

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2013

COUNCIL BILL NO. CB13-0224
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Standard Food and Beverage Concession Space Agreement between the City and County of Denver and CI/EL-ROI, JV concerning a concession at Denver International Airport.

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

Section 1. The proposed Standard Food and Beverage Concession Space Agreement between the City and County of Denver and CI/EL-ROI, JV (201309945) dba Wetzel's Pretzels in the words and figures contained and set forth in that form of the 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. 2013-0253, is hereby approved.

COMMITTEE APPROVAL DATE: April 18, 2013

MAYOR-COUNCIL DATE: April 23, 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: April 25, 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: April 25, 2013

STANDARD FOOD AND BEVERAGE CONCESSION SPACE AGREEMENT

BETWEEN

THE CITY AND COUNTY OF DENVER

AND

**CI/EL-ROI, JV
DBA
WETZEL'S PRETZELS**

**AT
DENVER INTERNATIONAL AIRPORT**

PERMITTED USE:

Operation of a first-class Food and Beverage concession at DIA, offering for sale the following approved items proposed by Concessionaire: The sale of Wetzel's Pretzels-branded pretzels, including flavored and cheese pretzels, Wetzel Bitz and Gourmet Bitz, pretzel dips, Wetzel dog and cheese dog, as well as non-alcoholic beverages such as fresh lemonade, frozen lemonade, frozen granita, fountain drinks, iced tea, bottled water, bottled soda and for no other purpose whatsoever unless approved in advance by the City, examples of which are listed in *Exhibit E, Initial Menu and Approved Pricing List*.

Express Restrictions:

Unless otherwise authorized in writing by the Manager or the Manager's Authorized Representative, Concessionaire may not sell the following expressly restricted items: All frozen desserts such as ice cream, shakes, and floats as well as specialty or gourmet coffees (defined as hot, cold and frozen espresso based beverages or other flavored coffees, i.e. cappuccinos, mochas, lattes, etc.).

Major Concession Category

Food and Beverage

Minor Concession Category

Snacks

Concessionaire's Brand(s)

Wetzel's Pretzels

HOURS OF OPERATION:

6AM - 10PM, Not less than sixteen (16) hours each day, seven (7) days per week, or as they may be adjusted pursuant to §7.04.

PRELIMINARY DESIGN DUE DATE:

30 calendar days from the Effective Date or as documented by *Exhibit D*.

NTP DOCUMENTS DEADLINE:

150 calendar days from the Effective Date or as documented by *Exhibit D*.

TARGET POSSESSION DATE:

180 calendar days from the Effective Date or as documented by *Exhibit D*.

REQUIRED OPENING DATE:

270 calendar days from the Effective Date or as documented by *Exhibit D*.

TABLE OF CONTENTS

SECTION 1 – GENERAL	1
1.01 CONSIDERATION.....	1
1.02 INCORPORATION OF ATTACHED SUMMARY PAGE, EXHIBITS, AND ADDENDA.....	1
SECTION 2 – ADMINISTRATION OF AGREEMENT	1
2.01. MANAGER; MANAGER’S AUTHORIZED REPRESENTATIVE.....	1
SECTION 3 – GRANT OF CONCESSION RIGHTS	2
3.01 CONCESSION RIGHTS GRANTED.....	2
3.02 USE OF SPACE	2
3.03 RIGHTS NOT EXCLUSIVE.....	2
3.04 MEANS OF ACCESS	2
3.05 CITY’S RIGHT OF ACCESS.....	3
SECTION 4 – TERM	3
4.01 TERM.....	3
4.02 DELIVERY OF THE CONCESSION SPACE	3
4.03 CONFIRMATION OF DATES	4
4.04 HOLDING OVER	4
SECTION 5 – COMPENSATION	5
5.01 COMPENSATION.....	5
5.02 GROSS REVENUES	5
5.03 MONTHLY PAYMENTS AND REVENUE STATEMENTS.....	6
5.04 TITLE TO CITY’S COMPENSATION	7
5.05 INTEREST ON PAST DUE AMOUNTS	7
5.06 PLACE AND MANNER OF PAYMENTS.....	7
5.07 APPLICATION OF PAYMENTS.....	8
5.08 BOOKS OF ACCOUNT AND AUDITING	8
5.09. REESTABLISHMENT OF RENTALS, FEES, AND CHARGES.....	10
SECTION 6 – DESIGN, CONSTRUCTION, AND INSTALLATION OBLIGATIONS	11
6.01 ACCEPTANCE OF THE CONCESSION SPACE.....	11
6.02 CONSTRUCTION OBLIGATIONS OF CONCESSIONAIRE	11
SECTION 7 - OPERATION AND USE	12
7.01 OPERATING A FIRST CLASS CONCESSION.....	12
7.02 BRANDS.....	15
7.03 CREDIT CARDS AND DEBIT CARDS.....	16
7.04 HOURS OF OPERATION.....	16
7.05 CARE OF AREA.....	16
7.06 SALES AND DIGNIFIED USE	16
7.07 VENDING MACHINES.....	17
7.08 MAINTENANCE OF A FIRST-CLASS CONCESSION SPACE.....	17
7.09 RENOVATION OF CONCESSION SPACE	18
7.10 TITLE TO IMPROVEMENTS	19
7.11 SURRENDER OF CONCESSION SPACE	19
7.12 REMOVAL OF CONCESSIONAIRE’S EQUIPMENT	20

