



APPENDIX 5.11-3

2021 Amended and Restated Agreement to Provide Municipal Services

**AMENDED AND RESTATED AGREEMENT
TO PROVIDE MUNICIPAL SERVICES FOR THE
ONTARIO INTERNATIONAL AIRPORT BETWEEN THE CITY OF ONTARIO AND
THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY**

This AMENDED AND RESTATED AGREEMENT TO PROVIDE MUNICIPAL SERVICES FOR THE ONTARIO INTERNATIONAL AIRPORT BETWEEN THE CITY OF ONTARIO AND THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY (“Agreement”) is made and entered into this 13th day of September, 2021, by and between the CITY of Ontario, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 303 East “B” Street, Ontario, California 91764 (the “CITY”), and the Ontario International Airport AUTHORITY, a Joint Powers AUTHORITY with its principal place of business at 1923 East Avion Street, Ontario, California 91761 (the “AUTHORITY”) to provide certain municipal services for the Ontario International Airport (“ONT” or “Airport”). The CITY and the AUTHORITY are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

SECTION 1: RECITALS

- A. The AUTHORITY was established through a Joint Exercise of Powers Agreement, dated August 21, 2012, between the CITY and the County of San Bernardino for the purpose of administering airport operations at ONT.
- B. On May 2, 2017, the CITY and AUTHORITY entered into a COOPERATIVE AGREEMENT TO PROVIDE POLICE SERVICES FOR THE ONTARIO INTERNATIONAL AIRPORT BETWEEN THE CITY OF ONTARIO AND THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY under which the CITY provides police services to the AUTHORITY at ONT (“Police Services Agreement”).
- C. Because Federal Aviation Regulations (“FAR”), 14 C.F.R. Part 139, Certification and Operations: Land Airports serving Air Carriers, require that commercial service airports, including ONT, provide a minimum level of Aircraft Rescue and Fire Fighting Services (“ARFF”), and the level of service is based on the type of commercial aircraft in operation and the level of activity at the airport, on May 2, 2017, the CITY and AUTHORITY entered into a COOPERATIVE AGREEMENT TO PROVIDE FIRE PROTECTION SERVICES FOR THE ONTARIO INTERNATIONAL AIRPORT BETWEEN THE CITY OF ONTARIO AND THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY under which the CITY provides fire protection services to the AUTHORITY at ONT (“Fire Protection Services Agreement”).
- D. Ancillary to the Police Services Agreement, the Fire Protection Services

Agreement and the Fleet Services Agreement, the CITY has provided various administrative-related services to the AUTHORITY through the CITY's Finance, Human Resources and Information Technology agencies (collectively, the "Ancillary Services").

- E. The Parties desire to consolidate the terms and conditions of the above-referenced agreements into one comprehensive document for the purposes of efficiency and streamlining of the administration of the agreements between the parties with respect to the services offered thereunder. Specifically, the Police Services (including dispatch services), Fire Protection Services (including dispatch services), and the Ancillary Services provided to the AUTHORITY by the CITY under the various agreements between the Parties will be consolidated hereunder, and henceforth be known and referred to as "Municipal Services" under this Agreement. For the purposes of this Agreement, Municipal Services is sometimes broken into two categories: (i) Police Services and Fire Protection Services are referred to as "Public Safety Services" (as described on Exhibits "A" and "B"); and (ii) human resources and information technology services are referred to as "Administrative Services" (as described on Exhibit "C").
- F. The AUTHORITY desires that the CITY provide the AUTHORITY with all technical and professional labor, materials, parts, and related work to perform all operations necessary and required to provide the Municipal Services, as described in Exhibits "A", "B" and "C" attached hereto and made a part hereof twenty-four (24) hours a day and seven (7) days a week where applicable, in conformity with the rules, regulations, and promulgations established by the Federal Aviation Administration ("FAA"), the Department of Homeland Security ("DHS"), Transportation Security Administration ("TSA") and other federal regulatory bodies as they pertain to the issuance and maintenance of the AUTHORITY's FAR Part 139 certification. All such regulatory requirements are collectively referred to herein as the "Federal Mandates".
- G. The AUTHORITY further desires that the CITY hire or maintain as necessary qualified and technically-proficient staff to carry out the Municipal Services set forth in this Agreement, and to that end, CITY will hire or maintain the employees as necessary to fill the positions which are described in Exhibits "A", "B" and "C" (collectively, the "Required Personnel").
- H. The AUTHORITY has requested the CITY to provide a cost model for Municipal Services that will provide greater predictability and simplicity by including all costs (including fleet services, Ancillary Services and scheduled overtime) within a fully burdened hourly rate for the Municipal Services that will provide a "true cost of service" and will minimize unanticipated changes in annual budgets and provide a reconciliation mechanism that is easy to implement on

