

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 Supplemental Agreement between the City and
7 County of Denver and Trugoy Inc., concerning renovation and upgrade for the shared
8 commons area for the food courts at Denver International Airport.

9
10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** The proposed Supplemental Agreement between the City and County of
12 Denver and Trugoy Inc., (Concourse C) in the words and figures contained and set forth in that
13 form of the Supplemental Agreement filed in the office of the Clerk and Recorder, Ex-Officio Clerk
14 of the City and County of Denver, on the 6th day of January, 2011, City Clerk's Filing
15 No. 93-208-F is hereby approved.

16
17 COMMITTEE APPROVAL DATE: December 24, 2010

18 MAYOR-COUNCIL DATE: December 28, 2010

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~~ DATE: January 6, 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: January 6, 2011

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is made and entered into this _____ day of _____, _____ ("Effective Date") by and among 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 **TRUGOY, INC.**, a Colorado corporation ("Concessionaire"), *d/b/a/ TCBY*, Party of the Second Part.

RECITALS

A. In 1993, to establish and provide for the necessary and proper operation of several food courts to be located within the terminal complex at Denver International Airport Concessions International/Panda Express J.V., McDonald's Corporation and Rosmik, Inc. (together, the "Anchor Concessionaires") entered into individual food court concession agreements with the City. Pursuant to their responsibilities under their individual food court concession agreements, at their own cost and expense (recovering a pro rata share of the original costs from each other food court tenant (collectively, the Non-Anchor Concessionaires)), the Anchor Concessionaires installed the finishes, fixtures, furnishings and furniture ("Commons Area Capital Improvements") in the food courts' commons areas described in each concession agreement (collectively, the "Commons Areas").

B. Anchor Concessionaires retain title to those Commons Area Capital Improvements that are not affixed to the realty until expiration or earlier termination of their individual food court concession agreements, after which title shall automatically vest in the City without any further consideration. For seventeen years, the Anchor Concessionaires (with the Non-Anchor Concessionaires contributing their pro rata share of the Commons Areas Expenses) have operated, managed and maintained the Commons Areas as needed.

C. Recently, each food court tenant, Anchor and Non-Anchor Concessionaire alike were required by their individual food court concession agreements to renovate their individual concession spaces. Because of this requirement, the City broached the subject with the food court tenants of when and by whom the Commons Areas should be remodeled and renovated. After several months of discussion, the City and the food court tenants recognize that after seventeen years of maintenance, repair, replacement and refurbishing, the Commons Areas are sorely in need of a face-lift, the nature of which can only be accomplished by renovating or remodeling the Commons Areas. The food court tenants agree that such a face-lift may improve the potential for increased revenue generation among all food court tenants. As importantly, because their individual food court concession agreements are somewhat ambiguous on this subject, the individual food court tenants and the City agree that it is in their best interests to cooperate and together undertake the much needed remodeling and renovation of the Commons Areas thereby avoiding the cost and expense of having a third-party tribunal decide the issue of when and by whom the Commons Areas should be renovated. Further, the City and the individual food court tenants agree to address this ambiguity whenever their individual food court concession agreements are next amended.

D. Accordingly, the City has offered to remodel the Commons Areas and the food court tenants agree to individually supplement their individual food court concession agreements to accomplish this purpose.

93-208-F

NOW THEREFORE, for consideration of the premises and for other good and valuable consideration, the sufficiency of which hereby is acknowledged, Concessionaire and the City (the "Parties") agree as follows:

AGREEMENT

1. The Parties hereto entered into a concession agreement dated April 14, 1993, as amended (the "Original Agreement") for the operation of a food court concession at Denver International Airport.

2. Concessionaire acknowledges that the City reserved the right of entry in and to the Commons Areas for any purpose necessary under the Original Agreement, and therefore, the City may enter, remodel and renovate the Commons Areas at the City's own cost and expense and at the City's sole and absolute discretion, including, but not limited to, the timetable for and the demolition, removal and destruction, construction and installation of the Commons Area Capital Improvements affixed to the realty, as well as the design, cost, quality, aesthetics, layout and seating in numbers and in a manner the City deems appropriate for all food court tenants.

