

TEMPORARY USE AGREEMENT

AUG 29 2023

Reference Project Number - ABR# 423002 US 281 Jack CountyVANESSA JAMES, County Clerk
JACK COUNTY, TEXAS

DEPUTY

THIS TEMPORARY USE AGREEMENT (this "Agreement") is made and entered into this 7th day of August 2023, by and between the County of Jack ("Grantor"), with an address of 100 Main Street, Suite 206, Jacksboro, Texas 76458, and Rigid Constructors, LLC. (collectively, "Grantee"), with an address of 3861 Ambassador Caffery Pkwy, Suite 175, Lafayette, LA 70503.

WITNESS:

WHEREAS, Grantor is the owner of that specific real property legally described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Grantee has requested (subject to the terms of this Agreement) to temporarily utilize the Property for constructing and utilizing a lime plant to support the Texas Department of Transportation Construction Project of US 281 Super 2 from the Palo Pinto County Line to SH 199, approximately 9.23-miles, which will pass through the community of Perrin, TX. (Collectively, the "Permitted Use");

WHEREAS, Grantor is willing, subject to the terms and conditions hereof, to provide Grantee said right to utilize the Property for the Permitted Use only.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which consideration is mutually acknowledged and the other promises, covenants, and agreements from now on set forth and in furtherance of the understanding of the parties, it is agreed as follows:

1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

2. Use of the Property.

(a) Subject to the terms of this Agreement, commencing on the Commencement Date (defined below) and terminating on the Termination Date (described below), Grantor provides to Grantee only a temporary non-exclusive right to utilize the Property solely for the Permitted Use. The Grantor has the right to delineate the specific area on the Property that may be used.

(b) Grantee shall not construct any improvements in or on the Property nor use the Property for any different purposes than the Permitted Use without the prior written consent of Grantor, which consent may be withheld in Grantor's sole and absolute discretion.

(c) This right to utilize the Property for the Permitted Use: (i) shall not attach to the Property; (ii) shall not be construed as a license, easement, lease, or any other encumbrance against the Property; (iii) does not confer upon Grantee any interest in the Property or real property rights whatsoever; and (iv) is non-exclusive, and Grantor reserves the right to utilize and allow others to utilize the Property simultaneously. Upon the Termination Date or early termination of this Agreement, Grantee shall restore the Property to its status at the Commencement Date.

3. Term. The term of this Agreement (the "Term") shall commence on August 7, 2023 (the "Commencement Date") and shall end on the later to occur of either 18 months from the Commencement Date or February 20, 2025 (the "Termination Date"). If Grantee violates any terms, Grantor shall have the right to terminate this Agreement and all rights contained herein immediately.

4. **Amount of Compensation.** The Grantee shall pay Grantor \$10.00 per year, with a total payment of \$18.00 payable within sixty (60) calendar days of the Commencement Date, and other goods and valuable considerations. Grantor may, without further notification, terminate this Agreement and regain control of the Property exclusive of Grantee or its agents or invitees if payment and other good and valuable consideration are not made within the above time limit. Accepting a late fee does not establish a custom, usage, or right to make future late payments.

(a) Grantee shall construct a boundary or perimeter fence, a six-strand barbed wire with six ft. heavy-duty steel posts spaced 10 feet apart. All corner posts will be built with four-inch H – brace corner posts with 2 3/8 pipe dead men.

(b) Grantee shall construct the front fence with 2 3/8 pipe with a sliding gate to ensure the safety and security of the property while simultaneously enabling easy access for authorized individuals.

(c) Grantee shall provide a Metered Commercial Water Well on the property. All engineering and Texas Commission of Environmental Quality (TCEQ) permits will be the responsibility of the Grantee.

(d) Grantee shall not use more than 8,000 gallons of fresh water daily from the property well. If the daily demand for the permitted use causes a significant drop in the water table or affects the Perrin Community water supply, water use will stop.

(e) If the Grantee requires fresh water over the daily allotment, a payment of \$3.39 per 1,000 gallons shall be paid to Grantor.

5. **Covenants of Grantee.**

(a) Grantee shall comply at all times with all present and future laws, regulations, rules, and directives of any association or any governmental authority applying to the Property and the Permitted Use, which shall include, without limitation, obtaining all necessary governmental permits and approvals. Grantee shall be responsible for all the acts and activities of any use occurring by it or anyone with whom it works. Grantee shall not store, use or dispose of any toxic waste and hazardous substances on the Property. Grantee shall not dispose of or allow the leakage of any petroleum products on the Property.

(b) Grantee shall compel its agents, tenants, contractors, subcontractors, licensees, employees, or anyone else on Grantee's behalf to comply with this Agreement's provisions. The breach of such provision by Grantee's tenants, agents, contractors, subcontractors, licensees, employees, or anyone else on behalf of Grantee, shall be deemed a breach by Grantee.

6. **Liens.** Grantee agrees that any construction lien arising from Grantee's or its contractors' or subcontractors' use of the Property shall be bonded off or otherwise removed of record within ten (10) days after the date of any such construction lien. This obligation shall survive the Termination Date or early termination of this Agreement.

7. **Property Condition.** Grantee accepts the Property on an "as-is, where-is" basis (with all faults and in its existing condition) in the term's broadest sense. Grantee agrees to maintain the Property in good, clean condition and not to commit or permit to be committed any waste of the Property. The Grantor does not warrant or represent that the Property is safe or suitable for the Permitted Use, and Grantee expressly assumes all such risks. Grantee assumes all risk of loss to any property stored on the Property. Grantor shall not be responsible for any loss or damage to any property held on the Property, whether caused by the negligence of Grantor, its agents, employees, licensees, mortgagees, or by fire, hurricane, flood, or other cause whatsoever.

