RESOLUTION 15D-10

RESOLUTION COMMITTING TO INDEMNIFY DEPARTMENT OF DEFENSE IN CONNECTION WITH INNOVATIVE READINESS TRAINING PROJECT ON ATLAS CEMENT SITE

RESOLVED, by the Duluth Economic Development Authority ("DEDA"), that DEDA hereby agrees that any agreement with the U.S. Department of Defense (DOD) to construct stormwater drainage and treatment ponds on the Atlas Cement Site as part of a Department Innovative Readiness Training (IRT) exercise may contain the indemnification language attached hereto and made a part hereof as Exhibit A; and

RESOLVED, that the proper DEDA officials will be authorized to execute an agreement for said project containing such language.

Approved by the Duluth Economic Development Authority this 23rd day of March, 2015.

ATTEST:

APPROVED AS TO FORM
REA
DEDA Attorney
APPROVED FOR PRESENTATION
CTE
Executive Director

_____
Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to provide the U.S. Army Reserve with assurance that DEDA will execute their required indemnification provisions to induce them to process DEDA's request that they include the construction of stormwater drainage and treatment facilities at the Atlas site in their program of Innovative Readiness Training projects for 2015.

DEDA has been wrestling with how to fund the construction of two stormwater ponds needed to collect and process stormwater from the Atlas site for some time. There has been no source to fund the needed work.

Each year the Local Army engineering battalion looks for community service projects which they can use as training exercises for their forces. This year there is an opening in their schedule which would allow them to take on the Atlas project and DEDA has applied to fill that slot. However, to be considered, their process requires that DEDA commit in advance that, if their project is selected, DEDA will agree to accept liability related to the project, except for that resulting from gross negligence or intentional acts. This resolution makes that commitment. However it would still need to be included in an agreement for the construction of the project.

Office of the Assistant Secretary of Defense
Reserve Affairs
1500 Defense Pentagon
Washington, DC 20301-1500

INNOVATIVE READINESS TRAINING
REQUEST FOR MILITARY ASSISTANCE

This application is to be used by all civil organizations or governmental agencies requesting Civil-Military Innovative Readiness Training (IRT) support as authorized by section 2012 of Title 10, United States Code. Applications are to be mailed to:

OASD/Reserve Affairs
Attn: IRT Director
1500 Defense, Pentagon
Room 2E573
Washington, DC 20301-1500

All IRT applications for support will be reviewed for completeness and eligibility. The applications will be forwarded to the Service IRT Program Managers and the Services will review the event for unit and individual training opportunities. The Services will forward a request to support the training event to the Office of the Assistant Secretary of Defense for Reserve Affairs (OASD/RA) for final review and approval. It is imperative that the information provided by the requesting official(s) be accurate and complete. A requesting official is an individual who submits the request and can sign contracts or commit funds and resources on behalf of the requesting organization. Specific information related to medical (Attachment A), engineering (Attachment B), and transportation and dive (Attachment C) training events must be included with this application. Complete the additional documents as appropriate for the training event. Any additional letters, documents, maps that would provide more information or details to the proposed training event also should be attached to the application as appropriate. Any request for support that will exceed one year must submit an annual request for military participation with all supporting documentation. **The application must be completed annually for the length of the training event.**

Please include copies of documents listed below with this application:

1. 501 C3 letter- required for non-profit organization request, must not be more than 10 years old
2. Articles of Incorporation
3. By-laws
4. Copy of newspaper ads which were published twice on two separate dates. State/Federal/local government entity to use their required process to advertise for this training event; ie: advertisement in FedBizOpps or contract ads. Ad must be published annually for the length of the training event.
5. Affidavit of publication (annual requirement for the length of the training event)
6. Environmental study if appropriate
7. Statement of non-competition (Attachment D)
8. Release of liability (Attachment E)

The execution of any approved IRT training event is contingent upon the availability of funding and DoD resources.

1. Name of community, agency, State or Federal entity requesting military support:

Duluth Economic Development Authority (DEDA) ["a public body corporate and politic and a political subdivision of the state"—Minnesota Statutes 469.091 subd 2]

1a. Is the requesting agency/organization a military entity, either State or Federal, active, reserve or Guard?

Yes _____ No __X__

1b. Is the requester a non-profit organization or entity other than city, state, federal entity?

Yes _____ No __X__

If the answer is yes, attach a copy of the articles of incorporation, 501C3 letter, and organization by-laws with this application.

