

Town Road Upgrade, Right-Of-Way Permit and Road Use Agreement

Town of Arland

Permit No. 3

This Right-of-Way permit ("Permit") is hereby approved and issued by the Town of Arland, a Wisconsin municipal entity located in Barron County, Wisconsin, ("the Town") and issued to Superior Silica Sands LLC, a Texas limited liability company ("Operator").

WHEREAS, it is the desire of the Operator to mine sand from a nonmetallic mine located on that real property (the "Property") in the Town of Arland described in Attachment A; and

WHEREAS, the desired haul route for sand on public roads within the Town encompasses a route from County Truck Highway P thence easterly 2300 feet; and

WHEREAS, the Town has agreed that Operator shall be granted a Right-of-Way Permit relative to the Town roadbed, improvements, and right-of-way to allow the Operator to perform all functions incidental and necessary to reconstruct and improve that roadway that is the subject of this Right-of-Way permit (the "Permit"); and

WHEREAS, Operator will supply at no cost to the Town, all labor, materials, and equipment necessary to reconstruct and improve the Town roads to a standard consistent with the proposed use and dedicate the improvements thereafter to the Town; and

NOW THEREFORE, the Town grants this permit subject to the conditions described below:

CONDITIONS

1. The proposed haul road is shown on the map in Attachment B and encompasses a route from CTH P thence easterly 2300 feet. Operator will not haul sand on any other Town roads or utilize any other Town roads for heavy trucks without prior approval from the Town.
2. All work performed on the Right-of-Way shall be performed by Wisconsin Department of Transportation ("WisDOT") approved contractors rated for the type work performed. Operator shall bear full financial responsibility for the improvements contemplated herein. Construction shall not commence until the Town has reviewed and approved the Permit. The Permit shall run from the commencement period described above and shall be in place until either the cessation of mining, or a thirty year time period, whichever occurs first, except that the provisions in Sections 8 shall survive until its conditions are met. The project improvements shall be dedicated to the Town upon final inspection by the Town Board or a third party designated by the Town Board.

3. This Right-of-Way Permit shall become effective upon the date it is approved by the Arland Town Board and when Operator is compliant with all conditions precedent hereto.
4. The upgrading of pavement sections on the Town road will be to a design standard as directed by the WisDOT Facilities Development Manual Section 11-40, to withstand the hauling of products and equipment that are necessary for the type of traffic generated by the operations of Operator. Planned improvements include reconstruction of the westerly section of 7th Avenue, where the current surface consists of gravel, and resurfacing of the easterly section of the road to the terminus of the project where 7th Avenue intersects 7 ½ Street. The section to be reconstructed will be prepared with twelve inches of crushed aggregate that will be topped with four inches of asphalt. The east section of 7th Avenue will be milled and overlain with a total asphalt thickness of four inches. This upgrade includes improvements at entrances, intersections and to the typical cross-section. Geometric improvements shall also include any improvements to structures and culverts that are necessary to accommodate the increased traffic from the nonmetallic mine.
5. Operator agrees to incur all costs related to the recruitment, supervision, and payment of a private contractor who shall rebuild the Town road consistent with the standards set forth in this Permit. The chosen contractor shall be fully insured, bonded, and in good corporate and financial standing and shall not have been debarred from public employment. Operator shall provide assurance to Town that contractor is fully compliant with all state and federal road building regulations for towns, including but not limited to employment regulations such as prevailing wage rates and equal employment provisions.
6. Upon completion of the improvements provided for in this permit, the Town shall be responsible for all road maintenance consistent with the Town's maintenance of those other Town roads in the Town except Operator shall be responsible to make any repairs to the Town road caused solely by Operator's use of the Town road.
7. Operator shall procure and maintain throughout the term of this Permit, Commercial General Liability insurance including bodily injury, property damage, and personal injury, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence. The policy shall also provide contractual liability in the same amount. Operator's coverage shall to the extent of the liability and indemnity obligations assumed by operator under this Permit; (1) be primary, and (2) list the Town of Arland, its officers, officials, agents and employees as additional insureds. Operator shall, at the time of execution of this permit, provide the Town of Arland with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates and expiration dates of the policy. A certified copy of the Certificate of Insurance shall be filed with the Town Clerk prior to constructions.
8. Upon Operator discontinuing its nonmetallic mine operation on the Property, including the reclamation of the Property pursuant to its Non-Metallic Reclamation Permit, Operator agrees, at Operator's sole cost, to restore the Town road to such condition as shall meet the minimum town road standards of the Town, in effect as of the date of issuance of this permit. The guaranty covers all improvements done in the right of way consistent with Attachment B.
9. Operator agrees to indemnify and hold harmless the Town for any costs, claim, suit, liability and/or award which might come, be brought, or be assessed, because of the issuance or exercise of the permit, or because of any adverse effect upon any person or property which is attributed to the partially or entirely completed works of the Operator. This indemnification language shall also include any prevailing wage claim filed in conjunction with this project.

10. Operator is further granted all necessary rights of ingress, egress, and access to the right-of-way, road bed, subsurface, and improvements located within the Town road as may be necessary to fulfill Operator's obligations hereunder.
11. Town agrees that during the pendency of construction and as long as Operator continues or intends to continue its nonmetallic mining operation on the Property, the weight limits and frost bans will not be imposed by the Town on the Operator, Operator's representatives, agents, contractor, subcontractor, successors, and assigns. Operator recognizes the Town has the authority to retain a Town engineer to inspect the Road at any time to determine if it is capable of continuing to handle the weight and volume of traffic generated by the Operator's operations. Such costs shall be handled consistent with Section 12 of this agreement.
12. Operator agrees to pay the Town's administrative costs associated with processing this permit and the reconstruction of 7th Avenue, including but not limited to costs incurred by the Town for the Town Engineer, Town Attorney, and Town staff time. Town will provide the Operator a detailed invoice for such additional costs and Operator will have 30 days to make payment to the Town.
13. Operator will provide to the Town financial assurance that it can complete the reconstruction of 7th Avenue. 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 \$100,000 which shall be issued by a party acceptable to the Town and in a form accessible to the Town in the event that the Town should need to complete construction of 7th Avenue. At the completion of construction and with the Town's approval, the funds, bond or letter of credit may be released.
14. This Permit is not assignable without the express written consent and approval of the Town, which consent shall not be unreasonably withheld. It is agreed by the parties that it is reasonable as a condition for the Town's consent for the Town to require proof of financial integrity of any assignee or transferee, and it is reasonable for the Town to require financial assurance such as that provided for in Section 13 of this agreement.
15. 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



BY:

Chair



BY:

Clerk

10/14/13

Date

10-14-13

Date