

ONTARIO INTERNATIONAL AIRPORT AUTHORITY

COMMISSION AGENDA – SPECIAL MEETING



JANUARY 26, 2023, AT 2:15 P.M.

(This meeting will be called to order at 2:15 p.m. or after the 2:00 p.m. Regular Meeting is adjourned; if after 2:15 p.m.)

Ontario International Airport Authority Administration Offices
1923 East Avion Street, Room 100, Ontario, CA 91761

ALAN D. WAPNER
President

RONALD O. LOVERIDGE
Vice President

JIM W. BOWMAN
Secretary

CURT HAGMAN
Commissioner

JULIA GOUW
Commissioner

ATIF ELKADI
Chief Executive Officer

LORI D. BALLANCE
General Counsel

JOHN M. SCHUBERT
Treasurer

NORMA I. ALLEY, MMC
Board Clerk/Assistant Secretary

WELCOME TO A MEETING OF THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY

- All documents for public review are on file at the Ontario International Airport Administration Offices located at 1923 E. Avion Street, Ontario, CA 91761.
- In accordance with State Law, public comment remarks will be limited to items on the agenda only.
- Anyone wishing to speak on an agenda item, will be required to fill out a Request to Address Card (blue slip). Blue slips must be turned in prior to an agenda item is taken up. The Secretary/Assistant Secretary will not accept blue slips after that time.
- You may submit public comments by e-mail to publiccomment@flyontario.com no later than 4:00 p.m. the day before the meeting. Please identify the Agenda item you wish to address in your comments. All e-mail comments will be included in the meeting record.
- Comments will be limited to 3 minutes. Speakers will be alerted when their time is up and no further comments will be permitted. Speakers are then to return to their seats.
- Remarks from those seated or standing in the back of the board room will not be permitted. All those wishing to speak, including Commissioners and Staff, need to be recognized by the Authority President before speaking.
- Sign language interpreters, communication access real-time transcription, assistive listening devices, or other auxiliary aids and/or services may be provided upon request. To ensure availability, you are advised to make your request at least 72 hours prior to the meeting you wish to attend. Due to difficulties in securing Sign Language Interpreters, five or more business days' notice is strongly recommended. Any members of the public who require special assistance or a reasonable accommodation to participate may contact the Board Clerk at (909) 544-5307 or clerk@flyontario.com.

CALL TO ORDER (OPEN SESSION)

ROLL CALL

Loveridge, Bowman, Hagman, Gouw, President Wapner

PLEDGE OF ALLEGIANCE

AGENDA REVIEW/ANNOUNCEMENTS

The Chief Executive Officer will go over all updated materials and correspondence received after the Agenda was distributed to ensure Commissioners have received them.

1. INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

Agenda item contractors, subcontractors and agents may require member abstentions due to conflict of interests and financial interests. Commission Member abstentions shall be stated under this item for recordation on the appropriate item.

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION

CLOSED SESSION

- CONFERENCE WITH REAL PROPERTY NEGOTIATORS (GOV \$54956.8.)
Property: ONT Terminals
Agency negotiator: OIAA General Counsel's office
Under negotiation: Potential Lease with SSP America

REPORT ON CLOSED SESSION

General Legal Counsel

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

2. RESOLUTION APPROVING A SERVICE EMPLOYEE RETENTION PROGRAM

Adopt a resolution approving a service employee retention program.

RESOLUTION NO. 2023-04

A RESOLUTION OF THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY
ADOPTING AND APPROVING A SERVICE EMPLOYEE RETENTION PROGRAM
AT THE ONTARIO INTERNATIONAL AIRPORT

3. CONCESSION AGREEMENT WITH SSP AMERICA FOR FOOD AND BEVERAGE OUTLETS

Authorize the Chief Executive Officer (CEO) to execute a Food & Beverage (F&B) concession agreement with SSP America to re-brand and build restaurants in Terminals 2 & 4 to provide food and beverage services at Ontario International Airport (ONT) for a term of 20 years with one 5-year option to extend the term.

