

**CITY AND COUNTY OF DENVER
DEPARTMENT OF AVIATION
DENVER INTERNATIONAL AIRPORT**

**STOCKPILE LICENSE AGREEMENT
Multi-Purpose License - - Filing 47 Grading and Infrastructure**

THIS LICENSE AGREEMENT (“Agreement”) is entered into as of the date stated on the City’s signature page below by and between the **CITY AND COUNTY OF DENVER (“City” or “Grantor”)**, **FOREST CITY STAPLETON, INC.**, a Colorado corporation (“**FCS**”), and **PARK CREEK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“**District**”). FCS and District are collectively referred to herein as “**Grantee**.”

WHEREAS, the City owns, operates and maintains the Denver Municipal Airport System, which includes the former Stapleton International Airport (hereinafter “**Stapleton**” or “**Stapleton Site**”); and

WHEREAS, Grantee, at no cost to the City or its Department of Aviation, desires to construct and maintain grading, utilities, and associated public infrastructure on a portion of the Stapleton Site; and

WHEREAS, the Grantee is qualified and ready, willing and able to complete the stockpiling of soils;

NOW THEREFORE, the City and Grantee covenant and agree as follows:

1. **CONSIDERATION.** Grantor makes these grants in consideration of the payment of Six Hundred Five Thousand Two Hundred Twenty-Two Dollars and 50/100 (\$605,222.50) and in consideration of Grantee performing the covenants herein. The payment shall be made by Grantee or within ten (10) days of the date of execution of this Agreement, in good funds payable to the Airport Revenue Fund. It is also a condition of the grant of this License that FCS and all related entities including but not limited to FC Stapleton II, LLC agree and acknowledge that they will accept title to the Property as described herein with no objection to the existing contamination as defined in Section 14 hereof. This agreement to accept title shall survive any termination of this License except for Termination by Purchase under Section 11.b.

2. **PERMITTED ACTIVITIES.** “Permitted Activities” shall mean the following: (i) general construction traffic access, ingress and egress; (ii) stockpiling and grading of soil and fill; (iii) maintenance and use of such stockpiled and graded soils; (iv) construction and maintenance of public utilities and infrastructure; and (v) installation and maintenance of stormwater management controls as set forth in the District’s SWMP Permit.

3. **PURPOSE OF LICENSE: STORMWATER MANAGEMENT.** Grantee wishes to obtain authorization for itself, its employees, contractors, subcontractors, invitees, and successors and assigns (collectively, the “**Grantee’s Parties**”) to use the Property for the

Permitted Activities (all such activities referred to herein generally as the “Work”), subject to the requirements set forth in this License.

a. During the term of this License, (i) the Permittee shall maintain all necessary permits for construction stormwater discharges (“Stormwater Permits”) related to construction activities on the Property; and (ii) the City shall provide sufficient access and operational control to the Grantee over the Property to implement the stormwater management plan attached as **Exhibit B** (“SWMP”).

b. All erosion control inspection and maintenance operations by the Grantee under the SWMP will be conducted outside of any area included in ACM remediation activities.

c. The City shall not interfere with or damage, and shall prohibit its contractors, permittees, lessees, licensees, and invitees from interfering or damaging, any structures or measures Grantee implements on the Property under the SWMP. If the City or its contractors, permittees, licensees, or invitees damage or interfere with any such structures or measures, subject to appropriation if required, the City shall promptly correct such damage or interference in a manner sufficient avoid any violation of the Grantee’s Stormwater Permits or pay to Grantee an amount sufficient to compensate for the loss sustained by Grantee as a result of such damage or interference. However, if the Grantee modifies the SWMP during the term of this License, the City shall have no obligation to correct, or reimburse the Grantee, for any such damage to any modified structure or measure unless the City received advance notice of such modification.

d. If the City revokes or modifies this License in a manner that limits or eliminates such operational control prior to the Termination Date, such revocation or modification shall be effective on the date that City and Grantee either transfer the Access Property to the City’s Stormwater Permits or the Grantee completes all steps necessary to terminate the Grantee’s Stormwater Permit with respect to the Access Property. If the City elects to require the Permittee to terminate the Grantee’s Stormwater Permit with respect to the Access Property, the Grantee shall complete such steps no later than 30 days following receipt of notice from the City of such pending revocation or modification to this License.

