RESOLUTION 15D-14

RESOLUTION AUTHORIZING AN AGREEMENT WITH VEIT FOR THE IMPORT OF CLEAN CLAY TO ATLAS INDUSTRIAL PARK

RESOLVED, by the Duluth Economic Development Authority ("DEDA"), that the proper DEDA officials are hereby authorized to enter into an agreement, substantially in the form of that attached hereto (Contract No. _____), with Veit, providing for the import of clean clay to Atlas Industrial Park at no cost to DEDA.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2015.

ATTEST:

APPROVED AS TO FORM

DEDA Attorney

APPROVED FOR PRESENTATION

Executive Director

_____

Executive Director

STATEMENT OF PURPOSE: DEDA staff is working with various partners to cause the summer construction of two storm water ponds at Atlas. One necessary component of the pond construction is lining the excavation with clay. Staff contacted Veit's excavation division to see if they had any 2015 projects that had excess clay. Veit is, in fact, engaged in a large construction project in Midway Township, close to the Atlas site. Their contract for that project requires them to dispose of the excavated soil, which has been found to be clean, native clay. Veit has agreed to transport this material to the Atlas site at no charge to DEDA. This resolution lays out the requirements of Veit for the soil sampling, excavation, transport and placement at Atlas. Barr Engineering will oversee both environmental and geotechnical analysis under their existing Atlas project contract.

AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2015, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 ("DEDA"), and VEIT _____, a _____ ("Veit").

WHEREAS, DEDA is the owner of certain property known as the Atlas Industrial Park generally located at Commonwealth Avenue and Nick Gumac Drive in the Morgan Park neighborhood of Duluth ("Atlas"); and

WHEREAS, Veit is involved in a project located at two sites in Midway Township as shown on the attached Exhibit A (the "Midway Sites") requiring the removal and export of earth material; Veit is responsible for the disposal of said materials.

WHEREAS, a portion of the material consists of fatty clay free of sand, silt and debris ("Clay") which is a material DEDA desires, subject to its environmental and geotechnical qualities, to use at Atlas for construction of storm water retention ponds or for general site fill; and

WHEREAS, DEDA desires to have Veit collect representative samples of the Clay for testing by DEDA's consultant, BARR Engineering, prior to import to Atlas; and subject to acceptable results thereof, have Veit import the Clay to Atlas; and

WHEREAS, Veit has represented that it is qualified and willing to provide said services;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Testing

Veit agrees to obtain three (3) representative samples of Clay taken from each Midway Site (six (6) representative samples total) and provide them to DEDA's Consultant, BARR Engineering, for environmental and geotechnical testing prior to import to Atlas. Veit shall conduct the sampling in accordance with attached Exhibit B. DEDA will provide notice to Veit after such testing as to whether the Clay is acceptable for import to Atlas. In the event that the Clay is acceptable, Veit agrees to remove from the Midway Sites only the Clay, and no other types of materials whatsoever, and to import it to Atlas; and for said purposes, DEDA grants to Veit a non-exclusive license to import the Clay to Atlas at a location to be provided to Veit in writing prior to import. In the event that upon import, Veit determines that some of the material is other than Clay,

it shall segregate said material and place it in a separate, adjacent pile, and shall notify DEDA immediately of said material. Additionally, if the physical characteristics of the Clay changes during the excavation and transport, additional environmental and geotechnical characterization samples may be required. In such event, Veit shall conduct the sampling in accordance with Exhibit B.

2. Term

The term of this Agreement shall commence on the date set forth above and shall continue through December 31, 2015, unless terminated earlier as provided for herein.

3. Compensation

The parties acknowledge that the delivery and placement of Clay at Atlas benefits both DEDA and Veit, and no compensation shall exchange hands between the parties.

4. Termination

Either party may terminate this Agreement with or without cause upon written notice thereof stating the date of termination. Notice to terminate this Agreement shall be as provided for in Paragraph 9.

5. Reasonable Care

Veit agrees to exercise reasonable care in the use of Atlas and the placement of Clay during the term of this Agreement. Veit agrees to restore any damages to the Atlas site caused by the import of the Clay at its cost.

