

HILLSBOROUGH COUNTY AVIATION AUTHORITY

AMENDMENT NO. 3 TO  
CONCESSION AGREEMENT; LUGGAGE CARTS

SMARTE CARTE, INC

Board Date: November 2, 2017

HILLSBOROUGH COUNTY AVIATION AUTHORITY  
AMENDMENT NO. 3 TO  
CONCESSION AGREEMENT; LUGGAGE CARTS AT TAMPA INTERNATIONAL AIRPORT

THIS AMENDMENT NO. 3 to the Concession Agreement; Luggage Carts at Tampa International Airport (Agreement) dated February 7, 2013, by and between Hillsborough County Aviation Authority, a public body corporate under the laws of the State of Florida (Authority), and Smarte Carte, Inc., organized and existing under the laws of the State of Minnesota and authorized to do business in the State of Florida (Company), is entered into this \_\_\_\_ day of November, 2017.

WITNESSETH:

**WHEREAS**, on February 7, 2013, Authority entered into the Agreement with Bagport America, LLC for the right to operate a luggage cart rental concession (Concession) in the Main Terminal at Tampa International Airport; and

**WHEREAS**, on April 7, 2016 Bagport America, LLC merged with Smarte Carte, Inc., as evidenced by the Office of the Minnesota Secretary of State Certification of Record and Certificate of Merger as well as the Articles of Merger for the Merger of Bagport Holding Company, LLC and Bagport America, LLC with and into Smarte Carte, Inc., all of which are collectively hereinafter referenced to as the “Merger Documents”; and

**WHEREAS**, under the terms of the Merger Documents, Smarte Carte, Inc. has been designated as the surviving entity; and

**WHEREAS**, Authority requires updates to Agreement language to include new and updated statutorily required and other language throughout; and

**WHEREAS**, Authority wishes to exercise the two, two-year renewal options, thereby revising the end date of the Agreement to January 31, 2022; and

**WHEREAS**, Company agrees to continue to provide the Concession to Authority in accordance with the terms and conditions of the Agreement and agrees to be bound by all the terms and conditions of the Agreement as of the date hereof.

**NOW, THEREFORE**, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Parties do agree that the Agreement is amended as follows:

1. The above recitals are true and correct and are incorporated herein.

2. This Amendment No. 3 renews the Agreement for the period of February 1, 2018 through January 31, 2022.
3. Delete ARTICLE 18, COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES AND RULES, in its entirety and replace with the following:

Company, its officers, employees, agents, subcontractors, or those under its control, will at all times comply with applicable federal, state, and local laws and regulations, Airport Rules and Regulations, Policies, Standard Procedures, and Operating Directives as are now or may hereinafter be prescribed by Authority, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or Authority including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of Airport. Company, its officers, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Company or Authority by the Federal Government including but not limited to FAA or TSA. If Company, its officers, employees, agents, subcontractors or those under its control will fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against Authority, then, in addition to any other remedies available to Authority, Company will be responsible and will reimburse Authority in the full amount of any such monetary penalty or other damages. This amount must be paid by Company within 15 days from the date of written notice.

4. Delete ARTICLE 20, NON-DISCRIMINATION/AFFIRMATIVE ACTION, in its entirety and replace with the following:

#### NON-DISCRIMINATION

During the performance of this Agreement, Company, for itself, its assignees and successors in interest, agrees as follows:

- 20.1 Company will comply with the regulations relative to non-discrimination in federally assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.
- 20.2 Civil Rights. Company, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Company will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part

21. During the performance of this Agreement, Company, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- B. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- F. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- H. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- I. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Company must take reasonable steps to ensure that LEP persons have meaningful access to Company's programs (70 Fed. Reg. at 74087 to 74100); and
  - L. Title IX of the Education Amendments of 1972, as amended, which prohibits Company from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- 20.3 In all solicitations either by competitive bidding or negotiation made by the Company for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier must be notified by Company of Company's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 20.4 Company will provide all information and reports required by the Regulations or directives issued pursuant thereto and must permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Company is in the exclusive possession of another who fails or refuses to furnish this information, Company will so certify to Authority or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 20.5 In the event of Company's non-compliance with the non-discrimination provisions of this Agreement, Authority will impose such contractual sanctions as it or the FAA may determine to be appropriate, including, but not limited to, withholding of payments to Company under this Agreement until Company complies, and/or cancellation, termination or suspension of this Agreement, in whole or in part.
- 20.6 Company will include the provisions of Paragraphs 20.1 through 20.5 in every subcontract and subconsultant agreement, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued thereto. Company will take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event Company becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Company may request Authority to enter into such litigation to protect the interests of Authority and, in

addition, Company may request the United States to enter into such litigation to protect the interests of the United States.

Company assures that, in the performance of its obligations under this Agreement, it will fully comply with the requirements of 14 CFR Part 152, Subpart E (Non-Discrimination in Airport Aid Program), as amended from time to time, to the extent applicable to Company, to ensure, among other things, that no person will be excluded from participating in any activities covered by such requirements on the grounds of race, creed, color, national origin, or sex. Company, if required by such requirements, will provide assurances to Authority that Company will undertake an affirmative action program and will require the same of its subconsultants.

