

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB11-0935

SERIES OF 2012

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed First Amendment to Storm Water License Agreement for Multi- purpose License, Ref. No. 272 between the City and County of Denver and Park Creek Metropolitan District for Sanitary Sewer/Storm Sewer at the former Stapleton site.

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

Section 1. The proposed First Amendment to Storm Water License Agreement for Multi-purpose License, Ref. No. 272 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. 2007-0895-A, 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

FIRST AMENDMENT TO STORM WATER LICENSE AGREEMENT

Multi-Purpose License - - Ref. No. 272 -- Storm Water License Filing 7

THIS FIRST AMENDMENT TO STORM WATER LICENSE 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"), and **PARK CREEK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("District" or "Grantee").

WITNESSETH:

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, the City granted Grantee the right to use certain City-owned property at the Stapleton Site for construction of certain storm water pond and related facilities through a Storm Water License Agreement, Multi-Purpose License Ref. No. 272 Storm Water License Filing 7, dated October 23, 2007 ("License 272"); and

WHEREAS, the parties desire to amend License 272 as stated below;

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

1. All capitalized terms not otherwise defined in this First Amendment shall have the definitions accorded to those terms in the License.
2. Section 11, entitled "Restoration", is amended and restated to read as follows:
 - A. Upon termination of this Agreement as provided in Paragraph 10, or non-use or 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.

B. Grantee may at its option commence restoration activities, in whole or in part, prior to the termination of this Agreement (“Early Restoration”), provided that Grantee upon termination of this Agreement as provided in Paragraph 10 for breach, or non-use or abandonment Grantee shall still complete all restoration as set forth in this Section 11. The following requirements apply to all Early Restoration work.

1. Grantee shall perform the following tasks prior to commencing Early Restoration work:

a. The area to be restored, including detention pond sediment if the ponded area is to be restored, shall be sampled and tested for the presence of Stapleton Numeric Criteria constituents according to the sampling plan attached as Exhibit E hereto. Results of such sampling and testing shall be provided to Project Manager, Greg Holt, or his successor. In the event that some of these soils do not meet the SNC, the City and Grantee will meet no later than 5 business days following receipt of sampling results to determine responsibility for remediation pursuant to Paragraphs 13 and 15 of the Agreement and the schedule for such remediation. Upon completion of remediation by the responsible party, confirmation sampling will be performed to demonstrate the impacted area(s) meets SNC prior to beginning Early Restoration.

b. The following shall be submitted to the Project Manager for approval, which approval shall not be unreasonably withheld or delayed.

- i. a description of the Early Restoration tasks that will be performed;
- ii. a depiction of where the Early Restoration work will occur;
- iii. if the restoration work will include backfilling, a statement of the source of the backfill material.

c. Areas to be backfilled shall be surveyed prior to any backfill operations, and a copy of the survey provided to the Project Manager.

2. Grantee shall comply with the Imported Soil Protocol attached as Exhibit F hereto.

3. After completion of the Early Restoration, a survey of the Early Restoration area as restored shall be submitted to the Project Manager.

4. The Early Restoration area shall remain subject to the original License until termination thereof according to its terms.
3. A new Section 29 is added to the License 272, as follows:
 29. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Grantee consents to the use of electronic signatures by the City. License 272, 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 License 272 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 License 272 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.
4. The Exhibit E attached to this First Amendment is hereby incorporated into License 272 as Exhibit E.
5. The Exhibit F attached to this First Amendment is hereby incorporated into License 272 as Exhibit F.
6. In the event of any conflict between License 272 and this First Amendment, the terms and conditions of this First Amendment shall control.
7. This First Amendment may be executed by up to two (2) counterparts, each of which, when executed, shall be deemed an original and both of which together shall be deemed one and the same instrument. Furthermore, this First Amendment may be executed and delivered by the exchange of electronic facsimile copies or counterparts of the signed documents, which facsimile copies or counterparts shall be binding on the parties.
8. Except as otherwise provided herein, all of the terms and conditions of the existing License 272 shall remain in full force and effect and are hereby ratified and reaffirmed.
9. This First Amendment to Storm Water License 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: AR7A013

