

**SECOND AMENDMENT TO
SELF-SERVICE LUGGAGE CART AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
SMARTE CARTE, INC.**

This SECOND AMENDMENT TO SELF-SERVICE LUGGAGE CART AGREEMENT is entered into this ____ day of _____, 2021, by the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and Smarte Carte, Inc., a Minnesota corporation authorized to do business in California ("Concessionaire").

RECITALS

WHEREAS, on August 1, 2014, City and Concessionaire entered into an agreement entitled "NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT SELF-SERVICE LUGGAGE CART AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND SMARTE CARTE, INC." ("Agreement"); and

WHEREAS, on September 19, 2017, City and Concessionaire entered into a First Amendment to the Agreement to increase the Cart Fee compensation to \$850,000 and to add nondiscrimination requirements as required under federal law and regulations; and

WHEREAS, City and Concessionaire desire to further amend the amended Agreement to extend the Expiration Date to July 31, 2024, and add provisions required under federal law and regulations.

NOW, THEREFORE, effective upon execution, the parties agree to amend the Agreement as follows:

SECTION 1. SECTION 1, "SUMMARY OF TERMS AND DEFINITIONS", the following term is amended to read as follows:

“**Expiration Date**” shall mean the date July 31, 2024, subject to earlier termination as provided in this Agreement.”

SECTION 2. SECTION 32, “MISCELLANEOUS”, is amended to add subsections 32.18 “Counterparts” and 32.19 “Use of Electronic Signatures” to read as follows:

“32.18 Counterparts

This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

32.19 Use of electronic signatures

Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.”

SECTION 3. SECTION 34, “GENERAL CIVIL RIGHTS PROVISIONS”, is restated in its entirety to read as follows:

“34 GENERAL CIVIL RIGHTS PROVISIONS

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.”

SECTION 4. SECTION 40, “TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM” is hereby added to read as follows:

“40 TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Agreement and

to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.”

SECTION 5. SECTION 41, “TITLE VI CLAUSES FOR CONSTRUCTION / USE / ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM” is hereby added to read as follows:

“41 TITLE VI CLAUSES FOR CONSTRUCTION / USE / ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.”

SECTION 6. All of the terms and conditions of the Agreement not modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation of the State of California

Kevin Fisher

KEVIN FISHER
Chief Deputy City Attorney

TONI J. TABER, CMC
City Clerk

Date: _____

"CONCESSIONAIRE"

SMARTE CARTE, INC.,
a Minnesota corporation authorized to do
business in California

Scott Warren

Scott Warren (Dec 9, 2020 13:48 CST)

Signature

Scott Warren

Print Name

CFO

Title

Dec 9, 2020

Date

CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of the corporation.

I, Greg Schultz certify that I
Name of Secretary or Assistant Secretary

am the ☒ Secretary or ☐ Assistant Secretary of the corporation named in the

attached agreement; that Scott Warren
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the CFO
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and on behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.



Signature of Secretary or Assistant Secretary

Corporate Seal

Dec 9, 2020

Date