

File No. 170152

Committee Item No. 1
Board Item No. 5

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date March 23, 2017

Board of Supervisors Meeting

Date April 4, 2017

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

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Completed by: Linda Wong Date March 16, 2017
Completed by: Linda Wong Date March 28, 2017

AMENDED IN COMMITTEE

3/23/17

FILE NO. 170152

RESOLUTION NO.

1 [Agreement Extension - Airport Luggage Cart Lease and Operating Agreement - Smarte
2 Carte, Inc. - Not to Exceed \$4,250,605]

3 **Resolution approving a two-year term extension for Luggage Cart Lease and**
4 **Operating Agreement No. 11-0301, between Smarte Carte, Inc., and the City and**
5 **County of San Francisco, acting by and through its Airport Commission, for a total**
6 **term July 1, 2012, through June 30, 2019, in an amount not to exceed \$4,250,605 and**
7 **a new net payment total contract amount of \$12,924,595.**

8
9 WHEREAS, On May 15, 2012, by Resolution No. 176-12, this Board of Supervisors
10 approved the Airport Commission's award of the Luggage Cart Lease and Operating
11 Agreement No. 11-0301 ("Agreement") to Smarte Carte, Inc. ("Smarte Carte") for luggage cart
12 rental to passengers at San Francisco International Airport ("Airport"), and the provision of
13 courtesy luggage carts in the Airport's federal inspection services area; and

14 WHEREAS, The Agreement has an initial term of five years, expiring on June 30, 2017,
15 with one option term of two years exercisable by the Airport Commission, and a net not to
16 exceed amount of \$9,406,000 over the initial five-year term; and

17 WHEREAS, The net payment by the Airport to Smarte Carte for the original five-year
18 agreement term from July 1, 2012, through June 30, 2017, was \$8,673,990; and

19 WHEREAS, A copy of the Agreement is on file with the Clerk of the Board of
20 Supervisors in File No. 120015; and

21 WHEREAS, On December 20, 2016, by Airport Commission Resolution No. 16-0333,
22 the Airport Commission exercised the two-year extension option, thereby extending the term
23 of the Agreement to June 30, 2019, under the existing terms and conditions of the Agreement;
24 and

1 WHEREAS, The Airport's net payment to Smarte Carte over the two-year extension
2 term will not exceed \$4,250,605, which amount reflects the difference between the service fee
3 paid by the Airport to Smarte Carte for the provision of courtesy luggage carts in the federal
4 inspection services area, and the anticipated rent to be paid by Smarte Carte to the Airport;
5 now, therefore, be it

6 RESOLVED, That this Board of Supervisors hereby approves the two-year extension of
7 the Agreement, for an extension term of July 1, 2017, through June 30, 2019, and a net not to
8 exceed amount of \$4,250,605 and a new net payment total contract amount of \$12,924,595.
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<p>Item 1 File 17-0152</p>	<p>Department: San Francisco International Airport (Airport)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would approve a two-year extension under the existing Luggage Cart Lease and Operating Agreement between Smarte Carte, Inc. (Smarte Carte) and the Airport for a total seven-year term from July 1, 2012 through June 30, 2019. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • Based on a competitive process, the Board of Supervisors approved a Luggage Cart Lease and Operating Agreement between the Airport and Smarte Carte in May 2012 for (a) luggage cart rental to passengers at the San Francisco International Airport, and (b) the provision of free luggage carts in the Customs Area in the Airport's International Terminal (File 12-0015). The lease and operating agreement had a term of five years, expiring on June 30, 2017, with one option to extend the term by two years to June 30, 2019 • For the two year extension option, the Airport is required to pay Smarte Carte an annual service fee equal to the lesser of (a) the Customs Program FY 2016-17 service fee of \$2,690,000 multiplied by the average annual rate of change in projected international enplanements for FY 2017-18 and FY 2018-19, or (b) \$1.20 per actual luggage cart used, adjusted annually by the CPI. The service fee is to reimburse Smarte Carte for providing airport passengers with free luggage carts in the International Terminal's Customs Area. • For the two year extension option, Smarte Carte is required to pay the Airport an annual rent equal to the greater of (a) 25 percent of annual Smarte Carte gross revenues, or (b) the FY 2016-17 MAG of \$672,980, adjusted annually by a formula based on the CPI. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • Under the existing initial five-year term of the Luggage Cart Operating and Lease Agreement from July 1, 2012 to June 30, 2017, the Airport will have paid Smarte Carte total service fees of \$12,456,000, and Smarte Carte will have paid the Airport estimated percentage rent of \$3,782,010, for estimated net payments by the Airport to Smarte Carte of \$8,673,990 • The Airport estimates a maximum net payment to Smarte Carte over the two-year extension from July 1, 2017 to June 30, 2019 of \$4,250,605. 	
<p style="text-align: center;">Recommendations</p>	
<ul style="list-style-type: none"> • Amend the proposed resolution to state that (a) the net payment by the Airport to Smarte Carte for the original five-year agreement term from July 1, 2012 through June 30, 2017 is \$8,673,990 and (b) the net payment by the Airport to Smarte Carte for the proposed two-year extension term from July 1, 2017 through June 30, 2019 is not-to-exceed \$4,250,605, for a total net payment not-to-exceed amount of \$12,924,595. • Approve the proposed resolution as amended. 	

MANDATE STATEMENT

City Charter Section 9.118 states that (a) any agreements entered into by a department having a term in excess of ten years or City expenditures of \$10 million or more, or amendments to such agreements having City expenditures of more than \$500,000; and (b) any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more, is subject to Board of Supervisors approval.

BACKGROUND

Based on a competitive process, the Board of Supervisors approved a Luggage Cart Lease and Operating Agreement between the Airport and Smarte Carte, Inc. (Smarte Carte) in May 2012 for (a) luggage cart rental to passengers at the San Francisco International Airport, and (b) the provision of free luggage carts in the Customs Area in the Airport's International Terminal (File 12-0015). The lease and operating agreement had a term of five years, expiring on June 30, 2017, with one option to extend the term by two years to June 30, 2019.

Under the lease and operating agreement, Smarte Carte provides luggage carts in the following programs:

- *Self-Service Luggage Cart Rental Program* - Smarte Carte is required to provide at least 4,500 luggage carts to Airport passengers for a charge of \$5.00 per cart in the Domestic and International Terminals (other than the Customs Area in the International Terminal).
- *Customs Program* - Smarte Carte is required to provide at least 1,500 luggage carts free of charge for arriving international passengers in the Customs Area in the International Terminal.
- *Rental Car Center Program* - Smarte Carte is required to provide at least 500 luggage carts for a charge of \$5.00 per cart at the Airport's Rental Car Center.
- *AirTrain Failure Contingency Program* - Smarte Carte is required to provide the luggage carts in the Rental Car Center free of charge upon notification from the Airport that there is or may be an AirTrain failure.

Additionally, Smarte Carte is responsible for the (a) installation, maintenance, and repair of the luggage carts, (b) installation, maintenance, and repair of the luggage cart vending units, which automatically dispense luggage carts to Airport passengers, and (c) collection and relocation of luggage carts for the Customs, Rental Car Center, and AirTrain Failure Contingency programs.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a two-year extension under the existing Luggage Cart Lease and Operating Agreement between Smarte Carte and the Airport for a total seven-year term from July 1, 2012 through June 30, 2019.

Under the Luggage Care Lease and Operating Agreement, the Airport pays Smarte Carte an annual service fee for providing free luggage carts in the Customs Area of the International Terminal, and Smarte Carte pays the Airport rent equal to the greater of the Minimum Annual Guarantee (MAG) or percentage rent on the gross revenue from luggage carts for which Smarte Carte charges \$5.00 per cart. The proposed resolution increases the net payments by the Airport to Smarte Carte (the annual service fee less the MAG) by \$4,250,605, from \$9,406,000 to \$13,656,605.

The terms of the proposed lease and operating agreement extension are shown in Table 1 below.

Table 1: Key Provisions of Proposed Agreement Extension between Airport and Smarte Carte

Services	<ul style="list-style-type: none"> - Provide luggage cart service throughout the Airport for a \$5.00 fee per cart, and; - Operate the free luggage cart service in the International Terminal’s Customs Area for arriving international passengers.
Lease Premises	<ul style="list-style-type: none"> - Luggage cart vending units throughout the Airport, including terminals, limited areas in the domestic boarding areas, roadway curbsides, parking garages, and Rental Car Center. - Initial Cart Vending unit sites (108, with five pending) have been designated, but future sites may be designated by the Airport Director
Term	<ul style="list-style-type: none"> - Exercise the option to extend the term by two years to June 30, 2019, for a total term of seven years from July 1, 2012 to June 30, 2019
Luggage Cart Fee Charged to Passengers	\$5.00 per cart
Service Fee Paid by the Airport to Smarte Carte for providing free luggage carts in the International Terminal’s Customs Area	Lesser of: <ul style="list-style-type: none"> - \$2,690,000, adjusted annually by the annual rate of change in international enplanement - \$1.20 per luggage cart, adjusted annually by the Consumer Price Index (CPI)
Rent to be Paid by Smarte Carte to the Airport for luggage carts for which Smarte Carte charges \$5.00 per cart	Greater of: <ul style="list-style-type: none"> - \$672,980 MAG, adjusted annually by a formula based on the CPI; or - 25% of gross revenues

The original agreement, as approved by the Board of Supervisors in 2012, set the amount of the annual service fee paid by the Airport to Smarte Carte and the annual rent paid by Smarte Carte to the Airport if the option to extend the agreement by two years was exercised.

Airport’s Annual Service Fee Payment to Smarte Carte

For the two year extension option under the existing luggage cart lease and operating agreement, the Airport is required to pay Smarte Carte an annual service fee equal to the lesser of (a) the Customs Program FY 2016-17 service fee of \$2,690,000 multiplied by the average annual rate of change in projected international enplanements for FY 2017-18 and FY 2018-19, or (b) \$1.20 per actual luggage cart used, adjusted annually by the CPI. The service fee is to reimburse Smarte Carte for providing airport passengers with free luggage carts in the International Terminal’s Customs Area.

Smarte Carte’s Annual Rent Payable to the Airport

For the two year extension option under the existing luggage cart lease and operating agreement, Smarte Carte is required to pay the Airport an annual rent equal to the greater of (a) 25 percent of annual Smarte Carte gross revenues, or (b) the FY 2016-17 MAG of \$672,980, adjusted annually by a formula based on the CPI.

Airport passengers rent luggage carts from Smarte Carte, paying \$5.00 per cart, with all such revenues accruing to Smarte Carte.¹

FISCAL IMPACT

Under the existing initial five-year term of the Luggage Cart Operating and Lease Agreement from July 1, 2012 to June 30, 2017 as previously approved by the Board of Supervisors, the Airport will have paid Smarte Carte total service fees of \$12,456,000, and Smarte Carte will have paid the Airport estimated percentage rent of \$3,782,010, for estimated net payments by the Airport to Smarte Carte of \$8,673,990, as shown in Table 2 below.

Table 2: Estimated Net Payments by the Airport to Smarte Carte FY 2012-13 to FY 2016-17

	Annual Service Fee Payable from Airport to Smarte Carte	Estimated Percentage Rent Payable from Smarte Carte to Airport	Estimated Net Payment Payable from Airport to Smarte Carte
FY 2012-13	\$2,300,000	(\$709,559)	\$1,590,441
FY 2013-14	2,392,000	(724,754)	1,667,246
FY 2014-15	2,487,000	(750,830)	1,736,170
FY 2015-16	2,587,000	(786,634)	1,800,366
FY 2016-17	2,690,000	(810,233)	1,879,767
Total	\$12,456,000	(\$3,782,010)	\$8,673,990

Source: Airport

¹ Smarte Carte may raise the \$5.00 per cart rental rate with the Airport Director’s prior written consent, which may be granted or withheld in the Airport Director’s sole discretion.

According to Ms. Gigi Ricasa, the Airport's Senior Principal Property Manager, the Airport estimates a maximum net payment to Smarte Carte over the two-year extension from July 1, 2017 to June 30, 2019 of \$4,250,605, as shown in Table 3 below

Table 3: Estimated Maximum Net Payments by the Airport to Smarte Carte

Lease Year	Annual Service Fee Paid by Airport to Smarte Carte ^a	Minimum Annual Guarantee (MAG)* Paid by Smarte Carte to Airport	Net Payment Paid by Airport to Smarte Carte
FY 2017-18	\$2,761,554	(\$672,980)	\$2,088,574
FY 2018-19	2,835,011	(672,980)	2,162,031
TOTALS	\$5,596,565	(\$1,345,960)	\$4,250,605

^a Annual service fee payments in FY 2017-18 and FY 2018-19 represent a 2.7 percent increase from the prior year annual service fee payment, based on the Airport's estimated increase in annual international enplanements.

^b The MAG of \$672,980 in FY 2017-18 and FY 2018-19 is the same amount as the MAG in FY 2016-17

According to Ms. Ricasa, the annual service fee payable to Smarte Carte will be paid from the Airport's operating budget. The Airport will commence a competitive process for a new Luggage Cart Lease and Operating Agreement prior to the expiration of the existing agreement on June 2019.

Reduction in Agreement Not-to-Exceed Amount

Resolution 12-0015, as previously approved by the Board of Supervisors, provided for net payment by the Airport to Smarte Carte of not-to-exceed \$9,406,000 for the original five-year agreement term from July 1, 2012 through June 30, 2017. However, the actual net payment over the initial five year agreement term is estimated to be \$8,673,990. Therefore, the proposed resolution should be amended to correctly state that (a) the net payment by the Airport to Smarte Carte for the original five-year agreement term from July 1, 2012 through June 30, 2017 is \$8,673,990 and (b) the net payment by the Airport to Smarte Carte for the proposed two-year extension term from July 1, 2017 through June 30, 2019 is not-to-exceed \$4,250,605, for a total net payment not-to-exceed amount of \$12,924,595.

RECOMMENDATIONS

1. Amend the proposed resolution to state that (a) the net payment by the Airport to Smarte Carte for the original five-year agreement term from July 1, 2012 through June 30, 2017 is \$8,673,990 and (b) the net payment by the Airport to Smarte Carte for the proposed two-year extension term from July 1, 2017 through June 30, 2019 is not-to-exceed \$4,250,605, for a total net payment not-to-exceed amount of \$12,924,595.
2. Approve the proposed resolution as amended.

**LEASE AGREEMENT FOR
LUGGAGE CART LEASE AND OPERATING AGREEMENT
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

by and between

SMARTE CARTE, INC.,
as Operator

and

CITY AND COUNTY OF SAN FRANCISCO
ACTING BY AND THROUGH ITS AIRPORT COMMISSION,
as landlord

Edwin M. Lee
Mayor

AIRPORT COMMISSION

Hon. Larry Mazzola, President
Hon. Linda S. Crayton, Vice President
Hon. Eleanor Johns
Hon. Richard J. Guggenlime
Hon. Peter A. Stern

John L. Martin
Airport Director

December 2011

Lease No.11-0301

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2/23/2012
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**LEASE AGREEMENT
FOR THE LUGGAGE CART LEASE AND OPERATING AGREEMENT
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

MAJOR LEASE TERM SUMMARY

For the convenience of Operator and City (as such terms are defined below), this Major Lease Term Summary (this "**Summary**") summarizes certain terms of this Lease (as defined below). This Summary is not intended to be a detailed or complete description of this Lease, and reference must be made to the other Sections below for the particulars of this Lease. In the event of any inconsistency between the terms of this Summary and any other provision of this Lease, such other provision shall prevail. Capitalized terms used elsewhere in this Lease and not defined elsewhere shall have the meanings given them in this Summary.

Effective Date: June 6, 2012.

Operator: Smarte Carte, Inc.
a Minnesota corporation

Operator's Notice Address: 4455 White Bear Parkway
St. Paul, MN 55110
Attn: Edward D. Rudis, President and CEO
Fax No. (651) 426-0927
Tel. No. (651) 429-3614
Email rudise@smartecarte.com

City: The City and County of San Francisco, a municipal corporation,
acting by and through its Airport Commission.

City's Notice Address: San Francisco International Airport
International Terminal, North Shoulder Bldg., 5th Floor
Attn: Airport Director
P. O. Box 8097
San Francisco, CA 94128
Fax No. (650) 821-5005
Tel. No. (650) 821-5000

City's Rent Payment Address: San Francisco International Airport
Attn: Accounting
575 N. McDonnell Road, 2nd Floor
P. O. Box 7743
San Francisco, CA 94120

**City's Insurance/
Deposit Notice Address:** San Francisco International Airport
Attn: Revenue Development and Management
575 North McDonnell Road, Suite 3-329
P. O. Box 8097
San Francisco, CA 94128
Fax No. (650) 821-4519
Tel. No. (650) 821-4500

Premises: Cart Vending unit sites (individually, a "**Cart Vending Unit Site**") at the San Francisco International Airport, as the same may be designated from time to time by Director. The initial Cart Vending Unit Sites are designated on the attached **Exhibit A**.
(§ 1)

Summary, Page i

- Term:** Five years, commencing on the Rent Commencement Date, plus up to thirty (30) days construction period. The Airport Commission shall have one two-year option to extend the term exercisable by the Commission, in its sole discretion.
(§ 2)
- Commencement Date:** The date on which the Airport Director gives notice to Operator that the Premises are ready for Operator to take possession.
(§ 2.1)
July 1, 2012
(actual date to be inserted upon determination)
- Rent Prior to Rent Commencement Date:** In the event Operator completes its improvements and desires to open for business prior to Rent Commencement Date, Operator shall pay the percentage rent based on a calendar month.
(§ 4.2)
- Rent Commencement Date:** The earlier of: (a) the first day of the first calendar month following the date on which the Initial Improvements (as defined below) are substantially complete and Operator opens for business therein, and (b) the first day of the first calendar month following the date that is thirty days after the Commencement Date.
(§ 4)
July 1, 2012
(actual date to be inserted upon determination)
- Expiration Date:** 11:59 p.m. on the day before the fifth (5th) anniversary of the Rent Commencement Date, or on the subsequent anniversary if and to the extend the Commission exercises an option to extend the Term..
(§ 2)
June 30, 2017
(actual date to be inserted upon determination)
- Relevant Boarding Area(s):** All (ITA, B, C, D, E, F, ITG)
(§ 4.14)
- Reference Year** The calendar year immediately prior to the year in which this Lease is awarded: 2010.
(§ 4.14)
- Permitted Use:** (a) The operation of a fleet of not less than 4,500 luggage carts, equipped with brakes (the "Luggage Carts"), (b) the installation, maintenance, and repair of the Carts, (c) the installation, maintenance, and repair of luggage cart vending units described on the attached **Exhibit B-1** (the "Cart Vending Units") in the Premises, which Cart Vending Units will automatically dispense Luggage Carts to the public; (d) the operation of the Luggage Cart Program described on the **Exhibit B-2**, including the collection and relocation of Luggage Carts, in those areas designated by the Director from time to time (the "Permitted Operating Areas"); and (e) the provision of the Services. The Permitted Operating Areas initially designated by the Director are described on the attached **Exhibit B-2**. Without limiting the generality of the foregoing, Operator shall operate the Luggage Cart program in strict conformity with the requirements herein, including those set forth on **Exhibit B**.
(§ 3)

Services: The services described on the attached *Exhibit B-2*. Comprising the
(§ 3; Exh. B) "Customs Program", "RAC Program", and the "AirTrain Failure Contingency Program".

Customs Program. Operator shall provide no less than 1,500 Luggage Carts in the Federal Inspection Services ("FIS") Area on an annual basis, as may be adjusted based on the passenger count utilizing the FIS area. The luggage carts shall be available to the arrivals international passengers free of charge in the FIS Area. Operator shall respond promptly to the Luggage Cart needs in the FIS Area. Operator shall be compensated based on the Service Fee.

RAC Program: Operator shall provide no less than 500 Luggage Carts at the Rental Car Center. With the exception of Air Train Failure, Operator may charge its customers \$5.00 rent of the Luggage Carts.

