

THIRD AMENDMENT TO CONCESSION AGREEMENT

THIS THIRD AMENDMENT TO CONCESSION AGREEMENT (“Third 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**”), and **EL-ROI, LLC d/b/a ROCKY MOUNTAIN CHOCOLATE FACTORY**, a Colorado limited liability company authorized to conduct business in the State of Colorado (the “**Concessionaire**”) (collectively, the “**Parties**”).

WITNESSETH:

WHEREAS, the City owns and operates Denver International Airport (“**DEN**” or the “**Airport**”); and

WHEREAS, the Parties entered into a Concession Agreement, Contract No. 201311261 (the “**Existing Agreement**”) for the operation of a concession at DEN;

WHEREAS, the City has created the DEN Concessions Excellence in Service Program (“**EIS Program**”) to establish standards for best-in-class concessions and encourage concessionaires to voluntarily achieve targets and participate in extra assessments that promote the values of DEN and the City, including equity, diversity, inclusion, and accessibility (“**EDI**”), outstanding customer service, contract compliance, and environmental sustainability; and

WHEREAS, concessionaires who participate in the EIS Program have an opportunity to receive a one-time three-year extension (“**EIS Award**”) to the expiration date of their concession agreement by demonstrating excellence in service across four recurring evaluations: EDI, Airport Concession Disadvantaged Business Enterprise (“**ACDBE**”) partnership, customer service, and environmental sustainability; and

WHEREAS, Concessionaire elected to participate in the EIS Program, and its evaluated performance has earned Concessionaire’s one-time EIS extension;

NOW, THEREFORE, for and in consideration of the privileges granted by the Existing Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereto agree as follows:

1. Each concession is eligible to receive one (1) EIS Award. After receiving this one-time extension to the Existing Agreement, Concessionaire will demonstrate a good faith effort to continue participation to achieve at least 90% of the EIS Program’s evaluations. The Term and the Expiration Date contained in the Summary Page of the Existing Agreement constitutes exercising Concessionaire’s one-time EIS extension by three (3) years. Hereafter, the Term will be three (3) years and the Expiration Date of the Agreement is September 30, 2027.

2. Section 5.08(C) of the Existing Agreement is amended and restated to read as follows:

“C. Concessionaire agrees to comply with the following Annual Statement requirement: No later than February 28 after the end of each year of operation after the first Contract Year, Concessionaire will, at its sole cost and expense, provide an “**Annual Statement**” to City prepared by an Independent Certified Public Accountant (“**CPA**”). There may be no limitation on the scope of the engagement that would preclude the Independent CPA from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Revenue. The engagement will include a schedule of Gross Revenue and Privilege Fees for each month of the Concessionaire’s operations in the Contract Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to City. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion from the Independent CPA on whether the Gross Revenue, Privilege Fees, and all other fees or charges payable under this Agreement have been completely and accurately presented, calculated, reported, and paid according to the terms of this Agreement. City reserves the right to reject Concessionaire’s choice of Independent CPA, where in City’s view the Independent CPA does not have the appropriate standing, reputation, or independence from the Concessionaire. The City may further define or modify the requirements for the Annual Statement through updates to the Concessions Handbook or by the CEO’s signed directive. This provision will apply to reporting for the 2024 gross receipts.”

3. Section 7.14 of the Existing Agreement is amended and restated to read as follows:

“B. Americans with Disabilities Act. Concessionaire agrees to comply with the following Americans with Disabilities Act (“**ADA**”) accessibility requirements: Concessionaire shall comply with the ADA 42 USC § 12101, et. seq and any similar or successor federal, state, and local laws, ordinances, rules, standards, codes, guidelines and regulations and will cooperate with the City concerning the same subject matter. In the event compliance cannot be achieved, Concessionaire shall proceed formally to the federal, state or local agency having jurisdiction to obtain a waiver of compliance.”

4. Exhibit X, Section 18 of the Existing Agreement is amended and restated to read as follows:

“SECTION 18: Minority and Women Owned Business Enterprise (“MWBE”)

- (a) This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (“**D.R.M.C.**”), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”); and any Rules and Regulations promulgated pursuant thereto.