4. **GRANT OF LICENSE.** The City hereby grants to Grantee a nonexclusive license for the sole purpose of conducting the Permitted Activities within, across, and under the real property generally depicted on **Exhibit A** (hereinafter the “Property”) attached hereto and incorporated herein by this reference. Grantee shall be solely responsible for locating all overhead, above ground, and underground utilities, including without limitation electrical, sewer, water, and other utilities. The City shall make information available to Grantee regarding any subsurface structures, pipelines or cables that the City has knowledge of, but the City is not under a duty to inspect for the precautions to avoid damage to, or injury from, such utilities. Grantee agrees to be solely responsible for any such damage to or injury from, any such utilities on the City’s property which result from the Permitted Activities conducted by Grantee as specified herein. The City specifically reserves the right to allow Denver Water access to the Property for maintenance and operation of the water lines which will be constructed on the Property by Grantee, pursuant to that Water Agreement by and between the City and Denver Water dated November 30, 1999, as amended.

All costs and expenses of the Permitted Activities conducted by Grantee under the Agreement, and of all work related thereto conducted by, through or under Grantee, shall be at no cost to the City's Department of Aviation, except as otherwise provided in an IFDA. Grantee agrees to promptly pay when due, all bills, debts and obligations incurred by it in connection with its Permitted Activities on City property hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the access property or improvements thereon.

5. **PURPOSE OF LICENSE.** Grantee wishes to obtain authorization for itself, its employees, contractors, subcontractors, invitees, and successors and assigns (collectively, the "Grantee's Parties") to use the Property for the Permitted Activities (all such activities referred to herein generally as the "Work"), subject to the requirements set forth in this License.

6. **TERM.** Subject to the provisions hereof, the privileges granted herein shall commence upon the payment of the consideration required herein. This Agreement shall not be terminated unless and until the term is cancelled or terminated as set forth in paragraph 11 below, but in no event shall the term of this Agreement continue past the expiration of the Master Lease and Disposition Agreement by and between Grantor and the Stapleton Development Foundation, as amended.

7. **CONSTRUCTION.** Grantee shall comply with the requirements in the Service Plan for the Park Creek Metropolitan District in the City and County of Denver, Colorado, the Master Facilities Development Agreement, entered into by and between the City, Forest City, and/or the District for the construction of any improvements on the Property and applicable Individual Facilities Development Agreement entered into by and between the City, Forest City, the District and the Denver Urban Renewal Authority ("DURA"). Prior to the commencement of any construction or installation, Grantee shall obtain and pay for all required building permits and other governmental approvals.

8. **RETAINED RIGHTS OF THE CITY.** The City reserves the right of title, use and occupancy of the Property, subject to the rights granted herein, provided that the City shall not unreasonably interfere with Grantee's exercise of the rights granted hereunder. The City reserves the right to use any improvements constructed in connection with Grantee's exercises of its Permitted Activities for itself and its tenants, licensees, contractors, designees, successors and assigns, and for public purpose. The rights and privileges granted herein are subject to existing utilities, prior easements, rights-of-way, and other matters affecting title. Construction and/or operation and maintenance and use by Grantee of the improvements constructed pursuant to the Permitted Activities shall be in such a manner as to not unreasonably conflict with the rights or obligations of the City, or others with existing rights to use the Property, nor to interfere with the operations by the City with respect to such rights or obligations, nor to endanger lives and the safety of the public.

9. **REMEDICATION.** Grantee acknowledges that City or others may have to remediate portions of the Property or property adjacent thereto. Notwithstanding anything to the contrary set forth in the Agreement, the City expressly reserves the right to investigate and remediate the Property on behalf of itself or other parties. Upon written notice by the City, Grantee agrees to relocate any portion of the Grantee's stockpiles that adversely affect or impede such investigation or remediation, at no cost to the City. In the event of such relocation, City

agrees to grant Grantee a replacement license in substantially the form of this Agreement for the relocated stockpiles.

