

FIFTH AMENDMENT TO AGREEMENT

THIS FIFTH AMENDMENT TO AGREEMENT (“Fifth Amendment”) is 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 (the “City”), Party of the First Part, and **CONCESSIONS INTERNATIONAL PANDA EXPRESS, JV**, a joint venture formed under the laws of the State of Georgia authorized to conduct business in the State of Colorado (“Concessionaire”), d/b/a **Panda Express**, Party of the Second Part (collectively, the “Parties”).

RECITALS

- A. The City and Concessionaire, (a joint venture between **Concessions International, LLC and Panda Express Denver, Inc.**, a California corporation,) entered into an agreement dated May 19, 1993 (AC38009) for the operation of a concession at Denver International Airport (“Airport” “DIA” or “DEN”), which expired by its term on June 30, 2016 and which together with amendments to the Agreement is hereafter referred to as the “Original Agreement.”
- B. Because it is in the City’s best interest to avoid interrupting services to the traveling public, the City has authorized and Concessionaire has agreed, if necessary, to continue to operate its concession under the holdover provision after the Original Agreement expires while the City completes the process of installing a successor tenant in this location.
- C. Concessionaire has agreed to continue its operation for the City’s benefit, the Parties have agreed to revise the holding over provision of the Original Agreement to recognize the month-to-month tenancy of a permitted holdover, eliminate the 150% holdover fee otherwise due under the holdover provision and provide that the Parties will give each other no less than thirty (30) days’ notice before terminating Concessionaire’s tenancy and vacating the space.

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

1. All references in the Original Agreement to “Manager” or “Manager of Aviation” are hereby deleted and replaced with “Chief Executive Officer” or “CEO” as the context may require. “Chief Executive Officer” or “CEO” means the Chief Executive Officer of the City’s Department of Aviation having jurisdiction over the management, operation, and control of the Airport. Whenever reference is made to the “CEO or the CEO’s authorized representative,” or words of similar import are used such reference shall mean the officer or employee of the City designed in writing by the CEO as the CEO’s delegated authorized representative.

2. Effective as of the date of execution, Section 4.03, Holding Over, of the Original Agreement hereby is amended by deleting it entirely and replacing it with the following:

Section 4.03 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) day prior written notice of termination. It is agreed and understood that any holding over of Tenant after the expiration of this Agreement with the City's consent shall not renew or extend the Term. Concessionaire agrees to pay to the City in advance the monthly Compensation in effect at the end of the regular Term of the Agreement together with all other fees payable hereunder. Concessionaire agrees to remain bound by the terms, conditions, and covenants of this Agreement. 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 provided in this Agreement, at law, or in equity, to recover possession of the Concession Space, as well as any damages incurred by the City on account of such holding over.

3. Except as provided herein, all of the provisions, terms and conditions of the Original Agreement are hereby revived and ratified and shall remain in full force and effect as if fully set forth herein.

4. This Fifth Amendment shall not be or become effective or binding on the City until approved by the Denver City Council, if required by the City's Charter, and fully executed by all signatories of the City and County of Denver. This Fifth Amendment may be signed in two or more counterparts, each of which shall be deemed to be an original signature page and further may be signed electronically by the Parties in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-AC38009-06

Contractor Name: Concessions International Panda Express, J.V.

By: Donata Russell Ross

Name: Donata Russell Ross
(please print)

Title: CEO of Concessions International, LLC,
(please print) managing venturer

ATTEST: [if required]

By: Joye Hairston Whitner

Name: Joye Hairston Whitner
(please print)

Title: Secretary
(please print)



Contract Control Number:

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:

By _____

By _____

By _____

