

GRAVEL LEASE

THIS LEASE is made and entered into this ____ day of _____ 2019, by and between the **City of Valdez**, a municipal corporation, organized under the laws of the State of Alaska, whose address is P. O. Box 307, Valdez, Alaska, 99686 ("LESSOR"), and **RSR Contracting LLC**, an Alaska limited liability corporation, whose address is P. O. Box 2989, Valdez, Alaska, 99686 ("LESSEE").

WHEREAS, LESSOR is the owner of a supply of gravel located in a parcel of land ("Property" or "Premises") described as follows:

A 37-acre portion of Tract A, ASLS 79-116 (1500 Airport Road) more fully described in Exhibit A hereto.

NOW, THEREFORE, the parties agree as follows:

1. **Use.** LESSEE shall have the right to extract and remove marketable gravel from this location.

2. **Lease Term.** This Lease shall be for a term of five (5) years commencing on the ____ day of _____, 2019 with an option to renew for an additional five (5) years.

3. **Payments.**

(a) All work involved in the removal of the gravel and all preparation of the site for removal shall be at the sole expense of LESSEE. LESSOR shall have no responsibility other than to allow LESSEE free access to the Premises. LESSEE shall pay LESSOR **SIXTY CENTS** (\$0.60) per cubic yard for all gravel removed from the leased Premises. The \$0.60 charge applies for the balance of calendar year 2019.

Each calendar year prior to the commencement of gravel removal, LESSOR shall set the price for gravel removed. LESSEE shall pay an annual minimum rent of THREE THOUSAND DOLLARS (\$3,000.00) on or before **May 1** of each calendar year. This minimum annual rent may be increased by LESSOR during the month of **November** of each year. Gravel removed by LESSEE during that calendar year will then be credited against the rent payment at the established per-cubic-yard price. Upon the removal of \$3,000 worth of gravel, LESSEE shall then make payments for gravel removed at the established cubic-yard price pursuant to subparagraph (b) of this section. In no event shall any portion of the annual minimum rent be reimbursed to LESSEE or applied to another year's rent payment.

(b) Pursuant to subparagraph (a) above, once credit has been given for the annual minimum rent, payment shall be made within sixty (60) days from the end of the month in which the gravel was removed. Payment shall be made on the basis of cubic yards removed during the reported month. LESSEE shall report not later than the tenth of the month on the quantity of gravel removed from the Premises in the preceding month. LESSOR may, at any time, request

verification of the accuracy of LESSEE's count and LESSEE shall use all reasonable measures to assure the accuracy of the count of cubic yards removed and to satisfy LESSOR in this respect.

4. LESSEE to Pay Taxes. LESSEE agrees to pay, prior to delinquency and directly to the taxing authorities in which the Property is located, all real property taxes levied or assessed upon or against the Property and all buildings and improvements thereon during the term of this Lease. LESSEE further agrees to pay, prior to delinquency and directly to the taxing authorities in which the Property is located, all personal property taxes on personal property situated on the Property and placed thereon by LESSEE, its agents, servants, or employees. LESSEE further agrees to pay, prior to delinquency, any other taxes for which it may be liable. LESSEE shall, within thirty (30) days after any such tax, assessment, or other charge, whether or not constituting a lien on the Property, shall become due and payable, produce and exhibit to LESSOR satisfactory evidence of payment thereof.

5. Property Accepted "As Is." LESSEE acknowledges that it has inspected the Property and accepts the same "as is" and without reliance on any representations or warranties of LESSOR, its agents, servants, or employees, as to the physical condition of the Property, including, but not limited to, subsurface and soil conditions, or as to its fitness or habitability or for any particular purpose, or otherwise.

6. No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Property as stated in this Lease. LESSOR makes no warranty or representation as to whether the Property is open or closed to mineral claims or leases under State or federal law.

7. Condition of Premises. Upon expiration of this Lease, the Premises shall be left in a neat and orderly condition, as nearly level as possible, with no slope left in excess of ten to one. Where level-ground achievement is impractical, a lease area to be developed as a pit shall be left in a neat and orderly condition with no slope left in excess of four to one. No pools of water shall be left standing on the Premises. LESSEE shall comply with applicable State reclamation laws in effect during and upon expiration of this Lease. LESSEE shall schedule a final inspection of the Property with the City of Valdez at the expiration of this Lease.

8. Assignment and Subletting. LESSEE agrees not to assign this Lease or any part of it or let nor sublet by grant or implication the whole or any part of the Premises without the written consent of LESSOR. LESSEE agrees that any violation of this covenant will, at the option of LESSOR, work an immediate forfeiture of the Lease and all prepayments made under the terms of the Lease.

