and Ponds, without the prior written consent of MMM.

6.3 MMM shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of this Easements for the purposes stated herein, including but not limited to the rights of ingress and egress over and across the Easement Property for any and all purposes reasonably necessary or incidental to exercising MMM's rights hereunder. Seaworth agrees that, at MMM's option, MMM may pay and discharge any taxes, mortgages or liens existing, levied or assessed on or against the lands burdened by the Easements. If MMM exercises such option, MMM shall be subrogated to the rights of the party to whom payment is made, and in addition to its other rights, may reimburse itself out of the Management Payment defined in the separate Headgate Operating Agreement dated the same date as this Agreement or any other amounts otherwise payable to Seaworth from MMM.

7. Indemnification. MMM shall indemnify, protect, hold harmless and defend Seaworth from and against any and all claims, damages, losses, liens, costs, liabilities, fines, and expenses (including reasonable attorneys' fees and court costs), damage to or destruction of property, and death of or injury to any person, caused by, arising out of or resulting from the breach by MMM of any representation, warranty or covenant hereunder, or the exercise by MMM of the rights granted hereunder, or arising out of or in any way related to any claim made regarding MMM's use of the Easement Property or failure to comply with this Agreement, or any damage caused by MMM to the Easement Property, or mechanics liens filed against the Easement Property as a result of the actions or inactions of MMM, all except to the extent caused by the gross negligence or willful misconduct of Seaworth. MMM shall not be liable to Seaworth or Seaworth's agents, employees, officers, members, parties or shareholders for any claims, expenses, damages or loss of any kind or nature ensuing from or related to, directly or indirectly, whether known or unknown, the Easement Property and Seaworth shall indemnify MMM, its agents, employees, officers, members, parties or shareholders (collectively, the "MMM Parties") and hold the MMM Parties harmless for any damages, injuries, or losses to person or property caused, directly or indirectly, by Seaworth, Seaworth's agents, employees, customers, invitees or licensees, unless caused by the gross negligence or willful misconduct of the MMM Parties. In addition, Seaworth hereby waives and releases the MMM Parties from same except for claims arising

from the gross negligence or willful misconduct of the MMM Parties. The indemnities set forth in this Section 7 shall survive the termination of this Agreement and the termination of the Easement granted herein.

8. Insurance. MMM shall obtain, keep in force and maintain and cause each of MMM's employees, agents, contractors, subcontractors, assigns, lessees, licensees and agents (collectively, "MMM's Responsible Parties") to obtain, keep in force and maintain, at no cost to Seaworth, commercial general liability, combined single limit, bodily injury and property damage liability insurance policies (which insurance shall be primary and non-contributing) insuring MMM and Seaworth against all liability arising out of this Agreement (including MMM's contractual indemnity obligations hereunder) in an amount of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. In addition, MMM shall maintain and cause its contractors to maintain workers' compensation insurance in conformity with Colorado law. The foregoing policies shall all be written by insurance companies licensed to do business in Colorado and having general policyholder's ratings of at least "A" and a financial rating of at least "V" or greater in the most current Best's Insurance reports available on the date that the party obtains or renews the insurance policy (or, if such report is no longer published, comparable financial quality of insurance company). Upon request, MMM and its contractors shall provide certificates of such coverage or self-insurance letters evidencing the above described insurance.

9. Miscellaneous.

9.1 Easements to Run with Land. For the Easement Term, these Easements and all other covenants, agreements, rights and obligations created hereby shall run with the Easement Property, and shall be binding on all persons having or acquiring fee title to any portion of the Easement Property.

9.2 Liability; Authority. The individuals constituting Seaworth shall be jointly and severally liable for Seaworth's obligations and liabilities under this Agreement and MMM shall be entitled to rely on notice from any one party to bind Seaworth.

9.3 Counterparts. This Agreement may be executed in several counterparts, and each counterpart shall constitute one and the same Agreement binding on all Parties hereto, notwithstanding that all of the Parties are not signatory to an original or the same counterpart.