6. Indemnification

Veit agrees to defend, indemnify and hold DEDA harmless from any liability, claims, costs, judgments, damages or expenses which DEDA may sustain or be required to pay as a result of any act or omission on the part of Veit or its employees or agents arising out of this Agreement.

7. Independent Contractor

At all times and for all purposes hereunder, Veit shall be an independent contractor and is not an employee of DEDA for any purpose. No statement contained in this Agreement shall be construed so as to find Veit to be an employee of DEDA, and Veit or its employees shall not be entitled to any of the rights, privileges or benefits of employees of DEDA.

8. Assignment

Neither party may assign its interest under this Agreement or any part hereof without the prior written consent of the other party. Veit shall not enter into subcontracts for the performance of any of the work or services contemplated under this Agreement.

9. Notices

Any notice to be given by either party shall be deemed to be properly served if deposited with the United States Postal Service, or other acceptable mailing service, postage prepaid, addressed to Veit as follows: Duluth Economic Development Authority, Attn: Heidi Timm-Bijold, 411 West First Street, Room 402 City Hall, Duluth, MN 55802; and to Veit as follows: Veit, _____, Attn: Mike Friend.

10. Compliance with Laws, Rules and Regulations

Veit agrees to observe, comply and abide with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City and their respective agencies which are applicable to its activities under this Agreement. Veit shall procure at its own expense all licenses, permits or other rights required for the activity contemplated by this Agreement.

11. Choice of Law

All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be those courts located in St. Louis County, Minnesota.

12. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between DEDA and Veit and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between DEDA and Veit, may be waived at any time by mutual agreement between DEDA and Veit.

13. Amendments

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

14. Entire Agreement

This Agreement, including Exhibits A and B, constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

IN WITNESS WHEREOF, the parties have set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT AUTHORITY	VEIT
By_____	By_____
Its President	Its _____
By_____	
Its Secretary	

I:\ATTORNEY\DEDA (015)\Other Projects (OP)\Atlas Cement Plant (XX-0029)\Veit (4).docx

resourceful. naturally.
engineering and environmental consultants

BARR

To: Heidi Timm-Bijold
From: Ryan Erickson, Barr Engineering Co
Subject: Sampling Plan for the Collection of Representative Soil Sample Material from Two Proposed VEIT Borrow Sites- West Duluth, Minnesota
Date: April 15, 2015
Project: Atlas Industrial Park Development Site, Duluth, MN
c: Barr project file 23691160

This document describes the sampling plan associated with the characterization of soil from two VEIT project sites in Duluth, Minnesota. This sampling plan is based on the desire to not have Barr enter the VEIT project sites, therefore VEIT will collect both the environmental and geotechnical samples on DEDA's behalf.

1. Barr will provide VEIT with six (6) labeled and clean 5-gallon buckets for sample collection. Three (3) buckets will be filled at each of the two (2) project sites.
2. VEIT will verify that there is no apparent residual contamination on the equipment that they will use for collecting the soil samples. If potential contaminants are present, the equipment must be cleaned prior to sample collection. Barr will provide one (1) clean shovel for sample collection for each project site.
3. At each project site, VEIT will select three (3) separate locations where excess soil could be excavated and subsequently transported to Atlas, if approved by DEDA. VEIT will fill one (1) bucket at each location at least two thirds (2/3rds) full of representative mineral soil. Soil will be collected from below the topsoil material and at least one (1) foot below the ground surface.
4. VEIT will photograph each sampling excavation after the sample has been collected and will identify the general location of the sampling point on an aerial image provided by Barr.
5. VEIT will seal the buckets and contact Barr when the sample collection is complete. Barr will retrieve the soil samples from VEIT.
6. Barr will create composite samples from each of the VEIT project sites at their field office for environmental and geotechnical analyses.