an annual basis.

- I. The Parties are authorized to enter into this Agreement pursuant to Sections 6502, 54981, and 55632 of the California Government Code.
- J. The CITY is willing and able to provide Municipal Services to the AUTHORITY using the Required Personnel at rates negotiated annually and mutually agreed to by the CITY and the AUTHORITY, in compliance with federal statutes, regulations and policies, including without limitation the federal “grant assurances” provided by the AUTHORITY to the FAA.
- K. Funding revenue for this Agreement will be provided and derived from Airport revenues and/or FAA grant funds, provided that the source and amount of the funds comports with the requirement under federal statutes, regulations and policies that the payments reflect the actual operating or capital costs of services or goods provided to ONT.

SECTION 2: PURPOSE

The purpose of this Agreement is for the CITY to provide the AUTHORITY with Municipal Services, and for the AUTHORITY to compensate the CITY for such Municipal Services in a manner consistent with the AUTHORITY’s obligations as a federally-certificated airport subject to the requirements of 14 C.F.R. Part 139 and the grant assurances provided by the AUTHORITY to the FAA. The CITY’s ability to perform under this Agreement is subject to the terms and conditions herein.

SECTION 3: DESIGNATION OF CITY REPRESENTATIVE

A. The CITY’s CITY Manager, or her or his designee, (the “Director”) shall represent the CITY during the period of this Agreement and the Director shall have charge of the personnel, equipment and supplies of CITY as deemed necessary to satisfy the needs of both the AUTHORITY and the CITY. The CITY Manager will further have the authority to negotiate and agree to annual and other periodic changes in the Base Service Level and the Annual Fee as set forth in Sections 4 and 5.

B. The CITY (acting through the Police Chief and the Fire Chief with respect to Public Safety Services) will have sole discretion in the assignment of available personnel and equipment in order to provide the Municipal Services as agreed upon herein and in accordance with requirements placed upon the AUTHORITY by the TSA and FAA, and provided that the CITY is able to document and substantiate the time spent by each Municipal Services employee so that it can be verified that the AUTHORITY is only paying the CITY for employee time and equipment actually provided to ONT. Notwithstanding the foregoing, the Authority will have the right to make requests concerning the assignment of personnel and equipment and the City will make reasonable efforts to accommodate such requests.

SECTION 4: LEVEL OF SERVICE

A. The scope of Municipal Services as set forth on Exhibits "A" "B" and "C" reflect the level of service for police, fire, and ancillary services that has been agreed upon for the 2021-2022 fiscal year ("Base Service Level"). The Public Safety Services included in the Base Service Level constitutes a fully staffed Airport bureau with respect to police and fire services that ensures adequate staffing and it is not contemplated that the Base Service Level will increase absent substantial changes in regulatory requirements or passenger traffic at the Airport. The Parties shall negotiate proposed changes to the Base Service Level in good faith pursuant to Section 4(D) below. The CITY agrees to provide all staffing and resources necessary to deliver the Base Service Level in accordance with the requirements of this Agreement. At no time will the Base Service Level be reduced without the written consent of the CITY pursuant to the process set forth in this Section 4.

