

TOWN ROAD USE AND MAINTENANCE AGREEMENT

Permit No 1

This Town Road Use and Maintenance Agreement ("Agreement") is made and entered into this 10 day of May, 2012 by and between the Town of Arland ("Town"), and Midwest Frac LLC, ("Operator"). The term "Operator's Representatives" shall include Operator's contractors, sub-contractors, agents, employees, suppliers and designees.

RECITALS

WHEREAS, Operator is in the business of mining and production of silica sand, and is in the process of constructing, developing, and operating a non-metallic mining facility (the "Project") in Barron County, Wisconsin;

WHEREAS, in connection with the Project, the Parties desire to address certain issues relating to the roads owned, operated and maintained by the Town (collectively, the "Town Roads") over which it will be necessary for Operator and Operator's Representatives to, among other things, transport heavy equipment and certain materials, including, but not limited to, silica sand, over certain Town Roads, which may in certain cases be in excess of the design limits of the Town Roads; and,

WHEREAS, Wis. Stat. §349.16(1)(c) authorizes the Town to enter into an agreement on behalf of Town with any owner or operator of any vehicle being operated on a highway maintained by Town that provides that Town will be reimbursed for any damage done to the highway, and,

WHEREAS, Operator and Town wish to set forth their understanding and agreement as to the road issues relating to the construction, development, and operation of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties, intending to be legally bound, agree as follows:

1. Term: This Agreement shall commence upon the date indicated above (the "Effective Date") and shall continue in full force for ten (10) years or until Operator's Non-metallic Mining Reclamation Permit has expired, has been terminated, or until Operator has fully discontinued its construction, development, operation, maintenance and reclamation of the Project and any and all transportation activities related thereto on Town Roads, whichever occurs first.
2. Haul Route: Operator intends and agrees to only operate on the following Town Roads: 7th St. from approximately the NW corner of the NW ¼ of the SW ½ of Section 20, south to 8th Ave., and then west on 8th Ave. to County Rd. P.

3. Road Maintenance:

A. 8th Avenue. Operator agrees to maintain 8th Ave to at least a minimum standard as it existed prior to any of Operator's vehicles using 8th Ave. The parties acknowledge that 8th Ave. is a gravel road at present. However, if the Town finds that Operator's use of 8th Ave. is degrading the road surface and/or substructure, the Town can require Operator to upgrade 8th Ave. to a design standard, as directed by the WIDOT Facilities Development Manual, as is necessary to withstand the hauling of products and equipment to bear the type of traffic generated by the operations of Operator

B. 7th Street. Operator intends to use 7th Street for a limited time, currently estimated to be from May 15 to August 1, 2012. Operator agrees to maintain 7th Street to at least a minimum standard as existed prior to any of Operator's vehicles using 8th Ave. Operator agrees to pay ten cents per ton to the Town for each ton hauled over 7th St. Operator agrees to make any and all repairs and upgrades to 7th St. to repair any damage caused by Operator to bring 7th St. up to at least the standard which existed prior to Operator's use of 7th St.

4. Financial Assurance: Operator will provide to the Town financial assurance that it can complete any repairs or upgrading of any Town Roads damaged by Operator. Said assurance shall be in the form of a deposit with the Town of funds, or a bond or letter of credit in the amount of \$50,000 (fifty thousand dollars), which shall be issued by a party acceptable to the Town and in a form accessible to the Town if the Town should need to perform repairs or maintenance pursuant to this Agreement.

5. Engineer's Report: Operator agrees to pay the costs of the Town to hire an engineer to assess the current condition of the Haul Route and give the Town a report on the current condition of the roads, and on the ability of the roads to withstand such traffic as Operator intends to operate on the Haul Route. Operator also agrees to pay the costs of the Town to hire an engineer, from time to time as required by the Town Chair, to inspect the Haul Route for damage and make recommendations to the Town regarding required repairs and maintenance. Operator will pay such cost within ten business days (Monday – Friday) of a payment request.

6. Administrative Costs and Escrow: Operator agrees to pay the Town's administrative costs associated with administering this Agreement, including but not limited to costs incurred by the Town for the Town Engineer, Town Attorney, and Town staff time. Prior to any road work or sand hauling on Town roads, Operator agrees to pay to the Town an escrow fee of \$5,000 which will be held by the Town Treasurer to cover the Town's administrative costs. The Town Board will, at its regular monthly Board meeting, determine how much to withdraw from the escrow account each month. If the escrow account becomes insufficient to cover said administrative costs, Operator shall add sufficient funds to maintain a minimum balance of \$5,000 in the fund. If Operator ceases operations permanently and completes its reclamation process, and funds remain in said escrow account, the Town Board shall return any unused portion to Operator.

7. Modification: This Agreement may only be modified upon the written agreement of both parties. No evidence of any modification shall be offered or received in evidence in any proceeding arising between the Parties hereto out of or affecting this Agreement, or the rights or obligations of the Parties hereunder, unless such modification is in writing and duly executed. The parties further agree that the provisions of this Section 7 will not be waived by any course of conduct.
8. Severability. Should any section, clause, provision or portion of this Agreement be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction including all applicable appeals, the parties agree that the remainder of this Ordinance shall remain in full force and effect.
9. Waiver of Terms and Conditions. The failure of Parties to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
10. Interpretation and Governing Law: This Permit shall be interpreted so as to best protect the health, safety and welfare of the public, and shall be governed by the laws of the State of Wisconsin and venue shall be in Barron County, Wisconsin Circuit Court or other Wisconsin court of competent jurisdiction at the Town's discretion.

Town of Arland

Maynard Hoff
By: Maynard Hoff, Town Chair

5/10, 2012
(date)

Pamela Fall
By: Pamela Fall, Town Clerk

May 10, 2012
(date)

Midwest Frac, LLC (Operator):

[Signature]
(signature)

5-10, 2012
(date)

By: Matt Torgerson its President
(print name) (print title of officer)