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October 13, 2010

Mr. Brian Ryks, Executive Director  
Duluth Airport Authority  
4701 Grinden Drive  
Duluth, MN 55811

Re: Duluth International Airport  
New Passenger Terminal – BP 1  
Duluth, MN

Subject: WS 2.10 Northland Constructors – Contract Noncompliance Recommendation

Dear Mr. Ryks,

Per requirements of the Contract between Kraus-Anderson® Construction Company (KACC) and the Duluth Airport Authority (DAA) Contract dated 5/30/2008 - KACC is hereby providing notification of unsatisfactory performance regarding the Subject Contractor stated above. KACC offers this information to assist the Duluth Airport Authority (DAA) in making necessary decisions regarding this noncompliance issue.

On September 30th, 2010, Northland Constructors of Duluth, LLC (NC) notified Kraus-Anderson® Construction Company (KACC) of their dispute that soil correction and lean-mix concrete work being incidental to their work scope is not accurate. Since then, KACC and NC exchanged several more letters clarifying each one's position on the dispute with no resolution. KACC consulted with Reynolds, Smith and Hills, Inc. (RS&H) and MJB Consulting Structural Engineers (MJB) on options, which resulted in no change to the disputes. On October 4<sup>th</sup>, 2010 – KACC requested NC continue the work under dispute in which they have refused. KACC forwarded the dispute to RS&H for review and comment in which their position aligned with KACC's. At this point – KACC, RS&H, and MJB unanimously agree with the position taken that this dispute is unfounded and thus rejected. In the best interest of the project schedule, your decision was correct to allow KACC the authority on the DAA's behalf to have another contractor complete the lean-mix concrete portion of the dispute.

For further understanding of the disputes, I have summarized each of the 2 items below.

- 1) Soils Corrections: NC's contract requires them to complete all work within the Specification Section 02220 Building Earthwork. NC is defending their position by referencing Section 3.4 Excavation, Part E (Additional Excavation), Item 4 which references "changes in work" for removals in excess of 1 foot depth. It is the position of KACC, RS&H and MJB that the intent of this section is for "unforeseen" excavations. The soils corrections now underway were identified and known about by NC prior to bid and prior to award of contract. Specific discussions took place prior to bid and award in which they agreed it was covered. The positive news is that NC has agreed to proceed

under dispute to complete this work while tracking costs, and planning to submit for this upon completion of the work. The cost of this work is the minor portion to this overall claim.

- 2) Lean-mix Concrete: As mentioned above, NC's contract requires them to complete all work within the Specification Section 02220 Building Earthwork. NC's position is that lean-mix concrete is not within their scope. However, this scope is clearly called out under Section 3.5, Part C. (Backfill at Specific Locations) stating that the footings shall bear directly on undisturbed native soils or lean-mix concrete. With this requirement and by reviewing the Geotechnical reports, it was clear prior to bid lean-mix concrete would be required at locations where fill was present.

It must be noted that with regard to both soils correction and lean-mix concrete, it is agreed by the KACC and RS&H that a legitimate extra would be apparent if soils corrections or lean-mix concrete are required in excess of 1 foot beyond of what the Geotechnical reports would show. This item would be part of the negotiation process with NC at the completion of this work.

In conclusion, KACC recommends taking the contractual obligations necessary to properly notify NC of their noncompliance to complete work required per the Contract between the DAA and NC. Furthermore, and as stated earlier, KACC has instructed another Contractor to perform the lean-mix concrete work and track costs to be deducted from NC's contract so as to minimize the delay to the overall project schedule. This work commenced last week, and will continue into the next following weeks as necessary.

Upon request, KACC can provide proper notification to NC and their surety company.

If you have any questions regarding this information, please do not hesitate to call.

