

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2013

COUNCIL BILL NO. CB13-0437
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Seventh Amendment to Agreement between the City and County of Denver and Mission Yogurt, Inc. concerning a concession at Denver International Airport.

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

Section 1. The proposed Seventh Amendment to Agreement between the City and County of Denver and Mission Yogurt, Inc. (AC6X011) 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. 1996-1105-H, is hereby approved.

COMMITTEE APPROVAL DATE: July 4, 2013

MAYOR-COUNCIL DATE: July 9, 2013

PASSED BY THE COUNCIL: _____, 2013

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2013

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

PREPARED BY: Skip Gray, III, Assistant City Attorney DATE: July 11, 2013

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: July 11, 2013

SEVENTH AMENDMENT TO AGREEMENT

THIS SEVENTH AMENDMENT TO AGREEMENT ("Seventh Amendment") is made and entered into as of the date stated on the signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of the Department of Aviation (the "City"), Party of the First Part, and **MISSION YOGURT, INC.**, a Colorado corporation ("Concessionaire") d/b/a **TACO BELL**, Party of the Second Part (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Parties hereto entered into a concession agreement (AC6X011), dated April 11, 1996. The Agreement for a Food Court concession at Denver International Airport was amended several times, the last being a Sixth Amendment dated August 17, 2012 (collectively the "Original Agreement"); and

WHEREAS, plans for the redesign of the Jeppesen Terminal are still under consideration; and

WHEREAS, as part of the re-stabilization of the Terminal, the City has asked current Food Court Concessionaires to refurbish their concession locations in exchange for up to three years additional term; and

WHEREAS, having determined that uniform terms for Food Court concessions in the Terminal are necessary to continue to provide full services to the traveling public without interruption, which is in the best interest of the City and the traveling public; the Parties have agreed to adjust the term of the Original Agreement so that it expires at the same time as the agreements of the other Food Court concessions; and

WHEREAS, as consideration for this adjustment, Concessionaire agrees to invest needed capital to refurbish the Concession Space;

NOW THEREFORE, for the foregoing reasons and for other good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereby agree to amend the Original Agreement as follows:

1. **Extended Term.** Section 4.01 ("**Term**") of the Original agreement is hereby amended to extend the Expiration Date to June 30, 2016.

2. **Terminal Stabilization Refurbishment.** At its sole cost and expense, Concessionaire agrees to refurbish the Concession Space and install new signage in accordance with the new food court signage criteria ("**Terminal Stabilization Refurbishment**"). The scope of the Terminal Stabilization Refurbishment must be first approved by the City and at a minimum shall include those items listed on **Exhibit B, Minimum Refurbishment Investment List**, which is attached to this Amendment and incorporated herein by this reference. Full and complete specifications for all work and improvements related to Terminal Stabilization Refurbishment along with a statement of the time required to complete such work shall be submitted to and approved in writing by the City before such work commences. Electronic copies of plans for such work shall be given to Airport Engineering for review and written approval prior to commencement of the work. Concessionaire shall begin, diligently perform,

and complete Terminal Stabilization Refurbishment no later than four months from the date this Seventh Amendment is executed. Terminal Stabilization Refurbishment shall be completed in strict conformity with final plans and specifications marked "approved" by the City.

3. **Minimum Terminal Stabilization Investment.** The amount to be spent for Terminal Stabilization Refurbishment shall be no less than Thirty-two Thousand Eight Hundred Fifty Dollars (\$32,850.00) and the amount spent for new signage shall be no less than Fifteen Thousand Dollars (\$15,000.00) (the "Minimum Terminal Stabilization Investment"). The Minimum Terminal Stabilization Investment is a material part of the consideration to the City to adjust the Term so that it expires when the terms of the other Food Court concessions expire.

4. **Actual Investment.** This Minimum Terminal Stabilization Investment shall not include financial costs, interest, inventory, pre-opening expenses, or intra-company charges but may include architectural and engineering fees not to exceed 15% of the total. Within 90 days after completing Terminal Stabilization Refurbishment, Concessionaire shall file with the Manager lien releases for the above expenditures and a statement certified by an officer of the Concessionaire setting forth the total costs of the Terminal Stabilization Refurbishment with appropriate detail itemizing design fees, original construction contract amount, total change orders, decorations, furnishings, fixtures, and equipment ("Actual Investment"). At the City's request, Concessionaire shall also submit copies of invoices supporting such costs. Non-receipted expenditures will not be credited. If the total amount of the Actual Investment is less than the Minimum Terminal Stabilization Investment, Concessionaire shall pay to the City the difference between the Actual Investment (as detailed by the certified receipts) and the Minimum Terminal Stabilization Investment within 30 days after the City provides written notice to Concessionaire. The Manager's Authorized Representative, however, will waive this requirement to pay the difference upon a finding that Concessionaire's Terminal Stabilization Refurbishment was completed in strict conformity with approved final plans and specifications as described above.