9. Radio Interference. At LESSOR's request, LESSEE shall discontinue the use of any machine or device which interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

10. Applicable Laws and Withdrawal of Offer to Lease. The offer to lease is made subject to all applicable laws and regulations of the City of Valdez and may be withdrawn without

notice at any time after thirty (30) days from the submission thereof, unless within such thirty (30) days LESSEE executes and returns the Lease to LESSOR.

11. Entry and Access. LESSOR shall have the right at all reasonable times to enter the Premises or any part thereof for the purpose of inspection. LESSOR shall have access at all reasonable times to the books and records of LESSEE relating to operations under this Lease.

12. Covenant Not to Discriminate. LESSEE covenants and agrees that it will not, on the grounds of race, color, religion, national origin, ancestry, age or sex, discriminate or permit discrimination against any patron, employee applicant for employment, or other person or group of persons in any manner prohibited by federal or state law or regulation. LESSEE recognizes the right of LESSOR to take any action to enforce this covenant as it deems necessary or as it is directed pursuant to any federal or state law or regulation.

13. Modification. LESSEE agrees that LESSOR may modify this Lease to meet revised requirements for State or federal grants, or to conform to the requirements of any bond covenant to which LESSOR is a party; provided that in the case of modification to conform with the requirements of privileges granted or needed by any grants or covenants, such modification shall not act to cause LESSEE financial loss without compensation.

14. Hold Harmless. LESSEE covenants to hold LESSOR harmless from all actions, suits, liabilities, or damages resulting from or arising out of any acts of commission or omission by LESSEE, his agents, employees, or customers, or arising from or out of LESSEE's occupation or use of the Premises or privileges granted.

15. Compliance with Laws. LESSEE shall, at its own expense and cost, conduct all business authorized herein in compliance with all federal, State, and local laws, ordinances, rules, regulations, and permits now or hereafter in force which may be applicable to the operation of the business authorized herein or to the use, care, operation, maintenance, and protection of the Property, including, but not limited to, matters of health, safety, sanitation, and pollution. LESSEE shall obtain and pay for all licenses and permits necessary for the operation of such business, shall pay all taxes that may be lawfully imposed upon the Premises, and shall pay such other fees and charges as may be assessed under applicable statutes or ordinances.

16. Surveys and Site Assessments. LESSEE is responsible for survey, appraisal, and environmental assessment costs as deemed necessary by LESSOR. LESSEE specifically agrees that both prior to occupying the property and upon termination of this Lease, LESSEE will pay for a Phase I Environmental Site Assessment of the Property.

17. Insurance Requirement. LESSEE shall, at its own expense, purchase, maintain and otherwise keep in force, one or more Comprehensive General Liability insurance policies covering LESSEE and the City of Valdez for any and all claims for personal injury, bodily injury (including death) and property damage (including environmental degradation or contamination) arising from any activity occurring as a result of this Temporary Land Use Permit Agreement. The minimum limit of insurance shall be ONE MILLION DOLLARS (\$1,000,000.00) per occurrence,

with no aggregate limit. All such insurance of LESSEE shall name LESSOR as an additional insured party and contain a waiver of subrogation endorsement and provide that LESSOR shall be notified at least thirty (30) days prior to any termination, cancellation, or material change in such insurance coverage. LESSEE shall deposit with LESSOR a copy or copies of such insurance coverage together with appropriate evidence that the premiums thereupon have been paid.

18. Interests Conveyed. The interests transferred or conveyed by this Lease are subject to any and all covenants, terms, or conditions contained in the instruments conveying title, leasehold interests, or other interests to LESSOR.

19. No Warranty. LESSOR makes no warranty, expressed or implied, as to quantity, quality, merchantability, or fitness for a particular purpose concerning the material to be extracted from the Premises.

20. Reservation. LESSOR reserves the right to grant and control easements in or above the Premises and to permit other compatible uses of the Premises, including the sale of materials. No such grant, easement, or license will be made that will unreasonably interfere with LESSEE's use of the land.

21. Default. Each of the following events shall be deemed an event of default by LESSEE under this Lease and a breach of the terms, covenants, and conditions of this Lease:

(a) A default in the payment of the rent and additional sums due under this Lease, or any part thereof, for a period of thirty (30) days from the due date for the payment of such rent or additional sums.