14.03	AGREEMENT MADE IN COLORADO; VENUE	36
14.04	AGREEMENT SUBORDINATE TO-AGREEMENTS WITH THE UNITED STATES ...	36
14.05	RIGHT TO DEVELOP AIRPORT	36
14.06	MASTER PLAN	36
14.07	AGREEMENT SUBJECT TO AVIATION PRIORITY	36
14.08	BOND ORDINANCES.....	37
14.09	EARLY TERMINATION	37
14.10	FORCE MAJEURE	37
14.11	INCONVENIENCES DURING CONSTRUCTION	38
14.12	ASSIGNMENT AND SUBLEASE	38
14.13	NONDISCRIMINATION	38
14.14	NOT PARTNERSHIP	39
14.15	NOTICES.....	39
14.16	PARAGRAPH HEADINGS.....	39
14.17	PATENTS AND TRADEMARKS	39
14.18	COLORADO OPEN RECORDS ACT	40
14.19	SECURITY	40
14.20	SEVERABILITY	41
14.21	THIRD PARTIES	41
14.22	AUTHORITY TO ENTER INTO AGREEMENT	41
14.23	NO CONSTRUCTION AGAINST DRAFTING PARTY	42
14.24	USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS	42
14.25	CITY SMOKING POLICY	42
14.26	WAIVER OF CLAIMS	42
14.27	JOINT AND SEVERAL LIABILITY	42
14.28	BROKER'S COMMISSION	42
14.29	NO LIMIT ON CITY'S POWERS	43
14.30	WAR OR NATIONAL EMERGENCY	43
14.31	SURVIVAL OF CERTAIN CONTRACT PROVISIONS	43
14.32	AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS.....	43
14.33	FINAL APPROVAL; COUNTERPARTS; ELECTRONIC SIGNATURES.....	43

SECTION 3 – GRANT OF CONCESSION RIGHTS

3.01 CONCESSION RIGHTS GRANTED

Consistent with and subject to all the terms, conditions, covenants, and provisions of this Agreement, the City grants to Concessionaire the right to occupy, improve, and use the Concession Space as of the Delivery Date, as defined in §4.02 and documented by *Exhibit D*. As used in this Agreement, "Concession Space" shall mean that space located within the Jeppesen Terminal at the Airport ("Terminal"), the South Terminal at the Airport ("South Terminal"), and/or the Concourses A, B, or C at the Airport (collectively the "Concourses") as generally depicted and containing the number of square feet set forth on the Concession Space Plan attached hereto as *Exhibit A*. The City and Concessionaire acknowledge and agree that the dimensions of the Concession Space are approximate and that after completing construction, the precise dimensions and square footage shall be determined by the City and a revision to *Exhibit A* will be made, if necessary, depicting the dimensions and square footage of the Concession Space as actually constructed. In addition, the City may add or subtract square footage of up to twenty percent (20%) of the Concession Space with Concessionaire's prior written consent.

3.02 USE OF SPACE

Concessionaire may use the Concession Space only to operate a first-class food and beverage concession offering for sale the items set forth in the Permitted Use clause of the Summary Page. Concessionaire covenants and agrees to operate its concession in strict conformance with the Permitted Use and for no other purpose unless otherwise authorized in writing by the Manager or the Manager's Authorized Representative. Concessionaire understands and agrees that the use of the Concession Space is restricted by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipality having jurisdiction over the Airport.

