

**FIRST AMENDMENT TO
CONCESSION AGREEMENT #6222090042
AVIATION DEPARTMENT**

THIS FIRST AMENDMENT is made and entered into this day of _____ between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City"), and Smarte Carte, Inc. ("Concessionaire" or "Lessee"), whereby the parties desire to amend Contract No. 6222090042, as follows:

WHEREAS, City and Concessionaire have previously entered into a Contract whereby Concessionaire shall provide automated luggage cart services; and

WHEREAS, City requests an increase in the number of luggage cart dispenser ("Kiosks") units on Premises from five to seven per Section 2.1.(B) of the original agreement; and

WHEREAS, Concessionaire desires to lease certain property and facilities at the Airport; and

WHEREAS, City requires the addition of CREO Department's Civil Rights and Wage Assurances.

NOW, THEREFORE, in consideration of the payments and mutual agreements contained in this First Amendment, City and Concessionaire agree as follows:

Sections/Attachments Amended.

1. **ARTICLE I, TERM** will be deleted in its entirety and replaced with **ARTICLE I, PREMISES & TERM** as follows:

**ARTICLE I
PREMISES & TERM**

Sec 1.1. Term of Concession Agreement. This Concession Agreement will begin on the opening of the New Terminal at the Kansas City International Airport on or before March 3, 2023 ("Commencement Date"), ending on April 30, 2028.

- A. Renewals. The City, at its sole discretion, reserves the right to extend the term of this Agreement for up to two (2) one-year periods.
- B. Termination. The City or Concessionaire may terminate this Concession Agreement at any time with a ninety (90) day written notice, but each party agrees to use good faith efforts to provide advance notice to the other party if it is considering doing so.

Sec 1.2. Leased Premises. The City hereby leases to Lessee, and Lessee leases from the City, the real property, including all buildings, improvements and fixtures appurtenant thereto, more fully described in **Exhibit "B" – Leased Premises**, attached hereto and incorporated herein (hereinafter "Premises"). Lessee has inspected the Premises and accepts them in "as is" condition.

Sec. 1.3. Term of Lease. This Lease will begin on or about April 1, 2024 (“**Commencement Date**”), ending on April 30, 2028.

- A. Renewals: After April 30, 2028 the City, at its sole discretion, reserves the right to extend the term of this Lease for up to two (2) one-year periods.
- B. Termination: Either the Lessee or City may terminate this Lease at any time with a 30-day written notice.

Sec. 1.4. Personal Property. The Furniture, Fixtures and Equipment (“**FF&E**”), supplies and any appurtenances are the sole expense and responsibility of the Lessee. At the cancellation of this Lease, the Lessee shall remove all such property. In case Lessee does not remove FF&E at the end of the lease, then provisions of Part II, Section VI. B. Holding Over will be in effect.

Sec. 1.5. Use of Premises. Lessee shall use the Premises solely for administrative space for their employees who provide passenger and baggage screening for the airlines or other tenants at the Airport as provided for in accordance with this Lease. Any unauthorized use of the Premises shall constitute acceptable grounds for immediate termination.

Sec. 1.6. Relocation of Premises. The City reserves the right to relocate the Lessee, at the Lessee’s sole expense, during the term of this Lease to alternative premises upon 30 days written notice to the Lessee. The City further reserves the right to expand or reduce the assigned premises upon the same advanced written notice thereof. If Lessee relocates during the term of this Lease, Lessee shall pay the rent as provided for in Part I, Section 3.1.A. of this Lease.

Sec. 1.7. Improvements to Leased Space. No improvements, structures, facilities, alterations or additions to the Premises will be made by Lessee without prior written approval of the Director. This approval shall be in the form of a separate Tenant Modification Agreement through the Aviation Department’s Engineering Division signed by City and Lessee. The Tenant Modification Agreement may have requirements for payment and performance bonds, prevailing wage, Minority/Women’s Business Enterprise participation, and Federal Aviation Administration review, among other conditions. Lessee shall be responsible, at the Lessee’s sole expense, for any and all improvements made to the Premises during the term of this Lease.

2. ARTICLE II, Sec 2.1. (B) will be deleted in its entirety and replaced as follows:

- B. Concessionaire shall use the Premises solely for the operation of luggage cart concessions. Concessionaire shall place luggage cart operations based upon **Exhibit A – MCI Automated Luggage Cart Service Locations Map**, and **Exhibit A2 – MCI Automated Luggage Cart Service Locations Map Supplemental**.

3. **ARTICLE III, FEES** will be deleted in its entirety and replaced with **ARTICLE III, RENTS, FEES & CHARGES** as follows:

Sec. 3.1. Rents, Fee and Charges.