(CONTINUED FROM 12/19/2022 AND 1/19/2023)

ADJOURNMENT

AFFIDAVIT OF POSTING

I, Norma I. Alley, MMC, Board Clerk of the Ontario International Airport Authority (OIAA), do hereby declare under penalty of perjury that the foregoing agenda has been posted at the administrative office and on the OIAA website in compliance to the Brown Act.

Date Posted: January 25, 2023

Time posted: 2:00 P.M.

Signature: _____

Norma I. Alley
Norma I. Alley, MMC

Ontario International Airport Authority Board Clerk



MEETING DATE: JANUARY 19, 2023

AGENDA SECTION: AGENDA REVIEW/ANNOUNCEMENTS

SUBJECT: RELATIVE POSSIBLE CONFLICT OF INTEREST

RELEVANT STRATEGIC OBJECTIVE: Invest in ONT Master the Basics Plan for the Future

RECOMMENDED ACTION(S): Declare Conflict of Interest pertaining to agenda items and contractors and/or subcontractors, which may require member abstentions due to possible conflicts of interest.

FISCAL IMPACT SUMMARY: N/A

BACKGROUND: In accordance with California Government Code 84308, members of the Ontario International Airport Authority may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve (12) months and from an entity or individual if the member knows or has reason to know that the participant has a financial interest, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

Item No	Principals & Agents	Subcontractors
02	SSP America, Inc.	<ul style="list-style-type: none">None

PROCUREMENT: N/A

CEQA COMPLIANCE AND LAND USE APPROVALS: N/A

STAFFING IMPACT (# OF POSITIONS): N/A

IMPACT ON OPERATIONS: N/A

SCHEDULE: N/A

ATTACHMENTS: N/A

STAFF MEMBER PRESENTING: Chief Executive Officer Atif Elkadi

Originator Name: Norma I. Alley, MMC

Originating Dept.: Executive

Director Review: N/A

Chief Review: 

CEO Approval: 

This Agenda Report has been reviewed by OIAA General Counsel.

The Agenda Report references the terms and conditions of the recommended actions and request for approval. Any document(s) referred to herein, which are not attached or posted online, may be reviewed prior to or following scheduled Commission meetings in the Office of the Clerk of the Board. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, although these hours and review procedures may be modified. In that case, the documents may be requested by email at clerk@flyontario.com.

BOARD DISPOSITION: Approved Denied Continued to _____

**A RESOLUTION OF THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY
ADOPTING AND APPROVING A SERVICE EMPLOYEE RETENTION
PROGRAM AT THE ONTARIO INTERNATIONAL AIRPORT**

WHEREAS, The Ontario International Airport Authority (OIAA or Authority), in its normal course of business, engages in contracts with private firms to provide services to the traveling public and other guests of the Ontario International Airport (ONT). At the conclusion of these contracts a new firm (Successor) often assumes the responsibility of providing these services through a competitive procurement process. It is at times in the best interest of the Authority, ONT's clientele and the traveling public, and the economic well-being of certain employees providing services at ONT, that the services of experienced workers be retained during and after the transition to the Successor.

WHEREAS, The Authority has a proprietary interest in the success or failure of services provided at ONT, with special regard to those provided by contracted firms, as these services often have a direct correlation to how the traveling public perceives their experience at ONT. The Authority has found it is not always necessary to replace workers or employees presently performing services who already have useful knowledge about the workplace where the services are performed at ONT; and

WHEREAS, Incumbent employees at ONT often have valuable knowledge and experience with the work schedules, practices, patrons, or clients that are particular to the facility or location where the services are rendered. Replacing these workers or employees could decrease efficiency and result in a disservice to the Authority, ONT, tenants of ONT, and ONT's clientele and the traveling public. Retaining existing service employees could avoid such problems, enhance the continuity of service to patrons, and reduce the likelihood of labor disruptions or disputes at ONT location(s) where the services are rendered; and

WHEREAS, Accordingly, the OIAA intends to adopt a Service Employee Retention Program at ONT. It is the purpose of this Program to provide these incumbent ONT service employees with a reasonable opportunity to obtain possible employment with the Successor. It is the additional intent of this Program to avoid or minimize the disruption in ONT services which may be caused by a transition in service firms; and

WHEREAS, The Program is not intended to conflict with federal or State law. It is the intention of the OIAA that the Program be interpreted to be compatible with federal and State enactments and in furtherance of the public purposes which those enactments encompass.

