

## **ASSIGNMENT AND AMENDATORY AGREEMENT**

**THIS ASSIGNMENT AND AMENDATORY AGREEMENT**, made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and **MARTIN MARIETTA MATERIALS, INC.**, a North Carolina corporation with an address of 1675 Broadway, Suite 1200, Denver, Colorado, 80202, ("Contractor") and **LAFARGE NORTH AMERICA, INC.** a Maryland corporation with an address of 1650 Broadway, Suite 2090, Denver, Colorado, 80202, (former "Contractor"), hereinafter referred to as collectively referred to as (the "Parties").

### **RECITALS:**

**WHEREAS**, the City and Lafarge North America, Inc. previously entered into an Agreement executed December 29, 2011, to secure 9<sup>th</sup> Avenue, Lincoln to Ogden Street pavement rehabilitation services; and

**WHEREAS**, the Parties mutually desire to amend the Agreement to assign the Agreement to Martin Marietta Materials, Inc.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties hereto mutually agree as follows:

**1.** Martin Marietta Materials, Inc. agrees to be bound by and perform the Agreement in accordance with the conditions of the Agreement. Martin Marietta Materials, Inc. also assumes all obligations and liabilities that Lafarge North America, Inc., had under the Agreement as if Martin Marietta Materials, Inc. was the original party to the Agreement.

**2.** Martin Marietta Materials, Inc. ratifies all previous actions taken by Lafarge North America, Inc. with respect to the Agreement, with the same force and effect as if the action had been taken by Martin Marietta Materials, Inc.

**3.** The City Recognizes Martin Marietta Materials, Inc. as Lafarge North America, Inc.'s successor in interest in and to the Agreement and consents to the assignment of the Agreement from Lafarge North America, Inc. to Martin Marietta Materials, Inc., as if Martin Marietta Materials, Inc. was the original party to the Agreement.

**4.** All payments and reimbursement made by the City to Lafarge North America, Inc. under the Agreement shall be considered to have discharged the City's obligations under those parts of the Agreement.

5. The Parties hereby acknowledge that the Contractor previously referred to herein as Lafarge North America, Inc., Inc. shall now be referred to as Martin Marietta Materials, Inc., and further the parties hereby agree to assign and transfer all responsibilities and obligations of the Contractor under the Agreement from Lafarge North America, Inc. to Martin Marietta Materials, Inc. As such, the term “Contractor” shall henceforth, refer to Martin Marietta Materials, Inc.,

6. A Certificate of Insurance for Martin Marietta Materials, Inc. is hereby attached as **Exhibit A**.

7. A Performance and Payment Bond for Martin Marietta Materials, Inc. is hereby attached as **Exhibit B**.

8. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: PWADM-201102206-01

Contractor Name: MARTIN MARIETTA MATERIALS INC

By: [Signature]

Name: Ryan Yech  
(please print)

Title: General Manager  
(please print)

ATTEST: [if required]

By: [Signature]

Name: Andsee Matheson  
(please print)

Title: Manager, Construction Credits & Contracts  
(please print)





**CITY AND COUNTY OF DENVER  
DEPARTMENT OF PUBLIC WORKS**

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned Martin Marietta Materials, Inc., 2710 Wycliff Road, Raleigh, NC 27607 a corporation organized and existing under and by virtue of the laws of the State of North Carolina, hereafter referred to as the "Contractor", and Liberty Mutual Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, and authorized to transact business in the State of Colorado, as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", in the penal sum of Nine Hundred Twenty Nine Thousand Five Hundred Forty Seven Dollars and Sixty Cents (\$929,547.60), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden Contractor has entered into a written contract with the aforesaid City for furnishing all labor and tools, supplies, equipment, superintendence, materials and everything necessary for and required to do, perform and complete the construction of CONTRACT NO. 201102206 - 9TH AVENUE LINCOLN TO OGDEN PAVEMENT REHABILITATION, Denver, Colorado, and has bound itself to complete the project within the time or times specified or pay liquidated damages, all as designated, defined and described in the said Contract and Conditions thereof, and in accordance with the Plans and Technical Specifications therefore, a copy of said Contract being made a part hereof;

NOW, THEREFORE, if the said Contractor shall and will, in all particulars well and truly and faithfully observe, perform and abide by each and every Covenant, Condition and part of said Contract, and the Conditions, Technical Specifications, Plans, and other Contract Documents thereto attached, or by reference made a part thereof and any alterations in and additions thereto, according to the true intent and meaning in such case, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect;