B. By April 1 of each fiscal year, the CITY shall transmit for planning purposes to the AUTHORITY its proposed Base Service Level for the upcoming fiscal year. Revisions to the Base Service Level will automatically include changes that are Mandated Changes as described in Section 4(C), as well as any mutually agreed changes to the Base Service Level that were implemented during the current fiscal year unless such changes were designated as temporary. After receiving such information, the AUTHORITY and the CITY shall meet to review and discuss the proposed revisions in consultation with the FAA and Signatory Airlines. Within forty-five (45) days of receiving the proposed revisions to the Base Service Level and discussion with all parties, the AUTHORITY and the CITY will sign off on a revised set of Exhibits "A" through "C" to reflect the new Base Service Level. If the AUTHORITY and the CITY cannot agree on changes to the Base Service Level that are not Mandated Changes as of such date, then the Base Service Level will remain at its then current level until such time as AUTHORITY and the CITY agree to a change in the Base Service Level.

C. The Base Service Level will be subject to automatic adjustment if there is a Mandated Change. A Mandated Change will occur if the AUTHORITY reasonably determines there is a change in a Federal Mandate or a change in the classification/index of the Airport that requires an increase in the level of service to comply with any Federal Mandate. Upon making such a determination, the AUTHORITY will give the CITY as much notice as possible of any change in the level of service as a result of a Federal Mandate, but in no event less than ninety (90) day's notice, unless the change is the result of an emergency order (in which case the CITY will attempt to comply with the emergency order in good faith to the extent reasonably feasible). Within thirty (30) days of receiving notice of a change due to a Federal Mandate, the CITY will provide its best estimate of the additional resources, including the number of additional personnel hours by designation, that will be necessary to comply with the change and the corresponding cost of such resources. The CITY will use its best efforts to comply with the Mandated Change and provide the additional resources and personnel as of the date that the change goes into effect, provided, however, that it is understood that a substantial change in level of service may require additional time for compliance due to the process for the hiring and training of qualified personnel. The cost of

any Mandated Change that is the result of a Federal Mandate will be accompanied by a mid-year budget adjustment by the AUTHORITY and a corresponding increase in costs payable to the CITY as set forth in Section 5.

D. On no less than a quarterly basis, the AUTHORITY and the CITY will meet to review and discuss the Municipal Services and the Base Service Level. Changes in the Base Service Level may be proposed as follows:

(i) In the event that the AUTHORITY or the CITY desire to implement a change in Base Service Level with respect to Public Safety Services that is not a Mandated Change (a "Voluntary Change"), then either party may give notice to the other requesting a change in the Base Service Level and the parties will thereafter meet and confer to discuss the requested change, the resources necessary to accommodate the change and the anticipated cost impacts. A Voluntary Change will not go into effect unless the terms of the change are mutually acceptable to the AUTHORITY and the CITY.

(ii) In the event that the AUTHORITY desires to implement a change in the Base Service Level with respect to Administrative Services as a result of the decision by the AUTHORITY to bring such services in-house or to otherwise outsource such services, then the AUTHORITY will give the CITY written notice of the proposed change and the CITY will work with the AUTHORITY to implement such change within ninety (90) days of the request from AUTHORITY. The Annual Fee with respect to Administrative Services will be adjusted to take into account the change in service level. A request to decrease the Base Service Level with respect to Administrative Services will be mandatory, but any request to increase the level of Administrative Services will be subject to agreement with the City on mutually acceptable terms.

E. The CITY shall provide AUTHORITY thirty (30) days' prior written notice, and shall receive the AUTHORITY CEO's or their designee's prior written consent, if the CITY is required to hire additional personnel to provide a level of service that is in excess of the Base Service Level during the Term; the notice shall specify: (i) the number of personnel to be hired; (ii) the date(s) of hiring; and (iii) whether the hiring(s) triggers Section 4.E of the Agreement. In the event that the CITY is required to hire additional personnel to provide a level of service that is in excess of the Base Service Level during the Term and the AUTHORITY subsequently requests a reduction in the level of service that would require the removal of personnel that have been hired or promoted (provided that such promoted individual must be replaced by the CITY in his or her existing assignment) to provide Municipal Services for the AUTHORITY, then the AUTHORITY agrees that the CITY will have a period of up to thirty-six (36) months to implement such reduction, it being understood that CITY policy does not allow for the termination or demotion of Police and Fire Department personnel without cause and that such individual will continue to work at the Airport until he or she can be transitioned to another assignment. In no event shall AUTHORITY be responsible for any costs other than reimbursements to the CITY for the costs of services actually received and documented, subject to the terms of the FAA Policy. Notwithstanding