Sincerely,

KRAUS-ANDERSON® CONSTRUCTION COMPANY



Brett Cahoon  
Project Manager

BC/cb

- Attachments:
- 1 – Northland Constructors of Duluth LLC letter dated September 30, 2010
  - 2 – Kraus-Anderson Construction Company letter dated October 1, 2010
  - 3 – Northland Constructors of Duluth LCC letter dated October 1, 2010
  - 4 – Kraus-Anderson Construction Company letter dated October 4, 2010
  - 5 – Northland Constructors of Duluth LLC letter dated October 4, 2010
  - 6 – Reynolds, Smith and Hills, Inc. letter dated October 8, 2010

Cc: John Hippchen, RS&H  
Thomas Chambers, RS&H  
Craig Bursch, MBJ Consulting Structural Engineers  
Joan Christensen, City Attorney's Office

# Northland Constructors

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of Duluth, LLC

September 30<sup>th</sup>, 2010

Serial Letter 4465.014

Mr. Brett Cahoon  
Kraus-Anderson Construction Co.  
3716 Oneota Street  
Duluth, MN 55807



Re: Duluth Int'l Airport, Passenger Terminal Building (Civil Site Work  
FAA AIP 3-27-0024-48-10, RS&H Job No 213.1882.091

Subject: Work Scope, Lean-mix Concrete

Dear Mr. Cahoon:

It has come to our attention that there will be some over excavation required at the direction of the geotechnical engineer, to reach "native" soils for the footing excavation. Northland Constructors (NC) is under contract for Work Scope 2.10 -- Civil and Site Electrical work. In this work scope, division R, Building Earthwork is part of our contract and is described in specification section 02220. In that specification, 3.4 part E, line 4 "Additional Excavation" is described as any removal of unsuitable beyond one foot in depth will be paid as a change to original contract work. Any excavation beyond this one foot envelop should be paid as an extra.

Further in section 02220, 3.5, line 1, it describes the need for building footing to be placed on "undisturbed native soils or lean-mix concrete over undisturbed native soils," the mere mention of lean-mix concrete in this description does not place the responsibility of lean-mix concrete in our scope of work. This section also refers to the slab and footing in the description, but clearly those items are not in our work scope either. Concrete scope of work is described in Work Scope 3.10 Structural Concrete, Sections 03100-03300, concrete formwork, concrete reinforcement, and cast in-place concrete. Although there is no mention of lean-mix concrete in this work scope, clearly this work scope refers to the placement of structural concrete for the building. The omission of lean-mix concrete in the scope of work does not place the responsibility in NC's scope of work. Structural concrete is not in our work scope and NC does not plan on placing this, unless it is a change condition to our contract.

I would also point out that there is a conflict between the plans, specifications, and geotechnical report, in regard to the use of lean-mix concrete. In the plans and section 02220 it shows lean-mix concrete on undisturbed soil, but in the recommendations of the geotechnical report under building foundation support, it states that footings shall be placed on native soil or engineered fill placed directly over native soils, with no mention of lean-mix concrete.

Whatever the decision is regarding use of lean-mix concrete or engineered fill, NC believes that the contract documents clearly state excavation beyond the one foot envelop to be extra work, including the backfill. We also believe that whether the lean concrete is placed in the one foot envelop or below, is not in our scope of work and should have been addressed as a change in contract conditions.

Please contact me directly should you require additional information,

Sincerely,

Nathaniel Fox

Project Manager

Northland Constructors of Duluth, LLC



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October 1<sup>st</sup>, 2010

2

Mr. Nathaniel Fox  
Northland Constructors of Duluth, LLC  
4843 Rice Lake Road  
Duluth, MN 55803

Project: Duluth International Airport, Passenger Terminal Replacement – BP-1 WS2.10

Subject: Response to Work Scope and Lean-mix Concrete requirement letter

Dear Mr. Fox:

In response to the letter from Northland Constructors (NC) dated 9/30/10 regarding work scope and lean mix concrete. Kraus Anderson Construction (KA) has consulted with the Structural Engineer and the Architect of record for the "Project" to draw the following conclusions.

**Excavation (Section 02220, Part 3.4,)**

Subpart E (ADDITIONAL EXCAVATION) - The intent of this section is relevant to areas that differ from the information within the Geotechnical reports for removals of soils as required to required elevations. It is not for the purpose as described with NC's letter.