Exhibit A

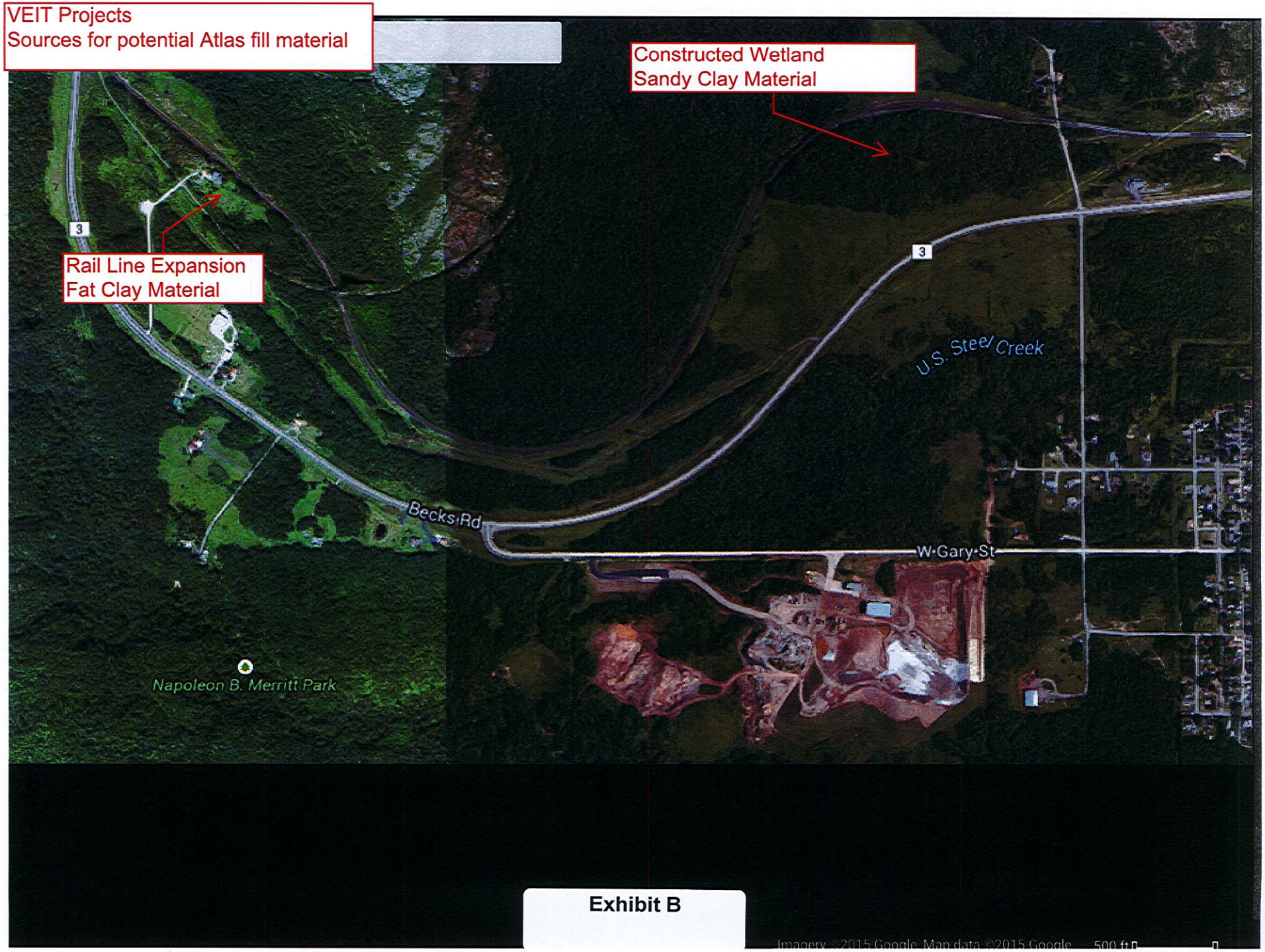
VEIT Projects
Sources for potential Atlas fill material
Constructed Wetland
Sandy Clay Material
Rail Line Expansion
Fat Clay Material
3
3
U.S. Steel Creek
Becks Rd
W Gary St
Napoleon B. Merritt Park
Imagery ©2015 Google, Map data ©2015 Google
500 ft

Exhibit B