10. MAINTENANCE. Grantee shall be responsible for the maintenance of all grading, utilities, infrastructure and SWMP controls installed pursuant to the District's SWMP permit and constructed in connection with the Permitted Activities and will maintain and restore all damage to the City's property. The City shall not be responsible for maintenance of any such grading, utilities, infrastructure, or District SWMP controls. Grantee shall also be responsible for maintaining compliance with required Stormwater Discharge Permits with respect to its work on the Property.

11. TERMINATION.

a. Termination for Cause. This Agreement may be terminated and forfeited by the declaration of the Manager of the City's Aviation Department (the "Aviation Manager") for Grantee's failure to comply with any or all of the provisions and conditions of this Agreement, or for non-use for a period of two (2) years, or for abandonment by Grantees. Prior to termination of Grantee's failure to comply with the provisions of this Agreement, non-use, or abandonment, the Aviation Manager shall provide notice specifying the grounds for termination, and the Grantee shall be allowed thirty (30) days to cure, or such longer period if the cure will require additional time and so long as the Grantee is diligently acting to complete the cure or commence work on the Property, as applicable.

b. Termination by Purchase. This Agreement and the rights granted herein shall terminate automatically upon transfer of the Property pursuant to the Master Lease and Disposition Agreement.

c. Termination at Request of Potential Buyer, Assignee, or Transferee: This License Agreement may be terminated by the Manager of Aviation at the request of a potential buyer, assignee, or transferee of the License Property. The Aviation Manager shall provide notice to Grantee that such a request has been made, and the Grantee shall be allowed sixty (60) days to remove it improvements from the property.

d. Termination upon Dedication or Acceptance. Notwithstanding anything to the contrary contained herein, the license and rights granted herein shall automatically terminate for any portion of the Property dedicated as a public right-of-way or conveyed to the City for open space purposes, including conveyance of the Permitted Activities, at such time as the applicable Property is so dedicated or conveyed.

The Parties will cooperate to execute any documents necessary to terminate or reflect the termination of this license. Upon termination of this Agreement, the use of the Permitted Activities shall be controlled by the City's Charter, ordinances, regulations, and any other easements, licenses, permits or any other agreements between the Parties to the MFDA.

12. RESTORATION. Upon termination of this Agreement as provided in Paragraph 11 for breach, or non-use or the abandonment, Grantee shall vacate the Property and restore the Property to a condition satisfactory to the Aviation Manager, including, as may be determined

necessary by the Aviation Manager, the removal of the Permitted Activities that are not currently in use, and any property of the Grantee. If Grantee fails or neglects to remove said property and also restore the Property, then, at the option of the Aviation Manager, such property of the Grantee shall either become the property of the City without compensation or the Aviation Manager may cause it to be removed and the Property to so be restored at the expense of the Grantee and no claim for damages against the City, or its officers or agents, shall be created by or made on account of such removal and restoration.

13. DAMAGE TO CITY PROPERTY. Any property of the City damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to the satisfaction of the Aviation Manager, or in lieu of such repair or replacement, Grantee shall, if so required by the Aviation Manager, at his option, pay to the City, money in an amount sufficient to compensate for the loss sustained by the City by reason of damage to or destruction of City property. Any property of the Grantee damaged or destroyed by the City incident to the City's exercise of its rights reserved hereunder shall be promptly repaired or replaced by the City, subject to appropriation if required, or in lieu of such repair or replacement, City shall pay to Grantee, money in an amount sufficient to compensate for the loss sustained by the Grantee by reason of damage to or destruction of Grantee property.

14. COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS. Grantee, in conducting any activity on the Property, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders, **including the SWMP** (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the 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" means substances, materials or waste, the generation, handling, storage, treatment or disposal of which is regulated by any local, state or federal government authority or laws, as a "hazardous waste," "hazardous material," "hazardous substance," "pollutant" or "contaminant" and including, without limitation, those designated as a "hazardous substance" under Section 311 or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Secs. 1321, 1317), defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6903), or defined as a "hazardous substance" under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601), and, including, without limitation, petroleum products and byproducts, PCBs and asbestos.