2. Address of requesting organization:

411 West First Street		
402 City Hall		
City **Duluth**	State **MN**	Zip **55802**

3a. Will this training event take place at a location different from the address listed above?

Yes __X__ No _____ If yes, include address in block below.

Atlas Industrial Park		
2402 Commonwealth Avenue		
City **Duluth**	State **MN**	Zip **55808**

3b. Does the requestor have ownership of real estate or real property where this training is to take place? Yes _X_ No ____ Property owned by __DEDA_____

4. Will this training event take place on a state or federal military installation, post, fort, base or other facility or property operated/leased/owned by or housing a federal or state military service or component?

Yes ____ No __X___

5. Information for requesting official submitting request for support:

Name: **Chris Eng**
Title: **Executive Director, DEDA**
Phone number: **218-730-5322**
Email address: **ceng@duluthmn.gov**
I have authority to enter into a binding agreement/MOU/MOA on behalf of the agency I represent: Yes __X__ No _____ (after DEDA resolution)
I have authority to commit resources or funds on behalf of the agency I represent: Yes __X__ No _____ (after DEDA resolution)

6. Check which community facilities are available (at no expense) for use by military during the training event.

Guard armory	city hall offices	community center	airfield hangar	clinic	school	office trailers
Other:						

7. What contributions or resources will be provided by the requesting organization to assist this proposed IRT training event? Place an "x" next to each that applies.

Lodging	Computer/internet access	transportation	
Meals	Telephone access	Construction supplies	**X**
Office space	Fax machine	Building materials	**X**

7a. Other assistance/financial/facilities provided by the requesting agency/community:

- **Public Relations**
- **Personnel and contracted professionals: e.g. City Civil Engineer, Environmental Engineering consultants**

8. What other funding/support is being contributed to this training event?

Fed/State/Local/Private	Department	Amount of funding Requested	Amount of actual appropriated funds/date appropriated
Federal	**EPA (Great Lakes Shoreline Cities Green Infrastructure Grant)**		**$70,450 for this project ($250,000 total grant)**
Federal	**EPA (2011-Brownfields Cleanup Grant – Atlas Industrial Site)**		**$75,000 for this project ($200,000 total grant)**

9. Specify and explain three prioritized time frames for the requested IRT support.

TIME FRAME	REASON FOR SPECIFIC TIME PERIOD
June 16 – July 4	**Starting any earlier would be difficult with the late snow melt and wet soils that will likely persist through May. By starting as early as possible, however, the construction of the storm ponds can be completed first, as the priority they are.**
July 7 – July 25	**This time frame allows for the ground to more thoroughly dry. It still leaves us plenty of time to complete the stormwater project and have time after construction to do other work (independent of the IRT) elsewhere on site.**
July 21 – August 7	**This time frame works but pushes us very close to an August 31 deadline put in place by one of our funding sources.**

10. Describe any special events/holidays/activities/ or local issues that may be ongoing during the training period. Include any situations that the military should be aware of that may impact their activities in the community.

Aside from federal holidays (e.g. July 4, Independence Day), there are no special events/holidays/activities/ or local issues ongoing during the training period in the immediate area of the IRT.

11. What is the projected length of time needed to complete this training event?

Three weeks

12. Federal, state, city **engineering training events** - has this training event been listed on the federal/state/county/city websites for engineering projects and advertised according to federal/state/county/city contract law or the contract bid process?
Yes ___ No __X__ **This is an annual request for the length of the event.**

If no, please attach an explanation to why this process was not completed.

There is no money to fund the work for which IRT assistance is requested. The City of Duluth and DEDA values its close relationship with local contractors. We have used and will continue to use local contractors at the Atlas site including for separate work that will be done this summer. However, despite years of effort to find sufficient money to pay for the creation of these desperately needed stormwater ponds, we have been unsuccessful. The portion of our grant award from the Shoreline Cities grant identified above that is designated for the Atlas project will go to pay local contractors for pieces of this project but is not nearly enough to fund the construction of the full project and will not be used for any work for which IRT support is requested. Any and all work performed through the IRT will be work that would otherwise not be completed to the exclusion (i.e. the project would not occur) of the overall project. The IRT project will not compete with the private sector because there would be no project without the IRT.

All training events- Please include the public notice ads that were placed in the newspaper for the minimum state required time for public notices.

Attach a copy of the ads and notarized affidavit stating the ads were published and what was the response to the ads. If this is a multi-year event, a new ad must be published annually.