the foregoing, the CITY will use reasonable efforts to lower staffing to agreed levels through reassignment as positions outside of Airport operations become available or as personnel assigned to the Municipal Services are lost through attrition or retirement. In no event will the CITY be required to reduce the level of personnel necessary to provide the Base Service Level if it would interfere with the ability of the CITY to comply with a Mandated Change pursuant to Section (B).

F. The Base Service Level does not include the police and fire services necessary to respond to special events or a major incident (as described in Exhibit A and Exhibit B), including the arrival and security of dignitaries, entertainment events held at the Airport, a natural disaster or other substantial disruption of Airport operations requiring substantially higher levels of service for a temporary period of time, or any other event that is outside of the normal scope of the Municipal Services (collectively, "Special Events"). Police and fire services for Special Events will be provided upon request of the AUTHORITY at the rates that are set forth in the Study or as otherwise negotiated by the Parties.

SECTION 5. PAYMENT FOR MUNICIPAL SERVICES

A. The CITY and the AUTHORITY hereby agree on a fixed annual fee for the Municipal Services for the duration of the Term ("Annual Fee"), subject to adjustment as set forth in this Section 5. The Annual Fee will initially be Twenty Million Three Hundred Two Thousand, Four Hundred Sixty Five Dollars (\$20,302,465.00). The Annual Fee has two components: (i) the Annual Fee for Public Safety Services, which is Nineteen Million, Two Hundred Forty Nine Thousand, Four Hundred Fifty Three (\$19,249,453.00); and (ii) the Annual Fee for Administrative Services, which is One Million Fifty three Thousand, Twelve Dollars (\$1,053,012.00). The Annual Fee will be adjusted in years 2 and 3 of the Term by the change in the consumer price index (all urban consumers) for Riverside-San Bernardino-Ontario as of December 31 of the calendar year preceding the new fiscal year. The Annual Fee is a negotiated amount that is supported by a cost of service study for the Municipal Services that was commissioned by the CITY to develop a Cost Allocation Plan in compliance with 2 CFR Part 200 and Attachment A to OMB Circular A-87 and determine fully inclusive hourly rates for all designations of CITY personnel who will provide the Municipal Services ("Study"). Such Annual Fee includes all direct costs, indirect cost allocations and anticipated overtime costs. The Study is specifically focused on the cost of providing the Municipal Services to the AUTHORITY and is further designed to comply with regulatory requirements that are unique to the Airport. A copy of the final version of the Study has been provided to the AUTHORITY. The City represents and warrants that the allocation method does not, and shall not, result in a disproportionate allocation of general government costs to the Airport in consideration of the benefits received by the Airport. The fees and rates in the Study are based on actual costs determined in accordance with the regulatory requirements set forth herein and the agreement between the parties. The annual cost of providing the Municipal Services set forth in the Base Service Level is included in the Annual Fee and the AUTHORITY will appropriate the funds necessary to pay the Annual Fee in twelve equal monthly payments to the CITY for each fiscal year. The Annual Fee will be adjusted each