8. **Indemnification/Insurance.**

(a) Grantee covenants and agrees to defend, protect, indemnify, and hold harmless Grantor, its officers, agents, employees, mortgagees, and lenders from and against all claims, demands, actions, causes of action, suits, damages, judgments, orders, decrees, costs, and expenses, including any action or proceedings brought thereon, and all costs, losses, expenses, and liability (including reasonable attorney's fees and cost of suit) for property damage, personal injury, harm or death which shall occur arising out of or occasioned by any activities of Grantee related to any use of the Property, its agents, contractors, sub-contractors, licensees, or employees during the Term.

(b) The indemnity provisions provided in this Section 8 shall survive the Termination Date of this Agreement or early termination. The parties acknowledge that good, sufficient, and independent consideration has been given for the indemnities provided for in this Agreement, and Grantee acknowledges that but for the indemnities provided to Grantor in this Agreement, Grantor would not have entered into this Agreement.

(c) Grantee and all its sub-contractors shall maintain at all times during the terms of this Agreement and while Grantee and its sub-contractors are utilizing or performing work on the Property under the terms of this Agreement, comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit, bodily injury, death and property damage per occurrence. Each insurance policy shall name Grantor as an additional insured, with coverage being primary. A certificate of insurance acceptable to the Grantor verifying such coverage shall be delivered to Grantor before any entry upon the Property by Grantee or its agents, employees, consultants, or sub-contractors.

9. **Governing Law / Venue / Amendments.** This Agreement shall be construed per Texas law and shall not be amended or modified terminated unless executed by the parties in writing. Venue for any action arising hereunder shall lie exclusively in Jack County, Texas. The Term of this Agreement may be extended on behalf of Grantor, County of Jack, by the Pct. 2 County Commissioner, up to an additional six (6) months by mutual written agreement of the parties. Further extensions require the approval of the Grantor. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be an original, but each half together shall constitute the same instrument. Facsimile signatures may be relied upon and include the same as original signatures.

10. **Severability.** If any term or provision of this Agreement or the application thereof to any party, person, or circumstance shall, to any extent, be declared invalid or unenforceable by a court of law, the remainder of this Agreement, or the application of such term or provision to parties, persons or circumstances other than those as to which it is held invalid or unenforceable, such time or provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other terms and conditions of this Agreement and all other applications of any such time or provision shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11. **Remedies.** In the event of default by Grantee in its respective obligations, Grantor shall have (in addition to any other remedies which may be contained herein) all treatments available to it at law or in equity, including, without limitation, the right to specific performance and damages. Grantor shall provide Grantee with written notice of any default and provide Grantee with ten (10) days to cure any such default before exercising Grantor's remedies. Suppose a default cannot reasonably be fixed in the ten-day period. In that case, Grantee must make a reasonable faith effort to commence curing the breach within ten days and complete curing the breach within thirty (30) days following written notice. Grantor may enforce the provisions of this Agreement. In the event of any legal proceedings or litigation, then Grantor shall be entitled to recover all costs and reasonable attorneys' fees incurred in the action or proceeding (including those incurred at trial and appellate levels), in addition to any other relief to which it or they may be entitled. In the event of a default by Grantor hereto in its respective obligations hereunder, Grantee's sole and exclusive remedy shall be to seek specific performance.

12. **No Recording.** This Agreement shall not be recorded in the Public Records.

13. **Authority.** The persons signing below on behalf of Grantor and Grantee have full power and authority to bind Grantor and Grantee to the terms hereof.

14. **Assignment.** This agreement is not otherwise assignable, except with the written consent of the Grantor.

IN WITNESS of which, Grantor and Grantee have executed this Agreement as of the day and year first above written.

FILED FOR RECORD

_____ O'CLOCK _____ M

AUG 16 2023

**VANESSA JAMES, County Clerk
JACK COUNTY, TEXAS**

BY _____ DEPUTY

GRANTOR:

COUNTY OF JACK

By: _____
Brian Keith Umphress, County Judge

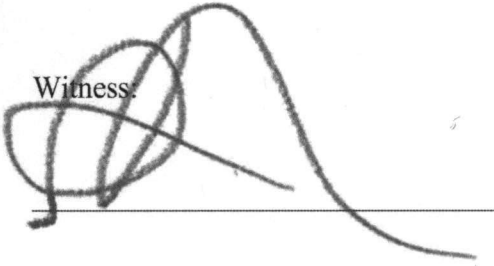
By: _____
Kenny Salazar, Commissioner Pct. 2

ATTEST:

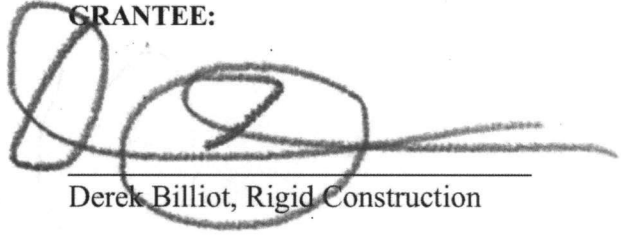
Vanessa James
Vanessa James,
County Clerk



Witness:

A handwritten signature in dark ink, consisting of several loops and a long trailing stroke, positioned above a horizontal line.

GRANTEE:

A handwritten signature in dark ink, featuring a large loop and a long trailing stroke, positioned above a horizontal line.

Derek Billiot, Rigid Construction