12a.

Place of advertisement	Date advertised
NA	NA

13. Is the requested support available from a commercial entity? Yes ___ No __X__
A negative response means there are no contractors or companies in the area/community of the training event that conduct this type of business. **[See note, above, regarding the nature of the project. There are certainly commercial entities that could construct stormwater ponds but they are for-profit entities not interested in performing such an extensive project pro bono. Because there is no money for the portion of the project for which IRT assistance is requested, there are no commercial entities available to provide the requested support. The City of Duluth will, as it has in the past, work with its commercial partners at Atlas to contract for work for which there is funding available.]**

13a. If services are available from a commercial entity, has the official submitting this request received a "certificate of non-competition" from the commercial entity that would otherwise provide such services? Yes ____ No ____

If applicable, attach a copy of the "certification of non-competition".

14. Has this training event been presented to any of the following entities: provide name beneath title if applicable.

US Senators **Al Franken** and **Amy Klobuchar**	Governor **Mark Dayton**	State Senator	City Mayor **Don Ness**
US Congressman **Rick Nolan**	State TAG	State Representative	other

15.Remarks (attach additional sheet if necessary)

In order to meet our City's demand for growth of good, high-paying jobs, we must expand land available to industrial (primarily, light industrial) developers. The challenge we face is that nearly all of Duluth's industrially-zoned property is in need of significant environmental remediation before it can be returned to productive use in the 21st century. With that in mind, the redevelopment of the Atlas Cement Plant (Atlas) site (62 acres) is a priority for us—so much so that the Duluth Economic Development Authority (DEDA) acquired Atlas in 2003 and has leveraged approximately $3.5 million of federal, state and local resources to create much-needed additional supply of industrial land. Despite such a significant investment, certain obstacles to redevelopment have been difficult to solve due to lack of

funding. Primary among those is the management of stormwater. Not only does the site present unique stormwater challenges by virtue of its geographic situation at the foot of Duluth's highest point, but the once wide-scale industrial footprint now presents itself as a large swath of foundation floors and virtually flat land that inhibits the natural flow of stormwater. City Engineering in tandem with the City's site-specific environmental consultant has engineered an appropriate solution to the most pressing stormwater issues on site that would use imported dredge fill to create negative elevation change from west to east, selectively destroy obstacles to flow and construct a series of storm ponds to retain and treat runoff (i.e. the scope of the IRT support). To date, the project has remained on the shelf because even using dredge fines—the material itself being available at no charge from the Duluth Seaway Port Authority—is not feasible due to the prohibitive costs of transporting the material to the site. A combination of DEDA investment and grant monies have been earmarked for this project but they are simply insufficient to fund the importation of fill and the actual construction of storm ponds. This is a key moment in time for the Army Reserves to step in and help make this high-priority project a reality. Without IRT support, this project will not happen.

The time is now. One of the funding sources that will facilitate professional (civil engineering, environmental engineering, etc.) assistance on the project is scheduled to expire August 31, 2015. With the assistance of the skilled personnel at the local U.S. Army Reserves unit through the Innovative Readiness Training (IRT) Program, we will finally be able to manage stormwater on the challenging northeastern quadrant of Atlas. Working with the Duluth Seaway Port Authority and the U.S. Army Corps of Engineers, among other agencies, the reserve unit will perform the hauling and earthwork tasks that have been impossible to fund in the past. In so doing, they will open the door for further private sector investment and involvement on other projects on site.

I ask for your quick and full approval of the City's and DEDA's IRT project request for Atlas in the summer of 2015.

Christopher T. Ely

Printed name of requesting official/civil authority

Christopher T. Ely for DEDA

Signature of requesting official/civil authority

Date: _____

Mail application to:
OASD/Reserve Affairs
Attn: IRT Director
1500 Defense, Pentagon
Room 2E573
Washington, DC 20301-1500

Attachment A
Medical Support Request

NA

Attachment B
Engineering Training Event:

1.

Location: Atlas Industrial Park, Duluth, Minnesota	
Type of engineering training: Vertical (buildings)	Horizontal (roads) X
Description of training event: Excavation of 2 stormwater basins, one with the dimension 600' x 70' with a depth of 5-7', a second basin with dimensions of 275' x 70' with a depth of 5-7'. Placement of 2 feet of dredge fines mix along the bottom of both basins. Construct an outlet structure for the larger pond. Construction of drainage ditches/swales to convey flow from the adjacent area west of the proposed stormwater basins.	