Air Train Failure Contingency Program. Should there be an AirTrain failure, and Airport finds it necessary to utilize buses to transport passengers from the Terminal to the Rental Car Center, Operator shall provide, upon notification from the Airport, Luggage Carts in the Rental Car Center, free of charge until such time as the AirTrain resumes services or as otherwise directed by the Airport. Operator shall not be compensated for this Program.

Annual Service Fee: Per Lease Year, the Annual Service Fee paid by the Airport to the Operator
(§ 4.15) shall be the lower of the \$1.20 per cart distributed in the Federal Inspection Stations ("FIS") area or a flat service fee as follows:

- 1st year: Two Million Three Hundred Thousand Dollars (\$2,300,000.00);
- 2nd year: Two Million Three Hundred Ninety Two Thousand Dollars (\$2,392,000.00);
- 3rd year: Two Million Four Hundred Eighty Seven Thousand Dollars (\$2,487,000.00);
- 4th year: Two Million Five Hundred Eighty Seven Thousand Dollars (\$2,587,000.00)
- 5th year: Two Million Six Hundred Ninety Thousand Dollars (\$2,690,000.00).

The base fee of \$1.20 per luggage cart distributed in the FIS will be subject to annual adjustments based on CPI index - SF-OAK-San Jose, All Urban Consumers (CUURS). The flat service fee shall not be adjusted by a Consumer Price Index as it already escalates as provided for in the Lease.

If the two-year Option Period is exercised, the Annual Service Fee shall be the lesser of \$1.20 per luggage cart, as adjusted by CPI, or an amount calculated as follows: \$2,690,000 multiplied by the average annual rate of change in projected international enplanement activity for Fiscal Years ending 2018 through 2022. The Flat Service Fee shall grow at that same rate for the second year of the Option Period. Such enplanement projections shall be calculated by the Airport Commission and shared with the operator no less than six months before the end of the base five-year term.

Summary, Page iii

Base Rent: Per Lease Year (as defined below), the greater of the MAG (as defined below) or the 25% of Gross Revenues (such sum being referred to herein as the "Percentage Rent").
(§ 4)

Lease Year: The period commencing on the Rent Commencement Date and terminating on the day before the first MAG Adjustment Date (as defined below), and each subsequent 12-month period, commencing on each MAG Adjustment Date and expiring on the day before the subsequent MAG Adjustment Date, or expiring on the Expiration Date, as the case may be.
(§ 4)

Minimum Annual Guarantee: Six Hundred Ten Thousand Dollars (\$610,000.00) (the "Initial MAG"), per annum; (Fifty Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$50,833.33) per month), subject to adjustments upward as described below and (b) suspension and reinstatement under certain circumstances as described herein.
(§ 4)

MAG Adjustment Date: The first anniversary of the Rent Commencement Date or the first day of the first calendar month following such anniversary if the Rent Commencement Date does not fall on the first day of a calendar month, and each anniversary of such adjustment date thereafter.
(§ 4.3)

July 1
(actual date to be inserted upon determination)

Maximum Rental Rate: Five Dollars (\$5.00) for the rental of each Luggage Cart; provided that Operator shall be entitled to raise such rental rate with the Director's prior written consent, which consent may be granted or withheld in Director's sole discretion.
(Ex. B)

Rent: Base Rent, together with all other amounts owing by Operator to City hereunder.
(§ 4)

Deposit Amount: Equal to one-half (1/2) of the then current MAG (subject to adjustment).
(§ 13)

Minimum Investment Amount: Amount sufficient to conform the Airport's design standards and/or to the base building designs and materials. All Operator improvements are subject to review and approval by the Design Review Committee. In addition, Luggage Carts must comply with requirements as set forth in **Exhibit B-1**.
(§ 7.2)

Resolution: Number 11-0301 approved by the Airport Commission on December 20, 2011.

Initial Operator Representative: Joe Rubino
Tel. No. (650) 877-0434
(§ 3.12)

Other Agreements: Rapid Charging Stations Lease No. 11-0027
(§ 13.5) Non-Airline Terminal Space or User Permit No. 4141
Non-Airline Terminal Space or User Permit No. 4132
Non-Airline Terminal Space or User Permit No. 4130

Exhibits: A – Premises

Summary, Page iv

- B-1 – Use and Operational Requirements
- B-2 – Description of Services and Designated Operating Areas
- C – Form of Commencement Date Acknowledgement
- D-1 – Form of Performance Bond
- D-2 – Form of Letter of Credit

All such exhibits are incorporated into this Lease and made a part hereof.

Initial of Authorized Representative of City: T.M.

Initial of Authorized Representative of Operator Edward D. Tyler

**LEASE AGREEMENT
FOR THE LUGGAGE CART PROGRAM
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS LEASE AGREEMENT (this "**Lease**"), dated as of the Effective Date, is entered into by and between Operator, and the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through its Airport Commission ("**Commission**"). This Lease is made with reference to the following facts:

A. City owns the San Francisco International Airport (the "**Airport**") located in the County of San Mateo, State of California, which Airport is operated by and through the Airport Commission (the "**Commission**"), the chief executive officer of which is the Airport Director ("**Director**"). The Airport's "Terminal Building Complex" is currently comprised of Terminal 1, Terminal 2, Terminal 3, and an International Terminal, together with connecting concourses, piers, boarding areas and extensions thereof, and satellite buildings now or hereafter constructed. Boarding Area "E" is currently closed to aircraft operations. Operator acknowledges that, from time to time, the Airport undergoes certain construction and renovation projects. Unless otherwise specified, the term "Airport" or "Terminal Building Complex" as used herein shall mean the Airport or the Terminal Building Complex, respectively, as the same may be expanded, contracted, improved, modified, renovated, or changed in any way. Unless otherwise specified below, references to the "City" shall mean the City, acting by and through its Airport Commission.

B. Operator desires to provide and operate the service described in the Permitted Use at the Airport, and City has determined that such service would be an accommodation and convenience for airline passengers and the public using the Terminal Building Complex or the Airport.

C. City desires to engage Operator to perform the Services for the Services Fee and Operator has represented that it is qualified to perform the Services. The Services would not be adequately accomplished by existing departments of the City and County of San Francisco.

D. Following a competitive process, pursuant to Section 2A.173 of the San Francisco Administrative Code, the Commission has determined that Operator is the highest or best responsible proposer. Pursuant to the Resolution, Commission has authorized the execution of this Agreement by City.

Accordingly, Operator and City agree as follows:

1. PREMISES

1.1 Extent of Leasehold On the terms, conditions, and covenants in this Lease, City hereby leases to Operator and Operator hereby leases from City, the Premises. In addition, Operator shall possess the non-exclusive right of ingress and egress to and from the Premises as may be necessary on the Designated Operating Areas, subject to Airport Rules and Regulations, as amended from time to time (as amended, the "**Airport Rules**"), provided that Operator's exercise of such right shall not impede or interfere unduly with the operation of the Airport by City, its Operator, its tenants, customers, and other authorized occupants. Operator shall also have the non-exclusive right to conduct in the Designated Operating Areas, the Permitted Use as described on **Exhibit B-1**. Operator shall not place or install any equipment or trade fixtures in any Airport property outside the Premises, without the express prior consent of Director. In no event will Operator engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business.

1.2 Addition or Deduction of Cart Vending Unit Sites.

(a) At any time during the Term, City may require that the Premises be expanded or contracted by the addition or deduction, as the case may be, of a Cart Vending Unit Site, on the terms set forth in this Section 1.2. When required by Director, Operator shall contract and/or expand the Premises, as applicable. From and after the date specified by the Director, the Premises shall be deemed expanded or contracted, as the case may be, to reflect such changes, without need for an amendment of this Agreement. To the extent Operator is required to surrender a Cart Vending Unit Site, Operator shall surrender such site in the condition required hereunder. To the extent Operator is required to a Cart Vending Unit Site, Operator shall install therein the appropriate equipment as required hereunder. All such contraction and expansion shall be performed by Operator at Operator's sole expense, and Operator shall have no right to terminate this Agreement with regard thereto; the foregoing shall not limit, however Operator's to retrieve Luggage Carts from impermissible areas.

(b) In the event a Cart Vending Unit Site is added or deducted, the Minimum Annual Guarantee shall not be adjusted. Nothing herein shall be deemed to grant Operator the right to operate beyond the Premises or Designated Operating Areas, including the BART Station without Director's consent thereto.

1.3 Changes to Airport. Operator acknowledges and agrees that (a) City shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal Building Complex and the Rental Car Center; (b) City has made no representations, warranties, or covenants to Operator regarding the design, construction, pedestrian traffic, enplanements, airline locations, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Operator acknowledges and agrees that the Airport (i) is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications; and (ii) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Operator's business. Although City will use reasonable efforts to minimize the effect of such changes on Operator's business, Operator acknowledges that such activity may have some effect on its operations located at the Airport. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although City will use reasonable efforts to minimize the effect of such changes on Operator's business, Operator acknowledges that such activity may have some effect on its operations located at the Airport, and Operator shall not be entitled to any rent credit or other compensation therefor. At any time and from time to time, City may, without the consent of Operator, and without affecting Operator's obligations under this Lease, at City's sole discretion, (a) change the shape, size, location, number and extent of the improvements in any portion of the Airport, including without limitation the concourses, piers, boarding areas, concession areas and security areas located within the Terminal Building, (b) build additional stories above or below the Airport buildings, including of the Terminal Building, (c) eliminate or relocate public entrances to the Premises so long as there is at all times one public entrance to the Premises, (d) construct multi-level, elevated or subterranean parking facilities, and (e) expand or contract the Airport, including redefining the Airport boundaries so as to include additional lands within the Airport or exclude lands from the Airport or both. Without limiting waivers set forth elsewhere in this Lease, Operator hereby waives all claims against City and releases City from all Losses (as defined below) that Operator suffers or incurs arising out of or in connection with any changes to the Airport or any portion of the Airport and Operator further agrees that Operator will not be entitled to any rent abatement or any other rent relief in connection with any changes to the Airport or any portion of the Airport.

1.4 Common Areas. The term "**common areas**" means all areas and facilities located within the Airport that are designated by City from time to time for the general use and convenience of the Operators of the Airport and other occupants of the airport, and airline passengers and other

visitors to the Airport such as concourses, sidewalks, elevators, escalators, moving walkways, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways. City may, in its sole discretion, and without any liability to Operator (a) change the common areas, (b) increase or decrease the common areas (including the conversion of common areas to leaseable areas and the conversion of leaseable areas to common areas), and (c) impose parking charges. City will, in its sole discretion, maintain the common areas, establish and enforce Airport Rules concerning the common areas, close temporarily portions of the common areas for maintenance purposes, and make changes to the common areas including changes in the location of security check points, driveways, entrances, exits, parking spaces, parking areas, and the direction of the flow of traffic. City reserves the right to make additional Airport Rules affecting the Airport throughout the Term, including the requirement that Operator participate in a parking validation program.

1.5 Administrative Support Space. At Operator's request, Director shall make available to Operator, at an additional cost, administrative support space, the use and occupation of which will be governed by a separate agreement. The location and size of such space shall be determined solely by the Director.

2. TERM

2.1 Commencement and Expiration. The Term shall commence on the Commencement Date and expire on the Expiration Date, unless terminated prior thereto as provided herein. If for any reason (including, without limitation, the existing Operator's failure to vacate timely the Premises) City cannot deliver possession of the Premises to Operator on the Commencement Date, this Lease shall remain in effect, City shall not be subject to any liability, and such failure shall not extend the Term hereof. In such event, and provided such delay is not caused by the act or omission of Operator, or Operator's principal, affiliate, contractor, employee, agent, licensee or invitee (a "Operator Entity"), the Rent Commencement Date shall be extended day for day to reflect such delay. If for any reason City is unable to deliver possession of the Premises to Operator on the date that is one hundred eighty (180) days after the Commencement Date, each of City and Operator shall have the right to terminate this Lease by notice to the other. After the Rent Commencement Date has occurred, upon Director's request, Operator will execute a written acknowledgment of the Commencement Date and the Rent Commencement Date, in the form attached as **Exhibit C**. In the event Operator fails to execute and return promptly such acknowledgment to City, the dates described therein shall be deemed conclusive.

2.2 Improvements and Required Opening. On or before the Commencement Date, Operator shall (a) take possession of the Premises, (b) install a Cart Vending Unit in each Cart Vending Unit Site, and (c) cause the Cart Vending Units and Luggage Carts to be operational. In the event any Cart Vending Units and Luggage Carts are not installed and operational on the date that is thirty (30) days after the Commencement Date, City has the option to terminate this Agreement, exercisable by notice to Operator.

2.3 Late Opening Charge. In the event Operator fails to install seventy-five percent (75%) of the Cart Vending Units and Luggage Carts for passenger use in designated areas on or before the Rent Commencement Date, City will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date until the day on which Operator opens the Facility for business, Operator shall pay to City Three Hundred Dollars (\$300.00) (in addition to Rent as provided below), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by City in the event Operator shall fail to open on or before the Rent Commencement Date. In the event the Operator fails to install seventy-five percent (75%) of the Cart Vending Units and Luggage Carts for passenger use in designated areas on the date that is ninety (90) days after the Rent Commencement Date, City shall have the option to terminate this Lease. Operator shall be liable for all damages associated with such termination, including City's releasing costs.

2.4 Delivery Delay by City. If for any reason City cannot deliver possession of a Cart Vending Unit to Operator on the Commencement Date, this Lease shall remain in effect, City shall not be subject to any liability, and such failure shall not extend the Term hereof. In such event, and provided such delay is not caused by the act or omission of Operator, or Operator's principal, affiliate, contractor, employee, agent, licensee or invitee (a "**Operator Entity**"), the Rent Commencement Date applicable to such Facility shall be extended day for day to reflect such delay. If for any reason City is unable to deliver possession of the Premises to Operator on the date that is one year after the Commencement Date, each of City and Operator shall have the right to terminate this Lease by notice to the other.

2.5 City's Right to Extend Term. City shall have one option to extend the Term by two years, on the terms and conditions of this Section 2.3 (the "**Extension Option**"). To exercise an Extension Option, City must give notice (an "**Exercise Notice**") to Operator on or before the date that is sixty (60) days prior to the Expiration Date. In no event will City be required to exercise the Extension Option.

2.6 Holding Over. If, without objection by City, Operator holds possession of the Premises after the Expiration Date, Operator shall become a Operator from month to month, upon the terms of this Lease except that, the MAG shall not be applicable, and Base Rent shall be the Percentage Rent specified in the Summary during any such holdover period. No such holdover shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Operator by giving thirty (30) days' notice of termination to the other at any time. Operator shall have no rights to renew or extend the Term of this Lease. Operator shall be compensated for providing Luggage Carts in the Customs area as stated in the Summary at the lesser of \$1.20 per Luggage Cart, as adjusted by CPI, or the prevailing rate during the holdover.

3. **USE AND OPERATION**

3.1 Permitted Use. Operator shall use the Premises for the Permitted Use and for no other purpose. In the event Operator desires to use the Premises for any purpose other than the Permitted Use, Operator may submit a request to Director. Director may, in his/her sole and absolute discretion approve or deny such request. Any such decision shall be binding on Operator. Without limiting Section 5 [Assignment or Subletting], Operator shall not, without the prior consent of Director, engage a third-party operator or conduct the Permitted Use or otherwise operate on the Premises.

3.2 Exclusivity. Insofar as City is legally able to bind itself, and so long as Operator is not in default under this Agreement, City shall not enter into a lease with another operator for the on-airport rental of Luggage Carts from and after the Commencement Date. City shall have no duty to prevent, monitor or remedy actions by any person or entity that may constitute commercial interference with Operator's exclusive rights hereunder.

3.3 Operation of Business. Subject to the terms of this Lease, Operator will operate Operator's business in the Premises so as to maximize Gross Revenues (as defined below) and in accordance with the requirements set forth on Exhibit B relating to, among other things, equipment and price requirements. Without limiting the generality of the foregoing, Operator shall (a) conduct the business in a first-class, businesslike, safe, efficient, courteous and accommodating manner; and (b) employ sufficient and experienced staff. In the event Director shall give notice to Operator that any of the foregoing covenants (a) - (b) are not being satisfied, Operator shall immediately discontinue or remedy the objectionable practice. In addition, Operator shall render the following public services: give directions, and assist the public generally. Operator shall take all reasonable measures in every proper manner to maintain, develop, and increase the business conducted by it. Operator will not divert or cause to be diverted any business from the Airport.

3.4 Hours of Operation. Operator will carry on its business diligently and continuously in the Premises and will keep the Cart Vending Units and Luggage Carts operational twenty-four hours each day seven days per week, including holidays. Director or his/her representative may, from time to time, change such required hours of operation, in which event, Operator will remain open during such revised hours. Operator may not, at any time, vacate or abandon the Premises.

3.5 Prices. Operator may charge \$5.00 per rental of its Luggage Cart, with certain exceptions. An exception is that Operator shall provide free of charge Luggage Carts in the Customs Area of the International Terminal. Another exception is should there be an AirTrain failure, and Airport finds it necessary to utilize buses to transport passengers from the Terminal to the Rental Car Center, Operator shall provide, upon notification from the Airport, Luggage Carts in the Rental Car Center, free of charge until such time as the AirTrain resumes services or as otherwise directed by the Airport ("**Air Train Failure Contingency Program**").

3.6 References to Airport. Operator shall not, without the prior written consent of Director, reference City or the Airport for any purpose other than the address of the business to be conducted by Operator in the Premises, nor will Operator do or permit anything in connection with Operator's business or advertising which in the judgment of City may reflect unfavorably on City or the Airport, or confuse or mislead the public as to the relationship between City and Operator.

3.7 Other Operational Requirements.

(a) Operator must dispose of all trash and debris in areas and in containers designated by Director. If City provides common trash areas, Operator may request a permit to use the same for a charge determined by Director from time to time. Operator may not place or leave or permit to be placed or left in or upon any part of the common areas or corridors adjacent to the Premises any garbage, debris or refuse.

(b) Operator acknowledges that the operational requirements of the Airport as an airport facility, including without limitation security requirements, are of paramount importance. Operator acknowledges and agrees that it must conduct its business in a manner that does not conflict with the operational requirements of the Airport as an airport facility and that fully accommodates those requirements. Without limiting other waivers herein, Operator waives all claims for any Losses arising out of or connected to the operation of the Airport as an airport facility. Without limitation on the foregoing, Operator must:

- (i) comply with the Airport Rules;
- (ii) cause all deliveries and dispatches of equipment, supplies, fixtures, and furniture to be made and conveyed to or from the Premises by means and during hours established by Director in Director's sole discretion. City has no responsibility regarding the delivery or dispatch of Operator's equipment, supplies, fixtures, and furniture. Operator may not at any time park its trucks or other delivery vehicles in common areas; and
- (iii) not park within the parking areas of the Airport except in those areas, if any, designated by City pursuant to permits obtained from the Airport's Permit Bureau. Nothing herein shall imply that Operator shall be able to secure any on-Airport parking privileges.

3.8 Prohibited Activities. Without limiting any other provision herein, Operator shall not, without the prior written consent of Director: (a) use or permit the use of the Premises for the conduct in or on the Premises as an outlet store or a second-hand store; (b) advertise any distress, fire,

bankruptcy, liquidation, relocation, closing, or going-out-of-business sales; (c) use or permit the use on the Premises of any pinball machines, videogames, or other devices or equipment for amusement or recreation, or any vending machines other than the luggage cart vending units, newspaper racks, pay telephones, or other coin, token, or credit card-operated devices; (d) cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the Terminal Building Complex or any of its contents; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in the Terminal Building Complex or injure or annoy them; (e) commit or suffer to be committed any waste upon the Premises; (f) use, or allow the Premises to be used, for any improper, immoral, unlawful or objectionable purpose; (g) place any loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within, or adjacent to the Terminal Building Complex; (h) use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Premises (such as searchlights, barkers or loudspeakers); (i) distribute handbills or circulars to Airport patrons or to cars in the parking lots, or engage in any other advertising in the Airport; (j) engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business; or (k) do or permit to be done anything in any way tending to injure the reputation of City or appearance of the Airport.

