

RESOLUTION 15D-24

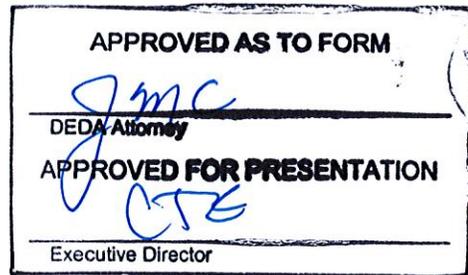
**RESOLUTION AUTHORIZING AN AGREEMENT
WITH VEIT & COMPANY, INC FOR THE IMPORT OF CLEAN CLAY
TO ATLAS INDUSTRIAL PARK**

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 & Company, Inc, providing for the import of clean clay to Atlas Industrial Park at no cost to DEDA.

Approved by the Duluth Economic Development Authority this 24th day of June, 2015.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: Pooling on the Atlas site has been a significant barrier to redevelopment. It has long been a goal to fill and grade the property to encourage appropriate stormwater flow. To date, the cost to import the amount of fill needed has proven to be prohibitive. However, Veit presently has access to fill material of sufficient quality and quantity that will facilitate the filling of the site. Moreover, Veit is willing to deliver and, potentially, lightly handle (e.g. spreading, compacting and roughly grading) the fill at no cost to DEDA. Concurrent with the fill activities, Barr Engineering will perform a study, under separate authorization, with respect to the ultimate grading and stormwater plan for the eastern portion of Atlas. This resolution approves the acceptance of fill material from Veit so that DEDA can move forward with redevelopment more expeditiously.

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 & Company, Inc, a Minnesota corporation (“Veit”).

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

WHEREAS, Veit is involved in a project 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 fill soil free of debris (“Fill”) which is a material DEDA desires, subject to its environmental and/or geotechnical qualities, to use at Atlas for general site fill; and

WHEREAS, DEDA desires to have Veit collect representative samples of the Fill for testing by DEDA’s consultant, BARR Engineering, prior to import to Atlas; and subject to acceptable results thereof, have Veit import the Fill 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 representative samples of Fill taken from its project site as set forth in Exhibit A (the “Project Site”) and provide them to DEDA’s Consultant, BARR Engineering, for environmental and/or geotechnical testing prior to import to Atlas. Veit shall conduct the sampling in accordance with attached Exhibit A. DEDA will provide notice to Veit after such testing as to whether the Fill is acceptable for import to Atlas. In the event that the Fill is acceptable, Veit agrees to remove the approved Fill from the Project Site and to import it to Atlas; and for said purposes, DEDA grants to Veit a non-exclusive license to import the Fill 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 Fill may not be acceptable for use at the Atlas (i.e. debris present), it shall segregate said material and place it in a separate, adjacent pile, and shall notify DEDA immediately of said potentially unacceptable material. Additionally, if the characteristics of the Fill change during the excavation and transport, additional environmental and/or geotechnical characterization samples may be required. In such event, Veit shall notify

geotechnical characterization samples may be required. In such event, Veit shall notify Barr and conduct the sampling in accordance with Exhibit A if it is determined to be necessary. Additionally, upon approval of the Executive Director, Veit may spread and compact the Fill in designated areas at Atlas pursuant to an agreed upon protocol.

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, placement and compacting of Fill 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 and compacting of Fill during the term of this Agreement. Veit agrees to restore any damages to the Atlas site caused by the import of the Fill 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, 14000 Veit Place, Rogers, MN 55374, 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. Counterparts/Electronic Submission

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

15. Entire Agreement

This Agreement, including Exhibit A, 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 & COMPANY, INC.

By _____
Its President

By _____
Its _____

By _____
Its Secretary

To: Heidi Timm-Bijold and Ross Lovely
From: Ryan Erickson, Barr Engineering Co
Subject: ADDENDUM - Sampling Plan for the Collection of Representative Fill Sample Material
Proposed VEIT Borrow Sites- West Duluth, Minnesota
Date: June 12, 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 fill that VEIT proposes to haul from ongoing project sites to the Atlas Industrial Park site in Duluth, Minnesota. This sampling plan is based on the desire to not have Barr enter the VEIT project sites; therefore, VEIT will collect the soil samples on DEDA's behalf, as described below, and will provide them to Barr at an agreed upon location.

1. VEIT will provide to Barr 1) a map identifying the location of the proposed fill sources/project sites and 2) an approximate volume estimate of excess fill that will be removed from each of the identified sites.
2. Barr will review the fill source locations on Google Earth and the MPCA *What's In My Neighborhood* online database to identify if known contamination sources are apparent or have been reported. The site review results will be submitted to DEDA in an email. Fill sources will then be selected by DEDA based on the site review and estimated fill volumes.
3. For EACH selected fill source/project site, Barr will provide VEIT with three (3) labeled and clean 5-gallon buckets for sample collection.
4. VEIT will verify that there is no apparent residual contamination on the equipment that they will use for collecting the fill samples. If potential contaminants are present, the equipment must be cleaned prior to sample collection.
5. At each fill source/project site, VEIT will select three (3) separate locations where excess fill could be excavated for subsequent transport 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.
6. 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.
7. VEIT will seal the buckets and contact Barr when the sample collection is complete. Barr will retrieve the fill samples from VEIT at an agreed upon location.
8. Barr will create a composite sample from each of the VEIT project sites at their field office. The composite samples will be submitted to a laboratory for the environmental analyses described in the MPCA *Best Management Practices for the Off-site Reuse of Unregulated Fill*.
9. Barr will submit the laboratory results to DEDA and, based on those results, will notify VEIT whether the fill is acceptable for use at Atlas.