

RESOLUTION 16D-30

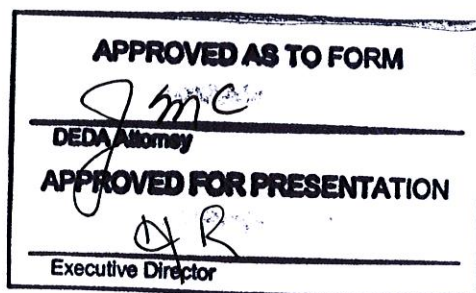
**RESOLUTION AUTHORIZING AGREEMENT WITH VEIT & COMPANY, INC.
FOR ENVIRONMENTAL CLEAN-UP SERVICES
IN AN AMOUNT NOT TO EXCEED \$150,000 RELATED TO THE ENVIRONMENTAL
REMEDICATION OF LOT D**

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 (DEDA Contract No. _____) with Veit & Company, Inc. for environmental clean-up services related to the limited remediation of Lot D in the amount of not to exceed \$150,000, payable from Fund 865.

Approved by the Duluth Economic Development Authority this 24th day of August, 2016.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to approve a limited environmental clean-up contract with Veit & Company, Inc. (Veit) to provide environmental clean-up services in connection with the Excavation and Materials Management Plan ("EMMP") for Lot D toward the remediation of environmental conditions on Lot D. The contractor, referred to as the EMMC in the EMMP, will provide clean-up services on an as-dictated-by-site-conditions basis at as-bid rates up to the total amount of funds available at which point all work will cease. Veit was procured through the City of Duluth's open bidding process.

DEDA had previously received a grant from the U. S. Environmental Protection Agency (EPA) in the amount of \$200,000 for the Lot D cleanup. The grant requires a \$40,000 match from DEDA, for a project budget of \$240,000. Some funds have been spent, resulting in a budget of approximately \$210,500 for the work to be performed this fall under this particular grant award.

In conjunction with this resolution, a resolution will be proposed to contract for the services of AMI Consulting Engineers P.A. (AMI) for the development, and oversight of the implementation of, the EMMP. AMI is one of three environmental consulting firms procured through the City of Duluth's RFP process for EPA-funded work.

Whereas the EMMP, as approved by the EPA, is based upon previous investigation,

the fact of the matter is that until the EMMC begins its excavation, the exact nature and amount of contaminated soil as well as its disposal and backfill required remains unknown. This uncertainty affects the scope of work of both the EMMC and AMI. It is for that reason that this resolution authorizes an amount greater than the estimated amount of work to be performed. The separate resolution authorizing the Consultant agreement with AMI also authorizes an amount greater than what is estimated to be performed. In both cases, the work performed will be monitored closely so as to remain within the funds-available budget. As previously noted, when that amount is reached, all work under both contracts will cease. This agreement runs to December 15, 2016.

Please refer to the Statement of Purpose for Resolution 16D-29.

CONSTRUCTION CONTRACT

VEIT & COMPANY, INC.

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DULUTH ECONOMIC DEVELOPMENT AUTHORITY

THIS AGREEMENT, made and entered this ____ day of _____ (month) 2016, is by and between the **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, a municipal corporation, hereinafter referred to as “**DEDA**” party of the first part, and **Veit & Company, Inc.**, 14000 Veit Place, Rogers, MN 55374, hereinafter referred to as the “**Contractor**,” party of the second part;

WITNESSETH: That the Contractor and DEDA agree as follows:

1. The following shall be deemed to be part of this contract:
 - a. The annexed resolution and legal advertisement of DEDA.
 - b. The bid request and specifications, as modified by irreconcilable language in this written contract.
 - c. The bid by Contractor, as modified by irreconcilable language in this written contract.
 - d. The performance bond and payment bond certification.
 - e. All provisions of law applicable to a contract of this nature.
2. The Contractor agrees to furnish and deliver to DEDA all labor, supervision, material, equipment, supplies, insurance, performance bond, payment bond and everything else necessary for soil and debris excavation, placement of demarcation materials (i.e., site controls), material segregation, stockpiling, stockpile management, and transportation and disposal of excavated materials to VONCO. Work to be performed at Lot D, located at 800 to 1000 Railroad Street, in Duluth, MN. Contractor shall not commence construction on any property until Contractor receives authorization from the duly authorized DEDA Representative, in writing and dated.
3. DEDA agrees to pay progress payments to the Contractor as stated in Section 01200 “Price and Payment Procedures” of the contract specifications. Contractor payment shall be based upon time and materials accounting and contingent upon funds available; Contractor total sum not to exceed One Hundred Fifty Thousand Dollars (\$150,000). Payments under this Agreement shall be made from Fund 865.
4. The Contractor shall furnish and maintain in full force and effect, until this contract is completely performed by the Contractor, a performance bond and payment bond if and when required by law, or if and when required by DEDA.