3.9 Audit of Operations. At any time and from time to time, City may conduct an audit of Operator's operations at the Airport (in addition to City's right to audit pursuant to Section 4.7 [Books and Records; Audit Rights] hereof) to confirm that such operations comply with the requirements set forth herein. Operator shall cooperate with such audit. In the event such audit shows that Operator is not complying with such requirements, without limiting City's ability to call a default hereunder, City may require that Operator reimburse City for the costs of such audit. Operator shall promptly remedy any noncompliance shown in any such audit.

3.10 Representative of Operator. Operator shall at all reasonable times retain in the Terminal Building Complex at least one qualified representative authorized to represent and act for it in matters pertaining to its operation, and shall keep Director informed in writing of the identity of each such person. The initial person so designated is the Initial Operator Representative.

3.11 Investigation Reports. Operator shall, if required by Director, employ, at its own cost and expense, an investigative organization approved by Director for the purpose of making investigations and observations and preparing a written report of the carrying out of any pricing policies, revenue control, and operational techniques being used on the Premises. Operator shall cause such investigation and observation to be made at such reasonable times and in the manner directed by Director, and the investigator shall deliver forthwith to Director a true and complete written copy of any such reports made to Operator.

3.12 Compliance with Laws. Operator shall promptly, at its sole expense, cause the Premises (including any permitted Alterations (as defined below)), and Operator's and any Operator Entity's use of the Premises and operations therein, to comply at all times with all Laws (as defined below). Notwithstanding the foregoing, this Section 3.13 shall not impose on Operator any liability to make any structural alterations to the Terminal's roof, foundation, bearing and exterior walls and subflooring; or heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Terminal (collectively "**Building Systems**"), except to the extent the same is (a) installed by Operator or Operator Entity, or (b) necessitated by Operator's Alterations or by any act or omission of Operator or any Operator Entity. As used herein, the term "**Laws**" shall mean all present and future laws, ordinances, rules, judgments, decrees, injunctions, regulations, permits, authorizations, orders and requirements, to the extent applicable to Operator or the Premises or any portion of any of them whether or not in the contemplation of the parties, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof,

authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Site or any portion thereof, including the Occupational Safety and Health Act and all other applicable laws relating to workplace safety or toxic materials, substances or wastes, Title XV (commencing with Section 3082) of the California Civil Code relating to works of improvement and all other applicable laws relating to construction projects, the provisions of the American with Disabilities Act, 42 U.S.C. Section 12101 et. seq. and any governmental regulations with respect thereto (the "ADA") (including, without limitation, the requirements under the ADA for the purposes of "public accommodations", as that term is used in the ADA), Title 24 of the California Administrative Code, all Environmental Laws, the Airport Rules, the Operator Improvement Guide (including any design criteria) as the same may be amended from time to time (the "TI Guide"), and the requirements referenced in Section 19 [City and Other Governmental Provisions] hereof.

3.13 Services. Operator shall perform the Services described in **Exhibit B-2**.

3.14 Termination for Convenience. Notwithstanding anything to the contrary herein, City has the option, in its sole discretion, and without cause, to reduce, expand, and/or terminate the Services, which option shall be exercised by the giving of notice to Operator at least ten days prior to the desired effective date of the reduction, expansion and/or termination. In such event, the Service Fee shall be reduced, increased, or terminated accordingly, and Operator shall be entitled to no other compensation with respect to such reduction, expansion and/or termination. Upon receipt of the notice, Operator shall commence and perform, with diligence, all actions necessary on the part of Operator to effect the termination of the Services on the date specified by City and to minimize the liability of Operator and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation: (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City; (2) Not placing any further orders or subcontracts for materials, services, equipment or other items; (3) Terminating all existing orders and subcontracts; (4) At City's discretion, assigning to City any or all of Operator's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (5) Subject to City's approval, setting all outstanding liability and all claims arising out of the termination or orders and subcontracts; (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City; (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Operator and in which City has or may acquire an interest.

3.15 Qualified Personnel. The Services shall be performed only by competent personnel under the supervision and in the employment of Operator. Operator will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Operator. Operator shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

3.16 Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Operator, or by any of its employees, even though such equipment be furnished, rented or loaned to Operator by City.

3.17 Independent Contractor; Payment of Taxes and Other Expenses. Operator shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Operator is liability for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Operator. Any terms in this Agreement referring to direct from from City shall be construed as providing for direction as to policy and the result of Operator's work only, and not as to the means by which such a result is

obtained. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Operator is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Operator which can be applied against this liability. City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Operator for City, upon notification of such fact by City, Operator shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Operator under this Agreement (again, offsetting any amounts already paid by Operator which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Operator shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Operator is an employee for any other purpose, then Operator agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Operator was not an employee.

4. RENT TO CITY AND COMPENSATION TO OPERATOR

4.1 Definitions. For purposes of this Lease, the following capitalized terms shall have the following meanings:

(a) "**Gross Revenues**" means:

- (i) All revenues achieved from the rental of Luggage Carts from or at the Airport, including those issued from the Cart Vending Units, whether such operations are operated by a subtenant or a concessionaire, or by any other person or entity, as may herein be provided, whether such sales be for cash or on credit, and in case of sales on credit whether or not payment is actually made; plus,
- (ii) The full amount of all deposits forfeited by customers in connection with any business of Operator in, on, about or from the Premises; plus,
- (iii) All revenues achieved from the placement of advertisements on the Luggage Carts and/or Cart Vending Units, if the same is permitted by Director as provided in Section 10.

The following shall not be included in Gross Revenues: Cash or credit refunds to customers on transactions (not to exceed the actual rental charge) otherwise included in Gross Revenues; any retail sales taxes applicable to the rental transaction; the Annual Service Fee paid by the City to the Operator; and revenue achieved from the sale of used equipment.

(b) "**Consumer Price Index**" means that index published by the United States Department of Labor, Bureau of Labor Statistics known as "**All Urban Consumers-Not Seasonally Adjusted- San Francisco/Oakland/San Jose, CA.**" In the event such index is discontinued, then "Consumer Price Index" shall mean an index chosen by Director which is, in Director's reasonable judgment, comparable to the index specified above.

(c) "**MAG Adjustment Date**" has the meaning given it in the Summary.

(d) "**Base Index**" means the most recent Consumer Price Index published immediately prior to the Rent Commencement Date.

(e) "**Comparison Index**" means the most recent Consumer Price Index available at the time of MAG Adjustment review.

(f) "**First Month**" means the month in which the Rent Commencement date occurs.

(g) "**Lease Year**" means the period commencing on the Rent Commencement Date and terminating on the day before the first MAG Adjustment Date, and each subsequent 12-month period, commencing on each MAG Adjustment Date and expiring on the day the day before the subsequent MAG Adjustment Date, or expiring on the Expiration Date, as the case may be.

(h) "**Rent Commencement Date**" has the meaning given it in the Summary.

4.2 Monthly Rent Payments. Operator shall pay, as rent for the Premises, estimated monthly Base Rent in advance, on or before the first (1st) day of each calendar month of the Term, as set forth below:

(a) On or before the Rent Commencement Date and the first (1st) day of each calendar month thereafter, Operator shall pay the current monthly Minimum Annual Guarantee to the City's Rent Payment Address.

(b) On or before the twentieth (20th) day of each calendar month after the First Month, concurrently with its submission of the Sales Reports breaking down Gross Revenues by Terminal described below covering the prior calendar month, Operator shall pay to City the deficiency, if any, between the Base Rent payable by Operator with respect to such prior calendar month (based on the Gross Revenues achieved with respect to such prior month), and the amount actually paid by Operator pursuant to the foregoing subsection (a) with respect to such month.

(c) All payments hereunder shall be paid to City's Rent Payment Address, or at such other place as City may from time to time designate in writing.

(d) All Rent shall be paid in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind.

(e) Any Rent not paid when due shall be subject to a service charge equal to the lesser of the rate of one and one-half percent (1½%) per month, and the maximum rate permitted by law. Acceptance of any service charge shall not constitute a waiver of Operator's default on the overdue amount or prevent City from exercising any of the other rights and remedies available to City.

(f) In the event Operator completes its improvements and desires to open for business prior to Rent Commencement Date, Operator shall pay the percentage rent based on a calendar month.

4.3 Adjustments to Minimum Annual Guarantee. On each MAG Adjustment Date, the Minimum Annual Guarantee will be adjusted if the Comparison Index exceeds the Base Index. The Minimum Annual Guarantee with respect to the Upcoming Lease Year shall then be increased to equal the following amount:

$$\text{Initial MAG} \quad \times \quad \frac{\text{Comparison Index}}{\text{Base Index}}$$

Notwithstanding anything to the contrary herein, in no event will the Minimum Annual Guarantee for any Lease Year of the Term be lower than the Minimum Annual Guarantee with respect to the prior Lease Year.

4.4 Construction Period Operations (Intentionally Deleted).

4.5 Rent During Construction (Intentionally Deleted).

4.6 Sales Reports. On or before the twentieth (20th) day of each calendar month after the First Month, Operator shall submit to City a report (the "**Sales Report**") showing all Gross Revenues achieved with respect to the prior month by Terminal, with Customs area in the International Terminal as a separate line item. Such report shall be certified as being true and correct by Operator and shall otherwise be in form and substance satisfactory to Director. As described below, City shall have the right, in addition to all other rights herein, to impose a fine in the event Operator shall fail to submit such Sales Report timely.

4.7 Annual Certification of Sales and Adjustment. Within ninety (90) days after the end of each Lease Year, Operator shall submit to Director an unqualified year-end financial report certified by an independent Certified Public Accountant showing Gross Revenues achieved with respect to the prior Lease Year. If such report shows that the total Base Rent actually paid by Operator with respect to the prior Lease Year was less than the Base Rent payable with respect to such year, then Operator shall immediately pay to City such deficiency. If such report shows that the total Base Rent actually paid by Operator with respect to such prior Lease Year exceeded the Base Rent payable with respect to such year, then such excess shall be applied as a rent credit to amounts next coming due. Notwithstanding anything to the contrary herein, in no event will the Base Rent payable to City be less than the Minimum Annual Guarantee. In addition, Operator shall submit to City such other financial or other reports as Director may reasonably require.

4.8 Cart Management Unit Requirement.

Without limiting other provisions herein relating to the Vending Unit requirements, each Vending Unit shall be of a type approved by Director in writing and shall register every transaction made in, on, about or from the Premises, including subject to inspection by Director or his/her agent. Each rental or other transaction from the Vending Unit must be recorded at the time of each rental or other transaction, in the presence of the customer. City shall have the right during business hours to examine the totals of the Vending Unit transaction record(s) including computerized transaction records or other similar electronic devices if used) used in the Premises and to inspect for compliance with this section.

4.9 Books and Records; Audit Rights.

(a) Operator shall maintain for a period of five (5) years after the Expiration Date, or, in the event of a claim by City, until such claim of City for payments hereunder shall have been fully ascertained, fixed and paid, separate and accurate daily records of Gross Revenues, whether for cash, credit, or otherwise. Operator must require each sub-Operator, licensee, and assignee to maintain the same records. All such books and records shall be kept in accordance with "generally accepted accounting principles", consistently applied, showing in detail all business done or transacted in, on, about or from or pertaining to the Premises, and Operator shall enter all receipts arising from such business in regular books of account, and all entries in any such records or books shall be made at or about the time the transactions respectively occur. The books and source documents to be kept by Operator must include records of inventories and receipts of merchandise, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Premises by all persons or entities conducting business in or from the Premises. Pertinent original sales records include: (i) computerized Vending Unit transaction records, (ii) cash register tapes, including tapes from temporary registers, (iii) settlement report sheets of transactions with sub-Operators, licensees and assignees, (iv) original records indicating that customers received a refund, (v) detailed original records or any exclusions or deductions from Gross Revenues, (vi) sales tax records, and (vii) all other sales records, if any, that would normally be

examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Gross Revenues. Operator must keep the required books, source documents and records of Gross Revenues available for inspection by City and its agents and employees at the Premises or at another location within the continental United States at all times during regular business hours. In addition, Operator shall maintain monthly and annual reports of Gross Revenues derived from its operation under this Lease, using a form and method as is directed by Director. Such forms and methods shall be employed by Operator throughout the term of this Lease. Upon Director's written request, Operator shall make available immediately to City and/or its auditors any and all books, records and accounts pertaining to its operations under this Lease. The intent and purpose of the provisions of this section are that Operator shall keep and maintain records which will enable City and City's Controller to ascertain, determine and audit, if so desired by City, clearly and accurately, Gross Revenues achieved, and the adequacy of the form and method of Operator's reporting thereof.

(b) Should any examination, inspection, and audit of Operator's books and records by City disclose an underpayment by Operator of the total Base Rent due, Operator shall promptly pay to City such deficiency, and if such deficiency exceeds two percent (2%) of the total Base Rent due, Operator shall also promptly reimburse City for all costs incurred in the conduct of such examination, inspection, and audit. Further, should any examination, inspection, and audit of Operator's books and records by City disclose an underpayment by Operator of the total Base Rent due and such deficiency exceeds five percent (5%) of the total Base Rent due, City shall have the right to terminate this Lease. In the event that City deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination, inspection, and audit, then Operator shall reimburse City for reasonable attorneys' fees and litigation expenses as part of the aforementioned costs incurred.

4.10 Other Reports and Submissions. Operator shall furnish City with such other financial or statistical reports as Director or his/her representative from time to time may reasonably require. Upon request by Director, Operator shall furnish to City copies of its quarterly California sales and use tax returns covering the Premises operations as well as that pertinent portion of both the California and Federal income tax returns and possessory interest tax returns on the Premises operations at the time of filing, and any amendments thereto. All copies of such returns must be certified as exact copies of the original documents by a Certified Public Accountant. Operator and all sub-Operators (to the extent permitted) shall also promptly notify Director of and furnish to City copies of any audit reports covering this facility conducted by the California Franchise Tax Board or the Board of Equalization.

4.11 Additional Rent. Operator shall pay to City any and all charges and other amounts under this Lease as additional rent, at the same place where Base Rent is payable. City shall have the same remedies for a default in the payment of any such additional charges as for a default in the payment of Base Rent.

4.12 Prepay Rent. Notwithstanding anything to the contrary herein, in the event Operator shall fail to pay any Rent when due hereunder, Director shall have the right to require Operator to pay estimated monthly Rent (including Base Rent, utility charges, and all other amounts) one (1) month in advance of when such payment would otherwise be due. Such prepayment would be based on the highest monthly Rent previously due from Operator. Such right shall be exercised by a notice from Director to Operator, which notice may be given any time after such default by Operator, regardless of whether the same is cured by Operator.

4.13 Nature of Lease. Under no circumstances will City be expected or required to make any payment of any kind with respect to Operator's use or occupancy of the Premises, except as may be otherwise expressly set forth herein. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, shall relieve Operator from its liability to pay all of the sums

required by this Lease, or relieve Operator from any of its other obligations under this Lease, or give Operator the right to terminate this Lease in whole or in part. Operator waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction, or suspension of payment of such sums, on account of such occurrence or situation. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Operator hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Premises or any portion thereof or any improvements thereon, or any taking thereof in eminent domain; (b) any restriction or prevention of or interference with any use of the Premises or the improvements or any part thereof; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to City, Operator or any constituent partner of Operator or any sublessee, licensee or concessionaire or any action taken with respect to this Lease by a trustee or receiver, or by any court, in any proceeding; (d) any claim that Operator or any other person has or might have against City; (e) any failure on the part of City to perform or comply with any of the terms hereof or of any other agreement with Operator or any other person; (f) any failure on the part of any sublessee, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Operator and any such person; (g) any termination of any sublease, license or concession, whether voluntary or by operation of law; or (h) any other occurrence whatsoever, whether similar or dissimilar to the foregoing in each case whether or not Operator shall have notice or knowledge of any of the foregoing. The obligations of Operator hereunder shall be separate and independent covenants and agreements. Operator hereby waives to the full extent permitted by applicable law, all rights now or hereafter conferred by statute, including without limitation the provisions of Civil Code Sections 1932 and 1933, to quit, terminate or surrender this Lease or the Premises or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of any rent hereunder.

4.14 Severe Decline in Enplanements.

(a) Defined Terms. For purposes of this Section, the following capitalized terms shall have the following meanings:

- (i) "**Relevant Boarding Area**" shall have the meaning given it in the Summary.
- (ii) "**Enplanements**" shall mean the total number of passengers boarding airline carriers. For purposes of this Section 4.14, all Enplanement comparisons shall be done by Relevant Boarding Area.
- (iii) "**Reference Month(s)**" shall mean the corresponding month in the Reference Year.
- (iv) "**Reference Year**" shall have the meaning given it in the Summary.
- (v) "**Percentage Rent**" shall have the meaning given it in the Summary.
- (vi) "**Severe Decline in Enplanements for Three Months**" shall mean that the actual Enplanements achieved during a one month period is less than 80% of the actual Enplanements of the same Reference Month in the Reference Year, and such shortfall continues for three (3) consecutive months.
- (vii) "**Enplanement Stabilization for Two Months**" means that actual Enplanements for a particular month equals or exceeds 80% of the

actual Enplanements of the same Reference Month in the Reference Year, and such threshold is achieved for two (2) consecutive months.

(b) MAG Suspension. If at any time during the term, there is a Severe Decline in Enplanements for Three Months, then the MAG shall be temporarily suspended as follows:

- (i) The MAG suspension shall be effective on the first day of the month immediately following the Severe Decline in Enplanements for Three Months.
- (ii) During such MAG suspension period, Operator shall be required to pay only the Percentage Rent, unless and until the MAG is reinstated as provided below. On or before the 20th day of each month, Operator will submit to City a Sales Report showing Operator's Gross Revenues achieved with respect to the prior month, together with the Percentage Rent calculated on such Gross Revenues, cumulated by Lease Year.
- (iii) If the Lease provides that the Percentage Rent is based on a tiered gross revenue structure, for purposes of determining the Percentage Rent payable, the annual Gross Revenues shall continue to cumulate as provided in the Lease. For example, if Operator's Lease Year is November 1 through October 31, then for purposes of calculating Percentage Rent for April 2003, all gross revenues achieved to date (from November 1 through April 30) will be cumulated.

(c) MAG Reinstatement. Once there is Enplanement Stabilization for Two Months, then the MAG is reinstated, and will continue unless and until there is another Severe Decline in Enplanements for Three Months, as follows:

- (i) Such MAG reinstatement will be effective on the first day of the month following an Enplanement Stabilization for Two Months.
- (ii) In the event the MAG is reinstated after the commencement of a "Lease Year" or other period of time for annual gross revenue accumulation specified in the Lease, the MAG will be pro-rated accordingly.

(d) Determination of Enplanements and "True-Ups". The parties acknowledge that Enplanements for a particular month are not usually determined as of the first day of the following month. Accordingly, unless and until the MAG is suspended as provided herein, Operator shall continue to pay the MAG as and when required hereunder. If and when a MAG is later suspended pursuant to Section 4.12(b), then City shall issue a rent credit to reflect any resulting overpayment in rent. If and to the extent Operator has any outstanding obligations to City hereunder, City may decline to issue such rent credit or reduce the rent credit by the amount outstanding. If and when the MAG is reinstated, Operator shall pay to City within five (5) days after City shall have given notice to Operator of such reinstatement, the deficiency, if any, between the Percentage Rent paid by the Operator and the MAG, for the month(s) following such reinstatement.

(e) Enplanement Determinations. Director shall have the sole discretion as to the Enplanement calculations, and whether there exists a Severe Decline in Enplanements for Three Months and/or an Enplanement Stabilization for Two Months.

(f) No Effect. The MAG suspension shall have no effect on (i) any adjustments specified in this Lease to be made to the MAG, including those based on increases in the Consumer Price Index; or (ii) the Deposit Amount.