- (1) Prior to the Notice to Proceed being issued by the City, the Concessionaire shall provide completed and updated DSBO forms, entitled “Commitment to MWBE Participation” and “Letter of Intent” (“**LOI**”). The LOI evidences Concessionaire’s understanding that they will enter into a

contractual relationship with the listed MWBE firm or that Concessionaire's general contractor, subcontractor(s), subconsultant(s), and/or supplier(s) will do so. A separate LOI is required for each MWBE subcontractor, subconsultant, and/or supplier at all tiers. The collective LOI amounts must be consistent with the total committed MWBE participation percent stated on the Commitment to MWBE Participation form.

- (b) Under § 28-68, D.R.M.C., the Concessionaire and its contractors and consultants have an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the MWBE participation upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting MWBEs performing on this Agreement through change order, contract amendment, force account, or other modification under § 28-70, D.R.M.C. The Concessionaire acknowledges that:
- (1) Future construction work under this Agreement, including but not limited to the Mid-Term Refurbishment, will be subject to a ***new*** MWBE goal established by DSBO. If any such future construction scope of work's value is determined to be over \$150,000.00, the Concessionaire must contact DSBO as soon as possible to request an MWBE participation goal on the refurbishment and/or other construction work to be completed. Contact should be made in the form of an email to goals@denvergov.org. If an MWBE participation goal is established by DSBO, the Concessionaire must submit the required Commitment to MWBE Participation form and Letter(s) of Intent for each City and County of Denver certified MWBE firm **prior to receiving a Notice to Proceed from the City**. Failure to submit the required DSBO forms could prevent NTP from being executed. Contact should be made in the form of an email to dsbo@flydenver.com.
 - (2) If change orders or any other contract modifications are issued under the Agreement, the Concessionaire and its contractors and consultants shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under § 28-70, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change by the City.
 - (3) If change orders or other amendments or modifications are issued that include an increase in the scope of work of any construction project under this Agreement, whether by amendment, change order, force account or otherwise, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such change orders or contract modification shall be promptly submitted to DSBO for notification purposes.

- (4) Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing project subcontractors or subconsultants are subject to the applicable goal and related requirements. The Concessionaire must ensure that its contractors and consultants satisfy the requirements with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. The Concessionaire must ensure that its contractors and consultants also satisfy the requirements under §§ 28-60 and 28-73, D.R.M.C., with regard to changes in scope or participation. The Concessionaire must ensure that it or its contractors and consultants supply to the DSBO Director all required documentation under §§ 28-60, 28-70, and 28-73, D.R.M.C., with respect to the modified dollar value or work under the contract.
- (5) If applicable, for contracts of one million dollars (\$1,000,000.00) and over, the Concessionaire will ensure that its contractors and consultants are required to comply with § 28-72, D.R.M.C. regarding prompt payment to MWBEs. Payment to MWBE subcontractors/subconsultants shall be made by no later than thirty-five (35) days after receipt of the MWBE subcontractor or subconsultant's invoice.
- (6) Failure to comply with these provisions may subject the Concessionaire to sanctions set forth in § 28-76 of the MWBE Ordinance.
- (7) Should any questions arise regarding specific circumstances, the Concessionaire and its contractors and consultants should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at DSBO@flydenver.com."

5. Except as otherwise provided herein, all provisions, terms and conditions of the Existing Agreement shall remain in full force and effect as if fully set forth herein.

6. This Third Amendment shall not be effective or binding on the City until approved and fully executed by all signatories of the City and County of Denver.

**END OF AMENDMENT
SIGNATURE PAGES AND EXHIBITS TO FOLLOW**

Contract Control Number: PLANE-202474586-03/Legacy 201311261-00
Contractor Name: EL-ROI, LLC

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202474586-03/Legacy 201311261-00
EL-ROI, LLC

By: DocuSigned by:
Muluye Hailermariam
66BC5AT284A945C...

Name: Muluye Hailermariam
(please print)

Title: owner
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)