Grantee shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements relating to Grantee's use of the Property. The Grantee agrees to notify the Manager of Aviation, Airport Office Building, 8500 Pena Boulevard, Denver, Colorado 80249-6340, (303) 342-2200, immediately if during the course of the Work pursuant to this Agreement, if Grantee encounters any visible, odorous, or otherwise recognizable contamination of the Property ("Existing Contamination"). The City will, upon notification, perform at its cost, all reasonable and appropriate sampling and analysis of such existing Contamination. The Grantee shall proceed with the Permitted Activities at other locations on the Property 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 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 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, as a result of the actions or omissions of any party except the Grantee.

15. **INSURANCE.** The Grantee shall obtain and keep in force during the entire term of this Agreement, insurance policies as described in the City's form of insurance certificate, attached to this Agreement as **Exhibit C** and incorporated herein. The certificate specifies the minimum insurance requirements the Grantee and any of its contractors must satisfy in order to perform work under this Agreement. The original of such certificate shall be executed before a notary by the authorized party as specified on the certificate.

Except as otherwise provided herein with respect to Pollution Legal Liability Insurance, each such policy or certificate shall contain a waiver of subrogation in favor of the City and further provide that any coverage afforded to the City as additional insured shall apply as primary insurance and other insurance issued to the City shall apply as excess and noncontributing insurance. Grantee shall be solely responsible for payment of any and all deductibles on issued policies. City shall have the right to verify or confirm, at any time, all coverages, information or representations contained herein and the insured and its undersigned agent shall promptly and fully cooperate in any such confirmation or verification the City may elect to undertake. Advice of renewal is required. Unless a period is specified, the City requires that the insured keep all covenants herein in full force and effect until this Agreement is terminated or expires.

The above referenced insurance may be increased at any time in the reasonable judgment of the City's Risk Administrator, upon notice to the Grantee.

16. **INDEMNIFICATION BY GRANTEE.**

a. **General.** To the extent permitted by Colorado law, Grantee shall indemnify, protect, hold harmless the City, its officers, agents and employees from and against all claims, damages, losses and expenses caused by, arising out of, or resulting from bodily injury and property damage or arising out of or in any way related to any claim made regarding Grantee or any of Grantee's Parties as a result of this Agreement. Grantee's obligation to defend and indemnify the City shall only extend to the percentage of negligence of Grantee in contributing to such claims, damages, losses and demands or expenses. Nothing herein shall be construed as a waiver of the protections afforded by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et. seq.*, as amended.

b. **Environmental.** In the case of the release, spill, discharge, leak, disturbance or disposal of Hazardous Materials as a result of Grantee's or its contractor's, subcontractor's, agent's and representative's activities at the Stapleton Site and/or Access Property, Grantee shall immediately control and diligently remediate all contaminated media to applicable federal, state and local standards. Grantee shall reimburse the City for any penalties and all reasonable cost and expense, including without limitation reasonable attorney's fees, incurred by the City as a result of the release or disposal by Grantee or its contractors, subcontractors, agents and

representatives of any Hazardous Materials on the Stapleton Site and/or Access Property. Grantee shall also immediately notify the City in writing of the release, spill, leak, discharge or disturbance of Hazardous Materials and the control and remediation response actions taken by Grantee, and any responses, notifications actions taken by any federal, state or local agency with regard to such release, spill or leak. Grantee shall make available to the City for inspection and copying, upon reasonable notice and at reasonable times, any requirement under this Section. If there is a requirement to file any notice or report of a release or threatened release of any Hazardous Materials at, on, under, or migrating from the Stapleton Site and/or the Access Property, Grantee shall provide copies of all results of such report or notice to the City. The provisions of this section shall expressly survive the termination of this Agreement.

c. **Existing Contamination.** In no event shall Grantee be obligated to indemnify, release, reimburse or save harmless the City, its officers, agents and employees, from any claims, damages, suits, costs, expenses, liability actions or proceedings of any kind or nature related to Existing Contamination and the City covenants not to sue Grantee with respect to such Existing Contamination, unless Grantee's acts or omissions, without regard to negligence, caused or exacerbated a release of such Existing Contamination.

At the City's reasonable request, Grantee shall conduct testing and monitoring as is necessary to determine whether any Hazardous Materials have entered the soil, groundwater or surface water on or under the Property due to Grantee's use or occupation of the Property. Grantee shall provide copies of all results of such testing and monitoring to the City.

