

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2012

COUNCIL BILL NO. CB11-0933
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Third Amendment to Permit Agreement for Multi - purpose Permit, Ref. No. 400 between the City and County of Denver and Park Creek Metropolitan District for general construction traffic access, ingress, and egress at the former Stapleton site.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Third Amendment to Permit Agreement for Multi- purpose Permit, Ref. No. 400 between the City and County of Denver and Park Creek Metropolitan District, in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2003-0995-C, is hereby approved.

COMMITTEE APPROVAL DATE: December 16, 2011

MAYOR-COUNCIL DATE: December 20, 2011

PASSED BY THE COUNCIL: _____, 2012

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2012

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2012; _____, 2012

PREPARED BY: Debra Overn, Assistant City Attorney  DATE: December 22, 2011

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: December 22, 2011

THIRD AMENDMENT TO PERMIT AGREEMENT

THIS THIRD AMENDMENT TO PERMIT AGREEMENT is made and entered into as of the date stated on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation ("City" or "Grantor"); **PARK CREEK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado; and **FOREST CITY STAPLETON, INC.**, an Ohio Corporation (Park Creek and Forest City collectively are "Grantees"). As used herein, Forest City Stapleton, Inc., or any of its parents or any of its subsidiaries which are directly or indirectly owned and controlled by Forest City Stapleton, Inc., or its parent shall collectively be referred to as "Forest City."

WITNESSETH:

WHEREAS, the City granted Grantees a permit to access certain City-owned property in the area of the former Stapleton International Airport through a Permit Agreement dated January 15, 2004, a First Amendment to Permit Agreement dated December 12, 2006, and a Second Amendment to Permit Agreement dated December 16, 2008 (collectively the "400 Permit"); and

WHEREAS, the parties desire to further amend the 400 Permit;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. Section 2, entitled "Permitted Activities", is amended and restated to read as follows:

"Permitted Activities" shall mean: (i) general construction traffic access, ingress and egress; (ii) installation, use and maintenance of all weather haul routes adequate to support construction traffic; (iii) stockpiling of construction materials, dirt, fill, and debris; (iv) preparation, maintenance and use of staging areas for construction; (v) installation of fencing as required; and (vi) meeting the requirements of any applicable Construction Activities Storm Water Discharge Permit, all as subject to the authorization of the Manager of the City's Aviation Department (the "Aviation Manager"). The exercise of the Permitted Activities shall not include the right of Grantees to conduct environmental or geotechnical work on the Property.

2. Section 3, entitled "Grant of Permits", is amended and restated to read as follows:

With respect to items (i) and (ii) in Paragraph 2 above, the City hereby grants to Grantees a blanket, non-exclusive right for the sole purpose of such Permitted Activities, and with respect to items (iii), (iv), (v), and (vi) in Paragraph 2 above, the City hereby grants to Grantees a blanket, exclusive right for the sole purpose of such Permitted Activities, all within, across and under the real property generally described as all property located within the boundaries of the Stapleton Site as defined in Section 2.59 of the Master Lease and Disposition Agreement Between the City and County of Denver and Stapleton Development Corporation dated July 21, 1998 south of Smith Road (hereinafter the "Property"). The specific location and duration of the Permitted Activities may be changed by the Manager from time to time.

3. Section 4, entitled "Term", is amended and restated to read as follows:

Subject to the provisions hereof, the privileges granted herein shall commence on January 15, 2004, and shall terminate January 15, 2015, unless and until the term is cancelled or terminated as set forth in Paragraphs 5 or 9 below.

4. Section 12, entitled "Compliance With Environmental Requirements", is amended and restated to read as follows:

Grantees, in conducting any activity on the Property, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the management, storage, use, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. For purposes of this Agreement the term "Hazardous Materials" shall mean asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls, used oil or any petroleum products, natural gas, radioactive source material, pesticides, and any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. These Environmental Requirements address, but are not limited to, requirements regarding the National Environmental Policy Act ("NEPA") and water quality and air quality regulations. The Grantees shall comply with all Environmental Requirements and accept responsibility for compliance with all environmental quality standards, limitations and permit requirements promulgated there under.

Grantees must install control measures in accordance with the most recent version of the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3: Best Management Practices and the City and County of Denver's Construction Activities Stormwater Management Plan information Guide, including as they may be amended from time to time.

Grantees shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements relating to Grantees' use of the Property. Failure of these specifications to specifically mention any Environmental Requirement does not relieve the Grantees from compliance.

The Grantees agree to notify the Manager of Aviation, Airport Office Building, 8500 Pena Boulevard, Denver, Colorado 80249-6340, 303-342-2200 and Joe Seracuse, Brown and Caldwell Inc, 1697 Cole Blvd. Ste 200, Golden, CO 80401, (303) 239-5492, immediately if during the course of the work pursuant to this permit it encounters any visible, odorous, or otherwise recognizable Existing Contamination. The City will, upon notification, perform at its cost all reasonable and appropriate sampling and analyses of such Existing Contamination. The Grantees shall proceed with the work at another location until the City has completed testing and/or remediation, if any, of the area in question. "Existing Contamination" shall include without limitation "Hazardous Materials" as defined above, and as defined in any implementing regulations and correlative Colorado laws; petroleum or refined petroleum products and their constituents; waste oils; natural gas; radioactive source material; and de-icing chemicals, existing on the Stapleton Site, as a result of the actions or omissions of any party except the Grantees.

5. A new Section 26 is added to the 400 Permit, as follows:

26. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: The Grantees consent to the use of electronic signatures by the City. The 400 Permit, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the 400 Permit solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the 400 Permit in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

6. Except as otherwise provided herein, all of the terms and conditions of the existing 400 Permit shall remain in full force and effect and are hereby ratified and reaffirmed.
7. This Third Amendment to Permit Agreement is expressly subject to, and shall not become effective or binding on the City, until it is fully executed by all signatories of the City and County of Denver.

END OF AGREEMENT; SIGNATURE PAGES FOLLOW

Contract Control Number: AC34006

Vendor Name:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



Contract Control Number: AC34006

Vendor Name:


Park Creek Metropolitan District,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: 

Name: Cheryl Cohen-Vader
(please print)

Title: First Vice President, PCMD
(please print)

~~ATTEST: [if required]~~ Forest City Stapleton, Inc.,
a Colorado Corporation

By: 

Name: John S. Lehigh
(please print)

Title: President and CEO
(please print)