year as set forth in this Section 5.A., provided that the CPI adjustment does not result in the Annual Fee exceeding the actual costs to the City of providing the Municipal Services as reconciled each year pursuant to Section 5.C. By April 1 of each year, the CITY shall transmit for planning purposes to the AUTHORITY the adjusted Annual Fee for the upcoming fiscal year. The CPI adjustment in the Annual Fee will be supported by an update of the Study, which will take into account increases or decreases in the actual hourly rate for each designation of personnel who provide Municipal Services based on actual experience in the current fiscal year, provided, however, that the Study is intended to be a framework for negotiation and not a predetermined fee schedule. After receiving such information, the AUTHORITY and the CITY shall meet to review and discuss the proposed revisions in consultation with the FAA and Signatory Airlines. Within forty-five (45) days of receiving the proposed revisions to the Annual Fee and discussion with all parties, the AUTHORITY shall incorporate into its annual operating budget the revised Annual Fee for the Municipal Services mutually agreed to by the AUTHORITY and the CITY. If the AUTHORITY and the CITY cannot agree on proposed revisions to the Annual Fee, then the Annual Fee will remain at its then current level until such time as AUTHORITY and the CITY agree to a change in the Annual Fee, provided, however, that no agreed increase in the Base Service Level for the next fiscal year will go into effect until such change is finalized. As set forth herein and in the FAA Policy, the actual amounts payable to the CITY by the AUTHORITY will be based on actual documented costs incurred by the CITY to provide the Municipal Services to the Airport. Furthermore, the Annual Fee will be subject to adjustment following the completion of the annual reconciliation of projected costs to actual costs as set forth in Section 5(C).

B. The annual budget of the AUTHORITY will be subject to a mid-year adjustment to account for any increase in the cost of providing the Base Service Level as a result of a Mandated Change set forth in Section 4(C) or as a result of a Voluntary Change involving a request by the AUTHORITY for an increase in the level of service as described in Section 4(D) and the monthly payment to the CITY in the current fiscal year will be adjusted to account for such increase. The budget adjustment shall be in an amount mutually agreed to and approved by the AUTHORITY and the CITY. The AUTHORITY may further elect to include the increased cost of any other change that is mutually agreed upon in a mid-year budget adjustment or may elect to have the cost of such change carried over to the next year as part of the reconciliation payment described in Section 5(C).

C. Within sixty (60) days of the end of each fiscal year, the CITY will perform a reconciliation of its actual costs to provide the Municipal Services to the Annual Fee. The CITY's annual reconciliation shall include a reconciliation/audit of the Study. The indirect cost rates set forth in the Study shall be adjusted based on the actual expenses incurred during the accounting period. In the event that the actual cost of providing the Municipal Services was less than the amount actually paid by the AUTHORITY, then the excess payment to the CITY will be credited to the AUTHORITY in a reconciliation credit that will be equally spread over the remaining ten (10) months of the following fiscal year. There will be no adjustment to the Annual Fee if the actual cost of providing the Municipal Services was greater than the amount actually paid by the Authority as the City is taking the responsibility for managing such

costs. With respect to the final year of the term, if this Agreement is not renewed, then the reconciliation amount will be paid by the CITY within ninety (90) days of the completion of the reconciliation. In the event there are "stranded personnel" as a result of staff reductions described in Section 4(E), the CITY and AUTHORITY shall agree to an appropriate offset to the reconciliation amount, recognizing that in no event shall AUTHORITY be responsible for any costs other than reimbursements to the CITY for the costs of services actually received and documented, subject to the terms of the FAA Policy.

D. All fees payable by the AUTHORITY for Special Events will be due and payable within thirty (30) days of the invoice date for such Special Event as a budget item separate from the cost of the Base Service Level of the Municipal Services.

E. The Parties acknowledge and agree that 49 U.S.C. §§ 47107(b) and 47133 only allow ONT revenues to be used for the capital or operating costs of the airport, the local airport system, or other facilities owned or operated by the airport sponsor and directly and substantially related to the actual air transportation of persons or property. The AUTHORITY can reimburse the CITY only for the actual cost of services actually received and documented, subject to the reconciliation payments described in Section 5(C). The Parties acknowledge and agree that reimbursements for capital and operating costs shall be supported by documentary evidence in compliance with the FAA "Policy and Procedures Concerning the use of Airport Revenue," 64 Fed. Reg. 7696 (Feb. 16, 1999) ("FAA Policy"), § V(C), as it may be amended from time to time. Indirect costs of the CITY allocated to the AUTHORITY must comply with § V(B) of the FAA Policy. The City intends the Study (as it may be updated from time to time) to provide a methodology to determine the correct allocation of indirect costs for federal grant programs in accordance with OMB Circular A-87, as required by FAA Policy, subject to annual negotiation of the Annual Fee and the audit and reconciliation process.

