

## LAND USE PERMIT

This LAND USE PERMIT (hereinafter referred to as Permit) and entered into this 28<sup>th</sup> day of April, 2009 by and between the **CITY OF VALDEZ**, an Alaska municipal corporation (hereinafter referred to as "Valdez") whose address is P.O. Box 307, Valdez, Alaska, 99686, and **HARRIS SAND & GRAVEL, INC.**, (hereinafter referred to as "Permittee") whose address is P.O. Box 6, Valdez, Alaska 99686.

### WITNESSETH:

1. Permit. Valdez hereby grants to Permittee the right and privilege to be present upon the following described real property belonging to Valdez pursuant to the terms of this Permit agreement:

Approximately 45,000 square feet of Block 7 & 8, Valdez Townsite (Pipeyard)

SEE EXHIBIT "A"

2. Term. Permittee may use the Property for the purposes herein set forth for one year, beginning on the 1st day of March, 2009 and ending on February 28, 2010 unless this permit is terminated pursuant to the terms hereof. This permit can be terminated by Valdez at any time for any reason with a maximum of thirty days' (30) written notice to Permittee.

3. Use. Permittee shall use the Property for marine repair work and for no other purpose whatsoever without prior written consent of the City of Valdez.

4. Permittee Not a Lessee. No legal title or leasehold interest in the Property shall be deemed or construed to have been created or vested in Permittee by anything contained herein. The purpose of this permit is to convey a non-possession interest by Valdez to Permittee in that certain property described in Exhibit "A", which can be terminated by Valdez at any time for any reason. Valdez shall maintain all right, title and interest in that Property as fee simple owner thereof, and Permittee by virtue of this Permit has only the right and privilege to be present upon the Property and to make use of it for the purpose set forth in paragraph 3 above.

5. Royalty. In consideration for use of land owned by Valdez, Permittee agrees to pay a royalty of one thousand five hundred forty-five dollars and no cents (\$1,545.00) annually.

6. Insurance Requirement. The Permittee during the term of this Permit, shall carry at its expense comprehensive general liability insurance covering the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit to protect against liability for personal injury, death or property damage which might arise from the use of the Property and the operations conducted on it. The Permittee shall deposit with Valdez a copy or copies of such insurance coverage together

with appropriate evidence that the premiums thereupon have been paid. All such insurance of the Permittee shall name Valdez as an additional insured party and contain a waiver of subrogation endorsement and provide that Valdez shall be notified at least thirty days (30) prior to any termination, cancellation or material change in such insurance coverage. Such requirement for insurance coverage shall not relieve that Permittee of any of its other obligations under this Permit.

Proof of environmental bonding must also be provided to the City and maintained for the length of the Land Use Permit.

7. Maintenance. Permittee agrees to maintain the property in a neat and orderly fashion. Upon termination of this Permit, Permittee agrees to leave the premises in a neat and clean condition.

8. Structures. Permittee shall not construct or locate any structure of any kind on the Property pursuant to this Permit.

9. Soils Testing/Phase I Environmental Site Assessment. Permittee shall have the soil in the Permit area tested prior to locating any personal property on the property and the soil will be tested at the expiration of the Permit. A Phase I Environmental Site Assessment will be conducted as soon as the snow is gone this spring and at the termination of the Permit. The ground will be covered with an approved environmentally safe cover when sand blasting to prevent any contamination of the soil.

10. Environmental Remediation. Permittee shall report any hazardous substance spills to Valdez and appropriate regulatory authorities. Permittee shall clean up any such spills to the satisfaction of Valdez and other regulatory agencies and will be solely responsible for any associated fines that may be levied by any regulatory authority.

11. Exculpation of Valdez. Valdez shall not be liable to Permittee for any damage to Permittee or Permittee's property from any cause. Permittee waives all claims against Valdez for damage to persons or property arising from any reason.

12. Indemnity. Permittee shall hold Valdez harmless from and against any and all damages arising out of any damage to any persons or property occurring in, on or about the Property.

13. Condemnation. If during the term of this Permit there is any taking by condemnation of the Property or any interest in this Permit, this Permit shall terminate on the date of taking.

14. Default. The occurrence of any of the following shall constitute a default under this Permit by Permittee:

- (a) Failure to pay rent when due, if the failure continues for 15 (15) days after written notice to do so;

- (b) Any default in or failure to perform any term, covenant or condition of this Permit;
- (c) The cancellation of Permittee's insurance coverage;
- (d) The making of any assignments for the benefit of creditors of Permittee, the appointment of a receiver for Permittee's business, the entry of an Order for Relief as to Permittee under the United States Bankruptcy Code as now in effect or hereinafter amended, the insolvency of Permittee, or similar situation.

15. Remedies. In the event of any default by Permittee under the provisions of paragraph 12 of this Permit all of Permittee's rights hereunder shall immediately terminate and Valdez any, in addition to any rights and remedies that it may be given by statute, common law, express agreement, or otherwise, enter and take sole possession and control of the Property.

16. Valdez' Entry on Premises. Valdez shall have right to enter the Property at any time and, in view of the fact this Permit constitutes a license on real property rather than a lease, shall at all times remain in possession of the property.

17. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by certified mail, return receipt requests, and shall be addressed to the other party at the address set forth in the introductory paragraph of this Permit. Either party may change this address by notifying the other party of the change of address. Such notices shall be deemed given when mailed irrespective of whether or not they are received.

18. Waiver. No delay or omission in the exercise of any right or remedy of Valdez on any default by Permittee shall impair such a right or remedy or be construed as a waiver. Any waiver by Valdez of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Permit.

19. Miscellaneous. Time is of the essence with respect to each provision of the Permit, and it shall be binding upon and inure to the benefit of the parties, their heirs, assigns and successors in interest. This Permit contains all of the agreements signed by both parties. This Permit shall be construed and interpreted in accordance with the laws of the State of Alaska. The enforceability, invalidity or illegality of any provisions of this Permit shall not render the other provisions of this Permit unenforceable, invalid or illegal.

IN WITNESS WHEREOF, the parties have duly executed this Agreement this 20<sup>th</sup> day of April, 2009.

“CITY”:


CITY OF VALDEZ

  
Bert L. Cottle, Mayor

Date 4/28/09

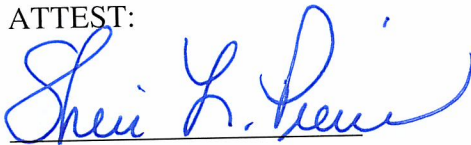
“PERMITTEE”:

HARRIS SAND & GRAVEL, INC.

  
Bill Harris, President

Date 4/20/09


ATTEST:



Sheri L. Pierce,  
CMC, City Clerk



Approved as to Form:  
Walker & Levesque, LLC

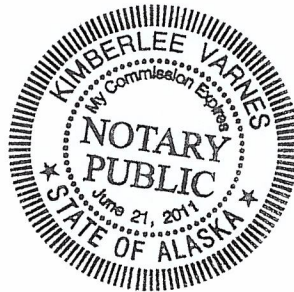
  
William M. Walker

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 20<sup>th</sup> day of April 2009, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Bill Harris, known to me and to me know to be the President of Harris Sand & Gravel, Inc., and the individual named in and who executed the foregoing instrument, and he acknowledged to me that he did sign and seal the same as his voluntary act and deed and was authorized to do so by Harris Sand & Gravel, Inc. for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year first hereinabove written.

Kimberlee Varnes  
Notary Public in and for Alaska  
My Commission expires: June 21, 2011





# Exhibit A: Harris Sand & Gravel Land Use Permit