(g) Effect of Default. Notwithstanding anything to the contrary herein, in the event Operator shall default under this Lease or any Other Agreement, the Airport Director may immediately reinstate the MAG, without giving to Operator the benefit of any notice or right to cure as may otherwise be provided under this Lease or Other Agreement.

(h) SubOperators. Without limiting the provisions of Section 5 [Assignment or Subletting] if Operator subleases any portion of the Premises, Operator shall offer to such subOperator(s) the same types of MAG suspension as are provided herein.

(i) Example. The following is intended merely to provide an example of the mechanics of the foregoing provisions, and the numbers provided are not intended to be projections or guarantees. Assume (a) the Premises are in Boarding Area F, (b) the Lease is awarded on February 15, 2003, and (c) Reference Year Enplanements for Boarding Area F, by Reference Month in the Reference Year (January 1- December 31, 2002) are:

	<u>Jan 2002</u>	<u>Feb 2002</u>	<u>Mar 2002</u>	<u>Apr 2002</u>	<u>May 2002</u>	<u>Jun 2002</u>	<u>Jul 2002</u>	<u>Aug 2002</u>	<u>Sep 2002</u>	<u>Oct 2002</u>	<u>Nov 2002</u>	<u>Dec 2002</u>
Enp ('000)	800	800	800	900	1,100	1,200	1,300	1,200	1,100	900	800	900

Assume further that actual Enplanements for Boarding Area F by Reference Month for 2005 are as follows:

	<u>Jan 2005</u>	<u>Feb 2005</u>	<u>Mar 2005</u>	<u>Apr 2005</u>	<u>May 2005</u>	<u>Jun 2005</u>	<u>Jul 2005</u>	<u>Aug 2005</u>	<u>Sep 2005</u>	<u>Oct 2005</u>	<u>Nov 2005</u>	<u>Dec 2005</u>
Enp ('000)	900	900	700	700	800	800	900	1100	700	800	700	800
% of Ref. Month	112.5	112.5	87.5	77.8	72.2	72.2	69.2	91.7	63.6	88.9	87.5	88.9

(j) Then, there occurs a Severe Decline in Enplanements for Three Months with respect to the months April 2005 – June 2005, and the MAG shall be suspended effective July 1, 2005. There occurs an Enplanement Stabilization for Two Months with respect to the months October 2005 – November 2005, and the MAG shall be reinstated effective December 1, 2005.

4.15 Compensation to Operator.

(a) With respect to the Services provided by Operator to City, compensation shall be made in monthly payments on or before the twentieth (20th) day of each month for providing luggage carts for passengers free of charge in the FIS Area of the International Terminal, that the Director in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. Such compensation is the Annual Service Fee as described the Summary. In no event shall the amount of this Agreement exceed the breakdown of charges associated with this Agreement as set forth in the Summary. Notwithstanding anything to the contrary herein, in the event City elects to reduce, expand, or terminate the Services as described in Section

3.14, the Service Fee shall be reduced, increased, or terminated based on the allocation of the Service Fee described in the Summary.

(b) No charges shall be incurred under this Agreement nor shall any payments become due to Operator until reports, services, or both, required under this Agreement are received from Operator and approved by Director as being in accordance with this Agreement. City may withhold payment to Operator in any instance in which Operator has failed or refused to satisfy any obligation provided for under this Agreement. City shall have the right to set-off against compensation owing to Operator any amounts owing from Operator to City which are not paid when due. In no event shall City be liable for interest or late charges for any late payments.

(c) Invoices furnished by Operator under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Operator shall be subject to audit by City. Payment shall be made by City to Operator at the Operator's Notice Address.

(d) The Controller is not authorized to pay invoices submitted by Operator prior to Operator's submission of HRC Form 7. If HRC Form 7 is not submitted with Operator's invoice, the Controller will notify the department, the Director of HRC and Operator of the omission. If Operator's failure to provide HRC Form 7 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided. Following City's payment of an invoice, Operator has ten days to file an affidavit using HRC Form 9 verifying that all subcontractors have been paid and specifying the amount.

4.16 Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Operator to perform services or to provide materials, equipment and supplies that would result in Operator performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment and supplies. The City is not required to reimburse Operator for services, materials, equipment or supplies that are provided by Operator which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Operator additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Operator's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which excess the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

4.17 Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Operator, shall in no way lessen the liability of Operator to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Operator without delay.

5. ASSIGNMENT OR SUBLETTING

5.1 No Assignment. Operator shall not assign, sublet, encumber, or otherwise transfer, whether voluntary or involuntary or by operation of law, the Premises or any part thereof, or any interest herein, without City's prior written consent, which consent may be granted or denied in City's sole and absolute discretion (the term "**Transfer**" shall mean any such assignment, subletting, encumbrance, or transfer). City's consent to one Transfer shall not be deemed a consent to subsequent Transfers. Any Transfer made without City's consent shall constitute a default hereunder and shall be voidable at City's election.

5.2 Changes in Operator. The merger of Operator with any other entity or the transfer of any controlling ownership interest in Operator, or the assignment or transfer of a substantial portion of the assets of Operator, whether or not located on the Premises, shall constitute a Transfer. Without limiting the generality of the foregoing, if Operator is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law of the partner or partners owning twenty-five percent (25%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least twenty-five percent (25%) of the value of the assets of Operator, shall be deemed a Transfer. If Operator is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Operator, or the sale or other transfer of a controlling percentage of the capital stock or membership interests of Operator, or the sale or transfer of at least twenty-five percent (25%) of the value of the assets of Operator, shall be deemed a Transfer. The phrase "**controlling percentage**" means the ownership of, and the right to vote, stock or interests possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Operator's capital stock or interests issued, outstanding and entitled to vote for the election of directors. Without limiting the restrictions on asset transfers, this paragraph shall not apply to stock or limited liability company interest transfers of corporations or limited liability companies the stock or interests of which is traded through an exchange or over the counter.

5.3 No Release. In no event will City's consent to a Transfer be deemed to be a release of Operator as primary obligor hereunder.

5.4 [Intentionally Deleted - Subleasing].

5.5 Excess Rent. City shall receive fifty percent (50%) of all Excess Rent payable in connection with any Transfer. "**Excess Rent**" means the excess of (a) all consideration received by Operator from a Transfer over (b) Rent payable under this Lease after deducting reasonable Operator improvements paid for by Operator, reasonable attorneys' fees and any other reasonable out-of-pocket costs paid by Operator as a result of the Transfer (but specifically excluding any Rent paid to Landlord while the Premises is vacant).

5.6 Acceptance of Rent. The acceptance of rent by City from any person or entity does not constitute a waiver by City of any provision of this Lease or a consent to any Transfer. City's consent to one Transfer will not be deemed to be a consent to any subsequent Transfer. If Operator defaults in the performance of any of the terms of this Lease, City may proceed directly against the transferor (or if there has been more than one Transfer, then each transferor) without necessity of exhausting remedies against Operator. City may consent to subsequent Transfers or amendments or modifications to this Lease with transferees, without notifying transferor (or if there has been more than one Transfer, then each transferor) and without obtaining its or their consent thereto and such action shall not relieve any transferor of liability under this Lease as amended.

5.7 Waiver. Operator waives the provisions of Civil Code Section 1995.310 with respect to remedies available to Operator should City fail to consent to a Transfer.

6. TAXES, ASSESSMENTS AND LIENS

6.1 Taxes.

(a) Operator recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Operator may be subject to the payment of property taxes levied on such interest. Operator further recognizes and understands that any Transfer permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Operator shall pay all taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Operator's usage of the Premises, all of which shall be paid when the same become due and payable and before delinquency.

(b) Operator shall report any Transfer, or any renewal or extension hereof, to the County of San Mateo Assessor within sixty (60) days after such Transfer transaction, or renewal or extension. Operator further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests and any applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission in connection with any tax-exempt Airport revenue bonds financing the property leased to Operator hereunder. Operator agrees to make an irrevocable election not to claim depreciation or an investment credit with respect to any property leased hereunder.

6.2 Other Liens. Operator shall not permit or suffer any liens to be imposed upon the limitation, mechanics', materialmen's and tax liens, as a result of its activities without promptly discharging the same. Notwithstanding the foregoing, Operator may in good faith contest any such lien if Operator provides a bond in an amount and form acceptable to City in order to clear the record of any such liens. Operator shall assume the defense of and indemnify and hold harmless City against any and all liens and charges of any and every nature and kind which may at any time be established against said premises and improvements, or any part thereof, as a consequence of any act or omission of Operator or as a consequence of the existence of Operator's interest under this Lease.

7. INVESTMENTS; ALTERATIONS

7.1 Installation of Cart Vending Units. City acknowledges that, prior to the Commencement Date, Operator has installed the Vending Units at the Vending Unit Sites and has caused such Vending Units to be operational. Within thirty (30) days after Effective Date, Operator shall provide to Director a statement certified by its architect or an officer of Tenant, if no architect was employed, setting forth the total construction costs, with appropriate detail showing the costs of the equipment. Tenant shall make available to Director, at Director's request, receipted invoices for labor and materials covering design and installation of equipment. The minimum investment may not include financial costs, interest, inventory, pre-opening expenses or inter-company charges related to construction.

7.2 City's Approval Rights. Operator shall not make or suffer to be made any alterations, additions, or improvements to the Premises or any part thereof or attach any fixtures or equipment therefo, including the Initial Improvements (collectively, "**Alterations**") without City's prior written consent. Without limiting the generality of the foregoing, the initial layout and design of all Alterations shall conform to Commission's established architectural design scheme for the Terminal Building Complex and the provisions of Airport's TI Guide. Prior to the construction of any Alterations, including the installation of any Vending Units, Operator shall submit detailed description of the Vending Units

to the Airport's Design Review Committee for approval. City's approval rights will extend to and include architectural and aesthetic matters and City reserves the right to reject any designs submitted and to require Operator to resubmit designs and layout proposals until they meet City's approval. The Rent Commencement Date shall not be extended if City elects to reject any designs or layout proposals submitted. In the event of disapproval by City of any portion of the plans and specifications, Operator will promptly submit necessary modifications and revisions thereof. No changes or alterations will be made in said plans or specifications after approval by City. City agrees to act within a reasonable period of time upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. One copy of plans for all improvements or subsequent changes therein or alterations thereof will, within fifteen (15) days after approval thereof by City, be signed by Operator and deposited with City as an official record thereof. All Alterations shall be effected through the use of contractors approved by City who shall furnish to City upon demand such completion bonds and labor and material bonds as City may require so as to assure completion of the Alterations on a lien-free basis. Without limiting the requirements set forth above, Operator acknowledges and agrees that Operator may be required to obtain approvals for any desired Alterations from the Airport's Quality Control Department.

7.3 Structures and Fixtures. Operator shall, at its sole cost and expense, design, erect, construct and install all fixtures, furnishings, carpeting, decorations, finishings, equipment, counters, or other necessary Alterations for its operation under this Lease. All construction shall be in conformity with the latest edition of the Airport TI Guide, and in conformity with the approved plans and specifications submitted by Operator, and shall meet all applicable local building codes and ordinances as well as all other Laws. Operator shall submit complete plans and specifications to Director, and prior to the commencing any construction work, obtain Director's written approval of said plans and specifications. Operator shall make no change or alteration in the plans and specifications without prior written approval of Director. Nothing herein contained shall be construed to delay or otherwise affect the Commencement Date or the Rent Commencement Date.

7.4 Notice and Permits. Operator shall give written notice to Director not less than seven (7) days prior to the commencement of any work in construction, alteration or repairs of the Premises, in order that City may post appropriate notices of non-responsibility, and agrees that such notices may remain posted until the acceptance of such work by City. Operator shall obtain, and pay all fees for all permits required by the City or other legal jurisdictions, for improvements that it is required to construct or install, and it shall furnish copies of all such permits to City prior to the commencement of any work.

7.5 Title to Alterations. Title to all Alterations of such a nature as cannot be removed without damage to the Terminal, including all carpeting, decorations, finishings, and counters, shall vest in City on the Expiration Date. All other equipment of such nature as to constitute trade fixtures shall remain the property of Operator. On the Expiration Date, Operator may remove said trade fixtures or Director may require that Operator remove same at Operator's expense. Prior to the Rent Commencement Date, Operator shall submit to Director a proposed list of such trade fixtures; said list may be subsequently amended during the term of this Lease to reflect any changes in said trade fixtures. Operator agrees and understands that "fixture" is defined as a thing affixed to premises that is bolted, nailed, screwed, cemented and/or plastered. For the purpose of this Lease, fixtures shall include slat wall, counters and the like, attached to the physical structure of the premises in any matter whatsoever. On the Expiration Date, all fixtures, other than those deemed trade fixtures by City, shall become the property of City. Operator shall be liable to City for City's costs for storing, removing and disposing of any alterations of Operator's personal property, and of restoration of the Premises.

7.6 Effect of Alterations on Airport. If and to the extent that Operator's activities or proposed Alterations trigger an obligation or requirement on the part of City to make changes to the

Airport premises (including ADA requirements), Operator shall indemnify, defend, and hold harmless City from and against any and all Losses (as defined below) arising out of such activities or Alterations.

7.7 Labor Harmony. The parties acknowledge that it is of the utmost importance to City, Operator, and all those occupying or to occupy space in the Domestic and International Terminals that there be no interruption in the progress of the construction work. Accordingly, City and Operator agree as follows:

(a) In any contract or undertaking which Operator may make with a contractor for work in the Premises, provision shall be made for the dismissal from the job of workmen whose work is unskilled or otherwise objectionable, in the Director's (and, for this purpose, "the Director" shall include a reference to the Airport's Architect) reasonable judgment. Operator shall cause any such workmen to be discharged from the project within twenty-four (24) hours after Director shall give notice to Operator requiring such discharge.

(b) Operator shall use, and Operator shall require its contractor and subcontractors to use, their respective best efforts to prevent work stoppages on the Premises, and/or elsewhere on the Airport, to the extent attributable to work being performed on the Premises, irrespective of the reason of any such stoppage. In the event that the conduct or presence of any employee(s) of Operator or Operator's contractor(s) or subcontractor(s) causes a labor dispute or work stoppage, Operator shall have such employee(s) immediately removed from the Airport upon Director's request.

(c) Operator shall include, and shall cause its contractor to include, the following clause in all contracts with its general contractors and subcontractors:

Harmony Clause

There shall be no manifestations on the project of any dispute between any labor organization and any Operator contractor or subcontractor, including but not limited to, any area standards picketing against said contractor or subcontractor. Should there be any manifestation of a labor dispute between any Operator contractor or subcontractor and any union, which results in a stoppage of work on the part of said contractor or subcontractor's employees or the employees of any other employer or supplier on the project or at the Airport, which in the sole judgment of the Director will cause, or is likely to cause, unreasonable delay in the progress of construction or operation of any business at the Airport, then upon written notice from Director, Operator shall declare the contractor or subcontractor in default of its contract, and upon such notice, Operator shall have the right to take such steps as are necessary to finish the uncompleted portion of the work to be performed by the contractor or subcontractor.

(d) Without limiting the generality of indemnities elsewhere in this Lease, Operator shall indemnify, defend, and hold harmless City and each City Entity for any and all Losses which arise from the actions taken pursuant to this Section 7.9.

8. UTILITIES

8.1 Services Provided. City shall provide in the Terminal Building Complex the following utility services: reasonable amounts of water, electricity, telephone, sewage outlets, heating, ventilation, and air conditioning, to a point determined by the Director. All extensions of the facilities requested by Operator for said utility services from said points shall be at the sole cost and expense of

Operator. In the event of any change desired by Operator as to said points of supply by City, the expense of making such changes or alterations shall be at the sole cost of Operator.

8.2 Utility Costs. Operator shall pay the whole cost for all utility services as invoiced to Operator by City and for such other special services which it may require in the Premises, and Operator hereby expressly waives the right to contest any utility rates.

8.3 Shared Telecommunications Services. Operator acknowledges that City has implement a shared telecommunications service program ("**STS Program**") to provide telecommunications services. The STS Program may involve City's provision of telephone, telefacsimile, local access, long distance service, internet, intranet, and other computer and telecommunications services. In such event, at City's option, Operator shall participate in the STS Program by engaging City or its agent to provide such services at Operator's expense, provided that the charges for such services are generally competitive. Further, Operator shall pay to City when invoices, the Airport Communication Infrastructure Charge, as the same may be modified from time to time. All payments for STS services shall be due and payable when invoiced by City.

8.4 Waiver of Damages. Operator hereby expressly waives any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, including electricity, gas, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences. Without limiting the generality of the foregoing, Operator shall have no rights to abate Rent or terminate this Lease in the event of any interruption or failure of utility services.

9. MAINTENANCE AND REPAIR

9.1 "As-Is" Condition. OPERATOR SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS LEASING THE PREMISES TO OPERATOR ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT OPERATOR IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, landscaping, utility systems, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, (iv) the development potential of the Premises, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of Hazardous Materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the real property, (ix) the condition of title to the Premises, and (x) the agreements affecting the Premises, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Operator has knowledge.

9.2 Operator's Maintenance Obligations. Operator, at all times during the Term and at Operator's sole cost and expense, shall keep the Premises and every part thereof in good condition and repair, and in compliance with applicable Laws, including the replacement of any facility of City used by Operator which requires replacement by reason of Operator's use thereof, excepting (a) ordinary wear and tear, and (b) damage due to casualty with respect to which the provisions of Section 14 [Damage or Destruction] shall apply. Operator hereby waives all right to make repairs at the expense of City or in lieu thereof to vacate the Premises as provided by California Civil Code Section 1941 and 1942 or any other law, statute or ordinance now or hereafter in effect. As provided below in Section 15.4 [City's Right to Perform], in the event Operator fails to perform its maintenance

and repair obligations hereunder, City shall have the right to do so, at Operator's expense. In addition, if it becomes reasonably necessary during the term of this Agreement, as determined by Director, Operator will, at its own expense, replace signage or otherwise make appropriate changes to the Premises. The parties acknowledge and agree that Operator's obligations under this Section are a material part of the bargained-for consideration under this Lease. Operator's compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Operator or City, the degree to which curative action may interfere with Operator's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Operator's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Operator of its obligations hereunder, nor give Operator any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Operator waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

10. SIGNS AND ADVERTISING

10.1 Signs and Advertising. Operator may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of Director and the requirements of the TI Guide, including but not limited to, the approval of the number, size, height, location, color and general type and design. Such approval shall be subject to revocation by Director at any time. Without express written consent of Director, Operator shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials.

11. [INTENTIONALLY DELETED - PROMOTIONAL PROGRAM]

12. WAIVER; INDEMNITY; INSURANCE

12.1 Waiver. Operator, on behalf of itself and its assigns, waives its rights to recover from and releases and discharges City and all City Entities and their respective heirs, successors, personal representatives and assigns, from any and all Losses whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way connected with (a) the physical or environmental condition of the Premises or any law or regulation applicable thereto, (b) any damage that may be suffered or sustained by Operator or any person whatsoever may at any time be using or occupying or visiting the Premises, or in or about the Airport, or (c) any act or omission (whether negligent, non-negligent or otherwise) of Operator or any Operator Entity, whether or not such Losses shall be caused in part by any act, omission or negligence of any of City, Commission, its members, or any officers, agents, and employees of each of them, and their successors and assigns (each, a "City Entity"), except if caused by the sole gross negligence or willful misconduct of City. In connection with the foregoing waiver, Operator expressly waives the benefit of Section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

12.2 Indemnity. In addition to, and not in limitation of the foregoing, Operator shall forever indemnify, defend, hold and save City and each City Entity free and harmless of, from and against any and all Losses caused in whole or in part by or arising out of (a) any act or omission of Operator or any Operator Entity, (b) Operator's use of the Premises or operations at the Airport, or (c) any default by Operator or any Operator Entity hereunder, whether or not Losses shall be caused in part by any

act, omission or negligence of City or any City Entity. The foregoing indemnity shall not extend to any Loss caused by the sole gross negligence or willful misconduct of City.