NOW, THEREFORE, BE IT RESOLVED by the Ontario International Airport Authority Commission as follows:

SECTION 1. The Ontario International Airport Authority Commission hereby approves and adopts the Service Employee Retention Program at the Ontario International Airport attached to this Resolution as Attachment "A".

SECTION 2. Effective Date. This Resolution will take effect immediately upon its adoption.

SECTION 3. Certification. The Secretary/Assistant Secretary shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED at a Special Meeting this 26th day of January, 2023.

ALAN D. WAPNER, OIAA PRESIDENT

ATTEST:

NORMA I. ALLEY, MMC, ASSISTANT SECRETARY

APPROVED AS TO LEGAL FORM:

LORI D. BALLANCE, GENERAL COUNSEL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Norma I. Alley, MMC, Board Clerk/Assistant Secretary of the Ontario International Airport Authority, DO HEREBY CERTIFY the foregoing Resolution No. 2023-04 is the original and was duly passed and adopted by the Commission of the Ontario International Airport Authority at their Special Meeting held January 26, 2023, by the following roll call vote, to wit:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

(SEAL)

NORMA I. ALLEY, MMC
BOARD CLERK/ASSISTANT SECRETARY

ATTACHMENT “A”

THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY SERVICE EMPLOYEE RETENTION PROGRAM AT THE ONTARIO INTERNATIONAL AIRPORT

 So Cal. So Easy.	Ontario International Airport Authority Policy	Effective Date	01/26/2023
	Service Employee Retention Program	Page	1 of 6
Approved: Atif Elkadi, Chief Executive Officer			

1. Purpose

Ontario International Airport Authority (“OIAA” or “Authority”), in its normal course of business, engages in contracts with private firms to provide services to the traveling public and other guests of the Ontario International Airport (“ONT”). At the conclusion of these contracts a new firm (Successor) often assumes the responsibility of providing these services through a competitive procurement process. It is at times in the best interest of the Authority, ONT’s clientele, and the economic well-being of certain employees providing services at ONT, that the services of experienced workers be retained during and after the transition to the Successor.

The Authority has a proprietary interest in the success or failure of services at ONT, with special regard to those provided by contracted firms, as these services often have a direct correlation to how the public perceives their experience at ONT. The Authority has found it is not always necessary to replace workers presently performing services who already have useful knowledge about the workplace where the services are performed. Incumbent workers may have valuable knowledge and experience with the work schedules, practices, patrons, or clients that are particular to the facility or location where the services are rendered. Replacing these workers could decrease efficiency and result in a disservice to the Authority, ONT, tenants of ONT, and its passengers and guests. Retaining existing service workers could avoid such problems, enhance continuity of service to patrons, and reduce the likelihood of labor disruptions or disputes at ONT location(s) where the services are rendered.

It is the purpose of the Service Employee Retention Program (“Program”) to provide these incumbent ONT service employees with a reasonable opportunity to obtain possible employment with the Successor. It is the additional intent of this Program to avoid or minimize the disruption in ONT services which may be caused by a transition in firms.

2. Definitions

The following definitions shall apply throughout this Program:

- i. “Authority” means the Ontario International Airport Authority, including any officer, employee, or board authorized to act on behalf of the Authority.

