## CONSENT TO TRANSFER

This Consent to Transfer (this "**Consent**") is dated as of September _, 2024, for reference purposes only, by and among the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**") operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), Martin Marietta Northern California Aggregates, LLC, a Delaware limited liability company, formerly known as Hanson Aggregates Mid-Pacific, Inc., a Delaware corporation ("**Tenant**"), HBMA Holdings LLC, a Delaware limited liability company and Lehigh Southwest Cement Company, a California corporation (collectively, "**Seller**") and Martin Marietta Materials, Inc., a North Carolina corporation ("**Buyer**").

## RECITALS

**A.** Port and Tenant, as Hanson Aggregates Mid-Pacific, Inc., a Delaware Corporation, entered into that certain Lease Agreement L-12839, dated October 6, 1999, as amended by the First Amendment dated October 10, 2001, the Second Amendment dated February 25, 2004, the Third Amendment dated January 11, 2005, and the Fourth Amendment dated March 21, 2006, relating to certain premises located at Pier 92 (as amended, "**Lease L-12839**") and Lease Agreement L-13002, dated August 26, 2001, as amended by the First Amendment dated July 7, 2003, relating to certain premises located at Pier 94 (as amended, "**Lease L-13002**" and, collectively with Lease L-12839, the "**Leases**"), in San Francisco, California (collectively, the "**Premises**"), as more particularly described in the Leases.

**B.** Seller and Buyer entered into an agreement, dated May 23, 2021 (the "**Transaction Agreement**"), which can be found at https://www.sec.gov/Archives/edgar/data/916076/000095015721000559/ex2-1.htm, whereby Buyer agreed to purchase and Seller agreed to sell all of Seller's equity interests in Tenant to Buyer (the "**Transaction**"), which Transaction closed on October 1, 2021 (the "**Transfer Date**"). Buyer assumed all obligations of Tenant under the Leases pursuant to the Transaction Agreement. Seller and Buyer did not obtain Port's consent to the sale of Tenant's interests in the Leases prior to the Transfer Date.

**C.** Buyer and Seller now request Port's retroactive consent to the Transaction, and Port has agreed to consent, on the terms and conditions set forth herein.

**D.** Tenant has provided Port the Tenant Estoppel Certificates in the form attached hereto as ***Exhibit A***.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual agreements and covenants hereinafter set forth, Port, Buyer, Seller, and Tenant agree as follows:

### 1. LEASE.

The Tenant shall continue to be bound by all of the terms, covenants, conditions, provisions and agreements of the Leases. Neither the Transaction Agreement nor this Consent shall be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Leases.

### 2. NO RELEASE OR WAIVER.

Neither the Transaction Agreement nor this Consent shall: (a) release or discharge the Tenant from any liability, whether past, present or future, under the Leases (including but not limited to the payment of Rent and any indemnification, hold harmless or exculpation obligations); or (b) be construed to waive any breach by Tenant of the Leases, or any of Port's rights as the landlord thereunder, or to enlarge or increase Port's obligations thereunder. Notwithstanding the foregoing, the Parties agree that upon payment of the transfer fee described in Section 9 below, Tenant's, Seller's, and Buyer's obligation to pay a transfer fee related to the Transaction will be deemed satsfied. Tenant and Buyer shall be and continue to be liable for the payment of all bills rendered by Port, if any, for charges incurred by the Tenant for services and materials supplied to the Premises from and after the Transfer Date. Seller acknowledges that Port need not give any notice to Seller before amending or terminating the Leases or entering into any new leases for the Premises.

**3. NO FURTHER CONSENT.**

Neither the Transaction Agreement nor this Consent shall: (a) operate as a consent or approval by Port to any of the terms, covenants, conditions, provisions or agreements of the Transaction Agreement, and Port shall not be bound thereby, or (b) be construed as a consent by Port to any further transfer by Seller, Buyer, or Tenant of the Leases, it being clearly understood that this Consent shall not in any way be construed to relieve Seller, Buyer, or Tenant of the obligation to obtain Port's prior written consent to any further assignment or transfer. Notwithstanding the foregoing, provided there was no transfer of Tenant's membership interests in connection with the conversion, Port acknowledges that Tenant's conversion to Martin Marietta Northern California Aggregates, LLC, a Delaware limited liability company, is not an assignment or transfer or event that requires Port's consent. In the event of any conflict between the terms of this Consent and the terms contained in the Transaction Agreement, the terms of this Consent shall prevail.

**4. REPRESENTATION AND WARRANTY BY SELLER AND BUYER.**

Seller, as to the period prior to the Transfer Date, and Buyer, from and after the Transfer Date, hereby represent and warrant that, (i) to the best of Seller's knowledge, Tenant was not in default or in breach of the Leases prior to the Transfer Date, nor had Tenant committed an act or failed to act in such a manner which, with the passage of time or notice or both, would have resulted in a default or breach of the Leases prior to the Transfer Date; (ii) to the best of Buyer's knowledge, Tenant is not in default or in breach of the Leases, nor has Tenant committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Leases; (iii) Seller is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing; and (iv) Buyer is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing. The representations in this Section and in the Tenant Estoppel Certificate provided by Tenant attached hereto as ***Exhibit A*** are material and Port would not have given its consent absent such representations.