12.3 Losses. For purposes hereof "**Losses**" shall mean any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees, investigation costs, remediation costs, and court costs), of any kind or nature.

12.4 Immediate Obligation to Defend. Operator specifically acknowledges that it has an immediate and independent obligation to defend City or the City Entity from any claim which is actually or potentially within the scope of the indemnity provision of this Section 12 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Operator and continues at all times thereafter.

12.5 Notice. Without limiting the foregoing waiver and indemnity, each party hereto shall give to the other prompt and timely written notice of any Loss coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

12.6 Insurance. Operator shall procure and maintain during the Term the following insurance:

(a) Workers' Compensation Insurance with Employer's Liability limits not less than \$1,000,000 each accident.

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products Liability and Completed Operations Coverages.

(c) Comprehensive Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.

(d) Property Insurance on all causes of loss-special form covering all Premises Operator improvements, fixtures, and equipment insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in the demised premises in an amount equal to the full replacement value of Operator improvements, fixtures and equipment.

(e) Business Interruption Insurance insuring that the Base Rent will be paid to City for a period of at least one (1) year if Operator is unable to operate its business at the Premises. Said insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Base Rent during any such interruption of business, the Gross Revenues for the 12-month period immediately preceding the incident causing the business interruption shall be used.

12.7 Form of Policies. All insurance required by Operator hereunder shall be pursuant to policies in form and substance and issued by companies satisfactory to City and City's City Attorney. City may, upon reasonable notice and reasonable grounds increase or change the required insurance hereunder, in which event Operator shall obtain such required insurance. Without limiting the generality of the foregoing, all Comprehensive General Liability Insurance, and Comprehensive Automobile Liability Insurance, policies shall be endorsed to provide the following:

(a) Name as additional insured the City and County of San Francisco, the Airport Commission and its members, and all of the officers, agents, and employees of each of them (collectively, "**Additional Insureds**");

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(c) That the insurance company shall give thirty (30) days prior written notice to City of cancellation, non-renewal or reduction in coverage or limits, delivered to City at City's Insurance/Deposit Notice Address.

12.8 Delivery of Policies or Certificates. Within five (5) days after Director's request, and in any event on or before the Commencement Date, Operator shall provide to City copies of its insurance policies or certificates thereof evidencing the above insurance, at City's Insurance/ Deposit Notice Address.

12.9 Subrogation. Notwithstanding anything to the contrary herein, Operator waives any right of recovery against City for any loss or damage to the extent the same is required to be covered by Operator's insurance hereunder. Operator shall obtain from its insurer, if possible, a waiver of subrogation the insurer may have against City or any City Entity in connection with any Loss covered by Operator's property insurance policy.

13. DEPOSIT

13.1 Form of Deposit. On or before the date specified by the Director, Operator will deliver to Director a security deposit (the "**Deposit**") in the Deposit Amount. Such Deposit shall be in the form of (a) a surety bond payable to City, naming City as obligee, in the form attached as Exhibit C-1, and otherwise in form satisfactory to City's City Attorney, and issued by a surety company satisfactory to Director, or a (b) letter of credit naming City as beneficiary, in the form attached as Exhibit C-2, and otherwise in form satisfactory to City's City Attorney, issued by a bank satisfactory to Director. Notwithstanding the foregoing, as may be provided in the Airport Commission Policy on Concession Deposits, (Resolution No. 04-0153, August 3, 2004) as the same may be amended from time to time, Operator shall be permitted to submit as the Deposit alternative forms of deposit as specified therein. Such Deposit shall be renewed annually and increased annually such that at all times, the Deposit is equal to one-half (1/2) the then current Minimum Annual Guarantee, all at Operator's cost. Such Deposit shall be kept in full force and effect during the Term to ensure the faithful performance by Operator of all covenants, terms, and conditions of this Lease, including payment of Rent. The sum designated as the "Deposit" is and will remain the sole and separate property of City until actually repaid to Operator (or at City's option, the last assignee (if any) of Operator's interest hereunder), said sum not being earned by Operator until all provisions precedent for its payment to Operator have been fulfilled. For Deposits in the form of a bond or letter of credit, Operator shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date of such bond or letter of credit of its intention not to renew said bond or letter of credit.

13.2 Maintenance of Deposit. Operator shall cause the Deposit to be increased from time to time such that at all times the Deposit is equal to one-half (1/2) the then current Minimum Annual Guarantee, all at Operator's cost. Operator shall cause the bond or letter of credit to be kept in full force and effect during the Term and any holdover period to ensure the faithful performance by Operator of all covenants, terms, and conditions of this Lease, including payment of Rent. If and to the extent City accepts a Deposit which has an expiration date or cancellation/termination provision, Operator shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date of such

bond or letter of credit of its intention not to renew or to cancel or terminate said bond or letter of credit. Operator shall cause such bond or letter of credit to be renewed, extended, or replaced, at Operator's sole cost, at least thirty (30) days before the expiration date or cancellation date of the bond or letter of credit, with another bond or letter of credit that complies with the requirements herein. If Operator fails to do so, City may, without notice to Operator, draw on the entirety of the Deposit and hold the proceeds thereof as security hereunder. Operator shall cause all notices to be given to City under this Section 13 to be given to City at City's Insurance/Deposit Notice Address.

13.3 Alternative Forms of Deposit. Notwithstanding the foregoing, if and to the extent alternative form(s) of Deposit are permitted pursuant to the Airport Bid Deposit and Performance Guarantee Policy, as authorized by Commission Resolution No. 04-0153, as such Policy may be amended from time to time, then Operator may provide such alternative forms of Deposit. Operator shall cause such Deposit to be increased from time to time such that at all times the Deposit is equal to one-half (1/2) the then current Minimum Annual Guarantee, all at Operator's cost.

13.4 Use of Deposit. If Operator fails to pay Rent or otherwise defaults with respect to any provision of this Lease, City may use, apply or retain all or any portion of the Deposit for the payment of Rent or other charge in default or for the payment of any other sum to which City may become obligated by reason of Operator's default or to compensate City for any loss or damage which City may suffer thereby. If City so uses or applies all or any portion of the Deposit, Operator, within ten (10) days after request therefore, shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof, and Operator's failure to do so shall be a breach of this Lease. City shall not be required to keep the Deposit or any proceeds thereof, as applicable, separate from its general accounts. Any proceeds of the Deposit is and will remain the sole and separate property of City until actually repaid to Operator; said sum not being earned by Operator until all provisions precedent for its payment to Operator have been fulfilled. If Operator performs all of Operator's obligations hereunder, the Deposit, or the proceeds thereof, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Operator (or, at City's option, to the last assignee, if any, of Operator's interest hereunder) within sixty (60) days after the expiration of the Term, and after Operator has vacated the Premises. No trust relationship is created herein between City and Operator with respect to the Deposit or any proceeds thereof.

13.5 Other Agreements. If Operator defaults with respect to any provision of any other agreement between City and Operator, including the Other Agreements, City may use, apply or retain all or any portion of the Deposit for payment of any sum owing to City or to which City may become obligated by reason of Operator's default or to compensate City for any loss or damage which City may suffer thereby. Likewise, if Operator defaults with respect to any provision under this Lease, City may use, apply, or retain all or any portion of any deposit provided under any other agreement between City and Operator, including the Other Agreements, for payment of any sum owing to City or to which City may become obligated by reason of Operator's default or to compensate City for any loss or damage which City may suffer thereby. In the event the Deposit or any other deposit is so used, Operator shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof.

14. DAMAGE OR DESTRUCTION

14.1 Partial Destruction of Premises.

(a) In the event the improvements on the Premises are damaged by any casualty which is required to be insured against pursuant to this Lease, then Operator shall repair such damage as soon as reasonably possible, at its own cost, and this Lease shall continue in full force and effect.

(b) In the event such improvements are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this Lease, then City may, at City's option, either

(i) repair such damage as soon as reasonably possible at City's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Operator within sixty (60) days after the date of occurrence of such damage of City's intention to terminate this Lease. Such termination shall be effective as of the date specified in such notice.

(c) Notwithstanding the foregoing, if such damage is caused by an act or omission to act of Operator or a Operator Entity, then Operator shall repair such damage, promptly at its sole cost and expense.

(d) In the event City elects to terminate this Lease pursuant to this Section 14.1, Operator shall have the right within ten (10) days after receipt of the required notice to notify City of Operator's intention to repair such damage at Operator's expense, without reimbursement from City, in which event this Lease shall continue in full force and effect and Operator shall proceed to make such repairs as soon as reasonably possible. If Operator does not give such notice within the ten (10) day period, this Lease shall be terminated as of the date specified in City's notice. City shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery or fixtures or any other improvements or property installed in the Premises by Operator or at the direct or indirect expense of Operator. Operator shall be required to restore or replace same in the event of damage.

14.2 Total Destruction of Premises. If the improvements on the Premises are totally destroyed during the Term from any cause whether or not covered by the insurance required herein (including any destruction required by any authorized public authority), this Lease shall automatically terminate as of the date of such total destruction.

14.3 Partial Destruction of Terminal Building. If fifty percent (50%) or more of the Terminal Building shall be damaged or destroyed by an insured risk, or if fifteen percent (15%) or more of the Terminal Building shall be damaged or destroyed by an uninsured risk, notwithstanding that the Premises may be unaffected thereby, each of City and Operator may elect to terminate this Lease by giving notice to the other within ninety (90) days from the date of occurrence of such damage or destruction, in which event the Term of this Lease shall expire on a mutually agreed upon date and Operator shall thereupon surrender the Premises to City as required hereunder.

14.4 Damage Near End of the Term. If during the last year of the Term the improvements on the Premises are partially destroyed or damaged, City may at City's option terminate this Lease as of the date of occurrence of such damage by giving written notice to Operator of City's election to do so within thirty (30) days after the date of occurrence of such damage. In the event City elects to terminate this Lease pursuant hereto, Operator shall have the right within ten (10) days after receipt of the required notice to notify City in writing of Operator's intention to repair such damage at Operator's expense, without reimbursement from City, in which event this Lease shall continue in full force and effect and Operator shall proceed to make such repairs as soon as reasonably possible.

14.5 No Abatement of Rent; Operator's Remedies.

(a) If the Premises are partially destroyed or damaged, Operator shall have no claim against City for any damage suffered by reason of any such damage, destruction, repair or restoration. Operator waives California Civil Code Sections 1932(2) and 1933(4) providing for termination of hiring upon destruction of the thing hired.

(b) In no event will Operator be entitled to an abatement of Rent resulting from any damage, destruction, repair, or restoration described herein.

15. DEFAULT; REMEDIES

15.1 Event of Default. The occurrence of any one or more of the following events shall constitute a breach of this Lease and an "Event of Default" hereunder:

(a) Operator shall fail duly and punctually to pay Rent, or to make any other payment required hereunder, when due to City, and such failure shall continue beyond the date specified in a written notice of such default from Director, which date shall be no earlier than the third (3rd) day after the effective date of such notice. Notwithstanding the foregoing, in the event there occurs two (2) defaults in the payment of Rent or other payment during the Term, thereafter Operator shall not be entitled to, and City shall have no obligation to give, notice of any further defaults in the payment of Rent or other payment. In such event, there shall be deemed to occur an Event of Default immediately upon Operator's failure to duly and punctually pay Rent or other payment hereunder; or

(b) Operator shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or

(c) A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Operator and shall not be dismissed within thirty (30) days after the filing thereof; or

(d) There shall occur a Transfer without the prior approval of the City; or

(e) Operator shall voluntarily abandon, desert or vacate the Premises; or

(f) Any lien shall be filed against the Premises as a result of any act or omission of Operator, and shall not be discharged or contested by Operator in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Operator; or

(g) Operator shall fail to provide, maintain, increase, or replace, the Deposit as required herein; or

(h) Operator shall fail to obtain and maintain the insurance required hereunder, or provide copies of the policies or certificates to City as required herein; or

(i) Operator shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease, and such failure shall continue for a period of more than three (3) days after delivery by Director of a written notice of such failure (the "First Notice"); or if satisfaction of such obligation requires activity over a period of time, if Operator fails to commence the cure of such failure within three (3) days after receipt of the First Notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within one hundred twenty (120) days after the giving of the First Notice; or

(j) Operator shall use or give its permission to any person to use any portion of Airport or the Terminal Buildings used by Operator under this Lease for any illegal purpose, or any purpose not approved by Director; or

(k) There shall occur a default under any other agreement between Operator and City, including the Other Agreements, if any, and such default is not cured as may be provided in such agreement; provided, however, that nothing herein shall be deemed to imply that Operator shall be entitled to additional notice or cure rights with respect to such default other than as may be provided in such other agreement.

15.2 Statutory Notices. Notwithstanding anything to the contrary in this Section 15, any written notice, other than as specifically set forth in this Section 15, required by any statute or law now or hereafter in force is hereby waived by Operator to the fullest extent available under law. Any notice given by City pursuant to Section 15.1 may be the notice required or permitted pursuant to Section 1161 et seq. of the California Code of Civil Procedure or successor statutes, and the provisions of this Lease will not require the giving of a notice in addition to the statutory notice to terminate this Lease and Operator's right to possession of the Premises. The periods specified in Section 15.1 within which Operator is permitted to cure any default following notice from City will run concurrently with any cure period provided by applicable laws.

15.3 Remedies. Upon the occurrence and during the continuance of an Event of Default, City shall have the following rights and remedies in addition to all other rights and remedies available to City at law or in equity:

(a) City shall have the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Operator's right to possession of the Premises. In the event this Lease is so terminated, City may recover from Operator the following damages:

- (i) The "**worth at the time of the award**" of the unpaid Rent earned to the time of termination hereunder;
- (ii) The "**worth at the time of the award**" of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Operator proves could be reasonably avoided; and
- (iii) The "**worth at the time of the award**" of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Operator proves could be reasonably avoided; and
- (iv) Any other amount necessary to compensate City for all the detriment proximately caused by Operator's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

For purposes of the foregoing, the "**worth at the time of award**" of the amounts referred to in clauses (i) and (ii) above is computed by allowing interest at the lower of 18% per annum and the highest rate legally permitted under applicable law. The "**worth at the time of award**" of the amount referred to in clause (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1% (one percent). Notwithstanding any other provisions hereof, any efforts by City to mitigate damages caused by Operator's breach of this Lease shall not constitute a waiver of City's right to recover damages hereunder and shall not affect the right of City to indemnification pursuant to the provisions of Section 12 [Waiver; Indemnify; Insurance] hereof. For purposes of calculating City's damages comprising Base Rent based on Gross Revenues, that amount will be computed by determining the highest Base Rent accruing in any Lease Year during the immediately preceding three Lease Years or

such shorter period if the Term prior to termination was less than three Lease Years. Operator agrees that Operator's obligations under this Lease, including the payment of Base Rent, are independent covenants and are not conditioned on the covenants or warranties of City.

(b) City shall have the right and remedy described in California Civil Code Section 1951.4. City may elect not to terminate this Lease and let this Lease continue, in which case City may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon the initiative of City to protect City's interest under this Lease shall not constitute a termination of Operator's right to possession.

(c) City shall have the right and power, as attorney in fact for Operator, to enter and to sublet the Premises, to collect rents from all subOperators and to provide or arrange for the provision of all services and fulfill all obligations of Operator (as permitted in accordance with the terms of this Lease) and City is hereby authorized on behalf of Operator, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as City deems necessary in connection therewith. Operator shall be liable immediately to City for all costs and expenses City incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. City is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Operator, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as City in its sole discretion may deem proper. Operator shall be liable immediately to City for all reasonable costs City incurs in reletting the Premises required by the reletting, and other costs. If City relets the Premises or any portion thereof, such reletting shall not relieve Operator of any obligation hereunder, except that City shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Operator hereunder to the extent that such rent or other proceeds compensate City for the nonperformance of any obligation of Operator hereunder. Such payments by Operator shall be due at such times as are provided elsewhere in this Lease, and City need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. City may execute any lease made pursuant hereto in its own name, and the lessee thereunder shall be under no obligation to see to the application by City of any rent or other proceeds, nor shall Operator have any right to collect any such rent or other proceeds. City shall not by any reentry or other act be deemed to have accepted any surrender by Operator of the Premises or Operator's interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Operator of any obligation hereunder, unless City shall have given Operator express written notice of City's election to do so as set forth herein.

(d) City shall have the right to have a receiver appointed upon application by City to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to this Section 15.3.

(e) City shall have the right to enjoin, and any other remedy or right now or hereafter available to a landlord against a defaulting Operator under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein.

(f) City may elect to terminate any other agreement between Operator and City, including the Other Agreements, if any.

15.4 City's Right to Perform. All agreements and provisions to be performed by Operator under any of the terms of this Lease shall be at its sole cost and expense and without any abatement of Rent. If Operator shall fail to make any payment or perform any act on its part to be performed hereunder and such failure shall continue for ten (10) days after notice thereof by City, City may, but shall not be obligated to do so, and without waiving or releasing Operator from any obligations of Operator, make any such payment or perform any such other act on Operator's part to be made or

performed as provided in this Lease. All sums so paid by City and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable to City on demand, and City shall have (in addition to any other right or remedy of City) the same rights and remedies in the event of the nonpayment thereof by Operator as in the case of default by Operator in the payment of Rent.

15.5 Rights Related to Termination. In the event of any termination based on any breach of the covenants, terms and conditions contained in this Lease, City shall have the option at once and without further notice to Operator to enter upon the Premises and take exclusive possession of same. City may remove or store any personal property located therein, at the sole cost and expense of Operator without City being liable to Operator for damage or loss thereby sustained by Operator. Upon such termination by City, all rights, powers and privileges of Operator hereunder shall cease, and Operator shall immediately vacate any space occupied by it under this Lease, and Operator shall have no claim of any kind whatsoever against City or any City Entity by reason of such termination, or by reason of any act by City or any City Entity incidental or related thereto. In the event of the exercise by City of such option to terminate, Operator shall have no right to or claim upon any improvements or the value thereof, which may have been previously installed by Operator in or on the Premises.

15.6 Cumulative Rights. The exercise by City of any remedy provided in this Lease shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

15.7 Prepayment. As provided in Section 4.10 [Prepay Rent], if Operator defaults in the payment of Rent, City may require prepayment of Rent. Such right shall be in addition to and not in lieu of any and all other rights hereunder, or at law or in equity.

15.8 Fines. If Operator defaults under any of the Lease terms specified below, Director may elect to impose the fines described below on the basis of per violation per day:

<u>Violation</u>	<u>Section</u>	<u>Fine</u>
Violation of Premises Clause	1	\$100
Failure to cause Vending Units to be installed and Vending Units and Luggage Carts by Rent Commencement Date or to be operational when required	1.2, 2.2	\$500
Violation of Use Section	3	\$300
Failure to cause operations or Premises to comply with Laws	3.13	\$100
Failure to submit required documents and reports, including Sales Reports	4.4, 4.5, and others	\$100
Construction or Alterations without City approval	7	\$100
Failure to make required repairs	9	\$300
Unauthorized advertising or signage	10	\$100
Failure to obtain/maintain insurance	12	\$300
Failure to obtain or maintain Deposit	13	\$300
Failure to abide by any other term in this Lease		\$300

Director's right to impose the foregoing Fines shall be in addition to and not in lieu of any and all other rights hereunder, in the Airport Rules, or at law or in equity. City shall have no obligation to

Operator to impose Fines on or otherwise take action against any other Operator at the Airport. Such Fines shall constitute "**Additional Rent.**"

15.9 City Lien. Operator hereby grants to City a lien upon and security interest in all fixtures, chattels and personal property of every kind now or hereafter to be placed or installed in or on the Premises, and agrees that in the event of any default on the part of Operator City has all the rights and remedies afforded the secured party by the chapter on "Default" of the Uniform Commercial Code in the state wherein the Premises are located on the date of this Lease and may, in connection therewith, also (a) enter on the Premises to assemble and take possession of the collateral, (b) require Operator to assemble the collateral and make its possession available to the City at the Premises, (c) enter the Premises, render the collateral, if equipment, unusable and dispose of it in a manner provided by the Uniform Commercial Code on the Premises. Operator agrees to execute such instruments as City may request to perfect such lien, and designates also Director his attorney-in-fact for purposes of executing such documents.