F. The CITY shall maintain documentation that meets the "Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions to Airports" specified in the FAA Policy. Such documentation shall include the following for each person providing services to ONT: (1) the time spent providing services, (2) total deployment time (or equivalent), and (3) the total costs of the person's position as determined by the CITY's cost allocation plan in effect at that time. Documentary evidence to support direct and indirect charges to the Airport must show that the amounts claimed were actually expended. Documentary evidence includes, but is not limited to: (a) Underlying accounting data such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, vouchers and indirect cost allocation plans, or (b) Audited financial statements, which show the specific expenditures to be reimbursed by the Airport; such expenditures should be clearly identifiable on the audited financial statements as being consistent with Section VIII of the FAA Policy. The CITY agrees to maintain for a period of six years all documentation necessary to ensure compliance with all applicable FAA and TSA regulatory requirements for reimbursement and provide such documentation to the AUTHORITY upon request.

SECTION 6: TERM

Subject to Section 7, the term of this Agreement shall be three (3) years beginning July 1, 2021.

SECTION 7: TERMINATION

A. Notwithstanding the provisions of Section 6, either Party may terminate this Agreement at any time for any reason upon notice in writing to the other Party of not less than twelve (12) months prior to the proposed termination date. In the event of any such termination, the AUTHORITY or the CITY, as applicable, will be required to pay the reconciliation payment set forth in Section 5(C) as though it was the end of the term.

B. If FAA, DOT, an arbitration body or a court with jurisdiction formally determines that there is a conflict between (a) the length of the prior notice that must be afforded before termination of the Agreement and (b) the federal grant assurances to which the AUTHORITY is bound, the grant assurances will take precedence and govern. In such event, the length of the prior notice that must be afforded before termination shall be the longest period permitted by applicable law.

SECTION 8: COOPERATIVE OPERATIONS AND PERSONNEL

To facilitate the performance of Municipal Services hereunder by the CITY, the AUTHORITY, its officers, agents, and employees shall give their full cooperation and assistance within the scope of the duties and responsibilities of such officers, agents, and employees. Such cooperation shall extend to assisting with the application and processing of any licenses or permits required to perform the Municipal Services under this Agreement, the cost of such licenses and permits shall be borne by the AUTHORITY.

SECTION 9: LEASE SPACE; PROPERTY ACCOUNTING

A. The CITY currently utilizes office space that is owned by the AUTHORITY for its airport bureau offices. The CITY and AUTHORITY agree to enter into a standard commercial office lease for such space that will run concurrent with this Agreement and will terminate upon any termination of this Agreement. Said lease shall charge rent based on AUTHORITY's then current rates and charges. The rental rate is expected to be approximately \$180,000 per year based on the square footage utilized by the CITY. However, CITY shall not be liable for any rent payments under said lease to the extent the cost to the City of providing the Base Service Level exceeds the Annual Fee.

B. All personal property provided by the AUTHORITY and by the CITY for the purpose of providing Municipal Services under the terms of this Agreement shall be marked and accounted for in such a manner as to conform to the standard operating procedure established by the CITY for the segregation, care, and use of the respective property of each.

SECTION 10: MANNER OF PERFORMANCE

The standards of performance, the methods of performance, the discipline of personnel, the control of personnel, the determination of proper fleet maintenance practices and procedures, and all other matters incidental to the manner of performance of Municipal Services by the CITY hereunder shall be determined by the Parties in consultation and collaboration as part of the mutually agreed upon annual budget process described herein. The responsibility of the CITY to the AUTHORITY hereunder shall be to provide, as an independent contracting agency, effective Municipal Services of the level contracted for herein, and the AUTHORITY shall not have the right to determine or direct the manner or means of the performance.