Service Employee Retention Program

- ii. “Contract” means a contract, subcontract or other agreement awarded or let by, or on behalf of, the Authority to provide Services at a facility or any other location owned, operated, or managed by the Authority, in excess of \$50,000 and with a term of more than ninety days. For the purposes of this Program, Contract does not include (i) procurement contracts for the purchase or lease of goods, products, equipment supplies or other property; (ii) professional service contracts; or (iii) construction contracts.
- iii. “Contractor” means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a Contract, subcontract, or other agreement to provide Services at a facility or any other location owned, operated, or managed by the Authority.
- iv. “Covered Service Employee” means a Service Employee, as defined herein, who has been employed by the Terminated Contractor for a period of six (6) months or longer at the site or sites covered by the Terminated Contractor’s contract with the Authority.
- v. “Employment Commencement Date” means the date on which a Service Employee retained by a Successor Contractor pursuant to this Program commences work for the Successor Contractor in exchange for compensation under terms and conditions established by the Successor Contractor or as required by law.
- vi. “Service Employee” means any employee of a Contractor, including but not limited to: hotel employees; on-site restaurant, food service or banquet employees; concession employees; janitorial employees; security guards; nonprofessional health care employees; gardeners; waste management employees; ticket takers; and clerical employees. “Employee” does not include managerial, supervisory, or confidential employees, or those persons required to possess an occupational license or certificate.
- vii. “Services” means those services performed by Covered Service Employees.
- viii. “Subcontractor” means any person not a Service Employee who enters into a contract with a Contractor to assist the Contractor in performing a Contract and who employs Service Employees for such purpose. A Subcontractor includes a sublessee or sublicensee.
- ix. “Successor Contract” means a Contract where the Services to be performed are substantially similar to the Contract recently terminated. The meaning also includes a Contract that is a public lease or license substantially similar to a public lease or license recently terminated. Termination includes but is not limited to: (1) the completion of the Contract or its term; (2) early termination of the Contract in whole or in part; or (3) an amendment that reduces services provided under the Contract, in whole or in part.

- x. "Successor Contractor" means the Contractor who has been awarded the Contract to replace the Terminated Contractor when the Terminated Contractor's contract terminates.
- xi. "Terminated Contractor" means the Contractor providing Services at a facility or any other location owned, operated, or managed by the Authority, at the point in time that a Contract for such Services is awarded to a New Contractor.

3. Transition Employment Period

- A. Within ten (10) days of learning that a Contract is to be terminated, the Terminated Contractor shall provide to the Successor Contractor and the Authority, the name, address, date of hire, and employment occupation classification of each Service Employee of the Terminated Contractor and Subcontractor(s) working pursuant to the Contract. If the Terminated Contractor has not learned the identity of the Successor Contractor, the Terminated Contractor shall request the identity from the Authority. If a Successor Contract has not been awarded by the end of the ten-day period, the Terminated Contractor shall provide the employment information referred to earlier in this subsection to the Authority. Where only a subcontract of a Contract has been terminated, the terminated Subcontractor shall for purposes of this Program be deemed a Terminated Contractor.
 - i. Where the use of Subcontractors has occurred under the terminated Contract or where the use of Subcontractors is to be permitted under the Successor Contract, or where both circumstances arise, the Successor Contractor may pool, when applicable, the Covered Service Employees, ordered by seniority within job classification.
- B. A Successor Contractor, awarded a Contract to perform similar Services as were provided by the Terminated Contractor, shall retain the Covered Service Employees for a 90-day transition period. The Successor Contractor may retain the Covered Service Employees at the same terms and conditions of employment as existed under the Terminated Contractor; establish new terms and conditions for those Covered Service Employees; or set them as required by law. At the time the Covered Service Employees are retained, the Successor Contractor shall advise them that a written performance evaluation will be provided at the end of the 90-day transition period.
- C. If work-related requirements for a particular job classification under the Successor Contract differ from those for the terminated Contract, the Successor Contractor (or Subcontractor, where applicable) shall give notice to the Authority and provide an explanation including:
 - i. the different work-related requirements needed; and
 - ii. the reason why the different work-related requirements are necessary for the Successor Contract.