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: AR7A013

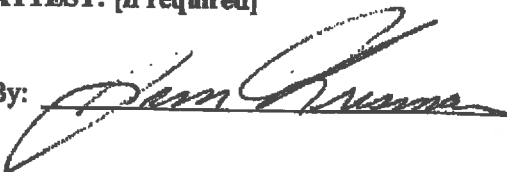
Vendor Name: Park Creek Metropolitan District,
a quasi-municipal corporation and
political subdivision of the State of
Colorado

By: 

Name: Cheryl Cohen-Vader
(please print)

Title: First Vice President
(please print)

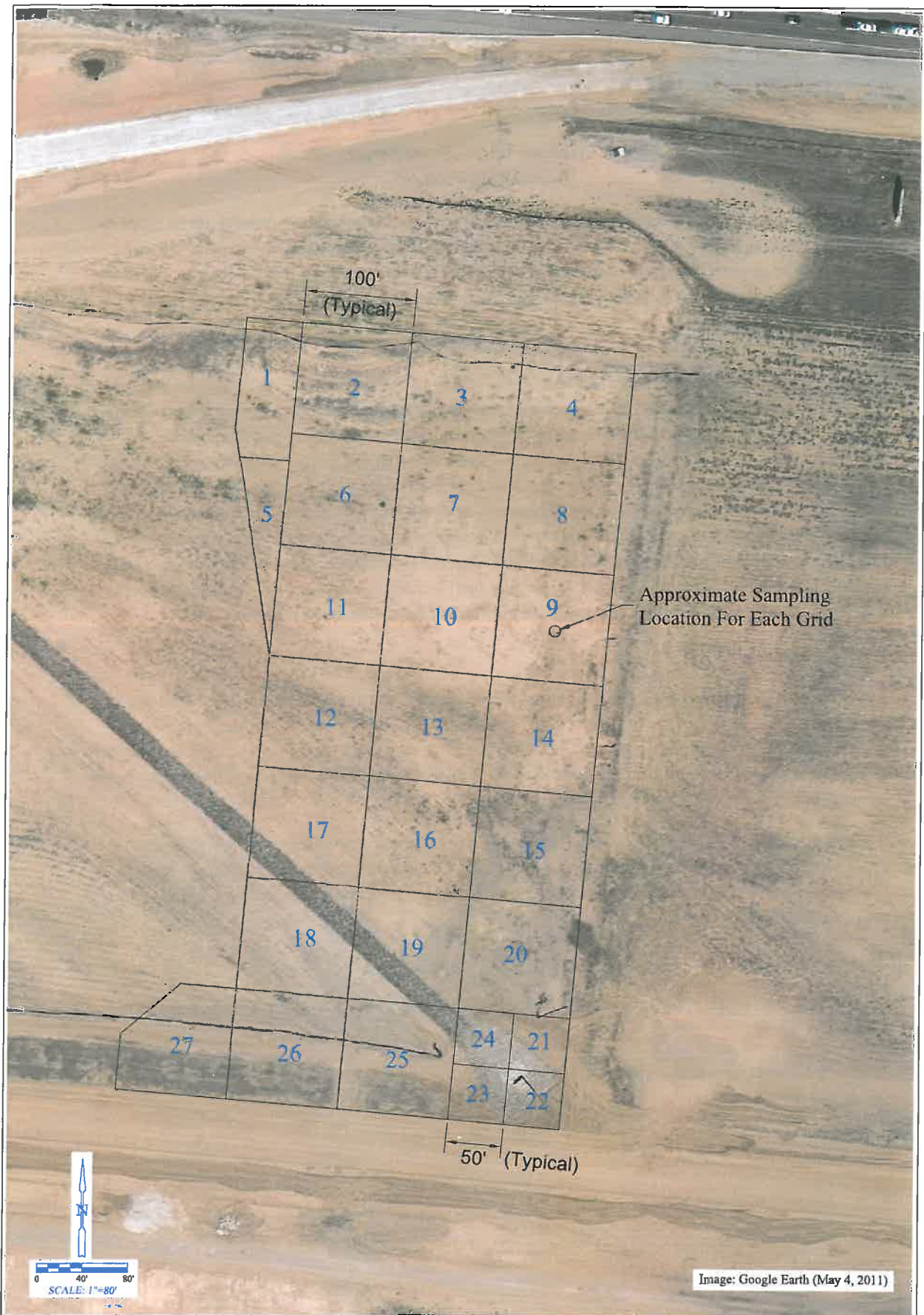
ATTEST: [if required]

By: 

Name: Jim Chrisman
(please print)

Title: Sec.
(please print)





STAPLETON INTERNATIONAL AIRPORT - FILING 7
DETENTION POND SURFACE CONFIRMATION SAMPLING
(100' GRID - TYPICAL)
WEST OF NORTHWEST CORNER OF EAST 40TH AVE. & HAVANA ST.
DENVER, COLORADO

PROJECT: 025
 DATE: 9/21/11
 DRAWN: S.S.B.
 CHECKED: P.L.C.
 FIGURE NO: 2

Handwritten signature or initials in black ink.