5. **Holding Over.** Section 4.03, Holding Over, of the Original Agreement is hereby amended by deleting it entirely and replacing it with the following:

4.03 HOLDING OVER

A. Holding Over. If Concessionaire holds over after the Expiration Date, or any extension or early termination of this Agreement as herein provided, and the City and Concessionaire have not otherwise agreed to the terms and provisions of such holding over, thereafter Concessionaire's occupancy shall be deemed by the City to be either a month-to-month holdover tenant at the same rental as was in effect immediately prior to the Expiration Date, or a tenant at sufferance, at a monthly rental, payable in advance, equal to 150% of the monthly Compensation provided for in Section 5 of this Agreement, and Concessionaire shall otherwise remain bound by all terms, conditions, covenants, and agreements hereof.

B. Permitted Holdover. The City may, at its option, allow Concessionaire to hold over under this Agreement on a month-to-month basis. A holdover by Concessionaire shall be deemed permitted until expiration of thirty (30) days after notice to vacate has been given by the City unless the City shall have entered into a binding agreement to deliver possession to another concessionaire on a date that is less than thirty (30) days following the Expiration

Date. It is agreed and understood that any holding over of Concessionaire after the termination of this Agreement with the City's consent shall not renew and extend the Term but shall operate and be construed as a month-to-month permit and Concessionaire agrees to pay to the City fees and other payments that are in effect at the end of the regular Term of the Agreement unless the City has given prior notice of any increased fees. Such increase in fees may be given at any time with notice of not less than thirty (30) days. Concessionaire shall be liable to the City for all loss or damage on account of any such holding over against the City's will after the termination of this Agreement, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing payment to the City in the event that Concessionaire fails or refuses to surrender possession shall not constitute a waiver by the City of its right to immediate possession.

C. Month -to -Month Tenancy. If Concessionaire is deemed to be a holdover tenant, Concessionaire and the City agree that the tenancy may be terminated at any time by thirty (30) days prior written notice from either Party to the other.

D. No Right to Holdover. Nothing herein shall be construed to give Concessionaire the right to hold over at any time, and the City (after expiration or termination of this Agreement, as the case may be), may exercise any and all remedies at law or in equity to recover possession of the Concession Spaces, as well as any damages incurred by City on account of such holding over.

E. Tenant at Sufferance. In the event that the City deems Concessionaire a tenant at sufferance, the City will notify Concessionaire, in writing, that Concessionaire is a tenant at sufferance. Thereafter, the City may take immediate action to evict Concessionaire without further notice and may otherwise exercise any other rights and remedies available to it at law or in equity.

6. Agreement Remains in Full Force and Effect. Except as otherwise modified or amended by this Seventh Amendment, all terms and conditions of the Original Agreement shall remain in full force and effect as though set out in full herein and the Original Agreement hereby is revived, confirmed and ratified in all respects.

7. Effective, Counterparts, Electronic Signatures. This Seventh Amendment is expressly subject to and shall not be or become effective or binding on the City until it has been approved by the City Council, if required by the City's Charter, and fully executed by all signatories of the City and County of Denver. This Seventh Amendment may be executed in two or more counterparts, each of which will be deemed an original signature page to this Seventh Amendment, and it may be signed electronically by either Party in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-AC6X011-07

Contractor Name: Mission Yogurt, Inc.

By: 

Name: Rodolfo J. Tafona
(please print)

Title: PRESIDENT
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number: PLANE-AC6X011-07

Contractor Name: Mission Yogurt, Inc.

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 _____



Exhibit B –Minimum Refurbishment Investment List for Mission Yogurt, Inc., dba Taco Bell

	<p>Eliminate items</p>		<p>Repair secure electrical support.</p>
<p>store around transformer.</p>	 <p>Install new smoke and heat detectors unless the existing ones can be cleaned without causing damage or creating alarms.</p>		<p>Repair leaking sink.</p>
	<p>Re-caulk at stainless steel.</p>		<p>Properly patch the wall.</p>
	<p>Replace countertop with stainless steel or solid surface material, and then properly seal the sink to the countertop. Install door pulls.</p>		<p>Install stainless steel mat at bottom of hand sink cabinet. Seal interior of sink cabinet to eliminate exposed particle board.</p>
	<p>Install missing bulb above hand sink.</p>		<p>Install missing lamps near serving line.</p>

 <p>Upgrade electrical system as necessary to eliminate use of electrical cord.</p>	 <p>Replace sprinkler head that has tape on it.</p>
 <p>Properly repair base.</p>	 <p>Repair cracked floor tile.</p>
 <p>Properly repair cove base.</p>	 <p>Clean and paint door and jamb.</p>

Concessionaire shall provide an engineer's stamped letter identify the condition of their HVAC system and the repairs/ upgrades necessary to bring the system into compliance with current applicable codes.

The tenant shall implement required work to bring system into compliance with current codes.

Each space shall be thoroughly and professionally cleaned.