

BILL/ RESOLUTION REQUEST

1. Title: Amendment and assignment of Moran Pizza (d/b/a Domino's Pizza) to Mission Yogurt (d/b/a/) Einstein Bros. Bagels in the main terminal of DIA (AC38010).

2. Requesting Agency: DIA

3. Contact Person with actual knowledge of proposed ordinance

Name:John Ackerman

Phone:303-342-2568

Email:john.ackerman@flydenver.com

4. Contact Person with actual knowledge of proposed ordinance who will present the item at Mayor Council and who will be available for first and second reading, if necessary

Name:Amy Raaz

Phone:(303) 342-2201

Email:Amy.Raaz@flydenver.com

5. Describe the proposed ordinance, including what the proposed ordinance is intended to accomplish, who's involved

a. Scope of Work

Moran Pizza d/b/a Domino's located in the main terminal is currently operating under a month-to-month holdover agreement. Moran Pizza d/b/a Domino's located in the main terminal is currently operating under a month-to-month holdover agreement. In the fourth quarter of 2012, Moran Pizza (Domino's) indicated to the City that the concession was experiencing a downturn in its ability to generate sufficient revenue to continue to operate the terminal food court location at the airport. Rather than take a rent reduction, by means of an amendment to the Agreement, Domino's and Mission Yogurt (Mission) contacted the City about steps necessary to implement their agreement and obtain the City's consent to assignment.

Mission offered to accept an assignment and an amended agreement from Moran Pizza with the City's consent, take possession of the space on a date certain and convert the concession to Einstein Bros Bagels expeditiously and operate in the Concession Space until December 31, 2016. For its part, Moran Pizza offered to continue to operate Domino's Pizza, paying its rent and CAM fees until an assignment and amendment can be executed and cooperate in transferring existing City business licenses to Mission. Once the City received Mission's proposal, the Commercial team met to evaluate it and other proposals the City received concerning this concession opportunity. The City performed its due diligence to evaluate Mission's current financial health, resources to execute this agreement, performance at other airports, progress on Root Down/Udi's, status of Mission's PVC administrative review, keeping in mind all the while three very important factors: (i) Einstein's Brothers Bagel is a strong brand and a successful

concession at DIA, (ii) for this particular opportunity, the City requires significant capital investment from any proposer to operate a different brand in the Moran Pizza concession space with insufficient term to realize a typical market return on its investment, and (iii) a closed Domino's space would be detrimental to DIA and its customers. The City evaluated all of the "offers" related to this concession opportunity, and it became clear that significant investment requirements coupled with limited term were economic factors that would make it unfavorable for the City to formally advertise this concession opportunity. Instead, the City chose to proceed informally with notice calculated to inform previous self-identified proposers in a manner designed to achieve maximum competition and maximum economy to the City without advertising, all the while minimizing the amount of time the concession location would be closed.

DIA consents to simultaneously assign and amend the Moran Pizza/Domino's Agreement to Mission Yogurt to operate an Einstein Bros. Bagels with the following conditions:

1. Mission Yogurt will provide an executed agreement to operate an Einstein Bros. Bagels in the current Domino's, terminal food court location
2. Mission Yogurt will complete design, construction contracting, and permitting prior to the amendment/assignment execution date, which is projected to be June 1, 2013
3. Airport will amend to set the rent at 10%, \$10K for month of June, no MAG for first 12 months, subsequent MAG of 85% of first 12 month gross revenue, allow Einstein Bros Bagels concept use, and set term to December 31, 2016
4. Mission Yogurt will design and install a sign in accordance with the new food court signage criteria
5. To minimize the amount of time the location is closed, Mission Yogurt guarantees, by evidence of an agreement, that Domino's will remain open, fully operational as a Domino's, and paying rent until the amendment/assignment with Mission Yogurt is fully executed, which is projected to be June 1, 2013
6. Mission Yogurt will assume possession of the location on the date the assignment/amendment is executed (projected to be June 1, 2013), at which time the Domino's will close and the remodeling of the space to an Einstein Bros Bagels will begin
7. The space will open for business upon approval by the airport, but no later than July 1, 2013
8. All conditions must be met by July 1, 2013, or the Airport, in its sole discretion, can terminate the assignment/amendment

b. Duration

4/29/1993 – 12/31/2016

c. Location

DIA

d. Affected Council District

11

e. Benefits

By Moran Pizza, Inc. amending and assigning the concession agreement to Mission Yogurt, Inc., Moran Pizza is able to close its door to minimize negative financial impact. The airport benefits because the amount of time the location is closed and not servicing the public significantly minimized.

f. Costs

n/a

6. Is there any controversy surrounding this ordinance, groups or individuals who may have concerns about it? Please explain.

No.

Bill Request Number: BR13-0353

Date: 5/28/2013