

1 BY AUTHORITY

2 ORDINANCE NO. _____

COUNCIL BILL NO. _____

3 SERIES OF 2011

COMMITTEE OF REFERENCE:

4 BUSINESS, WORKFORCE & SUSTAINABILITY

5 A BILL

6 For an ordinance approving a proposed Fifth Amendment to Concession Agreement
7 between the City and County of Denver and Denver Airport Enterprises, LLC,
8 concerning a 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 Fifth Amendment to Concession Agreement between the City
12 and County of Denver and Denver Airport Enterprises, LLC in the words and figures contained and
13 set forth in that form of the Agreement filed in the office of the Clerk and Recorder, Ex-Officio
14 Clerk of the City and County of Denver, on the 3rd day of February, 2011, City Clerk's Filing
15 No. 93-325-6 is hereby approved.
16

17 COMMITTEE APPROVAL DATE: January 28, 2011

18 MAYOR-COUNCIL DATE: February 1, 2011

19 PASSED BY THE COUNCIL _____ 2011

20 _____ - PRESIDENT

21 APPROVED: _____ - MAYOR _____ 2011

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 _____ 2011 _____ 2011

27 PREPARED BY: George "Skip" Gray, III, ~~10~~ DATE: February 3, 2011

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: February 3, 2011

FIFTH AMENDMENT TO CONCESSION AGREEMENT

THIS FIFTH AMENDMENT TO CONCESSION AGREEMENT is made and entered into this _____ day of _____, _____ ("Effective Date"), 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"), Party of the First Part, and DENVER AIRPORT ENTERPRISES, LLC, ("Concessionaire"), a Colorado limited liability company d/b/a *Children's Shop*, Party of the Second Part.

RECITALS

A. Since the opening of the Airport in 1995, Concessionaire has operated newsstands, other retail concessions and support facilities in 15 locations at the Airport.

B. In 2003, each of Concessionaire's 15 locations was extended for six years and Concessionaire agreed to a Term Extension Renovation for each location. This Term Extension Renovation was to be completed on or before September 1, 2006. The amount Concessionaire was required to invest in renovating the 15 locations was approximately \$582,361.00.

C. On June 25, 2010, to avoid being placed in default with the potential expense of litigation and to resolve Term Extension Renovation issues, Concessionaire reached the following agreement with the Concessions Management Team: (1) Keep and completely "gut and remodel" the three newsstands Concessionaire presently operates with a capital investment for the three that approximates the required Term Extension Renovation capital investment; (2) retain one office/storage location, returning the two remaining storage/office locations to the City; (3) return the nine remaining locations to the City by amendment, which will give the City the ability to terminate each agreement upon no less than 90 days written notice; and (4) to give the City the flexibility it needs for determining the best timetable for the Concessions Management Team to re-market the nine individual locations. Concessionaire agrees to continue to operate the concession locations until the City terminates Concessionaire's agreement.

NOW THEREFORE, for the premises set forth in these recitals, which are made a part of this Agreement, for the reasons stated above and for other good and valuable consideration the sufficiency of which hereby is acknowledged, the City and Concessionaire (collectively, the "Parties") intending to be legally bound, agree as follows:

AGREEMENT

1. The City entered into this Agreement (AC-38023) dated April 29, 1993 with Concessionaire, as amended (the "Original Agreement") to operate a Children's Shop on the East Outboard Sub Core of Concourse B.

2. Section 4.01 of the Original Agreement (Term) hereby is amended by deleting it entirely and replacing it with the following:

4.06. TERM

This Agreement shall commence and become fully effective and binding upon the Parties as of February 28, 1995 and shall expire August 31, 2014 unless sooner terminated pursuant to the provisions of this Agreement or by law. Any

93-325-5

provision to the contrary notwithstanding, This agreement may be terminate by the City for its convenience and upon Concessionaire's receipt of no less than ninety (90) days written notice from the Manager of the City's intention to terminate this agreement, at the end of the time stated in the notice, all the rights hereunder of the Concessionaire shall terminate.

3. To comply with Concessionaire's Term Extension Renovation obligations under the Original Agreement the City agrees to accept in lieu thereof, Concessionaire's promise to demolish, remodel and refurbish the Concession Spaces of the three newsstands it presently operates (AC-38041 – Newsstand, Concourse A Center Core; AC-38040 – Newsstand, Concourse B Center Core; and AC-38038 – Newsstand, Concourse C Center Core) at its own cost and expense and at a minimum capital investment in an amount that equals or exceeds the Term Extension capital investment originally required for the 15 locations. The Parties agree that execution of amendments to the three agreements referenced above that include Concessionaire's promise will forever extinguish Concessionaire's Term Extension Renovation obligations under the Original Agreement.

4. The Parties acknowledge and agree that except as amended herein, the provisions contained in the Original Agreement, which constitute the entire agreement between the parties, shall remain in full force and effect as if fully set forth herein and that no alterations, amendments, changes or modifications to this Agreement shall be valid unless they are contained in an instrument which is executed by all the parties with the same formality as this Agreement.

5. This Fifth Amendment to Agreement is expressly subject to, and shall not be or become effective or binding on the City until it is 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 executed this Amendment as of the day and year first above written.

ATTEST:

CITY AND COUNTY OF DENVER

STEPHANIE O'MALLEY

Clerk and Recorder, Ex-officio Clerk of the
City and County of Denver

By _____
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

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

By _____
Manager of Aviation

REGISTERED AND COUNTERSIGNED:

By _____
Assistant City Attorney

By _____
Manager of Finance

Contract Control No. AC38023-5

By _____
Auditor

"CITY"
Party of the First Part

ATTEST:

DENVER AIRPORT ENTERPRISES, LLC

By: Johanna M. Padilla
Johanna M. Padilla CFO
Title: ProServe Corporation
Manager / Member DAE LLC

By: J. M. Aragon
J. M. Aragon, Pres., CEO
Title: ProServe Corporation
MANAGER / MEMBER DAE LLC
"CONCESSIONAIRE"
Party of the Second Part