15.10 Commencement of Legal Actions. Any legal action by City to enforce any obligation of Operator or in the pursuit of any remedy hereunder shall be deemed timely filed if commenced at any time prior to one (1) year after the expiration or termination of the Term hereof or prior to the expiration of the statutory limitation period that would be applicable except for this Section 15.10, whichever period expires later.

15.11 Waiver of Notice. Except as otherwise expressly provided in this Section 15, Operator hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Operator, for and on behalf of itself and all persons claiming through or under Operator, also waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, if Operator is evicted or City takes possession of the Premises by reason of any default by Operator hereunder.

16. SURRENDER

Operator shall at the end of the Term surrender to City the Premises and all Alterations, additions and improvements thereto in the same condition as when received, ordinary wear and tear and damage by fire, earthquake, act of God, or the elements excepted. Subject to City's right to require removal pursuant to Section 7 [Investments; Alterations] hereof, all Alterations and improvements installed in the Premises by Operator (other than Operator's trade fixtures), shall, without compensation to Operator, then become City's property free and clear of all claims to or against them by Operator or any third person. In the event that Operator shall fail to remove its personal property, including trade fixtures, on or before the Expiration Date, such personal property shall become City's property free and clear of all claims to or against them by Operator or any third person. In such event, City shall not be responsible for any Losses related to such personal property, and City may sell or otherwise dispose of such personal property.

17. HAZARDOUS MATERIALS

17.1 Definitions. As used herein, the following terms shall have the meanings hereinafter set forth:

(a) "**Environmental Laws**" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section

401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, et seq.)

(b) "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to any Environmental Law; any asbestos and asbestos containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and any materials listed in the Airport's TI Guide.

(c) "**Release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

(d) "**Pre-Existing Condition**" means the existence of any Hazardous Materials on the Premises immediately prior to the Commencement Date.

17.2 Operator's Covenants.

(a) Neither Operator nor any Operator Entity shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Airport, or transported to or from the Premises or the Airport; provided that Operator may use such substances as are customarily used in retail sales so long as such use is in compliance with all applicable Environmental Laws and the Airport's TI Guide.

(b) Operator shall handle Hazardous Materials discovered or introduced on the Premises during the Term in compliance with all Environmental Laws and the Airport's TI Guide. Operator shall protect its employees and the general public in accordance with all Environmental Laws.

(c) In the event Operator becomes aware of the actual or possible Release of Hazardous Materials on the Premises or elsewhere on the Airport, Operator shall promptly give notice of the same to City. Without limiting the generality of the foregoing, Operator shall give notice to City of any of the following: (i) notice of a Release of Hazardous Materials given by Operator, any subOperator, or other occupant to any governmental or regulatory agency; (ii) notice of a violation or potential or alleged violation of any Environmental Law received by Operator, any subOperator, other occupant on the Premises from any governmental or regulatory agency; (iii) any inquiry, investigation, enforcement, cleanup, removal, other action that is instituted or threatened by a government or regulatory agency; (iv) any claim that is instituted or threatened by a third party against Operator, any subOperator, or other occupant on the Premises that relates to Hazardous Materials; and (v) any notice of termination, expiration, or material amendment to any environmental operating permit or license necessary for the use of the Premises.

(d) At Director's request, Operator shall provide information necessary for City to confirm that Operator is complying with the foregoing covenants.

17.3 Environmental Indemnity. Operator shall indemnify, defend, and hold harmless City from and against any and all Losses arising during or after the Term as a result of or arising from: (a) a breach by Operator of its obligations contained in the preceding Section 17.2 [Operator's Covenants], or (b) any Release of Hazardous Material from, in, on or about the Premises or the Airport

caused by the act or omission of Operator or any Operator Entity, or (c) the existence of any Hazardous Materials on the Premises, except to the extent that Operator can demonstrate that such Hazardous Materials constitutes a Pre-Existing Condition.

17.4 Environmental Audit. Upon reasonable notice, Director shall have the right but not the obligation to conduct or cause to be conducted by a firm acceptable to Director, an environmental audit or any other appropriate investigation of the Premises for possible environmental contamination. Such investigation may include environmental sampling and equipment and facility testing, including the testing of secondary contamination. No such testing or investigation shall limit Operator's obligations hereunder or constitute a release of Operator's obligations therefor. Operator shall pay all costs associated with said investigation in the event such investigation shall disclose any Hazardous Materials contamination as to which Operator is liable hereunder.

17.5 Closure Permit. Prior to the termination or expiration of this Lease, Director shall have the right to require Operator to file with the City an application for a Closure Permit for decontamination of the site and investigation and removal of all Hazardous Materials in compliance with the Airport's TI Guide, the Airport Rules, and all Laws. The Closure Permit may require a plan for long-term care and surveillance of any contamination allowed to remain at the Premises or Airport property and an acknowledgment of responsibility and indemnification for any and all Losses associated with any such contamination: Without limiting the foregoing provision, City reserves the right to require Operator to, and in such event Operator shall, at Operator's sole cost and expense, decontaminate the Premises and remove any Hazardous Materials discovered during the Term, except those Hazardous Materials which constitute Pre-Existing Conditions. Such removal shall be performed to the Director's reasonable satisfaction.

18. EMINENT DOMAIN

18.1 Definitions. For purposes of this Section 18, the following capitalized terms shall have the following meanings:

(a) "**Award**" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

(b) "**Date of Taking**" means the earlier of: (a) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor, and (b) the date on which Operator is dispossessed

(c) "**Taking**" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under applicable Laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

18.2 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Section 18. City and Operator intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

18.3 Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

18.4 Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises unoperatorable or unsuitable for continued use by Operator for the Permitted Use; (b) the condition rendering the Premises unoperatorable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition; and (c) City elects to terminate.

(b) If a partial Taking of a material portion of the Terminal occurs, City shall have the right to terminate this Lease in its entirety.

(c) City's elections to terminate this Lease pursuant to this Section 18 shall be exercised by City's giving notice to Operator on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Lease shall terminate upon on the thirtieth (30th) day after such notice is given.

18.5 Operator's Monetary Obligations; Award. Upon termination of this Lease pursuant to an election under Section 18.4 [Partial Taking; Election to Terminate] above, then: (a) Operator's obligation to pay Base Rent shall continue up until the date of termination, and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including any portion of the Award made for the value of the leasehold estate created by this Lease), and Operator shall have no claim against City for the value of any unexpired term of this Lease, provided that Operator may make a separate claim for compensation, and Operator shall receive any Award made specifically to Operator, for Operator's relocation expenses or the interruption of or damage to Operator's business or damage to Operator's personal property.

18.6 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 18.4 [Partial Taking; Election to Terminate] above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (a) the Minimum Annual Guarantee shall be adjusted by Director to reflect the Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Operator shall have no claim against City for the value of any unexpired Term of this Lease, provided that Operator may make a separate claim for compensation. Operator shall retain any Award made specifically to Operator for Operator's relocation expenses or the interruption of or damage to Operator's business or damage to Operator's personal property.

18.7 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Operator shall continue to pay Rent, and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive any Award.

19. CITY AND OTHER GOVERNMENTAL PROVISIONS

19.1 MacBride Principles - Northern Ireland. Pursuant to San Francisco Administrative Code §12.F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Operator acknowledges that he or she has read and understood this section.

19.2 Charter. The terms of this Lease shall be governed by and subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco.

19.3 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Operator's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

19.4 Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environmental Code, Operator shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Operator fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environmental Code, Operator shall be liable for liquidated damages for each violation in any amount equal to Operator's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

19.5 No Representations. Operator acknowledges and agrees that neither City nor any person on behalf of City has made, and City hereby disclaims, any representations or warranties, express or implied, regarding the business venture proposed by Operator at the Airport, including any statements relating to the potential success or profitability of such venture. Operator represents and warrants that it has made an independent investigation of all aspects of the business venture contemplated by this Lease and the Permitted Use.

19.6 Effect of City Approvals. Notwithstanding anything to the contrary herein, Operator acknowledges and agrees that City is entering into this Lease as a landowner, and not as a regulatory agency with police powers. Accordingly, any construction, alterations, or operations contemplated or performed by Operator hereunder may require further authorizations, approvals, or permits from governmental regulatory agencies, including the Airport's Quality Control Department. Nothing in this Lease shall limit Operator's obligation to obtain such other authorizations, approvals, or permits. No inspection, review, or approval by City pursuant to this Lease shall constitute the assumption of, nor be construed to impose, responsibility for the legal or other sufficiency of the matter inspected, reviewed, or approved. In particular, but without limiting the generality of the foregoing, in approving plans and specifications for Alterations, City (a) is not warranting that the proposed plan or other action complies with applicable Laws, and (b) reserves its right to insist on full compliance in that regard even after its approval has been given or a permit has been issued.

19.7 Limitation on Damages. Notwithstanding anything to the contrary herein, in no event will City or any City Entity be liable to Operator or any Operator Entity for any consequential, incidental, or special damages, or special damages, or lost revenues or lost profits.

19.8 Sponsor's Assurance Agreement. This Lease shall be subordinate and subject to the terms of any "Sponsor's Assurance Agreement" or any like agreement heretofore or hereinafter entered into by City and any agency of the United States of America.

19.9 Federal Nondiscrimination Regulations.

(a) Operator understands and acknowledges that City has given to the United States of America, acting by and through the Federal Aviation Administration, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act of 1964, as effectuated by Title 49 of the Code of Federal Regulations, Subtitle A - Office of the Secretary of Transportation, Part 21, as amended, as a condition precedent to the government making grants in aid to City for certain Airport programs and activities, and that City is required under said Regulations to include in every agreement or concession pursuant to which any person or persons other than City, operates or has the right to operate any facility on the Airport providing services to the public, the following covenant, to which Operator agrees as follows: "Operator in its operation at and use of San Francisco International Airport, covenants that (1) no person on the grounds of race, color, or national origin shall 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 grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the grantee, licensee, permittee, etc., shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended."

(b) (i) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23. (ii) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23 that it enters and cause those businesses to similarly include the statements in the further agreements.

19.10 Federal Affirmative Action Regulations. Operator assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Operator assures that it will require that its covered sub-organizations provide assurances to Operator that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

19.11 City's Nondiscrimination Ordinance.

(a) In the performance of this agreement, Operator agrees not to discriminate against any employee, City and County employee working with Permittee, applicant for employment Operator, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Operator, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Operator shall include in all subleases and other subcontracts relating to the Premises hereunder a non-discrimination clause in substantially the form of subsection (a) above. In addition, Operator shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subOperators and other subcontractors to comply with such provisions. Operator's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Operator does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco, where the work is being performed for the City, or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Operator hereby represents that prior to execution of this Lease (i) Operator executed and submitted to the Human Rights Commission of the City and County of San Francisco (the "HRC") the Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits form (Form HRC-12B-101), with supporting documentation, and (ii) the HRC approved such form.

(e) The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Operator shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Operator understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Operator and/or deducted from any payments due Operator.

19.12 Conflict of Interest. Through its execution of this Agreement, Operator acknowledges that it is familiar with the provisions of section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify Landlord.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

19.13 Prevailing Rates of Wage. Operator shall abide by Airport Commission Policy No. 80-0031, requiring that Operator pay generally prevailing rates of salaries, wages, and employee benefits, to its employees working at San Francisco International Airport pursuant to this Lease.

19.14 Declaration Regarding Airport Private Roads. Operator hereby acknowledges and agrees that all roads existing at the date of execution hereof within the boundaries of the Airport, as shown on the current official Airport plan and as it may be revised, are the private property and private roads of the City and County of San Francisco, with the exception of that portion of the old Bayshore Highway which runs through the southern limits of the City of South San Francisco and

through the northern portion of the Airport to the intersection with the North Airport Road as shown on said Airport Plan, and with the exception of that portion of the North Airport Road which runs from the off and on ramps of the State Bayshore Freeway to the intersection with said old Bayshore Highway as shown on said Airport Plan. It further acknowledges that any and all roads hereafter constructed or opened by City within the Airport boundaries will be the private property and road of City, unless otherwise designated by appropriate action.

19.15 No Relocation Assistance; Waiver of Claims. Operator acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Operator fully releases, waives, and discharges forever any and all claims or other Losses, against and covenants not to sue City or any City Entity under any Laws, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws. Without limiting Section 5 [Assignment or Subletting], Operator shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Operator shall indemnify, defend, and hold harmless City for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

19.16 Drug-Free Workplace. Operator acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Any violation of this prohibition by Operator or any Operator Entity shall constitute a default hereunder.

19.17 Compliance with Americans With Disabilities Act. Operator acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. Operator shall provide the services specified in this Lease in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Operator agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Lease, and further agrees that any violation of this prohibition on the part of Operator, its employees, agents or assigns shall constitute a material breach of this Lease.

19.18 Sunshine Ordinance. In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

19.19 Pesticide Prohibition. Operator shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Operator to submit to the Airport an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Operator may need to apply to the Premises during the terms of this Lease, (b) describes the steps Operator will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Operator's primary IPM contact person with the City. In addition, Operator shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

19.20 First Source Hiring Ordinance. Operator shall comply with the San Francisco First Source Hiring Ordinance (added by Board of Supervisors Ord. 264-98, approved on August 21, 1998 8/21/98; amended by Ord. 228-03, File No. 031402, App. 9/22/2003; Ord. 250-04, File No. 041190, App.

10/14/2004; Ord. 76-06, File No. 060166, App. 4/20/2006; Ord. 214-08, File No. 080235, App. 9/19/2008; Ord. 32-09, File No. 081512, App. 3/9/2009) in cooperation with the Airport Commission Office of Employment and Community Partnerships pursuant to the First Source Hiring Agreement entered into between the Airport Commission and the Operator concurrently herewith, and incorporated herein by reference.

19.21 Labor Peace/Card Check Rule. Without limiting the generality of other provisions herein requiring Operator to comply with all Airport Rules, Operator shall comply with the Airport's Labor Peace/Card Check Rule, adopted on February 1, 2000, pursuant to Airport Commission Resolution No. 00-0049 (the "**Labor Peace/Card Check Rule**"). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule. To comply with the Labor Peace/Card Check Rule, Operator shall, among other actions: (a) Enter into a Labor Peace/Card Check Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his/her designee, within thirty (30) days after the Labor Peace/Card Check Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Lease, Operator shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Director or his/her designee ("**registered labor organization**"), that Operator is seeking to modify or extend this Lease; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any Subcontract, Operator shall provide notice to all registered labor organizations that Operator is seeking to enter into such Subcontract; and (d) Operator shall include in any subcontract with a Subcontractor performing services pursuant to any Covered Contract, a provision requiring the Subcontractor to comply with the requirements of the Labor Peace/Card Check Rule. If Airport Director determines that Operator shall have violated the Labor Peace/Card Check Rule, Airport Director shall have the option to terminate this Lease, in addition to exercising all other remedies available to him/her.

19.22 Requiring Minimum Compensation.

(a) Operator agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Operator's obligations under the MCO is set forth in this Section. Operator is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Operator to pay Operator's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Operator is obligated to keep informed of the then-current requirements. Any subcontract entered into by Operator shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Operator's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Operator.

(c) Operator shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(d) Operator shall maintain employee and payroll records as required by the MCO. If Operator fails to do so, it shall be presumed that the Operator paid no more than the minimum wage required under State law.

(e) The City is authorized to inspect Operator's job sites and conduct interviews with employees and conduct audits of Operator.

(f) Operator's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Operator agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Operator's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Operator understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Operator fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Operator fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(h) Operator represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(i) If Operator is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Operator later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Operator shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Operator and this department to exceed \$25,000 in the fiscal year.

19.23 Local Business Enterprise (LBE) Utilization; Liquidated Damages.

(a) The LBE Ordinance. Operator shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Operator's obligations or liabilities, or materially diminish Operator's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Operator's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Operator's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Operator shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(b) Compliance and Enforcement.

(i) Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

19.24 Earned Income Credit (EIC) Forms. Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the internet, or anywhere that Federal Tax Forms can be found. Operator shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

19.25 Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, Operators, permittees, and others doing business with or at the Airport (including subcontractors and subOperators) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

19.26 Requiring Health Benefits for Covered Employees.

Operator agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from

time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Operator shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Operator chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Operator is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Operator's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Operator if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Operator fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Operator fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Operator shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Operator shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Operator shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Operator based on the Subcontractor's failure to comply, provided that City has first provided Operator with notice and an opportunity to obtain a cure of the violation.

e. Operator shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Operator's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Operator represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Operator shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Operator shall keep itself informed of the current requirements of the HCAO.

i. Operator shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Operator shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Operator shall allow City to inspect Operator's job sites and have access to Operator's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Operator to ascertain its compliance with HCAO. Operator agrees to cooperate with City when it conducts such audits.

m. If Operator is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Operator later enters into an agreement or agreements that cause C Operator's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Operator and the City to be equal to or greater than \$75,000 in the fiscal year.

19.27 Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "**Conduct Code**") Section 1.126 prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract. Through its execution of this Agreement, Operator acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify City.

19.28 [Intentionally Deleted - Food Service Waste Reduction Ordinance].

20. GENERAL PROVISIONS

20.1 Notices. Except as otherwise specifically provided in this Lease, any notice, consent, request, demand, or other correspondence given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid, to: (a) Operator at Operator's Notice Address; or (b) City at City's Notice Address; or (c) such other address as either Operator or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received and effective two (2) days after the date when it is mailed, if sent by first-class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile to the number set forth in the Summary or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

20.2 No Implied Waiver. No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver.

20.3 Entire Agreement. The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

20.4 Amendments. Except as specifically provided herein, neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

20.5 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days. Use of the word "**Including**" shall mean "including, without limitation." References to statutes, sections, ordinances or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, ordinance or regulation. Whenever the singular number is used in this Lease and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word "**person**" shall include corporation, partnership, firm, limited liability company, and association.

20.6 Successors and Assigns. Subject to the provisions of Section 5 [Assignment or Subletting], the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Operator and City and, except as otherwise provided herein, their personal representatives and successors and assigns.

20.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Lease.

20.8 No Joint Venture. It is expressly agreed that City is not, in any way or for any purpose, a partner of Operator in the conduct of Operator's business or a member of a joint enterprise with Operator, and does not assume any responsibility for Operator's conduct or performance of this Lease.

20.9 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, nor any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his/her claim shall be responsible for such commission or fee and shall indemnify, defend, and hold harmless the other party from any and all Losses incurred by the

indemnified party in defending against the same. The provisions of this Section shall survive any termination or expiration of this Lease.

20.10 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

20.11 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California and the Charter of the City and County of San Francisco.

20.12 Attorneys' Fees. In the event that either City or Operator fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Without limiting the generality of the foregoing, Operator shall also pay all costs and expenses incurred by City related to City's participation in or monitoring of any Operator bankruptcy, insolvency, or similar proceeding involving creditors' rights generally and any proceeding ancillary thereto. This Section shall survive expiration or earlier termination of this Lease.

20.13 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

20.14 Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

20.15 Reservations by City. City may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to prospective Operators or other interested parties, to post notices of non-responsibility, to re-measure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, and for any other lawful purpose; (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency. City shall use reasonable efforts to minimize disruption in Operator's business. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive, of Operator from the Premises. City reserves the exclusive right to use all areas of the Airport not comprising the Premises, and the exterior walls and roofs the Premises. City reserves the exclusive right to use such areas together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, columns, and structural elements serving other parts of the Airport in and through the Premises. This reservation in no way affects maintenance obligations imposed in this Lease.

20.16 Survival of Indemnities. Expiration or termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false,

City's request, Operator shall provide City evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

20.23 Consents. If City is required to reasonably grant consent or approval, but does not do so, Operator's sole and exclusive remedy is to seek specific performance and in no event will City be liable for any monetary damages.