**Former Stapleton International Airport Site
Import Soils Protocol**

Soils from on-site or off-site borrow sources or other fill sources identified for potential use on property owned by the City and County of Denver (CCoD) within the Former Stapleton International Airport (SIA) are to be screened for environmental and geotechnical suitability using the protocols set out in this memorandum to ensure that such soils are suitable for unrestricted residential use.

Evaluation of Soil Source

Prior to initiating any soils sampling and testing, the history of the site from which the subject soils are being generated shall be assessed to determine whether the soils originate from an appropriate source and to prepare an appropriate screening approach and analytical suite to use during soil sampling and testing. Any contractor proposing the use of soils shall provide the location and history of the source to CCoD. CCoD shall determine if the history of the source makes the soils acceptable or precludes the soils as a viable fill source (e.g., a site with a heavy industrial history that has documented soil contamination or a site where leaking underground tanks were removed would be eliminated as a potential borrow source). If the source is generally acceptable, CCoD shall develop a soil screening and sampling approach and analytical suite for soil sampling. Analytical testing shall include assessment of geotechnical properties to determine if the soils are acceptable as fill on the SIA site for the intended purpose.

Frequency of Testing

The contractor shall collect a sample from the proposed source soils at a minimum frequency of one in every 2,000 cubic yards. If the borrow source is less than 2,000 cubic yards, a minimum of three soil samples shall be collected. Samples shall be a representative composite sample of each 2,000 cubic yard increment of soil. Method of sample collection will be approved by CCoD; sampling and analysis must occur prior to the import of any borrow source to SIA.

If during the screening of the borrow soils, the contractor observes continuing consistency from an appearance perspective, the contractor may request from CCoD a decrease in the frequency of testing while maintaining adequate documentation of the material being imported. Frequency may not be less than 1 in 5,000 cubic yards.

Analysis to be Conducted

Soil samples shall be analyzed, at a minimum, for the following analytes and corresponding analytical methodology.

Total Petroleum Hydrocarbons (Method 8015)

Volatile Organic Compounds (Method 8260)

Poly Aromatic Hydrocarbons (Method 8270)

RCRA Metals List of 8 (Method 6010)

Ethylene Glycol and Propylene Glycol (Method 8015B)

Exhibit F

PAGE 1 of 5

Polychlorinated Biphenyls (Aroclor 1016 and 1254) (Method 8082)

Pesticides (Method 8081A)

Concentrations of any contaminants detected in soil samples must be less than those concentrations enumerated in the Stapleton Numeric Criteria (SNC). CCoD will determine if the source history suggests that the analyte list be expanded to include additional SNC compounds. All analytical results must exhibit detection limits that are below the SNC for a given analyte/compound.

Screening Protocol

If determined to be appropriate by CCoD based on the history of the source and sample results, soil shall be screened by the contractor during placement at the SIA Site. Such screening shall include, at a minimum, screening for visual and olfactory indications of contamination. If the sampling results or source history indicates that further screening is appropriate, the contractor shall supplement the screening protocol to include use of mechanical screening devices (such as PID or other field screening devices). Soils that show signs of contamination shall be segregated and disposed of according to the our Materials Management Plan.

Documentation

Following completion of soil placement, the contractor shall prepare a letter report documenting the location where any source soils were placed, the quantity of soil placed, the source, the history of the source, the sampling and screening protocol implemented, and the analytical results of the sampling performed. The contractor shall submit a copy of the report to CCoD.