Item # 1 uses the term "REQUIRED SUBGRADE ELEVATIONS" . By definition, the required elevation is determined thru the Geotechnical reports and not necessarily the bottom of footing elevations. Item # 4 refers to the excavation more than 1ft beyond original – is based on different conditions to those outlined in the geotechnical reports.

**Plan sheet S002 (2<sup>nd</sup> paragraph under CONVENTIONAL FOOTINGS area)**

This section specifically calls out that "All topsoil, fill and deposits must be removed below the footings and/or within the building area TO THE DEPTHS AS INDICATED IN THE GEOTECHNICAL ENGINEERING REPORT ..."

**Backfill and Fill (Section 02220, Part 3.5,)**

The intent of this section is to clarify the backfill requirements, which was written specifically based on information within the Geotechnical reports.

Subpart C. (Backfill at Specific Locations) – Based on the information above, the project requires all fill to be removed. Item # 1 specifically states the use of lean-mix concrete PER THE ADDENDUM to the Project Geotechnical report... The lean mix concrete responsibility of work scope 2.10 because it's solely dependent upon the SUBGRADE ELEVATIONS. It is entirely NC's responsibility for means and methods of completing work required within the Contract. NC's is required to excavate to undisturbed native soil and place lean concrete mix as required per the 1:1 area of influence requirements.

In Summary, The Geotechnical reports for the project were made available to all bidders on the WS2.10 scope and clearly state that all fill must be removed. This requirement is verified throughout the project documents and cannot be avoided. NC's had discussions with KA prior to the bid opening and prior to award of the contract specifically regarding the soils reports and the soils corrections identified within. Thus any requests for changes in contract conditions for identified fill materials and the use of lean-mix concrete are hereby denied.

Please feel free to call me to discuss the schedule of this work so as to not impact the project schedule any further.

Thank you,

A handwritten signature in black ink that reads "Brett Cahoon" followed by a horizontal line extending to the right.

Brett Cahoon  
Project Manager  
Kraus-Anderson Construction Company

Cc: John Hippchen, RS&H  
Thomas Chambers, RS&H  
Craig Bursch, MBJ Consulting Engineers

# Northland Constructors

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of Duluth, LLC

October 1st, 2010

Serial Letter 4465.015

Mr. Brett Cahoon  
Kraus-Anderson Construction Co.  
3716 Oneota Street  
Duluth, MN 55807

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Re: Duluth Int'l Airport, Passenger Terminal Building (Civil Site Work  
FAA AIP 3-27-0024-48-10, RS&H Job No 213.1882.091

Subject: Work Scope, Lean-mix Concrete

Dear Mr. Cahoon:

This letter is in response to letter from Kraus Anderson Construction (KA) dated 10/01/10, referring to over excavations, lean-mix concrete, and backfill. Northland Constructors (NC) still believes any excavation or backfill of any material outside the 1' envelop, below slab grade to be a change condition. NC also believes the use of lean-mix concrete not to be in our scope of work. We present the following information to further our position.

#### **Section 02220 – Building Earthwork**

*Part 2.1 Products*, No lean concrete materials are mentioned or specified in products list for building earthwork or NC's work scope

*Part 3.2 Clearing and Stripping*, this portion of work includes clearing and stripping "concrete and asphalt pavement layers," not including previous fill or to native soil.

*Part 3.4 Excavation, Part A*, Excavation work is defined as "Excavation consists of the removal and disposal of materials encountered when establishing required grade elevations for the site including footings, utilities, and all other items indicated in the drawings and specifications," no mention of geotechnical report for limits of grades.

*Part 3.4 Excavation, Part E 1*, "When excavation has reached required subgrade elevation," this reference is to a horizontal control required for footing elevations, makes no reference to soil conditions or recommendations of geotechnical report as you have stated was the intent.

*Part 3.4 Excavation, Part E 4*, "Removal of unsuitable material in excess of one foot in depth and its replacement as directed will be paid on the basis of contract conditions relative to change in work." This does not reference the geotechnical report or recommendations, simply stating that anything beyond the one foot depth shall be a change for the definition of this works scope. This provides a basis for bidders to quantify excavation and backfill quantities.