20.24 Options Personal. If and to the extent Operator has an option to extend the Term of this Lease, such option is personal to the original Operator and may be exercised only by the original Operator while occupying the Premises who does so without the intent of thereafter making any Transfer, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Operator, unless the foregoing prohibition is waived by Director. The options, if any, herein granted to Operator are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

20.25 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee. Further, Operator's obligation to make payments to City in respect of accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to City) which are accrued at the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease.

20.17 Quiet Enjoyment and Title. Operator, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term as against all persons or entities claiming by and through City. Operator expressly acknowledges that Operator's right to quiet possession of the Premises does not preclude City's right to make changes and additions to the Airport, including the Premises, and to do work in the Premises as permitted by this Lease.

20.18 No Right of Redemption. Operator waives any right of redemption or reinstatement of Operator under any present or future case law or statutory provision (including Code of Civil Procedure Sections 473 and 1179 and Civil Code Section 3275) in the event Operator is dispossessed from the Premises for any reason. This waiver applies to future statutes enacted in addition or in substitution to the statutes specified herein.

20.19 Accord and Satisfaction. The payment by Operator or the receipt by City of a lesser amount than the rent stipulated in this Lease may be, at City's sole option, deemed to be on account of the earliest due stipulated rent, or deemed to be on account of rent owing for the current period only, notwithstanding any instructions by or on behalf of Operator to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in otherwise, including possession of the Premises. City may accept any partial payment from Operator without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law. In such event, if City shall receive any such partial payment after it shall have commenced an action against Operator, City may amend its action as contemplated by Section 1161.1(c) of the California Civil Code to reflect any such partial payment, and no such payment shall limit any of City's rights to continue the action.

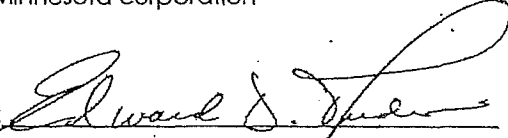
20.20 Joint and Several Liability. The liabilities hereunder of the entities and/or person(s) comprising Operator shall be joint and several.

20.21 Estoppel Statements. Within ten (10) days after request therefor by City, Operator shall deliver, in recordable form, an estoppel statement certifying that this Lease is in full force and effect; the date of Operator's most recent payment of Rent, and that Operator has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested. Failure to deliver said statement within the specified period shall be conclusive upon Operator that: (i) this Lease is in full force and effect, without modification except as may be represented by City; (ii) there are no uncured defaults in City's performance and Operator has no right of offset, counterclaim or deduction against Rent hereunder; and (iii) no more than one month's Base Rent has been paid in advance. Notwithstanding the conclusiveness of Operator's failure to deliver such statement, Operator's failure shall constitute a breach of this Lease.

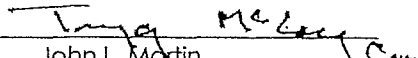
20.22 Authority. If Operator signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Lease on behalf of Operator does hereby covenant and warrant that Operator is a duly authorized and existing entity, that Operator has and is duly qualified to do business in California, that Operator has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Operator are authorized to do so. Upon

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

OPERATOR: Smarte Carte, Inc.,
[signatories to also initial Summary] a Minnesota corporation

By: 
Name: Edward D. Rudis
Title: President and CEO

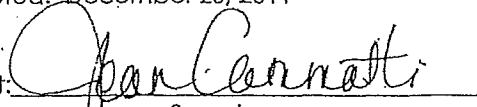
CITY: CITY AND COUNTY OF SAN FRANCISCO,
[signatories to also initial Summary] a municipal corporation,
acting by and through its Airport Commission


John L. Martin
Airport Director

AUTHORIZED BY
AIRPORT COMMISSION

Resolution No.: 16-0301

Adopted: December 20, 2011

Attest: 
Secretary
Airport Commission

APPROVED AS TO FORM:
DENNIS J. HERRERA,
City Attorney

By: 
Deputy City Attorney

LIST OF EXHIBITS

EXHIBIT A – Description of Premises

EXHIBIT B – Use and Operational Requirements

EXHIBIT C-1 – Form of Performance Bond

EXHIBIT C-2 – Form of Letter of Credit

**EXHIBIT A
PREMISES**

Initial Cart Vending Units or Cart Management Units (CMUs) locations are listed below.

Return Only Units

COUNT	SERIAL #	TERMINAL LOCATIONS
2	N/A	International Terminal Building, Arrivals Level, Center Island
5	N/A	International Terminal Building, Arrivals Level, Curbside

CMUs:

COUNT	SERIAL #	CMU#	TERMINAL LOCATIONS
International Terminal			
1	3623	IT02	International Terminal Building, Baggage Claim, near Carousel 12
1	4316	IT03	International Terminal Building, Baggage Claim, near Carousel 3
1	4299	IT01	International Terminal Building, Baggage Claim, near Carousel 9
1	4307	IT71	International Terminal Building, Courtyard G Curbside
1	6679	IT30	International Terminal Building, Departures Level, Curbside A by Door 1
1	6654	IT13	International Terminal Building, Departures Level, Curbside A, adjacent to mailbox
1	6663	IT04	International Terminal Building, Departures Level, Curbside A, south wall
1	6674	IT39	International Terminal Building, Departures Level, Curbside G, island
1	6676	IT38	International Terminal Building, Departures Level, Curbside G, island
1	5332	IT31	International Terminal Building, Departures Level, Door 2
1	5344	IT32	International Terminal Building, Departures Level, Door 2
1	5345	IT33	International Terminal Building, Departures Level, Door 3
1	6675	IT34	International Terminal Building, Departures Level, Door 3
1	6677	IT35	International Terminal Building, Departures Level, Door 4
1	6678	IT36	International Terminal Building, Departures Level, Door 4
1	5342	IT37	International Terminal Building, Departures Level, Door 5
1	6673	IT11	International Terminal Building, Departures Level, Door 5
1	4318	IT70	International Terminal Building, Departures Level, middle island
1	4310	IT50	International Terminal Building, North Shoulder, by Information Booth
1	3549	IT52	International Terminal Building, North Shoulder, by Travel Agency/Baggage Storage

Terminal 1			
1	4315	S02	Terminal 1, Arrivals Baggage Claim Level, near Carousel 2
1	4216	S03	Terminal 1, Arrivals Baggage Claim Level, near Carousel 4
1	4332	S04	Terminal 1, Arrivals Baggage Claim Level, near Carousel 7
1	6666	S05	Terminal 1, Arrivals Baggage Claim Level, near Carousel 7
1	6661	S06	Terminal 1, Arrivals Baggage Claim Level, near Carousel 10
1	6669	S13	Terminal 1, Arrivals Baggage Claim Level, near Carousel 13
1	6650	S07	Terminal 1, Arrivals Baggage Claim Level, near Carousel 13
1	4312	S08	Terminal 1, Arrivals Baggage Claim Level, near Carousel 15
1	6670	S09	Terminal 1, Arrivals Baggage Claim Level, near Carousel 15
1	4314	S10	Terminal 1, Arrivals Baggage Claim Level, near Carousel 17
1	4302	S01	Terminal 1, Departure Level, curbside (Southwest)
1	4273	S71	Terminal 1, Departure Level, Center Island (USAir)
1	4317	S42	Terminal 1, Departure Level, Concourse
1	3609	S44	Terminal 1, Departure Level, Concourse
1	3713	S32A	Terminal 1, Departure Level, curbside, (Air Tran)
1	6664	S35	Terminal 1, Departure Level, curbside (Alaska)
1	6665	S36	Terminal 1, Departure Level, curbside (Delta)
1	4295	S33	Terminal 1, Departure Level, curbside (former Continental)
1	6659	S34	Terminal 1, Departure Level, curbside (Frontier)
1	6667	S33A	Terminal 1, Departure Level, curbside (USAir)
1	4290	S70	Terminal 1, Departure Level, center island, (Air Trah)
Terminal 2			
1	6671	T2 01	Terminal 2, Departure Level, Center Island
1	3710	T2 02	Terminal 2, Departure Level curbside (American Airlines)
1	6658	T2 03	Terminal 2, Departure Level curbside (American Airlines)
1	4077	T2 04	Terminal 2, Arrivals Baggage Claim Level, by Carousel 1
1	4797	T2 05	Terminal 2, Arrivals Baggage Claim Level, by escalator
1	4080	T2 06	Terminal 2, Arrivals Baggage Claim Level, by escalator
1	4069	T2 07	Terminal 2 Arrivals Baggage Claim Level, back wall
1	3751	T2 08	Terminal 2, Arrivals Baggage Claim Level, by Carousel 4
1	4298	T2 09	Terminal 2, Departure Level curbside, Center
Terminal 3			
1	6657	N01	Terminal 3, Arrivals Baggage Claim Level, carousel #15
1	4341	N02	Terminal 3, Arrivals Baggage Claim Level, between carousel #11
1	6652	N03	Terminal 3, Arrivals Baggage Claim Level, between Carousel #10
1	4334	N04	Terminal 3, Arrivals Baggage Claim Level, between Carousel #5
1	3610	N04A	Terminal 3, Arrivals Baggage Claim Level, between Carousel #5
1	4274	N05	Terminal 3, Arrivals Baggage Claim Level, between Carousel #4
1	6653	N07	Terminal 3, Arrivals Baggage Claim Level, between Carousel #3
1	6656	N06	Terminal 3, Arrivals Baggage Claim Level, between Carousel #3
1	4304	N08	Terminal 3, Arrivals Baggage Claim Level, between Carousel #2
1	4300	N09	Terminal 3, Arrivals Baggage Claim Level, Carousel #1

1	4303	N22	Terminal 3, Departures Level, United connecting hallway
			Terminal 3, Arrivals Baggage Claim Level curbside, near door #6 (pending BA/E re-opening)
			Terminal 3, Arrivals Baggage Claim Level curbside, near door #4 (pending BA/E re-opening)
			Terminal 3, Arrivals Baggage Claim Level curbside, near door #2 (pending BA/E re-opening)
1	6660	N32	Terminal 3, Departure Level, curbside (United)
1	6672	N71	Terminal 3 Departure Level, Center Island
1	6651	N25	Terminal 3 Departure Level, curbside (United)
1	6668	N70	Terminal 3 Departure Level, Center Island
1	6655	N31	Terminal 3 Departure Level, curbside (Continental)
1	6662	N30	Terminal 3 Departure Level, curbside (Continental)
			Terminal 3, Departure Level, Terminal Lobby by elevator near "E" (pending BA/E re-opening)
1	4337	N44	Terminal 3, Departure Level, Concourse
1	4336	N45	Terminal 3, Departure Level, Concourse
International Terminal Garage A side			
1	5354	AA61	International Terminal A Garage, Level 1 front
1	5356	AB61	International Terminal A Garage, Level 1 middle
1	5353	AA62	International Terminal A Garage, Level 2 front
1	5358	AB62	International Terminal A Garage, Level 3 middle
1	5360	AB63	International Terminal A Garage, Level 3 middle
1	5355	AB64	International Terminal A Garage, Level 4 middle
1	5359	AA65	International Terminal A Garage, Level 5 front
1	5357	AB65	International Terminal A Garage, Level 5 middle
1	5351	AB66	International Terminal A Garage, Level 6 middle
International Terminal Garage G side			
1	3615	GB62	International Terminal Garage G side, Level 2 middle
1	4305	GB63	International Terminal Garage G side, Level 3 middle
1	4067	GB64	International Terminal Garage G side, Level 4 middle
1	3619	GB65	International Terminal Garage G side, Level 5 middle
1	4286	GB66	International Terminal Garage G side, Level 6 middle
Domestic Garage			
1	4075	B61	Domestic Garage, Section B, Level 1
1	4466	D61	Domestic Garage, Section D, Level 1
1	4443	C62	Domestic Garage, Section C, Level 2
1	4288	D62	Domestic Garage, Section D Level 2
1	4282	C63	Domestic Garage, Section C Level 3
1	4287	D63	Domestic Garage, Section D Level 3
1			Domestic Garage Section E, Level 1 (pending BA/E re-opening)
1			Domestic Garage Section E, Level 2 (pending BA/E re-opening)
Rental Car Center			
1	4282	CR1-70	Rental Car Center, 1 st Floor, near bus stop
1	5328	CR1-72	Rental Car Center, 1 st Floor, Hertz middle

1	5163	CR1-74	Rental Car Center, 1 st Floor, Hertz
1	4726	CR2-70	Rental Car Center, 2 nd Floor, Thrifty
1	5352	CR2-71	Rental Car Center, 2 nd Floor, Dollar
1	4794	CR3-70	Rental Car Center, 3 rd Floor, Avis
1	5329	CR3-71	Rental Car Center, 3 rd Floor, Avis
1	3611	CR4-70	Rental Car Center, 4 th Floor, National
1	4306	CR4-71	Rental Car Center, 4 th Floor, National
Customs / FIS			
1	Custom Meter	International Terminal Customs Area, connecting flights exit	
1	Custom Meter	International Terminal Customs Area "A", Immigration counter	
1	Custom Meter	International Terminal Customs Area "G", Immigration counter	

EXHIBIT B-1
USE AND OPERATIONAL REQUIREMENTS

Operator's proposal dated November 4, 2011 is incorporated by reference as though fully set forth herein. In the event of any inconsistency between a provision in Operator's proposal and a provision herein, the provision herein shall prevail.

EQUIPMENT REQUIREMENTS

Luggage Carts. Operational shall operate a fleet of not less than 4,500 Luggage Carts that conform to the following:

- The wheels shall traverse the 1 ½" gap between the AirTrain and the AirTrain Station Platforms. Worldcarte® luggage carts shall have a custom, patent pending, three-wheel front caster that is designed to resolve the potential of actual wheel caster getting stuck between ADA tactile domes and to help in the transition between the Air Train and the Air Train platform. This unique caster not only allows for transition across the gap; it allows for the difference in height (or rise) from the platform to the train floor. The unique TPRF domed caster wheels are manufactured from a long wear non-marring material that provides a soft ride. The third wheel acts to prevent the caster from sticking in the dome.
- The wheels shall traverse over the tactile domes throughout the Airport curbsides.
- The wheels shall be made of a resilient non-marking material.
- The brake system shall be controlled by the user.
- The Luggage Cart shall provide a bumper that protects the walls of the Airport building and AirTrain vehicle interior finishes.
- A signs shall be included on the Luggage Carts that informs the users that Luggage Carts are not intended for use on escalators.
- Payload area of the Luggage Carts shall be designated to mitigate movement of luggage.
- The center of gravity on the Luggage Carts shall be such that tipping is avoided under various load condition.
- Basket design shall preclude the carrying of children and shall be fitted with appropriate warning signs. The surfaces of the basket shall be smooth with no sharp edges.

Cart Management Units (CMUs).

- All CMUs shall be installed only in the Premises.
- Operator shall install and provide a service number as approved by the Director.
- Operator is committed to maintaining financial data security and the prevention of credit card fraud. All of Smarte Carte's equipment is compliant with the Payment Card Industry Data Security Standards (PCI-DSS). Operator uses Trustwave's TrustKeeper for annual certification and performs an external monthly scan for vulnerabilities; ensuring compliance with configuration requirements of applicable PCI-DSS standards. To aid in further fraud protection, credit card history is continually analyzed at each CMU for patterns of abuse, suspect cards are placed on a hot list and re-authorized before allowing vend. CMUs shall accept credit cards (PCI-DSS Compliant acceptance of Master Card, VISA, American Express and Discover); accept cash (\$1, \$5, \$10, \$20 bills); and give change. Credit card transactions are pre-authorized, where possible, using private and secure WIFI, DSL or Cellular Ehternet connectivity to the processing bank. Equipment is tested and monitored daily to ensure correct operation. Smarte Carte CMUs do not store credit card per the PCI PA_DSS v1.2 standard. Other features include

the automated collection of transaction data, and computerized management operating system that ensures carts are always available.

Luggage Cart Collection Vehicles.

- Luggage Cart Collection Vehicles shall be friendly to the environment.
- Operator shall provide a schedule of Luggage Cart collection.
- It is the responsibility of the Operator to ensure that Luggage Carts are collected in a timely manner.
- Operator shall not park its Luggage Cart Collection Vehicles in the garage overnight.
- Operator shall recharge its Luggage Cart Collection Vehicles out of public's view.
- Luggage carts are handled directly by Smarte Carte employees pushing and pulling the luggage carts with ropes. While moving carts with the ropes, a Customer Service Associate will be limited to 20 carts at any given time.
- With the Luggage Cart Collection Vehicle, Operator will utilize an Electric Cushman/Taylor Dunn vehicle. This Luggage Cart Collection Vehicle is a single rider capable of transporting a maximum of 40 luggage carts. The luggage carts are nested together inline and secured using a rope. The line of luggage carts is then hitched in the back of the vehicle using a Smarte Carte designed hitch.
- Hand Tugger/QuicKart is a powerful battery-operated cart handling tool that allows staff to quickly and efficiently move luggage carts throughout the airport. Its compact design allows the Tugger/QuicKart to operate smoothly in tighter spaces.
- SmartePede Trailer is a custom designed trailer to provide efficient and safe loading and unloading of carts preventing unnecessary wear and tear on wheels and brakes.

Maintenance. Operator shall maintain the Luggage Carts and the Cart Vending Units in a clean and orderly manner. Operator shall:

- Inspect the Luggage Carts and the Cart Vending Units daily and monitor operation of all Luggage Carts and the Cart Vending Units.
- Make regular reports to Director identifying the condition of the Luggage Carts and the Cart Vending Units.
- Take all necessary emergency action to protect the Airport facilities, revenue and public safety.
- Maintain all vehicles used in day-to-day operation in a state of good repair.
- Maintenance of Luggage Carts and the Cart Vending Units shall not be in public view. Operator, under a separate agreement and rent, shall obtain a maintenance facility to store and repair Luggage Carts and the Cart Vending Units.
- Broken Luggage Carts and the Cart Vending Units shall be taken out of rotation for public use, and removed from the public view for repair or disposal.
- Ensure that Operator personnel are sensitive to Airport surrounding when conducting its luggage cart operation. If proven that damage is caused by Operator's employee, Operator shall immediately repair damage, or Airport will perform the repair and Operator will be charged for the repair.
- All Operator's products are specifically designed to operate for many years in the harsh airport environment. To maximize years of service from its carts and CMUs, cleaning and preventative maintenance are performed on a regular schedule as well as on an as-needed basis.
- Part of local staff's responsibility is to perform routine "as needed" cleaning during the course of their regular duties. This includes tasks such as wiping up spills or removing debris on or around the equipment. A supervisor or manager always oversees the

cleaning effort to ensure that it is completed according to corporate policy with minimum disruption to customers and in a safe manner.

- A schedule of general cleaning is as follows:

Equipment Type	Part	Frequency
CMU	Clean floor	Weekly
	Track and rail	Weekly
	Bill validator	Monthly
	Credit card reader	Monthly
Luggage Carts	Frame	Monthly
	Baskets	Weekly
	Wheels	Monthly

- Schedule of preventative maintenance is as follows:

Equipment Type	Part	Frequency
Luggage Carts	Check for broken wheels, axles, or casters	Weekly
	Ensure both wheels and front caster turns	Weekly
	Check wheels/casters for flat spots, or debris adhered to them	Weekly
	Ensure all decals are in good shape	Weekly
	Look for bent cart frames that may need repair	Weekly
CMUs	Rental with bills – insert dollars, pull cart out to ensure both meters (carts used and carts out) advance one	Bi-weekly
	Rental with credit card – insert test card, pull cart out to ensure both meters (carts used and carts out) advance one	Bi-weekly
	Check level of change available in the rental end	Bi-weekly
	Check level of quarters available in the rental end	Bi-weekly
	Check fasteners on mechanism plate for tightness	Monthly
	Check mechanical parts for correct operation	Monthly
	Look for any indication of impending part failures	Monthly
	Check screw tightness	Monthly
	Check power supply leads to see that all connections are tight and free of corrosion	Monthly

- Operator is committed to responding to equipment problems quickly and efficiently. Problems identified by the public or other airport personnel are reported to T Operator's

on-duty manager. Communication system includes two-way radios, which facilitates the reporting problems and ensures prompt dispatching of personnel. Operator's staff is on call 24 hours a day, seven days a week. The normal time to complete a repair is less than one hour. This time may increase slightly during the late night or early morning hours of operation.