5. Delete ARTICLE 34, NOTICES AND COMMUNICATIONS, in its entirety and replace with the following:

All notices or communications whether to Authority or to Company pursuant hereto will be deemed validly given, served, or delivered, upon receipt by the Party by hand delivery, or three (3) days after depositing such notice or communication in a postal receptacle, or one (1) day after depositing such notice or communication with a reputable overnight courier service, and addressed as follows:

**TO AUTHORITY:**  
(MAIL DELIVERY)  
HILLSBOROUGH COUNTY AVIATION AUTHORITY  
TAMPA INTERNATIONAL AIRPORT  
P.O. Box 22287  
TAMPA, FLORIDA 33622-2287  
ATTN: CHIEF EXECUTIVE OFFICER

**TO COMPANY:**  
(MAIL DELIVERY)  
SMARTE CARTE, INC.  
4455 WHITE BEAR PKWAY  
ST. PAUL, MN 55110  
ATTN: JAMES N MEYER

**OR**

(HAND DELIVERY)  
HILLSBOROUGH COUNTY AVIATION AUTHORITY  
TAMPA INTERNATIONAL AIRPORT  
4160 GEORGE J. BEAN PARKWAY  
SUITE 2400, ADMINISTRATION BUILDING  
TAMPA, FLORIDA 33607-1470  
ATTN: CHIEF EXECUTIVE OFFICER

(HAND DELIVERY)  
SMARTE CARTE, INC.  
4455 WHITE BEAR PKWAY  
ST. PAUL, MN 55110  
ATTN: JAMES N MEYER

or to such other address as either Party may designate in writing by notice to the other Party delivered in accordance with the provisions of this Article.

If notice is sent through a mail system, a verifiable tracking documentation such as a certified return receipt or overnight mail tracking receipt is required.

6. ARTICLE 46, COMPLIANCE WITH PUBLIC RECORDS LAW, is hereby added to the Agreement and states:

**IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (813) 870-8721, ADMCENTRALRECORDS@TAMPAAIRPORT.COM, HILLSBOROUGH COUNTY AVIATION AUTHORITY, P.O.BOX 22287, TAMPA FL 33622.**

Company agrees in accordance with Florida Statute Section 119.0701 to comply with public records laws including the following:

- A. Keep and maintain public records required by Authority in order to perform the service contemplated by this Agreement.
  - B. Upon request from Authority custodian of public records, provide Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
  - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of this Agreement.
  - D. Upon completion of this Agreement, keep and maintain public records required by Authority to perform the service. Company shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Authority, upon request from Authority custodian of public records, in a format that is compatible with the information technology systems of Authority.
7. EXHIBIT B, SPECIFICATIONS AND SCOPE OF SERVICES, Paragraph B, Scope, Subparagraph 6(c), is hereby added to the Agreement and states:

c) Maintain complimentary luggage cart service for arriving international passengers, including an ambassador staff member at peak arrivals to welcome passengers while communicating the complimentary luggage cart service.

8. Except as provided herein, all other terms and conditions of the Agreement remain in full force and effect and are hereby ratified and confirmed. The Agreement, Amendment No. 1, Amendment No. 2, and this Amendment No. 3 represent the entire understanding between the Parties on the issues contained herein, either written or oral, and may only be amended by written instrument signed by both Parties.

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**IN WITNESS WHEREOF**, the parties hereto have set their hands and corporate seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.



**HILLSBOROUGH COUNTY AVIATION AUTHORITY**

ATTEST: \_\_\_\_\_  
Victor D. Crist, Secretary

BY: \_\_\_\_\_  
Robert I. Watkins, Chairman

Address: PO Box 22287  
Tampa FL

Address: PO Box 22287  
Tampa FL

WITNESS: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

**Approved as to form for legal sufficiency:**

BY: \_\_\_\_\_  
David Scott Knight, Assistant General Counsel

**HILLSBOROUGH COUNTY AVIATION AUTHORITY**

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Robert I. Watkins, in the capacity of Chairman of the Board of Directors and Victor D. Crist, in the capacity of Secretary of the Board of Directors, HILLSBOROUGH COUNTY AVIATION AUTHORITY, a public body corporate under the laws of the State of Florida, on its behalf. They are personally known to me and they did not take an oath.

Stamp or Seal of Notary

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date Notary Commission Expires (if not on stamp or seal)

**SMARTE CARTE, INC.**

Signed in the Presence of:

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Printed Name

BY:

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Printed Address

\_\_\_\_\_  
 City/State/Zip

**SMARTE CARTE, INC.**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by

\_\_\_\_\_ in the capacity of \_\_\_\_\_  
 (Individual's Name) (Individual's Title)

at \_\_\_\_\_, a corporation, on its behalf \_\_\_\_\_  
 (Company Name) (He is / She is)

\_\_\_\_\_ known to me and has produced \_\_\_\_\_  
 (Personally / Not Personally) (Form of Identification)

Stamp or Seal of Notary

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date Notary Commission Expires (if not on stamp or seal)