D. Within ten (10) days of receipt of the list of Service Employees from the Terminated Contractor, or the Authority, and subject to Section 3.C above regarding different job classifications for a Covered Service Employee, the Successor Contractor shall make binding offers for a 90-day transition employment period to Covered Service Employees. The binding offers shall ask each Covered Service Employee to respond to the offer indicating acceptance or rejection of the offer of employment. The offer shall state that if a Covered Service Employee fails to provide a notice of acceptance of the offer within ten (10) days of the date of issuance of the Successor Contractor's written binding offer, then the Covered Service Employee will be presumed to have declined the offer.

The Successor Contractor shall provide proof of the employment offers, and their delivery, to the Authority.

E. If at any time during the 90-day transition period, the Successor Contractor determines that fewer employees are required to perform the services under the Contract than were employed by the Terminated Contractor, the Successor Contractor shall retain such Covered Service Employees as are necessary, determined by the earlier date of hire or seniority within job classification. The Successor Contractor shall maintain a preferential hiring list of those Covered Service Employees not initially retained, for purposes of hiring those Covered Service Employees during the 90-day transition period should additional employees become necessary to perform services under the Successor Contract. The Successor Contractor shall give notice to the Authority, within thirty (30) days of receipt of the list of Service Employees, and provide an explanation including:

- i. the reason that fewer Covered Service Employees will be needed, and the total number of Covered Service Employees required under the Successor Contract; and
- ii. a breakdown of the number of Covered Service Employees required within each job classification, and a breakdown of the Terminated Contractor's Covered Service Employees by job classification and seniority.

F. Except as provided in subsection E. of this section 3, during the 90-day transition period the Successor Contractor shall not discharge, without cause, a Covered Service Employee retained pursuant to this Program. "Cause" for purposes of this section shall mean fair and honest reasons, regulated by good faith on the part of the Successor Contractor or Subcontractor, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual. "Cause" shall also include, but not be limited to, the Covered Service Employees' conduct while in the employ of the Terminated Contractor that contributed to the termination of the Contract for fraud or poor performance.

G. At the end of the 90-day transition employment period, the Successor Contractor (or Subcontractor, where applicable) shall perform a written performance evaluation for each Covered Service Employee retained pursuant to this article. If

Service Employee Retention Program

the Covered Service Employee's performance during the 90-day period is satisfactory, the Successor Contractor (or Subcontractor) shall offer the Covered Service Employee continued employment under terms and conditions established by the Successor Contractor (or Subcontractor) or as required by law.

H. Nothing in this Program shall be construed as creating any employment relationship, either during or beyond the 90-day transition employment period, between the Authority and the Covered Service Employees.

4. Enforcement

A. A Covered Service Employee who has been discharged by a Successor Contractor in violation of this Program may bring a private cause of action in the state court against the Successor Contractor and may be awarded any remedies and/or damages provided under applicable law.

B. Compliance with this article shall be required in all applicable Contracts and shall provide that violation of this article shall entitle the Authority to terminate the Contract and pursue all legal remedies.

C. If the Authority determines that a Contractor or Subcontractor violated this Program, the Authority may take any or all the following actions:

- a. Document the determination and utilize it in future evaluations related to the business of the Authority;
- b. Demand that the Contractor or Subcontractor cure the violation according to the terms of and timing set forth in the Successor Contract.
- c. Withhold payments, credits, or other incentives due to the Contractor or Subcontractor;
- d. Terminate the Contract.

D. Notwithstanding any other provision of this Program or any other law to the contrary, no criminal penalty shall attach for a violation of this Program.

5. Availability of Other Forms of Relief

A. This Program shall not be construed to limit a Covered Service Employee's rights against the Terminated Contractor or the Successor Contractor under other applicable laws, including any right the Covered Service Employee may have to bring suit for wrongful termination against the Terminated Contractor or the Successor Contractor.

6. Severability

- A. If any severable provision or provisions of this Program, or any application thereof, is held invalid, such invalidity shall not affect other provisions or applications of the Program that can be given effect notwithstanding such invalidity.



