

**AMENDMENT NO. 2 TO
AIRPORT LUGGAGE CART LEASE AND OPERATING AGREEMENT
AT SAN FRANCISCO INTERNATIONAL AIRPORT
LEASE NO. 19-0069**

THIS AMENDMENT NO. 2 TO THE AIRPORT LUGGAGE CART LEASE AND OPERATING AGREEMENT AT SAN FRANCISCO INTERNATIONAL AIRPORT LEASE NO. 19-0069 (this “**Amendment**”), dated as of the Effective Date (as defined below), is entered by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its AIRPORT COMMISSION (“**City**”), as landlord, and SMARTE CARTE INC. (“**Tenant**”), as tenant.

RECITALS

A. On April 2, 2019, by Resolution No. 19-0069, the Airport Commission (“**Commission**”) awarded Lease No. 19-0069 to Tenant (the “**Lease**”). On September 24, 2019, by Resolution 409-19, the Board of Supervisors (the “**BOS**”) approved the Lease. Pursuant to the Lease, Tenant provides luggage cart services at the San Francisco International Airport (the “**Airport**”) in both the International Terminals and Domestic Terminals (as further described in the Lease, the “**Premises**”).

B. On October 6, 2020, by Resolution No. 20-0180, the Commission approved Amendment No. 1 to SFO Concession Lease (Services) (“**Amendment No. 1**”) as part of the COVID-19 Emergency Rent Relief Program which provided for rent relief to address the severe economic impact of the COVID-19 pandemic. On January 5, 2021, by Ordinance No. 5-21, the BOS authorized the Airport to implement the COVID-19 Emergency Rent Relief Program and execute Amendment No. 1.

C. Airport operating revenues continues to be severely impacted due to the reduction in travel caused by the COVID-19 pandemic. To reduce spending and generate additional revenues to the Airport, City and Tenant desire to amend the Lease to: (i) convert the luggage cart service in the Federal Inspection Service (FIS) area from a free service to a paid service and terminate the payment of the Annual Service Fee to Tenant; (ii) provide the Airport Director with the authority to, in the future if operating conditions warrant, reinstate the carts as a free service in the FIS area and resume payment of the Annual Service Fee to Tenant, and (iii) exercise the three (3) year option to extend the term of the Lease.

D. All capitalized terms not otherwise defined herein shall have the same meaning given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration the sufficiency of which is hereby acknowledged, City and Tenant hereby agree to amend the Lease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. **Effective Date.** The “**Effective Date**” shall be the date upon which this Amendment shall have been finally approved by City pursuant to the Charter of the City. Upon the occurrence of the Effective Date, City shall insert the Effective Date below and provide a copy to Tenant:

Effective Date: _____ (to be inserted by City only)

3. **Term.** City hereby exercises the one, three (3) year option to extend the term of the Lease, and the new Expiration Date is December 31, 2025.

4. **Luggage Cart Program in FIS Area.** Notwithstanding anything to the contrary in the Lease, including, without limitation, the Lease Summary and Exhibits B-1 [Use and Operational Requirements] and B-2 [Description of Services], as of the Effective Date: (i) Luggage Cart services in the FIS Area shall no longer be provided on a free basis, but shall be subject to the charges for such services consistent with the remainder of the Airport pursuant to the terms of the Lease and (ii) no Annual Service Fee shall be paid to Tenant. All other operational requirements of service in the FIS Area remain unmodified.

5. **Authority of Airport Director to Reinstate Free Luggage Cart Service in the FIS Area.** Notwithstanding Section 4 of this Amendment, upon thirty (30) days’ written notice, the Airport Director shall have the right to direct Tenant to reinstate the provision of free Luggage Cart services in the FIS Area, and upon such reinstatement, City shall resume payment of the Annual Service Fee to Tenant. During the term (as extended), if business conditions merit such change, the Airport Director, in his discretion, shall have the continuing authority to further suspend or reinstate the provision of free Luggage Car services in the FIS Area and the payment of the Annual Service Fee to Tenant upon thirty (30) days written notice of such election.

6. **Additional City and Other Governmental Provisions.** The following provisions are hereby incorporated as new sections of the Article 19 of the Lease:

“19.31 Consideration of Salary History. Tenant shall comply with Administrative Code Chapter 12K (“**Chapter 12K**”), the Consideration of Salary History Ordinance or “Pay Parity Act.” Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Lease or in furtherance of this Lease, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter

12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Tenant is required to comply with all of the applicable provisions of Chapter 12K, irrespective of the listing of obligations in this Section. Tenant shall include this obligation in all subleases, licenses, sublicenses and any other contracts for work to be performed in the Premises entered into by Tenant.

19.32 All Gender Toilet Facilities. If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of the Premises in any building where extensive renovations are made by Tenant. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds fifty percent (50%) of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact Building Inspection and Code Enforcement (BICE) for guidance.

19.33 Federal Fair Labor Standards Act. The Lease incorporates by reference the provisions of 29 USC §201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Tenant has full responsibility to monitor compliance to the referenced statute or regulation for its employees in the Premises. Tenant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

19.34 OSHA. The Lease incorporates by reference the requirements of 29 CFR §1910 with the same force and effect as if given in full text. Tenant retains full responsibility to monitor its compliance and their contractor’s and subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR §1910). Tenant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.”

7. Entire Agreement. This Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment.

8. Miscellaneous. This Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment is made for the purpose of setting

forth certain rights and obligations of Tenant and City, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary of otherwise. Each party hereto shall execute, acknowledge and deliver to each other party all documents, and shall take all actions, reasonably requested by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Amendment. This Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment. This Amendment shall be governed by the laws of the State of California. Neither this Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

9. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Lease shall remain in full force and effect.

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

TENANT: Smarte Carte, Inc.

By: Steven Wagner

Name: Steven Wagner
(type or print)

Title: SUP of Business Development

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
acting by and through its Airport Commission

Ivar C. Satero
Airport Director

AUTHORIZED BY AIRPORT
COMMISSION

Resolution: 21-0089

Adopted: March 16, 2021

Attest: _____
Secretary
Airport Commission

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

By: _____
Deputy City Attorney

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