PROVIDED FURTHER, that if the said Contractor shall satisfy all claims and demands incurred by the Contractor in the performance of said Contract, and shall fully indemnify and save harmless the City from all damages, claims, demands, expense and charge of every kind (including claims of patent infringement) arising from any act, omission, or neglect of said Contractor, its agents, or employees with relation to said work; and shall fully reimburse and repay to the City all costs, damages, and expenses which it may incur in making good any default based upon the failure of the Contractor to fulfill its obligation to furnish maintenance, repairs or replacements for the full guarantee period provided in the Contract Documents, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if said Contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools or equipment used or performed in the prosecution of work provided for in the above Contract and that if the Contractor will indemnify and save harmless the City for the extent of any and all payments in connection with the carrying out of such Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

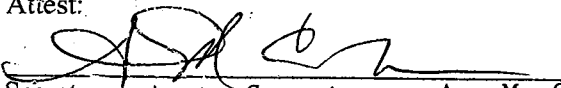
PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, gasoline, lubricating oils, fuel oils, grease, coal, or any other supplies or materials used or consumed by said Contractor or its subcontractors in performance of the work contracted to be done, or fails to pay any person who supplies rental machinery, tools or equipment, all amounts due as the result of the use of such machinery, tools or equipment in the prosecution of the work, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to contracts with others in connection with this project, or the work to be performed thereunder, or the Technical Specifications and Plans accompanying the same, shall in any way affect its obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or contracts, or to the work, or to the Technical Specifications and Plans.

IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this 26th day of January, 2012

**Martin Marietta Materials, Inc.,**  
Contractor

Attest:

  
Secretary Asst. Secretary - Ann M. Connick

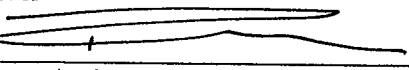
By:   
Byron Creech, Assistant Treasurer

**Liberty Mutual Insurance Company**  
Surety

By:   
Attorney-In-Fact, Rebeca L. Gomez Porras

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond).

APPROVED AS TO FORM:  
Attorney for the City and County of  
Denver

By:   
Assistant City Attorney

APPROVED FOR THE CITY AND COUNTY  
OF DENVER

By:   
MAYOR

By:   
MANAGER OF PUBLIC WORKS

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint
BYRON CREECH, TODD CRUMP, REBECA L. GOMEZ PORRAS, KRISTY W. KRETZSCHMAR, ALL OF THE CITY OF RALEIGH, STATE OF NORTH CAROLINA

each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWENTY FIVE MILLION AND 00/100 DOLLARS (\$ 25,000,000.00) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 28th day of February 2011

LIBERTY MUTUAL INSURANCE COMPANY

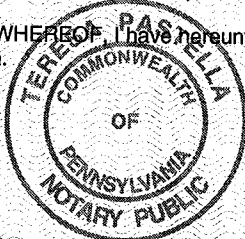
By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 28th day of February, 2011, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2013
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 23rd day of January 2012



By David M. Carey
David M. Carey, Assistant Secretary

currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



**PERFORMANCE AND PAYMENT BOND  
SURETY AUTHORIZATION**

FAX NUMBER: 720-913-3183  
TELEPHONE NUMBER: 720-913-3267

Assistant City Attorney  
201 W. Colfax Ave. Dept 1207  
Denver, Colorado 80202

RE: Liberty Mutual Insurance Company

Contract No: 201102206  
Project Name: 9<sup>th</sup> Ave. Lincoln to Odgen Pavement Rehabilitation  
Contract Amount: \$929,547.00  
Performance and Payment Bond No.: 016044537

Dear Assistant City Attorney,

The Performance and Payment Bonds covering the above captioned project were executed by this agency, through Liberty Mutual Insurance Company insurance company, on January 26, 2012.

We hereby authorize the City and County of Denver, Department of Public Works, to date all bonds and powers of attorney to coincide with the date of the contract.

If you should have any additional questions or concerns, please don't hesitate to give me a call at 919-510-4746.

Thank you.

Sincerely,



Rebeca L. Gómez Porrás  
Attorney-In-Fact

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each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWENTY FIVE MILLION AND 00/100..... DOLLARS (\$ 25,000,000.00.....) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

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LIBERTY MUTUAL INSURANCE COMPANY

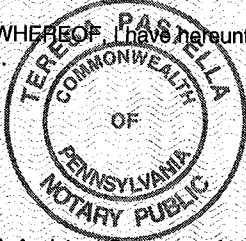
By Garnet W. Elliott, Assistant Secretary



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COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
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VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 26th day of January, 2012.



By David M. Carey, Assistant Secretary

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