

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2010

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:
4 BUSINESS, WORKFORCE & SUSTAINABILITY

5 A BILL

6 For an ordinance approving a proposed Third Amendment to Concession Agreement
7 between the City and County of Denver and Concessions Denver, LLC concerning a
8 concession at Denver International Airport.
9

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

11 **Section 1.** The proposed Third Amendment to Concession Agreement between the City
12 and County of Denver and Concessions Denver, LLC in the words and figures contained and set
13 forth in that form of the Standard Agreement filed in the office of the Clerk and Recorder, Ex-
14 Officio Clerk of the City and County of Denver, on the 2nd day of December, 2010, City Clerk's
15 Filing No. 03-916-C is hereby approved.
16

17 COMMITTEE APPROVAL DATE: November 26, 2010

18 MAYOR-COUNCIL DATE: November 30, 2010

19 PASSED BY THE COUNCIL _____ 2010

20 _____ - PRESIDENT

21 APPROVED: _____ - MAYOR _____ 2010

22 ATTEST: _____ - CLERK AND RECORDER,
23 EX-OFFICIO CLERK OF THE
24 CITY AND COUNTY OF DENVER
25

26 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2010 _____ 2010

27 PREPARED BY: George "Skip" Gray, III ~~DATE: December 2, 2010~~

28 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
29 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
30 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6
31 of the Charter.
32

33 David R. Fine, City Attorney

34 BY: _____, _____ City Attorney

35 DATE: December 2, 2010

THIRD AMENDMENT TO CONCESSION AGREEMENT

THIS THIRD AMENDMENT TO CONCESSION AGREEMENT is made and entered into this _____ day of _____, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting for and on behalf of the Department of Aviation (the "City"), Party of the First Part, and **CONCESSIONS DENVER, LLC**, a Colorado limited liability company ("Concessionaire"), dba **Rocky Mountain Chocolate Factory**, Party of the Second Part.

WITNESSETH:

WHEREAS, the parties hereto entered into an Agreement dated December 18, 2003, a First Amendment dated June 27, 2006 and a Second Amendment dated October 2, 2007 (collectively the "Original Agreement"), for a food and beverage concession at Denver International Airport; and

WHEREAS, the Original Agreement expires by its terms October 31, 2010 and the City anticipates that the process by which competitive proposals will be solicited for this location, will not be completed before the Original Agreement expires; and

WHEREAS, because it is in the City's best interest to avoid interrupting services to the traveling public once the Original Agreement expires, Concessionaire has agreed and the City hereby authorizes Concessionaire to continue to operate its concession under the holdover provision of the Original Agreement while the City completes the process of competitively soliciting proposals for this location; and

WHEREAS, recognizing that this permission to holdover is not a lease; it is only temporary and it shall not obligate the City subsequently to enter into a license, lease or any other such agreement with the Concessionaire, the City has offered to reduce the compensation due under the holdover provision and both parties agree to give each other no less than sixty (60) 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 sufficiency of which is acknowledged, the parties hereby agree to amend the Original Agreement as follows:

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

4.03 HOLDING OVER

Holding Over. If Concessionaire holds over after the expiration of this Agreement, any extension thereof, or earlier termination of this Concession Agreement as herein provided, and the City and Concessionaire have not otherwise agreed, in writing, to the terms and provisions of such holding over, Concessionaire shall remain bound by all terms, conditions, covenants, and agreements hereof.

Tenancy. Concessionaire and the City agree that Concessionaire's tenancy may be terminated at any time by sixty (60) days prior written notice from either Party to the other.

No Right to Holdover. Nothing herein shall be construed to give Concessionaire the right to hold over at any time and the City (after due notice), may exercise any and all remedies at law or in equity to recover possession of the Concession Space, as well as any damages incurred by City on account of such holding over. In such event, the City shall deem Concessionaire's tenancy to be at sufferance and thereafter 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.

3. Except as modified or revised herein, all terms, conditions, covenants and provisions of the Original Agreement shall remain in full force and effect as if fully set forth herein and the Original Agreement hereby is revived, confirmed and ratified in all respects.

4. This Third Amendment is expressly subject to and shall not be or become effective or binding on the City until approved by City Council and fully executed by all signatories of the City and County of Denver.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed as of the date first above written.

ATTEST:

CITY AND COUNTY OF DENVER

By

STEPHANIE Y. O'MALLEY, Clerk and
Recorder, ex-Officio Clerk of the
City and County of Denver

Mayor

APPROVED AS TO FORM:

DAVID R. FINE, Attorney for the
City and County of Denver

By _____
Assistant City Attorney

RECOMMENDED AND APPROVED:

By

Manager of Aviation

REGISTERED AND COUNTERSIGNED:

By

Manager of Finance

By

Auditor AC28001(3)

Party of the First Part

ATTEST:

CONCESSIONS DENVER, LLC

By

Treasurer
Title

By

President
Title
Party of the Second Part