17. **NOTICES.** Any notices or demands provided for herein shall be in writing and shall be deemed effectively given or made (i) immediately when served personally upon the party to be notified, (ii) immediately upon confirmation of facsimile transmission to the party to be notified if on a business day and given before 5:00 p.m. local time in the time zone of the recipient (or on the next business day if given after 5:00 p.m. on a business day), (iii) three (3) business days after being sent to the party to be notified by United States registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after being sent to the party to be notified by reputable overnight courier, prepaid, return receipt acknowledged, all of the foregoing (i) through (iv) to the address, or facsimile number, as applicable, of such party set forth below or to such other address as such party may last have designated by notice hereunder:

City: Manager of Aviation
Denver International Airport
8500 Pena Boulevard, Ninth Floor
Denver, Colorado 80249-6340

with a copy to: Airport Legal Services
Denver, International Airport
8500 Pena Boulevard, Ninth Floor
Denver, Colorado 80249-6340

to the District: Park Creek Metropolitan District
District Manager

Stapleton Development Corporation
7350 E. 29th Avenue, Ste. 300
Denver, Colorado 80238

with a copy to: Paul Cockrel, Esq.
Collins, Cockrel & Cole
390 Union Blvd., #400
Lakewood, Colorado 80228

to FCS: John S. Lehigh
Forest City Stapleton, Inc.
7351 East 29th Avenue
Denver, Colorado 80238
Fax No.: (303) 996-5950

with a copy to: Forest City Stapleton, Inc.
7351 East 29th Avenue
Denver, Colorado 80238
Attention: Assistant General Counsel
Fax No.: (303) 996-5959

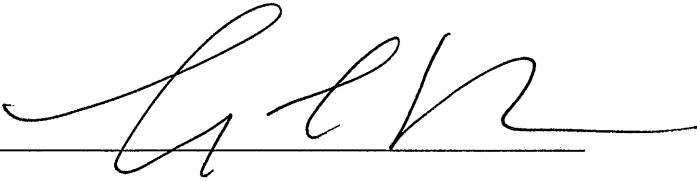
Rejection or refusal to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice as of the date such notice was deposited in the mail or delivered to the courier or transmitted via confirmed facsimile. When used in this Agreement, a "business day" shall mean a weekday which is not a federal or State of Colorado holiday.

18. COMPLIANCE WITH LAWS. All persons or entities utilizing the Property pursuant to this Agreement must observe and comply with any applicable provisions of all applicable Colorado and federal laws, and the Charter, ordinances and rules and regulations of the City, including the following, to the extent they apply to Grantee's activities on City property: (a) the Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") requirements of Article III, Divisions 1 and 3 of Chapter 28 of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, to the extent the MBE/WBE Ordinance applies to Grantee's activities under this License; (b) Prompt Pay Ordinance, D.R.M.C. Section 20-112 wherein Grantee is to pay its subconsultants in a timely fashion; any late payments are subject to a late payment penalty as provided for in the prompt pay ordinance (D.R.M.C. Sections 20-107 through 20-118); and (3) the Prevailing Wage Ordinance, D.R.M.C. Section 20-76 *et seq.*, to the extent such Ordinance applies to its activities on License Property. Grantee agrees to pay any and all fines, assessments and fees related to its work under this Agreement.

19. PERSONAL GRANT. The rights of the Grantee hereunder are personal to the Grantee and may not be assigned by Grantee, shall not constitute an interest in real property and shall not run with the land. Subject to the foregoing, this Agreement shall be binding on the Parties hereto and their successors and assigns and Grantor shall convey the Property subject to the rights granted herein.

Contract Control Number: PLANE-201520576-00

Contractor Name: PARK CREEK METROPOLITAN DISTRICT

By: 

Name: Tammi T. Holloway
(please print)

Title: Assistant Secretary
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number: PLANE-201520576-00

Contractor Name: FOREST CITY STAPLETON, INC.

By: 

Name: John S. Lehigh
(please print)

Title: President and COO
(please print)

ATTEST: [if required]

By: N/A

Name: N/A
(please print)

Title: N/A
(please print)



Contract Control Number:

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:

By _____

By _____

By _____