**5. NO REPRESENTATION OR WARRANTY BY PORT.**

Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

**6. INDEMNITY AND EXCULPATION.**

Notwithstanding any provision to the contrary in the Transaction Agreement, Buyer and Tenant agree and acknowledge that Tenant continues to be bound by the indemnification and exculpation provisions of the Leases. The obligation of Tenant under this Section 6 shall survive any termination or expiration of the Leases. Buyer, Seller, and Tenant each covenant and agree that Port and City shall not be responsible for or liable for, and, to the fullest extent allowed by law, each waive all rights against City, Port and their agents and release City, Port and their agents from any and all losses or liabilities relating to the Transfer, this Consent or any disputes that may exist between Buyer, Seller, and Tenant relating to the Leases or the Premises.

Buyer and Tenant understand and expressly accept and assume the risk that any facts concerning the claims released in this Consent might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Consent shall remain effective. Therefore, with respect to the claims released in this Consent, Buyer and Tenant waive any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Buyer and Tenant specifically acknowledge and confirm the validity of the release made above and the fact that Buyer and Tenant were represented by counsel who explained the consequences of the release at the time this Consent was made, or that Buyer and Tenant had the opportunity to consult with counsel, but declined to do so.

**7. WAIVER OF RELOCATION.**

To the extent allowed by applicable Law, Buyer and Tenant hereby waive any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

**8. INSURANCE.**

Notwithstanding any provision to the contrary in the Transaction Agreement, Tenant, shall, at Tenant's expense, with respect to the Premises, secure and keep in force during the term of the Leases such insurance as required of tenant under the Leases. Without limiting the generality of the immediately preceding sentence, such liability policy or policies of insurance shall name as additional insureds by written endorsement "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR DIRECTORS, COMMISSIONERS, OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES**", shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under the Leases, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability. A certificate evidencing such insurance shall be delivered to Port promptly after the date hereof. Tenant additionally acknowledges Port's absolute right to demand increased coverage to amounts consistent with the type of Tenant's business activities on the Premises.

Port and Tenant hereby mutually waive any claim against the other and its agents for any loss or damage to any of their property located on or about the Premises and the Project that is caused by or results from perils covered by property insurance carried by the respective parties, to the extent of the proceeds of such insurance actually received with respect to such loss or damage, whether due to the negligence of the other party or its agent(s). Each party shall immediately notify its insurer, in writing, of these mutual waivers and have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers.

**9. TRANSFER FEE.**

Pursuant to Section 21.4 of the Leases, Tenant shall pay Port a transfer fee in the amount of Nine Hundred Five Thousand Five Hundred Ninety-One and 48/100 Dollars ($905,591.48) on or prior to the effective date of this Consent.

**10. NOTICES.**

As of the Effective Date of this Consent, Seller's, Buyer's, and Tenant's addresses for delivery of notices are:

| Buyer: | Seller: | Tenant: |
| --- | --- | --- |
| ______________________________ | ______________________________ | ______________________________ |
| ______________________________ | ______________________________ | ______________________________ |
| ______________________________ | ______________________________ | ______________________________ |

**11. MISCELLANEOUS.**

**(a)** This Consent may be executed in counterparts.

**(b)** This Consent shall be governed by and construed in accordance with the laws of the State of California and the San Francisco Charter. In the event of a conflict between the terms and provisions of this Consent and the Transaction Agreement, the Consent shall control. Terms not defined in this Consent shall have the same meanings as in the Leases.

**(c)** The terms and provisions of this Consent shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**(d)** If any one or more provisions in this Consent shall be invalid, illegal or unenforceable for any reason, the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**(e)** This Consent may not be modified or amended except by a writing executed by all parties to the Consent.

**12. EFFECTIVE DATE.**

Subject to Port Commission [and Board ]approval, the Effective Date of this Consent is the date on which the Port fully executes and delivers this Consent.

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The execution of this Consent by Buyer, Seller, and Tenant shall evidence Buyer's, Seller's, and Tenant's joint and several confirmation of the foregoing conditions, and of their agreement to be bound thereby and shall constitute Buyer's, Seller's, and Tenant's acknowledgement that it has received a copy of the Leases.

***Port:***

**CITY AND COUNTY OF SAN FRANCISCO**
operating by and through the
**SAN FRANCISCO PORT COMMISSION**

By: ________________________
Scott Landsittel
Deputy Director, Real Estate and Development
Date: ________________________

***Buyer:***

**HANSON AGGREGATES MID-PACIFIC, INC.,**
a Delaware corporation

By: ________________________
Name: ________________________
Title: ________________________
Date: ________________________

***Seller:***

**HBMA HOLDINGS, LLC,**
a Delaware limited liability company

By: ________________________
Name: Carol Lowry
Title: Vice President and Secretary
Date: ________________________

***Tenant:***

**MARTIN MARIETTA NORTHERN CALIFORNIA AGGREGATES, LLC,**
a Delaware limited liability company

By: ________________________
Name: ________________________
Title: ________________________
Date: ________________________

**APPROVED AS TO FORM:**
**DAVID CHIU**, City Attorney

By: ________________________________
A. Mathai-Jackson
Deputy City Attorney

Prepared By: Demetri Amaro, Maritime Business Development Manager_____________(initial)

# **EXHIBIT A**

## **FORM OF TENANT ESTOPPEL CERTIFICATE**

The undersigned, ___________________________________, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the "**Property**"), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION** ("**Port**") the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of __________, 20__, between the undersigned and Port, covering approximately _____ square feet of the Property (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except by:

3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.

4. That the commencement date under the Lease was __________, 20__, the expiration date of said Lease is __________, 20___.

5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is $__________.

6. The security deposit held by Port under the terms of the Lease is $__________ and Port holds no other deposit from Tenant for security or otherwise.

7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.

8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.

9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.

10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.

11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, [Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____________, 20___.

[Name of Tenant]

By:

Name:

Title:

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