2. Training specifics: other items already completed should be added to the list or attached as addendums to this application.

Descriptive requirements	Completed by requesting entity- on file and submitted with this request	Date completed	Date to be completed	Not applicable
Environmental study	**Yes, environmental memo**	**April 4, 2014**		
Land use permits				
Blue prints/design	**Yes**	**January 2015**		
City building permits				
Right of way permits				
Training timeline	**Yes**	**March 2015**		

3. Please place an "X" beside each service that is anticipated to be needed in completing this training: this is an initial estimate of the work to be done. The military will assess the training and make assignments as needed at the initial planning conference.

Electricians	Project management **X**	Water purification
Plumbers	Truck drivers **X**	Fuel farm
Carpenters	Steelworkers	Maintenance facility
Brick layers	Welders	Other:
Heavy Equipment operators **X**	Warehousemen	

4. Has your organization ever received past engineering support from the military? If so, state which community, what type of support, when it occurred and the length of time the military was in the community.

Community	Type of support – brief project description	Dates of engineering support	Length of time in the community
a. **Duluth, Minnesota**	**Created two berms in the construction of a firing range on city-owned property.**	**Circa 1998-1999**	**Project extended two years but was completed as personnel were available**
b.			
c.			

5.

Additional Comments:

Attachment C
Transportation/Dive Training
N/A

Attachment D

Statement of Non-Competition

The Innovative Readiness Training (IRT) Event, **Atlas Industrial Park Eastern Stormwater Pond Construction Project**, located in Duluth, Minnesota for Fiscal Year 2014, would not compete with the services offered by civilian companies/vendors/entities or private providers. For the reasons set forth below the requested IRT assistance is not reasonably available from a commercial entity.

The Duluth Economic Development Authority is a subdivision of the state and we do not have money to fund the portion of the project for which IRT assistance is requested. Therefore, we have not requested bids from our contractor-partners. In fact, DEDA works closely with commercial contractors locally and it has been in deference to those relationships that we have refrained from asking for bids for a project when there is no funding to support the request. The IRT project will in no way take away from jobs that would have gone to them because there is no funding for the IRT aspect of the broader Atlas work.

Printed Name: Christopher T. Eng

Signature: Christopher T. Eng for DEDA

Title: Executive Director

Organization: Duluth Economic Development Authority

Phone: 218-730-5322

Date: 3/16/15

Attachment E

RELEASE AND HOLD HARMLESS AGREEMENT

The Duluth Economic Development Authority (DEDA) located in Duluth, MN agrees that its request that DoD military personnel conduct an Innovative Readiness Training (IRT) mission in support of the DEDA during fiscal year 2015 is subject to the following conditions:

1. The DoD IRT military support will be limited to that which is approved by the Department of Defense. Support that has not been previously approved will not be provided; IRT mission personnel may not perform activities beyond those previously approved.
2. Support shall be limited to providing personnel and equipment only.
3. All DoD military personnel and equipment will remain under the control and supervision of the officer or noncommissioned officer responsible for the military unit tasked to provide the IRT support.

The DEDA, in exchange for the DoD IRT military support, also agrees, on behalf of itself and its agents, to:

1. Release the DoD, its subordinate units, its officers, military personnel, employees, agents, and servants from any claim, demand, action, liability, or suit of any nature whatsoever for or on account of any injury, loss, or damage to the requesting organization and its agents arising from or in any way connected with the DoD military personnel support, excluding, however, any injury, loss, or damage arising solely from the intentional torts or gross negligence of the DoD military personnel or its agents.
2. Indemnify, defend and hold harmless the DoD, its subordinate units, officers, military personnel, employees, agents, and servants from any claim, demand, action, liability, or suit of any nature whatsoever for or on account of any injury, loss, or damage to any third person or third person's property arising from or in any way connected with the DoD IRT military support, excluding, however, those arising solely form the intentional torts or gross negligence of the DoD military personnel or its agents.

With full understanding of the conditions and agreements stated above, the undersigned representative, who is authorized to execute this document which is binding on his organization and all assigns, heirs, executors, beneficiaries, and derivative claimants, hereby executes this release of liability and hold harmless agreement.

Printed name: Christopher T. Ery Date: 3/16/15

Signature: Christopher T. Ery for DEDA

Title: Executive Director Organization: Duluth Economic Development Authority