*emailed to Jim Ledwin & Derek Brown
5-29-08*

EARTHWORK SPECIFICATION INSERTS
STAPLETON FILING 16
KUMAR & ASSOCIATES PROJECT NO. 08-1-260

MATERIALS

- A. **Suitability.** All fill materials shall be free of vegetation, brush, sod, and other deleterious substances and shall not contain rocks or lumps larger than 6 inches in greatest dimension. Organic content of all fill materials shall be less than 3%.
- B. **Select Granular Fill.** Select granular fill shall consist of suitable Stapleton area granular soil or similar material containing 100% minus 6-inch material, no more than 10% plus 2-inch material, containing less than 50% passing the No. 200 sieve, and having a maximum plasticity index of 10.
- C. **Overlot Fill.** Overlot fill shall consist of suitable Stapleton area soil or similar material containing 100% minus 6-inch material, no more than 10% plus 2-inch material, containing less than 80% passing the No. 200 sieve, and having a maximum liquid limit of 40 and a maximum plasticity index of 20.

PLACEMENT AND COMPACTION

- A. **Preparation of Embankment Areas.** In areas of proposed embankment, remove all pre-existing fill material, disturbed material, and any unsuitable material down to suitable undisturbed natural soil as determined by a representative of the third party geotechnical engineer. Also flatten any existing excavation slopes to no steeper than 2:1 (horizontal:vertical). Prepare the base of the excavation by scarifying to a minimum depth of 8 inches, moisture conditioning to within 2 percentage points of optimum, and compacting to provide a stable, uniform base for fill placement. Rework any excessively moist or unstable areas as necessary to allow for proper compaction of embankment fill. Where fill is to be placed on slopes steeper than 4:1, excavate 2-foot to 4-foot high horizontal benches to allow fill placement in horizontal lifts. A representative of the third party geotechnical engineer shall be given the opportunity to observe all prepared embankment areas prior to fill placement.
- B. **Material Zones and Compaction Requirements.** Fill placed more than 8 feet below final grade shall consist of Select Granular Fill compacted to at least 100% of the ASTM D 698 (Standard Proctor) maximum dry density. Fill placed within 8 feet of final grade shall consist of Overlot Fill compacted to at least 95% of the ASTM D 698 maximum dry density. All fill placed to within 3 feet of final grade shall be placed at moisture contents between 1 percentage below and 3 percentage points above the ASTM D 698 optimum

moisture content. The moisture content shall be reduced to between plus/minus 2 percentage points of optimum in the upper 3 feet.

COMPACTION CONTROL AND QUALITY ACCEPTANCE

- A. **Material Conformance.** Suitability and material conformance of all fill materials will be checked by the third party geotechnical engineer prior to fill placement. The Contractor shall submit samples of all proposed fill materials to the third party geotechnical engineer for approval at least 48 hours prior to placement. Once material sources are initially approved, the third party geotechnical engineer's on-site representative will obtain a sample for conformance testing for at least every 25,000 cubic yards of fill placed, or when a change in material type occurs.

- B. **Compaction Testing.** In compacted fills, the representative of the third party geotechnical engineer will perform in-place nuclear moisture-density tests at a frequency of at least one test for each 2,000 cubic yards of fill placed, with at least one test performed at elevation increments of 1 to 1.5 feet for each day's work in each general work area. No layer of fill shall be covered by another layer until the proper moisture and compaction have been achieved and the area approved by the third party geotechnical engineer's representative.

Compaction Table:

	Deep Zone (Fill > 8-ft BFG*)	Middle Zone (8-ft < Fill < 3-ft BFG*)	Upper Zone (Fill < 3-ft BFG*)
Preparation	Scarify bottom of excavation to 8" minimum depth, moisture condition to optimum moisture content +/- 2% and recompact to provide uniform stable base for fill placement. Verify by 3 rd party geotechnical engineer.		
Soil Type	Select Granular (100% minus 6-inch, ≤10% plus 2-inch, <50% passing #200, Plasticity Index ≤10	Overlot Fill (100% minus 6-inch, ≤10% plus 2-inch, <80% passing #200, Liquid Limit ≤40, Plasticity Index ≤20	Overlot Fill (100% minus 6-inch, ≤10% plus 2-inch, <80% passing #200, Liquid Limit ≤40, Plasticity Index ≤20
Compaction Standard	100% Std Proctor in 8" Lifts	95% Std Proctor in 8" Lifts	95% Std Proctor in 8" Lifts
Moisture Content	-1% < MC < 3%	-1% < MC < 3%	-2% < MC < 2%

Notes:

* BFG denotes below finished grade

3rd party testing required for moisture and compaction at a rate of 1 test per 2000 cubic yards with at least one test performed at elevation increments of 1-1.5 ft for each day's work in each general work area.