OPERATIONAL REQUIREMENTS

Rental Requirements. Operator shall charge no more than the Maximum Rental Rate for the rental of a Luggage Cart. Operator shall not charge any rent for Luggage Carts provided pursuant to the Customs Program, as described in **Exhibit B-2**. The luggage cart rental price shall be \$5.00 per luggage cart with no reward for the return of a cart to a Cart Management Unit (CMU).

Staffing. The Initial Operator Representative shall have regular communications and meetings with Airport staff to keep them fully informed of day-to-day operations. Operator shall hire, train, supervise and terminate, as necessary, personnel to operate the Self-Service Luggage Cart System; provided other supervisory personnel necessary to ensure efficient operation of the facilities, equipment, staff and maintain business offices. In particular, Operator shall cause sufficient staff to be present in the Customs area during the scheduled arrival times of each international flight, to assist passengers in taking carts and to replenish the Luggage Carts. All employees will be orderly and competent persons who will be able to work and deal effectively with the public and Airport tenants.

Operator shall provide holiday and peak period staffing so that service levels are adequately maintained during these times.

Operator shall respond within fifteen minutes should there be a need for luggage carts in certain areas of the Airport.

Operator is an Equal Opportunity Employers. Operator believes diversity in its workforce and management strengthens its ability to respond to the public and provide the best possible level of experience. This diversity is evident throughout its workforce. Operator is committed to developing the best team spans racial and ethnic backgrounds.

Operator's Corporate Human Resources Department fully supports the recruitment, screening and hiring process, working directly with the local management team. Operator's HR Department coordinates the advertising placements, screens resumes, conducts telephone interviews and background checks, and creates a short list of the most qualified candidates. Operator's HR Department then participate in on-site interviews, and then final group of candidates are brought to St. Paul, Minnesota for the final interview cycle. Customer Service Associates are sought through local newspaper advertising, local colleges and trade schools, job postings in-house and at the airport through the Employment Community Partnership office, and referrals from employees and airport colleagues. Local management uses a printed guideline sheet "checklist" established by the corporate HR Department to ensure consistent, thorough review of all candidates.

Uniforms: Operator shall cause all staff to be dressed in neat, clean, identifiable uniforms at all times. Operator shall, at Director's direction, procure replacement uniforms from time to time. Uniforms shall be consistent in appearance, style and color for all Operator employees, subject to Director approval. Expenses associated with providing and replacing employee uniforms shall be borne solely by the Operator.

Reporting. Operator shall submit various operational reports using Airport approved templates, all of which must be in form and substance satisfactory to the Airport, including but not limited to: Monthly Operations Highlights, Monthly Financial/Operating Statements providing line-item detail of all revenue and expenditures, with commentary, Year-End Financial Statement, and Annual Inventory of all equipment.

Advertising. Operator may, at the approval of the Director, develop and implement an advertising program and all proceeds of such program shall be included in the calculation of the Gross Revenues in accordance with Section 4.1.(a)(iii) of this Agreement.

Revenue Collection. Operator shall take every reasonable action to ensure the collection of all fees and charges due from the rental of the Luggage Carts.

Security. Operator must provide a safe and secure environment for the counting of cash collected from the Cart Vending Units.

Operational Audit. Operator's locations receive a minimum of one operational and financial audit each year, with large locations receiving at least two audits per year. The operational component of the audit ensures that the performance, appearance and safety standards are being met for both Operator's products and Operator's employees. Because managing a luggage cart concession involves the handling of cash, Operator's internal audit program includes a financial component with meticulous safeguards to secure revenue. Audits are conducted by the senior general managers and are typically unannounced. Within 30 days of completion of an audit, senior general manager are required to submit their findings to Smarte carte's full-time internal auditor at corporate headquarters. The internal auditor reviews each audit and the issues identified. In addition, the internal audit conducts unannounced operational and financial audits throughout the year.

Handling Customer Complaints. Operator's customer service strategies focus on eliminating potential problems before they happen and quickly resolving any questions, comments, concerns or problems that its customers may have. Operator has a "no questions asked" refund policy. Operator has a 24 hour toll-free telephone line to handle incoming customer service requests. This toll-free number is clearly displayed on all of its products. In addition, Operator offers a customer service area on its website, www.smartecarte.co/customer-service, where customers can provide feedback or suggestions regarding its products and services as well report issues or request refunds. The data from every customer service call is recorded and tracked at the home office. This information is used to monitor Operator's performance at every Operator's performance at every airport and to identify potential opportunities for design modifications to eliminate the most common problems.

EXHIBIT B-2
DESCRIPTION OF SERVICES

Operator shall perform all Services in accordance with the terms of its proposal dated November 4, 2011, incorporated by reference as though fully set forth herein, including the services set forth below. In the event of any inconsistency between a provision in Operator's proposal and a provision herein, the provision herein shall prevail.

1. **Customs Program.** Operator shall provide no less than 2,000 Luggage Carts in the FIS area on an annual basis, as may be adjusted based on the passenger count utilizing the FIS area. The luggage carts shall be available to the arrivals international passengers free of charge in the FIS Area. Operator shall respond promptly to the Luggage Cart needs in the FIS Area. Operator shall be compensated based on the Service Fee.
2. **AirTrain Failure Contingency Plan.** Should there be an AirTrain failure, and Airport finds it necessary to utilize buses to transport passengers from the Terminal to the Rental Car Center, Operator shall provide, upon notification from the Airport, Luggage Carts in the Rental Car Center, free of charge until such time as the AirTrain resumes services or as otherwise directed by the Airport. Operator shall not be compensated for this Program.

3. Permitted Operating Areas

Terminal 1

- Departure Level and Arrivals Level
- Concourses
- Curbsides
- Center Islands
- Limited area of Boarding Areas

Terminal 2

- Departure Level and Arrivals Level
- Concourses
- Curbsides
- Center Islands

Terminal 3

- Departure Level and Arrivals Level
- Concourses
- Curbsides
- Limited area of Boarding Areas
- Center Islands

International Terminal

- Departure Level and Arrivals Level
- Concourses
- Customs/FIS Area
- Curbsides
- Center Islands
- Courtyards A and G
- Domestic and International Garages
- Rental Car Center

And such other areas as may from time to time be authorized by Director Operator's use.

4. Luggage Cart Collection

Abandoned Luggage Carts. Operator shall immediately remove, and return to circulation, abandoned Luggage Carts throughout the Airport.

The main objective is to keep up with the thousands of cart users as they abandon their carts once they have reached their destination. The process for collecting loose carts begins with a well-established staffing and labor plan. The labor plan details specific work areas within the airport. The labor plan identifies and targets the heaviest usage areas: baggage claim, ticketing, arrivals hall and concourses. Operator visually monitors the flow of carts from these areas to the destination locations – baggage recheck, ground transportation and parking lots. The individual terminal supervisors continually analyze the traffic patterns and dispatch customer service associates to their work areas. From there, customer service associates follow a pattern of consistently sweeping the work area from one end to the other to gather the loose carts promptly. Carts are either directly put into the return end of a CMU, or collected by nesting the carts together in a line. Lines of carts are secured by a rope and then brought to an appropriate CMU or staging area. Supervisors also sweep the area to pinpoint the locations of loose carts and using two-way radio, direct employees to collect them.

Transportation of Luggage Carts. In transporting Luggage Carts around the Airport, Operator shall use elevators, walkways, and routes designated by Director from time to time.

Ferrying of Carts. Luggage Carts shall be moved between buildings by Operator at street level. Operator shall not transport Luggage Carts on the AirTrain.

BART. Operator shall immediately remove and return to circulation, Luggage Carts found in the Non-Fare Area of the BART Station Platform.

Vertical Movement. Vertical circulation of the Luggage Carts shall be via elevators.

Prohibited Movement on Escalators. Luggage Carts shall not be intended for use on escalators. The Luggage Carts shall not include runners or other hardware designed for operation on escalators. Provisions by the Operator to mitigate unauthorized use of Luggage Carts on escalators shall include warning signs on Luggage Carts regarding prohibited use on escalators, and warning signs on escalators regarding the use of Luggage Carts.

AirTrain Stations. Operator shall immediately remove, and return to circulation, Luggage Carts found in the AirTrain stations.

EXHIBIT C-1
FORM OF PERFORMANCE BOND FOR AIRPORT LEASES

_____ (Surety)

KNOW ALL MEN BY THESE PRESENT:

That we, _____, as Principal, and _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____, as Surety, are held and firmly bound unto the City and County of San Francisco, acting by and through its Airport Commission, as Obligee, in the sum of _____ Dollars (\$ _____) lawful money of the United States of America, to be paid to the City and County of San Francisco, acting by and through its Airport Commission, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into one or more leases, permits, or agreements with the City and County of San Francisco, Airport Commission (collectively, the "**Agreements**").

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall perform all terms of the Agreements (which by reference are made a part hereof), including the payment of rent or fees, in accordance with the terms of such Agreements, then this obligation shall be null and void, otherwise to remain in full force and effect; and shall be effective _____.

This bond may be called upon by Obligee by a notice sent to the Surety in person or by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at: _____.

Any such call by Obligee shall include a statement signed by the Airport Director of the Airport Commission of the City and County of San Francisco, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Principal has defaulted under one or more of the Agreements; or
- b) Principal has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or any state thereof, or any jurisdiction available to Principal, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Principal; or
- d) This bond is cancelled, terminated, or not renewed, and City has not received an acceptable replacement letter of credit or bond at least thirty (30) days prior to the cancellation, termination, or expiration date.

We shall honor and pay on such call within ten (10) days after receipt.

We shall give you notice in writing by registered mail at least forty-five (45) days prior to the cancellation date, termination date or expiration date of this bond, if any is stated, of our intention to cancel, terminate, or non-renew this bond. In the event we fail to give such notice promptly, then this bond shall be deemed renewed for an additional one-year period.

Signed, sealed and dated this ___ day of _____, 20__.

Principal: By: _____

Title: _____

Seal: _____

Surety By: _____
Company:

Title: _____

Seal:

(Attach Notary Public Certificate and Attorney-in-Fact form)

EXHIBIT C-2
FORM OF LETTER OF CREDIT FOR AIRPORT LEASES

Date _____

Irrevocable Letter of Credit No. _____

Airport Commission
City and County of San Francisco
Att'n: Deputy Director, Business & Finance
San Francisco International Airport
International Terminal, No. Shoulder Bldg., 5/F
PO Box 8097
San Francisco, CA 94128

Ladies and Gentlemen:

We hereby establish an irrevocable letter of credit in your favor in the amount of _____ United States Dollars (US\$ _____) for the account of _____ ("**Account Party**"), available by your draft at sight, when accompanied by the following document:

A statement signed by the Airport Director of the Airport Commission of the City and County of San Francisco, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Account Party has defaulted under the one or more agreements with the City and County of San Francisco, acting by and through its Airport Commission at San Francisco International Airport; or
- b) Account Party has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or any state thereof, or any jurisdiction available to Account Party, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Account Party; or
- d) This letter of credit is cancelled or not renewed, and City has not received an acceptable replacement letter of credit or bond at least thirty (30) days prior to the cancellation or expiration date.

Drafts drawn under and in compliance with the terms of this letter of credit will be duly honored by us upon presentation and delivery of the statement specified above. Partial draws are permitted. Such drafts may be presented in person or by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at:

We shall give you notice in writing by registered mail at least forty-five (45) days prior to the cancellation date or expiration date of this letter of credit, if any is stated, of our intention to cancel or non-renew this letter of credit. In the event we fail to give such notice promptly, then this letter of credit shall be deemed renewed for an additional one-year period. Notwithstanding the foregoing, this letter of credit shall finally expire on _____
20_.

Sincerely,

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 16-0333

**EXERCISE OF THE TWO-YEAR OPTION TO EXTEND THE LEASE TERM UNDER
SMARTE CARTE, INC.'S LUGGAGE CART LEASE AND OPERATING
AGREEMENT - LEASE NO. 11-0301, FOR AN OPTION TERM OF JULY 1, 2017
THROUGH JUNE 30, 2019**

WHEREAS, by Resolution No. 11-0301, adopted December 20, 2011, the Airport Commission ("Commission") awarded the Luggage Cart Lease and Operating Agreement ("Lease") to Smarte Carte, Inc.; and

WHEREAS, the Lease has a five-year term expiring on June 30, 2017 with one two-year option to extend exercisable by the Commission; and

WHEREAS, the Airport is satisfied with Smarte Carte, Inc.'s performance and considers the Lease a necessity to maintain an acceptable level of customer service to the Airport's patrons; now, therefore, be it

RESOLVED, that this Commission exercises the two-year option to extend the term under the Luggage Cart Lease and Operating Agreement - Lease No. 11-0301, with Smarte Carte, Inc., for an option term of July 1, 2017 through June 30, 2019, under the existing lease terms and conditions; and, be it further

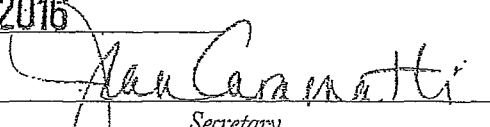
RESOLVED, that this Commission directs the Commission Secretary to seek approval of the Board of Supervisors.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of _____

DEC 20 2016

266


Secretary

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0301

AWARD OF THE LUGGAGE CART LEASE AND OPERATING AGREEMENT TO
SMARTE CARTE, INC. FOR A MINIMUM ANNUAL GUARANTEE OF \$610,000 FOR
THE FIRST YEAR OF THE LEASE

WHEREAS, by Resolution No. 11-0097, adopted April 5, 2011, the Airport Commission authorized staff to commence a competitive selection process for the Luggage Cart Lease and Operating Agreement ("Lease") through a Request for Proposals; and

WHEREAS, by Resolution No. 11-0179, adopted August 16, 2011, the Commission authorized staff to accept proposals for the Lease; and

WHEREAS, on November 9, 2011, staff received one proposal submittal from Smarte Carte, Inc.; and

WHEREAS, staff determined that Smarte Carte, Inc. met the minimum qualification requirements, and staff convened a three-member panel which, upon review, deemed the proposal responsive and responsible; now, therefore, be it

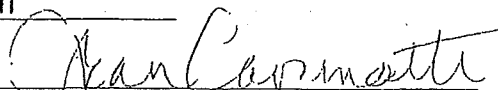
RESOLVED, that the Airport Commission awards the Luggage Cart Lease and Operating Agreement to Smarte Carte, Inc. under the conditions set forth in the staff memorandum on file with the Commission Secretary, including, but not limited to a Minimum Annual Guarantee of \$610,000 for the first year of the lease, a term of five (5) years with one (1) two-year option, exercisable at the sole and absolute discretion of the Airport Commission and a Maximum Annual Service Fee for free carts in the customs program of the lesser of \$1.20 per cart used or \$2,300,000 for Lease Year 1, \$2,392,000 for Lease Year 2, \$2,487,000 for Lease Year 3, \$2,587,000 for Lease Year 4 and \$2,690,000 for Lease Year 5; and, be it further

RESOLVED, that this Commission Secretary is hereby directed to request approval of the Lease by Resolution of the Board of Supervisors pursuant to Section 9.118 of the Charter of the City and County of San Francisco.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of _____

DEC 20 2011


Secretary

1 [Airport Lease and Operating Agreement – Not to Exceed \$9,406,000]

2
3 **Resolution approving the Luggage Cart Lease and Operating Agreement between**
4 **Smarte Carte, Inc. and the City and County of San Francisco, acting by and through its**
5 **Airport Commission in an amount not-to-exceed \$9,406,000.**

6
7 WHEREAS, The Airport Commission has requested proposals for the Luggage Cart
8 Lease and Operating Agreement; and

9 WHEREAS, Smarte Carte, Inc. was the sole proposer; and,

10 WHEREAS, Smarte Carte met the minimum qualifications and submitted a responsible
11 and responsive proposal;

12 WHEREAS, The Airport Commission approved Resolution No. 11-0301, adopted
13 December 20, 2011, awarding the Luggage Cart Lease and Operating Agreement to Smarte
14 Carte, Inc.; now, therefore, be it

15 RESOLVED, That the Board of Supervisors hereby approves the Luggage Cart Lease
16 and Operating Agreement No. 11-0301, in an amount not-to-exceed amount of \$9,406,000,
17 copies of which are contained in Board of Supervisors' File No. 120015.



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 120015

Date Passed: May 15, 2012

Resolution approving the Luggage Cart Lease and Operating Agreement between Smarte Carte, Inc., and the City and County of San Francisco, acting by and through its Airport Commission in an amount not-to-exceed \$9,406,000.

May 09, 2012 Budget and Finance Sub-Committee - MEETING RECESSED

May 11, 2012 Budget and Finance Sub-Committee - AMENDED

May 11, 2012 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

May 15, 2012 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

File No. 120015

I hereby certify that the foregoing Resolution was ADOPTED on 5/15/2012 by the Board of Supervisors of the City and County of San Francisco.

-Angela Calvillo
Clerk of the Board

Mayor

Date Approved



San Francisco International Airport

January 23, 2017

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

RECEIVED
SAN FRANCISCO
2017 JAN 30 PM 1:54
BY *en*

Subject: Approval of a Two-Year Term Extension for Luggage Cart Lease and Operating Agreement No. 11-0301, between Smarte Carte, Inc. and the City and County of San Francisco, acting by and through its Airport Commission

Dear Ms. Calvillo:

Pursuant to Section 9.118 of the City Charter, I am forwarding a resolution for the Board of Supervisors' approval of a two-year extension option for Luggage Cart Lease and Operating Agreement No. 11-0301, between Smarte Carte, Inc. and the City and County of San Francisco, acting by and through its Airport Commission. The Airport Commission exercised the two-year option to extend by Resolution No. 16-0333 dated December 20, 2016.

Original and two copy sets of the following documents are enclosed for review:

- Airport Commission Resolution No. 16-0333;
- Ethics Form SFEC-126 for the Board of Supervisors;
- Ethics Form SFEC-126 for the Mayor's Office;
- Airport Commission Resolution No. 11-0301;
- Board of Supervisors Resolution No. 176-12;
- Luggage Cart Lease and Operating Agreement No. 11-0301.

Please contact Cheryl Nashir of Airport Revenue Development and Management at 650.821.4500, if you should have questions or concerns regarding this matter.

Very truly yours,

Jean Caramatti
Commission Secretary

Enclosures

cc: Cheryl Nashir, Revenue Development and Management

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHIME

PETER A. STERN

IVAR C. SATERO
AIRPORT DIRECTOR

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Smarte Carte, Inc.	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Edward D. Rudis, President and CEO James N. Meyer, CFO Philip R. Hagberg, COO Smarte Carte, Inc. does not sponsor or control any political committee.	

Contractor address: 4455 White Bear Parkway, St. Paul, MN 55110-7641

Date that contract was approved:	Amount of contract: MAG of \$672,980.03 (FY 2016/17) or 25% of Gross Revenues paid by Smarte Carte to the Airport. In addition, the Airport shall pay Smarte Carte for the Customs Cart Program the lesser of fee for each luggage cart distributed free of charge to the public in Customs or as follows: 1 st year - \$1.20 or \$2,300,000; 2 nd year - \$1.24 or \$2,392,000; 3 rd year - \$1.26 or \$2,487,000; 4 th year - \$1.29 or \$2,587,000; 5 th year - \$1.32 or \$2,690,000.
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Describe the nature of the contract that was approved: Lease was awarded through a Request for Proposal process.

Comments: Requesting to approve exercising one two-year option to extend the term from 7/1/17 to 6/30/19.
--

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102-4689	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