(b) A default in the performance of any other term, covenant, or condition on the part of LESSEE to be kept, performed, or observed for a period of thirty (30) days after LESSOR gives to LESSEE a written notice specifying the particular default or defaults; provided, however, that any default on the part of LESSEE in the performance of work or acts required of him to be done, or conditions to be modified, shall be deemed to be cured if steps shall have been taken promptly by LESSEE to rectify the same and shall be prosecuted to completion with diligence and continuity.

(c) The making by LESSEE of an assignment for the benefit of creditors.

(d) The appointment of a receiver by a court of competent jurisdiction for LESSEE's business.

(e) The levy upon, under execution or attachment by process of law, the leasehold interest of LESSEE in the Property.

(f) The use of the Property or buildings and improvements thereon for purposes other than those enumerated herein, to which LESSOR has not given its written consent.

(g) The abandonment of the Property by LESSEE.

(h) Failure to comply with the terms of any permits issued for the use of the Property.

22. LESSOR's Remedies. In the event of any default by LESSEE as recited in paragraph 21 of this Lease, LESSOR shall have all of the below-enumerated rights and remedies, all in addition to any rights and remedies that LESSOR may be given by statute, common law, or otherwise. All rights of LESSOR shall be cumulative, and none shall exclude any other right or remedy. LESSOR's rights and remedies include the following:

(a) LESSOR may declare the term of this Lease ended by written notice to LESSEE. Upon termination of this Lease, LESSEE shall surrender possession and vacate the Property immediately, and deliver possession thereof to LESSOR, and LESSEE hereby grants to LESSOR full and free license to enter into and upon the Property in such event with or without process of law and to repossess the Property and to expel or remove LESSEE and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, and without relinquishing LESSOR's right to rent or any other right given to LESSOR hereunder or by operation of law.

(b) LESSOR may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the term of this Lease, for any sum which LESSOR may deem reasonable, except as provided in (d) of this paragraph.

(c) LESSOR may collect any and all rents due or to become due from subtenants or other occupants of the Property.

(d) LESSOR may recover, whether this Lease be terminated or not, from LESSEE, reasonable attorney's fees and other expenses incurred by LESSOR by reason of the breach or default by LESSEE.

(e) Reentry or reletting of the Property, or any part thereof, shall not be deemed a termination of this Lease, unless expressly declared to be so by LESSOR. If this Lease shall be deemed terminated, LESSEE's liabilities shall survive and LESSEE shall be liable for damages as provided in this Lease.

23. Construction Conditions. Excavation in connection with this Lease shall be conducted so as to avoid damage to streams, lakes, or other water areas and land adjacent thereto. Vegetation and materials shall not be deposited in any stream or other water area. Locations or improvements necessary for stream crossing or haul roads shall be approved in advance by the appropriate governmental authority.

24. Prevention for Wildfires. LESSEE shall take all necessary precautions of prevention of wildfires and shall be responsible for the suppression costs of any and all destructive or uncontrolled fires occurring within or without the Premises resulting from any and all operations involved in the removal of material under the provisions of this Lease. LESSEE shall comply with

all laws, regulations, and rules promulgated by the governmental agency responsible for fire protection in this area.

25. Access and Road Construction. Before constructing any main haul, secondary or spur roads across LESSOR's or state land, LESSEE shall obtain written approval of the location and construction standards from LESSOR or the State. The terms and conditions of this Lease shall apply with equal force upon any agent, employee or contractor designated by LESSEE to perform any or all of the operations of severance, extraction or removal of the materials which are the subject of this Lease, and LESSEE shall be liable for non-compliance caused by such agent, employee or contractor. LESSEE shall be responsible for the accurate location of any operations performed pursuant to this Lease. Access over any route not under LESSOR's control is the responsibility of LESSEE. LESSEE agrees that any permanent access of right-of-way obtained over privately owned property shall provide a permanent easement to LESSOR.

26. Improvements. Any improvement or transportation facilities, including crushers, mixing plants, buildings, roads, etc., constructed on the Premises by the purchaser shall be in accordance with plans approved by LESSOR. LESSEE shall, within sixty (60) days after the expiration or termination date of this Lease, remove its equipment and other personal property from the Premises. Any property having an appraised value in excess of \$10,000 as determined by LESSOR that is not removed within the time allowed, shall, upon due notice to LESSEE, be sold at public auction by LESSOR. The proceeds of the sale shall inure to LESSEE after satisfaction of expenses of sale and deductions of all amounts then due and owing to LESSOR. If any such property having an appraised value of \$10,000 or less, as determined by LESSOR, is not removed within the time allowed, title to such property shall automatically vest in LESSOR.

