

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB12-0050

SERIES OF 2012

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed First Amendment to Agreement between the City and County of Denver and Elite Line Services, LLC for operation, maintenance, and management services for terminal baggage systems at Denver International Airport.

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

Section 1. The proposed First Amendment to Agreement between the City and County of Denver and Elite Line Services, LLC in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2007-0963-A, is hereby approved.

COMMITTEE APPROVAL DATE: January 20, 2012

MAYOR-COUNCIL DATE: January 24, 2012

PASSED BY THE COUNCIL: _____, 2012

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2012

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2012; _____, 2012

PREPARED BY: Deanne Durfee ^{DJD}, Assistant City Attorney DATE: January 26, 2012

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

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: January 26, 2012

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **ELITE LINE SERVICES, LLC**, a Colorado limited liability company (formerly known as **Elite Line Services, Inc.**) (“Operator”).

WITNESSETH:

WHEREAS, the parties hereto entered into an Agreement dated March 1, 2007 for the operation and maintenance of the Denver International Airport’s baggage handling system (CE75018); and

WHEREAS, the parties desire to amend the Agreement to extend the term and add additional funds, and amend certain other terms as set forth herein;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. Subsection (a) of Section 2.1, “**Appointment and Term**,” of the Agreement is hereby amended to read in its entirety as follows:

Section 2.1 Appointment and Term:

(a) The City hereby appoints Operator for the term beginning with the Start Date of this Agreement and ending on **August 31, 2012** (the “Finish Date”), unless sooner terminated pursuant to the provisions of this Agreement, to perform services to the extent specified herein in connection with the operation, maintenance and management of the Baggage System and Operator hereby accepts such appointment on the terms and conditions set forth herein. Subject to the terms and conditions of this Agreement, Contracting Airlines hereby authorizes Operator, insofar as it may lawfully do so, and insofar as is necessary for Operator to perform services in accordance with this Agreement, to use all of the rights, easement and licenses granted to Contracting Airlines under the License Agreement and any other agreement by which Contracting Airlines acquire rights, easements or licenses necessary or incidental to use the occupancy of the Baggage System or otherwise related to the services to be performed by Operator pursuant to this Agreement.

2. Subsection (g), “Maximum Contract Liability”, of Section 5.1, “**Payments to Operator**,” is amended to read in its entirety as follows:

(g) Maximum Contract Liability.

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment of services rendered and expenses incurred by the Operator under the Terms of this Agreement for any amount in

excess of **Nineteen Million Five Hundred Thousand and no/100 Dollars (\$19,500,000.00)**.

- (ii) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

3. Section 9.1, "**Term**", of the Agreement, is amended to read in its entirety as follows:

Section 9.1 Term

The term of this Agreement shall commence on the date first written above and shall continue until **August 31, 2012**, unless terminated earlier as provided herein. The services contemplated by this Agreement shall commence on the Start Date.

4. The Agreement is amended by adding a new Section 16.13, "**No Employment of Illegal Aliens to Perform Work under the Agreement**", to read in its entirety as follows:

16.13 No Employment of Illegal Aliens to Perform Work under the Agreement

(a) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

(b) The Operator certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(c) The Operator also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Operator that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.
- (4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Operator to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Operator will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

(d) The Operator is liable for any violations as provided in the Certification Ordinance. If Operator violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Operator shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Operator from submitting bids or proposals for future contracts with the City.

5. The Agreement is amended by adding a new Section 16.14, “**Electronic Signatures and Electronic Records**,” to read as follows:

16.14 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Operator consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document

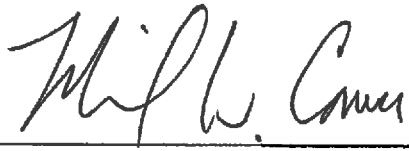
bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

6. Except as provided herein, all provisions, terms and conditions of the Existing Agreement shall remain in full force and effect as if fully set forth herein.

[END OF PAGE]

Contract Control Number: PLANE-CE75018-01

Vendor Name: ELITE LINE SERVICES INC

By: 

Name: MICHAEL W. CONNER
(please print)

Title: VICE PRESIDENT / GENERAL MANAGER
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