9.4 Successors and Assigns. This Agreement shall be binding on Seaworth's and MMM's respective successors and assigns.

9.5 Section Headings. The Section headings herein are inserted only for convenience and reference and shall in no way define, limit, or prescribe the scope or intent of any provisions of this Agreement.

9.6 Entire Agreement. This Agreement contains the entire agreement of the Parties hereto with respect to the subject matter hereof and no prior written or oral agreement shall have any force or effect or be binding upon the Parties hereto.

9.7 No Rights in Public. Nothing contained herein is intended to dedicate, grant, or reserve to the general public or the public at large or for any public purpose whatsoever, or to permit any member of the general public to acquire any right, by adverse possession, prescription, grant, dedication or otherwise, to possess, use or occupy the Easement Property, or any portion thereof, said grant, dedication, reservation, or prescriptive rights being expressly denied.

9.8 Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

9.9 Governing Law. The terms and provisions of this Agreement shall be construed under and governed by the laws of the state of Colorado and the Parties hereto consent to venue and jurisdiction in Colorado. If any action or proceeding shall be brought in any forum in any other location, then it shall, to the fullest extent permitted by law, be stayed upon initiation of any action or proceeding concerning this Agreement in the foregoing forum.

9.10 Waivers; Estoppels. No provision of this Agreement shall be deemed waived except by a writing executed by the Party against whom the waiver is sought to be enforced. No waiver of any provision of this Agreement shall be deemed a continuing waiver of such provision or deemed a waiver of any other provision of this Agreement. Each Party agrees within thirty (30) days after notice from the other Party to deliver a written statement which may be relied upon by the requesting Party or any transferee or mortgagee of the requesting Party's interest herein, setting forth whether or not the requesting Party has fully complied with the provisions hereof, and if not, setting forth in reasonable detail the nature of the violations. Failure to deliver such statement within such 30-day period shall be conclusive evidence that the requesting Party has fully complied with the provisions hereof as of the date the request was made.

9.11 Notices. All notices, statements, demands, requirements, or other communications and documents ("Communications") required or permitted to be given, served, or delivered by or to either Party or any intended recipient under this Agreement shall be in writing and shall be either delivered by hand, sent by a nationally recognized overnight courier service, or prepaid certified or registered mail, return receipt requested, to the Party or intended recipient at its address stated below, or sent by e-mail to the Party or intended recipient at its e-mail address stated below or to such other address as either Party may from time to time have notified the other Party as being its address for purposes of this Agreement to the exclusion of all previously applicable addresses. Such Communications shall be deemed to have been given, served, or delivered:

- (a) if delivered by hand, upon delivery;

- (b) if delivered by overnight courier, on the next business day following the date of delivery to the courier;
- (c) if sent by certified or registered mail, upon the date noted in the return receipt; or
- (d) if sent by e-mail, upon transmission and receipt of a delivery receipt.

The addresses and E-mail addresses of the Parties are as follows:

To MMM: Martin Marietta Materials, Inc.  
10170 Church Ranch Way, Suite 201  
Westminster, Colorado 80021  
Attn: James Sharn  
E-mail: james.sharnmartinmarietta.com

To Seaworth: William O. Seaworth & Paulette M. Seaworth  
2305 N. Taft Hill Road  
Fort Collins, Colorado 80524  
Attn: William O. Seaworth  
E-mail: Seaworth@frii.com

9.12 Amendment. This Agreement may not be amended or terminated except by a written instrument signed by the then-fee-owner of the Easement Property and MMM.

9.13 Default. If either Party hereto breaches any provision of this Agreement and fails to cure such breach within fourteen (14) days after written notice thereof, the non-breaching Party shall be entitled to any and all remedies, legal or equitable, which may be available including, without limitation, specific performance. All such remedies, including those set forth in this Agreement, shall be cumulative.

9.14 Attorney Fees. The prevailing Party in any action brought to enforce or interpret this Agreement shall be awarded its costs and reasonable attorney's fees, including reasonable attorney's fees for any appellate review.

9.15 Authority to Execute. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the Party on whose behalf it is so executing. Seaworth acknowledges that MMM may execute this Agreement by an authorized representative.