*Part 3.4 Excavation, Part J 3*, "Concrete is specified in Division 3" Division 3 is not listed as part of our work scope for bid item 113, Terminal Building Work.

### **Geotechnical Exploration**

The geotechnical "report" or exploration was available to bidders at time of bid. The specification classifies and defines the limits of excavation. The geotechnical report only advises and states recommendations to the design group for the design the building. The front of the geotechnical report states the following "this report is not intended to provide sufficient information to accurately determine quantities and location of particular material." NC did not base our bid quantities off the geotechnical report, because it advises us not to do so, and further, the specification has already defined the limits of excavation at one foot below the slab.

Also, in the plans there are details that refer to the geotechnical report for the definition of engineered fill. Engineered fill is defined; "Engineered fill should be a non-organic, granular-material void of frozen soil, boulders, and debris." "Engineered fill should be placed in thin loose lifts compacted to at least 95% of the maximum Modified Proctor dry density (ASTM D1557)." If areas of fill on-site meet the compaction requirements, according to the geotechnical, it can be used under floor slab areas up to the 6" cushion layer, so there will be no need to excavate to native soils under the floor slab because it meets the geotechnical requirements for "engineered fill."

There were no conversations prior to bid or award regarding soils corrections, additional excavation, or lean mix-concrete, between KA and/or the design team and NC. Our bid is based on what is specifically written in the plans and specifications. NC still believes excavation beyond the one foot envelop is a change condition and will need written directive to proceed beyond our original scope of work. We also firmly believe that the lean-mix concrete is not specified or addressed in our work scope. NC will focus our efforts in other areas of the project until we receive further direction on how to proceed.

Please contact me directly should you require additional information,

Sincerely,



Nathaniel Fox

Project Manager

Northland Constructors of Duluth, LLC



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October 4th, 2010

Mr. Nathaniel Fox  
Northland Constructors of Duluth, LLC  
4843 Rice Lake Road  
Duluth, MN 55803

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Project: Duluth International Airport, Passenger Terminal Replacement – BP-1 WS2.10

Subject: Response to Work Scope and Lean-mix Concrete requirement letter dated 10/1/10

Dear Mr. Fox:

Kraus Anderson Construction Co. (KA) has received and acknowledged Northland Constructors (NC's) claim of extra work. Both parties have stated interpretations with little movement toward reconciliation. NC's interpretation of the 02220 Building Earthwork section and the Geotechnical Exploration report are not consistent with that of KA and RS&H's. KA must call special attention to NC's letter's last paragraph disputing any conversations about soils corrections. This statement is false and should be retracted. KA has documented the several phone conversations discussing and confirming the soils corrections required for the project. In fact quantities and scope discussions took place to the level of where you needed to discuss these items further with fellow employees who assisted with the project estimate. Prior to KA recommending NC's should be awarded the contract for WS 2.10 – you had called back confirming no issues with the questions asked.

At this point, the construction of the foundation system for the building has been delayed by several working days. With this stalemate – we are requesting that NC continue to excavate and backfill as necessary, utilizing lean-mix concrete when required per the plans, specifications and as directed by the on-site Geotechnical Engineer. The construction can continue while the details surrounding these claims can be resolved. For additional information regarding this process, please review the General Provisions (GP's) section 50-16 for the documentation requirements and processes.

Sincerely,

A handwritten signature in black ink that reads 'Brett Cahoon'.

Brett Cahoon  
Project Manager  
Kraus-Anderson Construction Company

Cc: John Hippchen, RS&H  
Thomas Chambers, RS&H  
Craig Bursch, MJB Consulting Engineers  
Brian Grefe, Duluth Airport Authority

# **Northland Constructors** **of Duluth, LLC**

October 4<sup>th</sup>, 2010

Serial Letter 4465.016

Mr. Brett Cahoon  
Kraus-Anderson Construction Co.  
3716 Oneota Street  
Duluth, MN 55807

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Re: Duluth Int'l Airport, Passenger Terminal Building (Civil Site Work  
FAA AIP 3-27-0024-48-10, RS&H Job No 213.1882.091

Subject: Notice of Intent to Claim, Over Excavation & Lean-mix Concrete

Dear Mr. Cahoon:

This letter is in response to letter from Kraus Anderson Construction (KA) dated 10/04/10, referring to Northland Constructors (NC) work scope and lean-mix concrete. In the interest of keeping the overall project on schedule NC had notified KA as soon as the extra work was brought to our attention. We presented detailed reasons why this is extra work in NC Serial Letters 4465.014 – 4465.015.