- A. Terminal Rent Payments. Lessee shall pay the City the current Non-Signatory terminal rent rate beginning on the Commencement Date. Annual per square foot rental rates are estimated for each fiscal year (May 1st through April 30th). The rent of all Terminal Building space tenants is adjusted effect May 1st of each year.
- B. Concession Fee. Concessionaire shall pay to City five percent (5%) of the Gross Revenue, as defined below.
- C. Minimum Monthly Fee. Concessionaire covenants and agrees to pay City, without demand or invoice a Concession Fee as described above. However, Concession Fee shall be the greater of the agreed to Minimum Monthly Fee of One hundred sixty six and sixty-seven dollars per month (\$166.67) or the five percent (5%) of Gross Revenues, as defined below.
- D. Definition of Gross Revenue. The term “Gross Revenue” as used in this Concessionaire Agreement shall mean the total revenue derived from every “Net Rental Charge”, as hereinafter defined, generated from the rental of carts, whether for cash or paid by credit card or otherwise, excluding all sales tax and excise tax imposed by governmental taxing agencies. “Net Rental Charge” will mean the rental for each cart as rented by a user in obtaining release of the cart, not to exceed \$7.00 dollars per cart, less the amount of refund received upon the return of the cart to the cart return unit, currently \$0.25.
- E. Method and Remittance of Payment. Concessionaire shall make concession fee payments monthly by the 20th of each month without notice of demand by City and without abatement, deduction or set-off, except as herein specifically provided. The fees shall be made in legal tender of the United States and mailed to the Aviation Department, P.O. Box 210513, Kansas City, Missouri 64121-0513, payable to the “City Treasurer” **or electronically by utilizing the City’s approved Automated Clearing House (ACH) process.**
- F. Unpaid Fees. All unpaid concession fees due to the City hereunder shall bear a service charge of one and one-half percent (1½ %) per month if not paid and received by City on or before the 20th day of the month in which said payments are due. Concessionaire agrees that it shall pay and discharge all costs and expenses, including attorneys' fees, incurred or expended by City in collection of all delinquent amounts due, including service charges.

Sec. 3.2. Additional Fees and Charges. The Concessionaire shall pay City additional fees and charges under the following conditions:

- A. If the City has paid any sum or sums or has incurred any obligations or expense for which the Concessionaire has agreed to pay or reimburse City.

- B. If the City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of the fees, charges and rental thereafter due hereunder. Each and every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally part of the basic fees, charges and rental, as set forth herein.

For all purposes under this section, and in any suit, action or proceeding of any kind between the parties, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be *prima facie* evidence against the Concessionaire that the amount of such payment was necessary and reasonable.

Sec. 3.3. Net Agreement. This Agreement, in every sense, shall be without cost to the City. It shall be the sole responsibility of the Concessionaire to equip, furnish, stock, keep, maintain, repair and operate the equipment, wiring and appurtenances required under this Agreement, at the Concessionaire's sole cost and expense.

Sec. 3.4. Prompt Payment. The Concessionaire covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses and permits, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, assessments, excises, fees or charges to become delinquent.

Sec. 3.5. Reports. Concessionaire shall provide the City, in a form and detail satisfactory to the City, a true and correct statement of monthly Gross Revenue and also the cumulative annual gross receipts. Said monthly statement shall be due by the 20th day of the following month. Statements of Gross Revenue shall be certified as correct by an officer of the Concessionaire.

4. **Exhibit A-2 / MCI Automated Luggage Cart Service Locations Map Supplemental** is hereby inserted.
5. **Exhibit B - Leased Premises** is hereby inserted.
6. **Exhibit C – CREO Civil Rights and Wage Assurances** dated March 22, 2023 is hereby inserted.

Sections/Attachments not Amended.

All other sections and attachments of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties for themselves, their successors and assigns, have executed this Amendment the day and year first above written. Except as expressly amended, the Agreement dated March 7, 2023, shall remain unchanged and in full force and effect.

CONCESSIONAIRE

I hereby certify that I have authority to execute this document on behalf of Concessionaire

By: _____

Title: _____

Date: _____

KANSAS CITY, MISSOURI

Melissa Cooper, AAE (date)
Director of Aviation

Approved as to form:

Assistant City Attorney (date)

EXHIBIT C
CREO CIVIL RIGHTS AND WAGE ASSURANCES (032223)

Non-discrimination in Employment. Contractor shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity, age, or in any other manner prohibited by Chapter 38 of the City Code. Contractor shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

Ban the Box in Hiring and Promotion.

- (a) Pursuant to Section 38-104, City Code Ordinances, Contractor shall not base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.
- (b) Notwithstanding subsection (a), Contractor may inquire about an applicant's criminal history after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Any such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.
- (c) This provision shall not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source. Contractor shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$15.00 per hour in compliance with the City's Quality Services Assurance Act, Section 3-66, Code of Ordinances or City has granted Contractor an exemption pursuant to the Quality Services Assurance Act.

Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor

warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

- (a) Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.
- (b) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.
- (c) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (d) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Civil Rights and Equal Opportunity Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, cancelled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement. Contractor shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

Prevailing Wage. If the Agreement exceeds \$75,000.00 and any of the Services performed by Contractor includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, that is subject to the Missouri Prevailing Wage Law (Section 290.210, RSMo – 290.340, RSMo), Contractor shall immediately notify the City prior to performing Services so the parties can execute an agreement that incorporates the appropriate Wage Order. Contractor shall comply with all requirements of Section 290.210, RSMo – 290.340, RSMo even if Contractor fails to notify the City.

EXHIBIT A-2

MCI AUTOMATED LUGGAGE CART SERVICES LOCATION MAP SUPPLEMENTAL

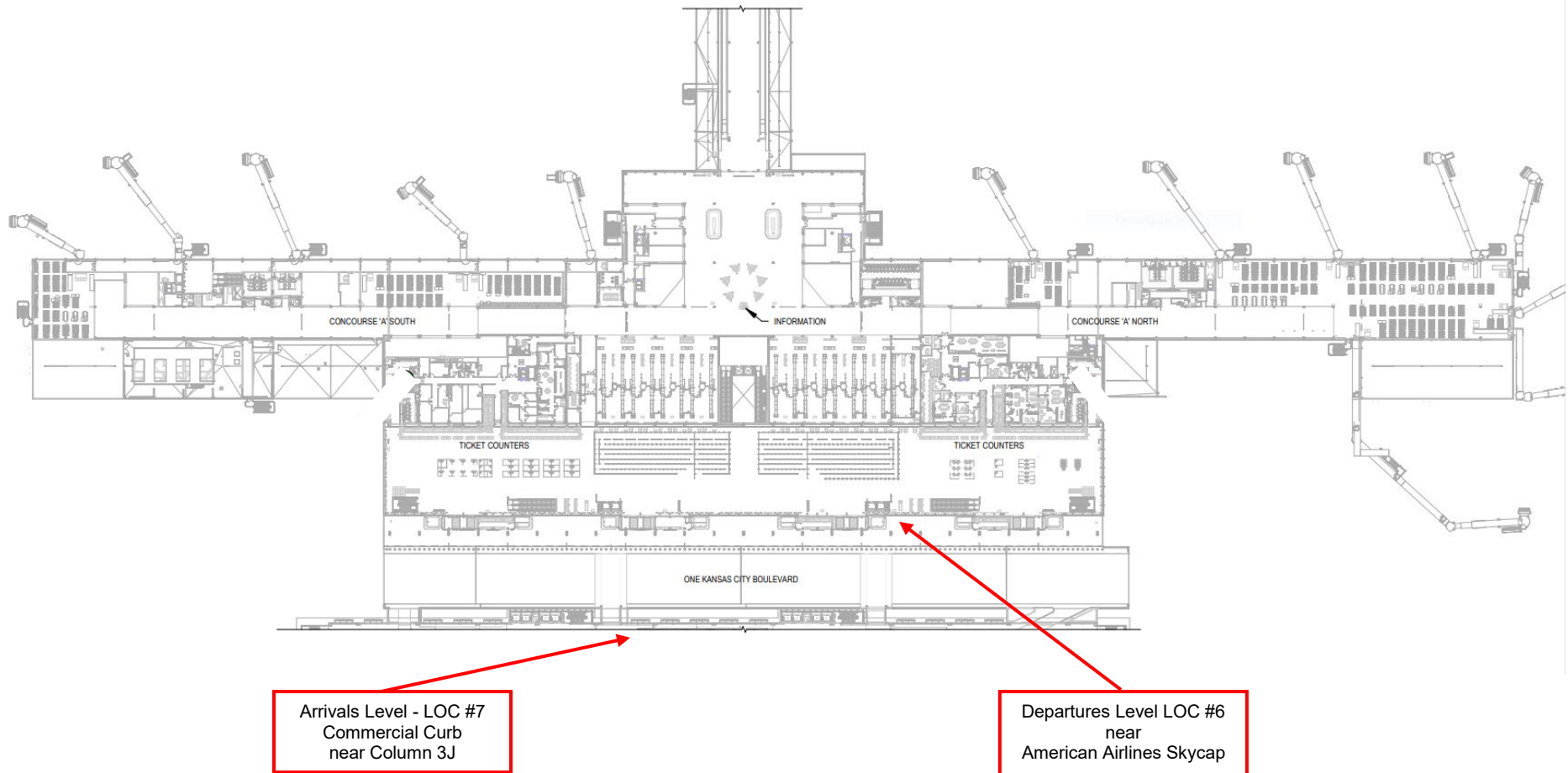


EXHIBIT B

LEASED PREMISES