27. Partial Invalidity. If any term, provision, condition, or part of this Lease is declared by the legislature or a court of competent jurisdiction of the State of Alaska to be invalid or unconstitutional, the remaining terms, provisions, conditions, or parts shall continue in full force and effect as though such declarations were not made.

28. No Waiver. The failure of LESSOR to insist in any one or more instances upon a strict performance by LESSEE of any of the provisions, terms, covenants, reservations, conditions, or stipulations contained herein may not be considered as a waiver or relinquishment thereof for the future, but the same shall continue and remain in full force and effect, and no waiver by LESSOR of any provision, term, covenant, reservations, condition, or stipulation by this Lease may be deemed to have been made in any instance unless expressed in writing by LESSOR.

29. Notices. All written notices required by this Lease may be sent by registered or certified mail, or delivered personally, to the last address on record in the files of LESSOR.

30. Successors in Interest. This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors as fully and to the same extent as though specifically mentioned. All covenants, stipulations, and agreements in this Lease shall extend to and be binding upon any assignee or subLESSEE to the extent that assignees and subLESSEES are allowed under this Lease.

31. Supersedes Prior Agreements. This Lease supersedes and replaces any and all prior gravel leases and amendments between LESSOR and LESSEE.

32. Hazardous Materials.

(a) LESSEE has had full opportunity to examine the Property for the presence of any Hazardous Materials and accepts the Property in an “as is” condition.

(b) Any other provisions of this Lease to the contrary notwithstanding, LESSEE releases LESSOR from any and all claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs or expenses (including, without limitation, a decrease in the value of the Property, damages due to loss or restriction of usable space, and attorneys’ fees, court costs, litigation expenses, and consultant and expert fees) arising before, during, or after the term of this Lease, and resulting from the use, keeping, storage, or disposal of Hazardous Material on the Property. This release includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by a federal, State or local agency or political subdivision or by law.

(c) LESSEE shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by LESSEE or its authorized representatives or invitees, except for such Hazardous Material as is necessary or useful to LESSEE’s use of the Property.

(d) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, shall be used, kept, stored, and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Materials.

(e) LESSEE shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if such material (as reasonably determined by LESSOR, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Property or elsewhere, or (b) the condition, use, or enjoyment of the Property or any other real or personal property.

(f) LESSEE hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material kept on the Property by LESSEE, its authorized representatives and invitees, and LESSEE shall give immediate notice to LESSOR of any violation or potential violation of the provisions of subparagraphs 32.3 (a), (b), and (c).

(g) Any other provision of this Lease to the contrary notwithstanding, LESSEE shall defend, indemnify, and hold harmless LESSOR and its authorized representatives from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant, and expert fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release, or threatened release of any such Hazardous Materials which is on, from, or affecting the Property, soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury (including

wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; and or (d) any violation of any laws applicable thereto; provided, however, that this provision shall apply only if the acts giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (i) occur in whole or in part during the term of this Lease, or (ii) proximately result in whole or in part from the use of, operations on, or actions on the Property by LESSEE or its employees, agents, invitees, or contractors. The provisions of this subparagraph shall be in addition to any other obligations and liabilities LESSEE may have to LESSOR at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

(h) Hazardous Material is any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of Alaska, or the United States government. Hazardous Material includes any and all material or substances, which are defined as “hazardous waste,” “extremely hazardous waste,” or a “hazardous substance” pursuant to local, state or federal law, including, without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. “Hazardous Material” includes but is not restricted to asbestos, polychlorobiphenyls (“PCB’s”), and petroleum and petroleum products.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first hereinabove written.

LESSOR:

CITY OF VALDEZ

Date: _____

By: _____
Jeremy O’Neil, Mayor

Attest: _____
Sheri L. Pierce, MMC, City Clerk

LESSEE:

RSR CONTRACTING LLC

Date: _____

By: _____

Roger Kipar, Member

APPROVED AS TO FORM:

BRENA, BELL & WALKER, LLC
Attorneys for City of Valdez

By: _____
Jake W. Staser, Esq.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Jeremy O’Neil and Sherri L. Pierce, known to me to be the Mayor and Clerk, respectively, of the City of Valdez, and known to be the person named in and who executed the within and foregoing document on behalf of the City by authority duly vested in them, and they acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein mentioned.

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

Notary Public in and for the State of Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Roger Kipar, known to me to be a member of RSR Contracting LLC, and known to me to be the person named in and who executed the within and foregoing instrument, and he acknowledged to me that he signed the same for and on behalf of said limited liability company by authority duly vested in him, freely and voluntarily for the uses and purposes therein mentioned.

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

Notary Public in and for the State of Alaska
My Commission Expires: _____