9.16 Recordation. MMM shall record this Agreement against the Easement Property in the appropriate jurisdiction. If this Agreement is terminated and either Party desires to record an instrument evidencing such termination, the Parties shall prepare, execute and record, at the expense of the requesting Party, any reasonable instrument necessary to release this Agreement of record.

**9.17 Disclaimer of Joint Venture.** This Agreement is not intended to create a joint venture, partnership or agency relationship between Seaworth and MMM, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

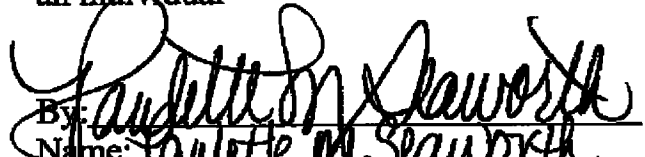
**9.18 Construction.** The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**[Signatures on Following Page]**


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the  
Effective Date.

**SEAWORTH:**

PAULETTE M. SEAWORTH,  
an individual

By:   
Name: Paulette M. Seaworth  
Title: Owner

WILLIAM O. SEAWORTH,  
an individual

By:   
Name: William O. Seaworth  
Title: Owner

**MMM:**

MARTIN MARIETTA MATERIALS,  
INC., a North Carolina corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Acknowledgments on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the  
Effective Date.

**SEAWORTH:**

PAULETTE M. SEAWORTH,  
an individual

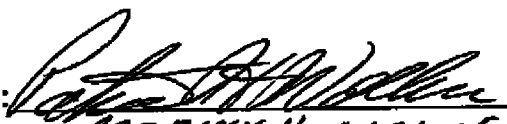
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WILLIAM O. SEAWORTH,  
an individual

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MMM:**

MARTIN MARIETTA MATERIALS,  
INC., a North Carolina corporation

By:   
Name: PATRICK H. WALKER  
Title: DIVISION PRESIDENT

[Acknowledgments on Following Page]

STATE OF COLORADO     }  
                                      } ss.  
COUNTY OF Jefferson }

The foregoing instrument was acknowledged before me this 27 day of June  
2014, by Patrick Walker as Division President of MARTIN  
MARIETTA MATERIALS, INC., a North Carolina corporation.

WITNESS my hand and official seal. **MONICA L. VICKERS**  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_  
STATE OF COLORADO  
NOTARY ID 20034011009

MY COMMISSION EXPIRES JUNE 10 2015

Notary Public Monica L. Vickers

STATE OF COLORADO     }  
                                      } ss.  
COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2014, by PAULETTE M. SEAWORTH, an individual.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

Notary Public \_\_\_\_\_

STATE OF COLORADO     }  
                                      } ss.  
COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2014, by WILLIAM O. SEAWORTH, an individual.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

Notary Public \_\_\_\_\_

STATE OF COLORADO    }  
  } ss.  
COUNTY OF \_\_\_\_\_}

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2014, by \_\_\_\_\_ as \_\_\_\_\_ of MARTIN  
MARIETTA MATERIALS, INC., a North Carolina corporation.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

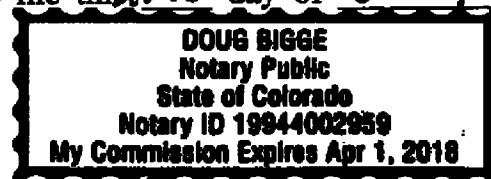
Notary Public \_\_\_\_\_

STATE OF COLORADO    }  
  } ss.  
COUNTY OF Larimer }

The foregoing instrument was acknowledged before me this 2nd day of July  
2014, by PAULETTE M. SEAWORTH, an individual.

WITNESS my hand and official seal.

My commission expires: 4-1-2018



Notary Public Doug Bigge

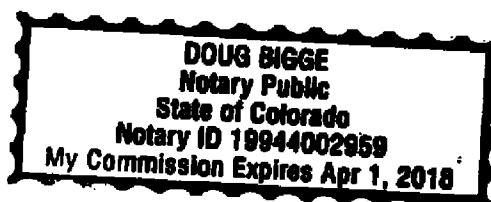
STATE OF COLORADO    }  
  } ss.  
COUNTY OF Larimer }

The foregoing instrument was acknowledged before me this 2nd day of July  
2014, by WILLIAM O. SEAWORTH, an individual.

