ORDINANCE/RESOLUTION REQUEST

Please email requests to the Mayor's Legislative Team

at MileHighOrdinance@DenverGov.org by **11 a.m. Friday.** Contact the Mayor's Legislative team with questions

Date of Request: **October 12, 2023**

Please mark one: ☐ **Bill Request** **or** ☒ **Resolution Request**

1. Type of Request:

☒ **Contract/Grant Agreement** ☐ **Intergovernmental Agreement (IGA)** ☐ **Rezoning/Text Amendment**

☐ **Dedication/Vacation** ☐ **Appropriation/Supplemental** ☐ **Denver Revised Municipal Code Change**

☐ **Other:**

2. Title: Approves, Trugoy, Inc., dba Starbucks Coffee contract execution for the Premium Value Concession Award Benefit term awarded 7-years years based on awarded contract at Denver International Airport

3. Requesting Agency: Department of Aviation

4. Contact Person:

Contact person with knowledge of proposed ordinance/resolution (e.g., subject matter expert)	Contact person for council members or mayor-council
Name: Pamela Dechant, SVP of Concessions	Name: Rita Aguilar, Rachel Gruber & Barry Burch
Email: Pamela.Dechant@flydenver.com	Email: Rita.Agular@flydenver.com, Rachel.Gruber@flydenver.com, Barry.Burch@flydenver.com

5. General description or background of proposed request. Attach executive summary if more space needed:

Denver International Airport (DEN) collaborated with its concession partners to develop and implement the Premium Value Concessions Program (PVC). Concession partners are the population of small, local, and global businesses that operate Retail, Food and Beverage, and Services at DEN. DEN implemented to the PVC program in 2012 which was created to drive non-aeronautical revenue and increase customer satisfaction at DEN by rewarding concessions that had the highest sales, highest customer service, and maintained contract compliance. The original PVC program included scoring concessionaires against their peers in the same minor merchandise category. Minor merchandise categories are more specific sub-divisions within major categories, delineating narrower groups of related products and levels of service. Major Merchandise categories represent the broadest classifications of products or goods offered by a concession at DEN, typically encompassing large product groups such as Food and Beverage, Retail, and Services. Scoring was conducted by a 3rd party administrator, DRG Metrix, which was selected by a competitive RFP in 2011 and in 2016. Concessionaire participation in the PVC program was required per the operating contract to include 154 participants since 2012. The top 1/3 performers are awarded the program benefit which is the opportunity to bypass the competitive request for proposal (RFP) process and begin a new lease negotiation with DEN. DEN ensured the equity of the PVC process by offering new concessionaires the necessary information and resources to compete effectively while diligently monitoring both the recipients and non-recipients of Program Benefits, with special attention to small, MWBE, and ACDBE concessionaires. For those concessions not earning the Program Benefit, DEN will issue an RFP and competitively bid out those concession locations.

Trugoy, Inc., formerly known as Trugoy, Inc., dba TCBY Yogurt on B Concourse Center Core Food Court has earned the PVC Program Benefit. DEN and Trugoy, Inc., negotiated on a concept and location to align the placement of the new contract with the Concessions Master Plan. After negotiations, both parties concluded that the new concept would be a Starbucks Coffee located on Concourse B, Center Core northwest quadrant. The space has changed to align with the Concessions Master Plan and the existing space was awarded to a different PVC Program Benefit award winner. The term for this opportunity is 7 years to allow the concessionaire to amortize their capital investment of $1,402,500.00 to build out this 1,011.1 square foot location. Additionally, the term was based on the original term of the awarded contract, as required by the Premium Value Concession Program. No funding or capital investment will be provided by DEN, as the space will be turned over as is.

DEN requests City Council to approve the new contract 202369779, which will dissolve the previous contract on or prior to the opening of the new contracted location.