It is still our intention that the work being asked of NC is clearly extra work outside our original contract and scope of work. NC will proceed to accomplish the over excavation that is being determined by the geotechnical engineer. However, we fill the placement of the lean-mix concrete, is so far beyond our scope of work, we are requesting that the work be placed in your structural concrete scope of work.

NC will proceed to accomplish the over excavation at your direction to advance your construction schedule at KA's request. We will track our work for this claim on a separate cost phase or force account, in case unit prices cannot be agreed upon for this work. In addition to seeking additional compensation for the work, we will seek additional calendar days required to complete the work. Should the work be pushed into winter weather, we will seek compensation for weatherization, heat, re-mobilization, and any other unforeseen conditions that may arise from the delay.

Please contact me directly should you require additional information,

Sincerely,



Nathaniel Fox  
Project Manager  
Northland Constructors of Duluth, LLC

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**IMPROVING YOUR WORLD**

4525 Airport Approach Road, Suite A  
Duluth, Minnesota 55811  
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Fax: 218-722-1052

October 8, 2010

Mr. Brett Cahoon  
Project Manager  
**KRAUS-ANDERSON CONSTRUCTION COMPANY.**  
3716 Oneota Street  
Duluth, MN 55807

RE: **LEAN MIX CONCRETE NONCOMPLIANCE**  
Duluth International Airport  
New Passenger Terminal Bld Pack 1

Dear Mr. Cahoon:

I have received your letter dated October 7, 2010 regarding the use of lean-mix concrete under the building footings.

Specification 02220 part 3.5 C-1 clearly states "Building footings shall bear directly on undisturbed native soils or lean-mix concrete over undisturbed native soils as defined by the Addendum to the Project Geotechnical Report Dated January 29, 2010." Footing notes on sheet S002 and plan details on sheet S501, also detail the use of lean-mix concrete under footings not bearing on undisturbed native soils.

Soil borings in the building area indicate fill material over native soils between two feet and four feet below existing grade. All footings are a minimum of six feet below finished floor elevation, which is approximately two feet above the existing grade. If properly excavated, most footings should bear on undisturbed native soils without additional excavation necessary below the required subgrade elevation.

Detail 7 on sheet S502, and detail 1 on sheet S504 require that all underground utilities be above a 1H:1V. If a utility trench extends below the line, the footing will need to be lowered to bear on undisturbed native soil or lean-mix concrete as directed by the engineer.

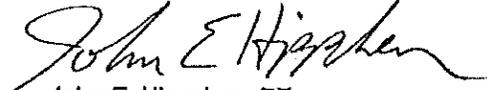
The use of lean-mix concrete under footings that do not bear directly on undisturbed native soil is clearly a part of the contract documents. As provided in the specifications, if soil conditions vary from what is shown in the soil borings, or utility removals result in excavations deeper than can be expected from the contract documents, additional compensation will be made relative to the changes in work.

Also, the contract documents require that all backfill shall be as defined in the Project Geotechnical Report. In addition to the requirements discussed above, unsuitable soils under the floor slabs shall be removed and replaced with engineered fill.

Please feel free to contact me if you have any questions or concerns in this matter.

Very truly yours,

REYNOLDS, SMITH AND HILLS, INC.

A handwritten signature in cursive script, appearing to read "John E. Hippchen".

John E. Hippchen, PE  
Project Manager

Cc: Brian Ryks, DAA  
Brian Gréfe, DAA  
Thomas Chambers, RS&H  
Craig Bursch, MBJ  
Joan Christianson, City of Duluth's Attorney's Office