WITNESS my hand and official seal.

My commission expires: 4-1-2018

Notary Public Doug Bigge



**EXHIBIT A**  
**to**  
**Access and Easement Agreement**  
**Legal Description of Easement Property**

A TRACT OF LAND LOCATED IN THE EAST HALF AND SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6<sup>TH</sup> P.M., COUNTY OF LARIMER, STATE OF COLORADO, BEING ALL OF THAT TRACT OF LAND DESCRIBED IN A QUIT CLAIM DEED DATED OCTOBER 11, 2000 AT RECEPTION NUMBER 2000070430, LARIMER COUNTY CLERK AND RECORDER'S OFFICE, WITH ADDITIONAL LAND DEDICATED IN THIS PLAT, THE PARCEL ALTOGETHER IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33 AS BEARING N00°26'21"W, (PREVIOUSLY RECORDED AS N00°18'35"W, A DIFFERENCE OF 00°07'46") WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO: COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 33, THENCE ALONG SAID EAST LINE N00°26'21"W, 1327.73 FEET (PREVIOUSLY RECORDED AS N00°17'35"W, 1327.75) TO THE NORTH SIXTEENTH CORNER COMMON TO SECTIONS 33 AND 34; THENCE ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID NORTHEAST QUARTER, S89°49'54"W, 1396.77 FEET (PREVIOUSLY RECORDED AS S89°49'20"W) TO THE POINT OF BEGINNING; THENCE S00°26'21"E, 1491.81 FEET; THENCE S89°54'45"W, 650.59 FEET; THENCE S05°41'51"E, 680.73 FEET (PREVIOUSLY RECORDED AS S05°34'05"E); THENCE S12°27'36"E, 261.36 FEET (PREVIOUSLY RECORDED AS S12°19'50"E); THENCE S21°22'22"E, 228.38 FEET (PREVIOUSLY RECORDED AS S21°14'36"E); THENCE S08°07'46"E, 5.88 FEET (PREVIOUSLY RECORDED AS S08°00'00"E, 9.95 FEET) TO THE SOUTH LINE OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 33; THENCE ALONG SAID SOUTH LINE S89°55'42"W, 476.54 FEET (PREVIOUSLY RECORDED AS S89°55'52"W); THENCE N00°08'01"W, 146.04 FEET (PREVIOUSLY RECORDED AS N00°00'15"W) TO A POINT ON THE CENTERLINE OF THE CACHE LA POUDDRE RIVER; THENCE ALONG SAID CENTERLINE N67°57'40"W, 409.53 FEET (PREVIOUSLY RECORDED AS N67°49'55"W); AND AGAIN N56°11'50"W, 646.62 FEET (PREVIOUSLY RECORDED AS N56°04'05"W); AND AGAIN N44°50'45"W, 290.54 FEET (PREVIOUSLY RECORDED AS N44°43'00"W); AND AGAIN N17°19'35"W, 464.76 FEET (PREVIOUSLY RECORDED AS N17°11'50"W, 463.78 FEET) TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE ALONG SAID NORTH LINE N89°48'44"E, 928.41 FEET (PREVIOUSLY RECORDED AS N89°51'20"E, 926.57 FEET) TO THE CENTER QUARTER CORNER OF SAID SECTION 33; THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 33 N00°07'31"W, 1328.61 FEET

(PREVIOUSLY RECORDED AS N00°00'14"W, 1326.22 FEET) TO THE NORTH SIXTEENTH CORNER OF SAID SECTION 33; THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID NORTHEAST QUARTER, N89°49'54"E, 1242.74 FEET (PREVIOUSLY RECORDED AS N89°49'20"E, 940.73 FEET) TO THE POINT OF BEGINNING, LESS AND EXCEPTING THAT PROPERTY DESCRIBED IN QUITCLAIM DEED RECORDED SEPTEMBER 17, 2004 AT RECEPTION NO. 20040091779.