3.03 RIGHTS NOT EXCLUSIVE

The City reserves the right to grant to other concessionaires the right to operate a business and sell items in other locations in the Airport that are the same, similar, or even identical to those described on the Summary Page. Concessionaire understands and agrees that its right to operate its business at the Airport and/or sell any of the items described on the Summary Page is not exclusive.

3.04 MEANS OF ACCESS

Concessionaire, its agents, invitees, guests, employees, and suppliers have a non-exclusive right of ingress to and egress from the Concession Space by a means of access located outside the boundaries of such space as specified by the City. Such access shall, without exception, be in common with such other persons (including, at the option of the City, the general public) as the City may authorize or permit. The City may at any time close, relocate, reconstruct, or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purpose. This right of access is subject to the security requirements of §14.19. Moreover, without exception, nothing in this Agreement shall be construed to prevent the City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon the Airport; using the roadways in or on the Airport; soliciting passengers upon the Airport; or otherwise operating on the Airport. The City reserves the right to make such charges provided that they do not discriminate unreasonably

B. City's Option to Terminate. If for any reason the City fails to deliver possession of the Concession Space to Concessionaire within six (6) months after the Target Possession Date, then the City, in the sole and absolute discretion of the Manager, shall have the option at any time thereafter to notify Concessionaire in writing of the City's intent to terminate the Agreement. In such event, the Agreement shall terminate on the date as stated in said notice, and both the City and Concessionaire shall be released from any liability or obligation under the Agreement.

C. Concessionaire's Option to Terminate. If for any reason the City has not terminated this Agreement or delivered possession of the Concession Space to Concessionaire within nine (9) months after the Target Possession Date, then Concessionaire, at any time thereafter, may notify the City in writing of Concessionaire's intent to terminate the Agreement sixty (60) days after the City receives written notice. This Agreement, however, shall remain in full force and effect if the City delivers possession of the Concession Space within that sixty (60) day period. If the City has not delivered possession of the Concession Space to Concessionaire within the sixty (60) day notice period, this Agreement shall terminate at the close of business on the sixtieth (60th) day, and both the City and Concessionaire shall be released from any liability or obligation under the Agreement.

4.03 CONFIRMATION OF DATES

The Parties acknowledge that the Required Opening, Rent Commencement, Renovation Completion, Expiration Dates, Preliminary Design Due Date, and the NTP Documents Deadline as listed on the Summary Page are all calculated based on the Effective Date, which cannot be determined until this Agreement is fully executed. Because these dates are material to this Agreement, promptly after execution of this Agreement, the City will confirm the Effective Date and deliver to Concessionaire a written confirmation of the referenced dates substantially in the form of *Exhibit D*. Following the Rent Commencement Date, the Parties shall execute a final confirmation of all dates in a written statement substantially in the form of *Exhibit D*. If Concessionaire fails to execute the final confirmation within twenty (20) days after it is delivered to Concessionaire, then absent manifest error, the dates set forth by the City in its final confirmation will be deemed to be accurate under this Agreement for all purposes. *Exhibit D* may be modified by the Manager as permitted herein without formally amending this Agreement.

4.04 HOLDING OVER

A. Tenancy at Sufferance. Concessionaire's tenancy shall be at sufferance if Concessionaire remains in possession of the Concession Space after the Expiration Date, any extension of the Term, or earlier termination of this Agreement, and the City and Concessionaire have not otherwise agreed in writing (as described below in §4.04B). Tenancy at sufferance shall be at a monthly compensation, payable in advance, equal to one hundred and fifty percent (150%) of the monthly Compensation provided for in §5.01, together with all other fees payable hereunder of this Agreement. Concessionaire shall otherwise remain bound by all other terms, conditions, and covenants of this Agreement. The City will notify Concessionaire in writing that the tenancy is at sufferance. Thereafter, and without further notice, the City may exercise all remedies provided in this Agreement, at law, or in equity, to recover possession of the Concession Space. Tenant shall be liable to the City for all loss or damage incurred by the City on account of any such holding over.

B. Permitted Holding Over. The foregoing notwithstanding, the City may at its option give Concessionaire written permission to remain in possession of the Concession Space after expiration of the Term on a month-to-month basis. A month-to-month tenancy by Concessionaire shall be deemed permitted until either Party gives the other Party a thirty (30)