3. Such entry by the City for this purpose shall be without liability and without in any manner affecting Concessionaire's obligations under the Original Agreement. No such entry by or on behalf of the City upon the Commons Areas subject to the Original Concession Agreement shall constitute or cause a termination of the Original Agreement, nor shall such entry be deemed to constitute an interference with the use thereof by Concessionaire.

4. Concessionaire acknowledges that in meetings open to all food court tenants, the City has shared design plans and specifications of the proposed renovations of the Commons Areas and received their input and comments prior to undertaking such renovations. The plans included appropriate detail relating to the elements of design and decorations, seating layout and all construction and trade fixtures, including furniture, fixtures and equipment, along with a statement of the time required to complete such renovations. Concessionaire agrees that it shall have no right to reject any designs for renovation and that the City's decisions concerning the Commons Areas are final and its discretion is absolute.

5. Concessionaire agrees to remove by a date certain, which will be stated in a written document from the City, any Commons Area Capital Improvements that are not affixed to the realty and to which Concessionaire has retained title, if applicable; or in the alternative, Concessionaire agrees and hereby gives the City permission to exercise its discretion to remove and/or demolish any Commons Area Capital Improvements belonging to Concessionaire without being liable for damages therefor. Such Commons Area Capital Improvements are generally described on but not limited to **Attachment 1**, which is incorporated herein by this reference.

6. Concessionaire recognizes that as it may be necessary for the City to remodel and renovate the Commons Areas, such remodeling and renovation may inconvenience Concessionaire in its operations at the Airport. Nevertheless, Concessionaire agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors or representatives by way of such inconveniences, and Concessionaire hereby expressly waives any right to claim damages or other consideration from the City including but not limited to loss of profits as a result of any interruption to Concessionaire's business during the remodeling and renovation of the Commons Areas.

7. Concessionaire acknowledges that title to any newly installed Commons Area Capital Improvements shall remain in the City; Concessionaire agrees that it shall continue to perform its obligations under the Original Agreement including, but not limited to, the obligations concerning the operation, management, repair and maintenance of the Commons Areas, subject to and set forth in Sections 5, 6 and 8 thereof. Concessionaire agrees that it shall perform its obligations in the same manner as Concessionaire would have performed had an Anchor Concessionaire remodeled the Commons Areas and installed and retained title to the Commons Area Capital Improvement. Nothing herein contained shall be deemed to impose upon the City any obligation, responsibility, or liability whatsoever, for any care, maintenance, or repair of the Commons Areas, except as otherwise expressly provided for in the Original Agreement.

8. The Parties each warrant and represent to each other that this Supplemental Agreement constitutes their legal, valid and binding obligation and that the provisions herein contain the entire agreement between the Parties as to the subject matter of this Supplemental Agreement.

9. This Supplemental Agreement is expressly subject to, and shall not be or become effective or binding on the City until approved by City Council, if required by law, 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 Supplemental Agreement as of the day and year first above written.

CITY AND COUNTY OF DENVER

ATTEST:


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:

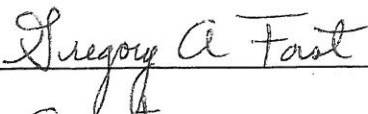
By _____
Assistant City Attorney

By: _____
Manager of Finance

Contract Control No. AC38001-6

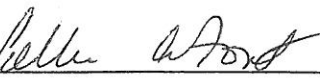
By _____
Auditor

ATTEST:

By:  _____
Title: Secretary

"CITY"
Party of the First Part

TROGOY, INC.

By:  _____
Title: President

"CONCESSIONAIRE"
Party of the Second Part

**ATTACHMENT 1: SAMPLE FOOD COURT COMMONS AREA
CAPITAL IMPROVEMENTS INVENTORY**

Concourse A

12 permanently affixed tables
23 freestanding tables
29 permanently affixed stool seats
58 lineal feet of booth seating
92 freestanding chairs
6 trash cans

Concourse B

19 permanently affixed tables
31 freestanding tables
24 lineal feet of booth seating
134 freestanding chairs
7 trash cans

Concourse C

12 permanently affixed tables
31 freestanding tables
52 lineal feet of booth seating
101 freestanding chairs
6 trash cans

Terminal

63 freestanding tables
56 permanently affixed stool seats
222 seats (all attached to tables)
8 trash cans