5. Inasmuch as this contract concerns work, materials and equipment needed for the public benefit, the provisions of this contract relating to the time of performance and completion of work and delivery of materials or equipment are of the essence of this contract.
6. The Contractor will defend, indemnify and save the City of Duluth and DEDA harmless from all costs, charges, damages, and loss of any kind that may grow out of the matter covered by this contract. Said obligation does not include indemnification of the City of Duluth and DEDA for claims of liability arising out of the sole negligent or intentional acts or omissions of the City of Duluth and DEDA but shall include but not be limited to the obligation to defend, indemnify and save harmless the City and DEDA in all cases where claims of liability against the City of Duluth and DEDA arise out of acts or omissions of the City of Duluth and DEDA which are derivative of the negligence or intentional acts or omissions of Contractor such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and any other such source of liability. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.
7. Insurance
 - a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City of Duluth and DEDA from all liability described in Paragraph 6 above, subject to provisions of Subparagraph f. below.
 - (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
 - (2) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be with a company approved by DEDA; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
 - (3) The City of Duluth and DEDA shall be named as **Additional Insureds** under the Public Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth and DEDA. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions

included. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth and DEDA as additional insureds.*

- (4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City of Duluth and DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City of Duluth and DEDA will render any such change or changes in said policy or coverages ineffective as against the City of Duluth and DEDA.
 - (5) The use of an "Acord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL7002) or equivalent, as approved by the Duluth City Attorney's Office.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
 - c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City of Duluth and DEDA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City of Duluth and DEDA during the term of this Contract.
 - d. Contractor shall be required to provide insurance meeting the requirements of this Paragraph 7 unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City of Duluth and DEDA which is reasonably available.

8. No claim whatsoever shall be made by the Contractor against any officer, agent or employee of DEDA for, or on account of, anything done, or omitted to be done, in connection with this contract. If this contract is not made in conformity with mandatory provisions of any statute the Contractor agrees to raise no defense and make no claim against DEDA on the basis of ratification, laches, estoppel, or implied contract.
9. The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in or to it, or any part thereof, or assign, by power of attorney, or otherwise, any of the moneys due or to become due under this contract, without the consent of DEDA, evidenced by a resolution duly adopted by the DEDA.
10. The Contractor agrees that in the hiring of common or skilled labor for the performance of any work under this contract, Contractor will not, by reason of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in local commissions, disability or age, discriminate against any person or persons who are citizens of the United States who are qualified and available to perform the work to which such employment relates.
11. The Contractor agrees that Contractor shall not in any manner discriminate against or intimidate or prevent the employment of any person or persons, or on being hired, prevent or conspire to prevent any person or persons from the performance or work under this contract on account of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in local commissions, disability or age.
12. The contractor agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, contractor's books, records, documents, and accounting procedures and practices are subject to examination by DEDA or the state auditor for six years from the date of execution of this contract.
13. This contract may be cancelled or terminated by DEDA, and all moneys due or to become due hereunder may be forfeited for any failure to perform any terms or conditions of this contract including but not limited to any violation of the terms or conditions of Section 10 or 11 of this contract.
14. Any waiver by any party of any provision of this contract shall not imply a subsequent waiver of that or any other provision.
15. This contract is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

16. This Agreement constitutes the entire agreement between DEDA and the Contractor on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed on behalf of DEDA and the Contractor. The Contractor agrees that no representations or warranties made by DEDA shall be binding upon DEDA unless expressed in writing herein.
17. This Agreement shall not be in force and effect, or in any way binding upon DEDA until the same shall have been approved by DEDA, and signed by its President and Secretary.
18. The Contractor unconditionally guarantees to perform all work pursuant to this contract in a good and workmanlike manner, in strict compliance with the specifications and instructions hereto attached, and to the satisfaction of DEDA.
19. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

AUTHORIZATIONS

**DULUTH ECONOMIC DEVELOPMENT
AUTHORITY**

**CONTRACTOR
VEIT & COMPANY, INC.**

Its President

By: _____
Contractor's Representative

President's Printed Name

Representative's Printed Name/Title

Its Secretary

Date: _____

Secretary's Printed Name

Date: _____