6. City Attorney assigned to this request (if applicable): Brent Larson

7. City Council District: District 11

8. **For all contracts, fill out and submit accompanying Key Contract Terms worksheet**

To be completed by Mayor's Legislative Team:

Resolution/Bill Number: ____________________ Date Entered: _________________

Key Contract Terms

Type of Contract: (e.g. Professional Services > $500K; IGA/Grant Agreement, Sale or Lease of Real Property): Concession Agreement

Vendor/Contractor Name (including any dba's): Trugoy, Inc., dba Starbucks Coffee

Contract control number (legacy and new): Dissolving contract No. **AC 38002**; New Contract No. **202369779**

Location: Denver International Airport

Is this a new contract? ☒ **Yes** ☐ **No** **Is this an Amendment?** ☐ **Yes** ☒ **No** **If yes, how many? _____**

Contract Term/Duration (for amended contracts, include existing term dates and amended dates):
7-years

Contract Amount (indicate existing amount, amended amount and new contract total):

Current Contract Amount (A)	*Additional Funds (B)*	*Total Contract Amount (A+B)*
$529,125.00 Minimum Annual Guarantee (MAG) or percentage fee of 16.5%	N/A	$529,125.00 Minimum Annual Guarantee (MAG) or percentage fee of 16.5%

Current Contract Term	*Added Time*	*New Ending Date*
7 years	N/A	7 years

Scope of work:
Trugoy, Inc., will design, build, manage, and lease Starbucks Coffee on Concourse B, Center Core northwest quadrant. Trugoy, Inc., has committed to investing a minimum of $1,402,500.00 to design and build this space. To amortize Trugoy, Inc. capital investment, they will receive a contract term of 7 years. Denver International Airport (DEN) will receive the greater of either a guaranteed rent/Minimum Annual guarantee (MAG) of $529,125.00 or a percentage rent of gross sales at 16.5%. MAG is the initial calculation based on the projected gross sales by the concessionaires for the space multiplied by the proposed percentage fee listed above. MAG is recalculated each contract year and will be equal to the greater of the initial MAG or eighty-five (85%) of the total Privilege fees payable in the prior Contract Year.

Was this contractor selected by competitive process? No **If not, why not?**
Denver International Airport (DEN) collaborated with its concessionaire partners to develop and implement the Premium Value Concessions Program (PVC). The program established an internal competition to recognize the top-performing concessions. These top performers are awarded the program benefit which is the opportunity to bypass the competitive request for proposal (RFP) process and begin a new lease negotiation with the airport. For those concessions not earning the Program Benefit, DEN will issue an RFP and competitively bid out those concession locations.

The PVC program represents a special circumstance, as outlined in Executive Order No. 8, authorized and justified by the DEN CEO as a way to incentivize high performance among DEN's concessionaires and allows DEN to contract directly with the highest of performers with proven track records at DEN. The PVC program was integrated into the respective concession agreements through amendments and in subsequent concession agreements, each approved by City Council, and the concessionaires who earned the PVC Program Benefit thereby have a legal contractual right to the privileges of the Program Benefit, including the right to negotiate these contracts without competitive selection.

Has this contractor provided these services to the City before? ☒ **Yes** ☐ **No**

Source of funds: Revenue

Is this contract subject to: ☒ **W/MBE** ☐ **DBE** ☐ **SBE** ☐ **XO101** ☒ **ACDBE** ☐ **N/A**

WBE/MBE/DBE commitments (construction, design, Airport concession contracts): 30.8% Airport Concessions Disadvantaged Business Enterprise (ACDBE) / 25% M/WBE

Who are the subcontractors to this contract? ACBDE is Trugoy, Inc., (100% participation). M/WBE firms will be selected by the concessionaire's selected General Contractor, after the execution of the concession agreement and the construction contract. The M/WBE firms are reviewed and approved by DSBO prior to DEN's issuance of Notice to Proceed with construction for the concession location. A Notice to Proceed is provided by DEN to the concessionaire after all applicable documents, such as Bonds, Insurance, Permits, and DSBO approval, have been provided by the concessionaire, and their selected general contractor to begin construction of the concession location.

To be completed by Mayor's Legislative Team:

Resolution/Bill Number: _____________________ Date Entered: __________________