MEETING DATE: DECEMBER 19, 2022 (CONTINUED)
JANUARY 19, 2023 (CONTINUED)
JANUARY 26, 2023

AGENDA SECTION: ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

SUBJECT: CONCESSION AGREEMENT WITH SSP AMERICA FOR FOOD AND BEVERAGE OUTLETS

RELEVANT STRATEGIC OBJECTIVE: Invest in ONT Master the Basics Plan for the Future

RECOMMENDED ACTION(S): Authorize the Chief Executive Officer (CEO) to execute a Food & Beverage (F&B) concession agreement with SSP America to re-brand and build restaurants in Terminals 2 & 4 to provide food and beverage services at Ontario International Airport (ONT) for a term of 20 years with one 5-year option to extend the term.

FISCAL IMPACT SUMMARY: There will be a positive impact to the income to OIAA over the term with short term impact during the transition and a measured impact during the mid-term refurbishment and potential rebranding at that time. Upon the Rent Commencement Date of this agreement, SSP shall pay the OIAA a twelve percent (12%) Concession Fee for food & beverage and sixteen percent (16%) for alcohol sales of its monthly Gross Receipts. Annual rent of \$124.23 per square foot shall be paid monthly upon occupancy for any office or storage space rented in the Terminals, as may be required to support their operations. SSP projects first year \$14,620,000 sales, more than \$475,000,000 in sales over the initial term with more than \$66,000,000 income to OIAA within the initial 20 year term. Please note that the COVID pandemic experienced since 2020 has resulted in changes to the non-aeronautical concession industry, such that if the operation of concessionaire's business at the Airport is affected by shortages, disruptions of the supply chain, or staffing at levels resulting in materially decreased gross revenues for a period of sixty (60) or more consecutive days, then the obligation to open the leased premises for business shall be excused, until such shortage or disruption ceases.

BACKGROUND: ONT is a medium hub airport and is a major air-cargo facility in Southern California, with more than 750,000 tons being carried to and from the airport each year. The OIAA wishes to provide passengers traveling through ONT with a friendly environment that helps reduce the stress of travel, while providing them with a superior travel experience and productivity-enhancing amenities. The OIAA is confident that the development of a broad width and breadth of food and beverage outlets in each of its terminals will be an important step to provide such highly-sought-after amenities. reflects the attractiveness of OIAA in the industry, while including local business in providing such highly-sought-after amenities for the continued growth and productivity of the OIAA concession business.

PROCUREMENT: RFP #220011 Operation, Maintenance, and Management of Food and Beverage Outlets and or Retail Outlets at Terminal 2 & Terminal 4 at Ontario International Airport was issued on Friday, January 28, on

Planet Bids with more than ten firms attending the pre-proposal meeting and the OIAA receiving two (2) qualified proposals. The RFP team reviewed, graded and interviewed both firms, which presented various options for a variety of Food & Beverage offerings.

CEQA COMPLIANCE AND LAND USE APPROVALS: The issuance or approval of leases, agreements, renewals, amendments, or extension thereof, granting use of an existing facility at a public airport, involving negligible or no expansion of use is exempt from the requirements of the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301. In addition, to the extent any alteration of the facilities occurs, CEQA Guidelines section 15301 also provides an exemption for minor alterations to existing structures or facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

STAFFING IMPACT (# OF POSITIONS): N/A

IMPACT ON OPERATIONS: N/A

SCHEDULE: N/A

ATTACHMENTS: N/A

STAFF MEMBER PRESENTING: Chief Executive Officer Atif Elkadi

Originator Name: Jeff Laass
Originating Dept.: Revenue Management
Director Review: 
Chief Review: 
CEO Approval: 

This Agenda Report has been reviewed by OIAA General Counsel.

The Agenda Report references the terms and conditions of the recommended actions and request for approval. Any document(s) referred to herein, which are not attached or posted online, may be reviewed prior to or following scheduled Commission meetings in the Office of the Clerk of the Board. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, although these hours and review procedures may be modified. In that case, the documents may be requested by email at clerk@flyontario.com.

BOARD DISPOSITION: Approved Denied Continued to _____