SECTION 11: INDEMNIFICATION AND HOLD HARMLESS

A. To the fullest extent permitted by applicable law, the CITY shall and does agree to indemnify, protect, defend and hold harmless the AUTHORITY, its agencies, departments, directors, officers, elected and appointed officials, employees, agents, and representatives (collectively, "**Indemnitees**") for, from and against any and all liabilities, claims, damages, losses, liens, causes of action, suits, awards, judgments and expenses, attorney and/or consultant fees and costs, taxable or otherwise, of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) the Municipal Services performed hereunder by the CITY, or any part thereof, (2) the Agreement, including any approved amendments or modifications, or (3) any negligent act or omission of the CITY, its officers, employees, subcontractors, agents, or representatives (collectively, "**Liabilities**"). Notwithstanding the foregoing, the only Liabilities with respect to which CITY's obligation to indemnify, including the cost to defend, the Indemnitees does not apply is with respect to Liabilities resulting from the negligence or willful misconduct of an Indemnitee, or to the extent such claims do not arise out of, pertain to, or relate to the Scope of Services in the Agreement.

B. To the fullest extent permitted by applicable law, the AUTHORITY shall and does agree to indemnify, protect, defend and hold harmless the CITY, its agencies, departments, directors, officers, elected and appointed officials, employees, agents, and representatives (collectively, "**Indemnitees**") for, from and against any and all liabilities, claims, damages, losses, liens, causes of action, suits, awards, judgments and expenses, attorney and/or consultant fees and costs, taxable or otherwise, of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) the services performed hereunder, by AUTHORITY, or any part thereof, (2) the Agreement, including any approved amendments or modifications, or (3) any negligent act or omission of the AUTHORITY its officers, employees, subcontractors, agents, or representatives (collectively, "**Liabilities**"). Notwithstanding the foregoing, the only Liabilities with respect to which AUTHORITY's obligation to indemnify, including the cost to defend, the Indemnitees does not apply is with respect to Liabilities resulting from the negligence or willful misconduct of an Indemnitee, or to the extent such claims do not arise out of, pertain to, or relate to the Scope

of Services in the Agreement.

SECTION 12: INSURANCE

A. The CITY and the AUTHORITY agree that each are adequately self-insured as respects the terms and provisions of this Agreement.

B. Prior to the execution of this Agreement and prior to commencement of any work, the CITY and the AUTHORITY shall each furnish the other with a letter confirming self-insurance in the amount not less than the minimum amount of insurance coverage stated herein. Approval of self-insurance by the CITY and the AUTHORITY shall not decrease nor relieve either Party of any liability.

C. The CITY and the AUTHORITY will each inform the other with an advance notice of no less than thirty (30) days should pending changes to either self-insurance program imperil the protection afforded by their present programs.

D. The CITY and the AUTHORITY shall each maintain insurance or self-insurance in the following minimum coverages and minimum limits:

1. Worker's Compensation at statutory requirements.
2. Employer's Liability at \$1,000,000 per accident for bodily injury including death or disease.
3. Commercial General Liability shall be on an Occurrence basis (as opposed to Claims Made Basis). Minimum limits and structure shall be:

General Aggregate:	\$20,000,000
Completed Products/Ops Aggregate:	\$20,000,000
Personal & Advertising Injury:	\$10,000,000
Each Occurrence:	\$10,000,000
Fire Damage:	\$10,000,000

4. Commercial Auto Liability at \$10,000,000 combined single limit, including owned, leased, hired and borrowed vehicles.

SECTION 13: AUDIT BY PARTIES

A. The CITY and the AUTHORITY agree that their designated representatives shall have the right to review and to copy any records and supporting documentation of the other Party hereto, pertaining to the performance of this Agreement. The CITY and the

AUTHORITY agree to maintain such records for possible audit for a minimum of six (6) years after final payment, unless a longer period of records retention is stipulated or as required by law, and to allow the auditor(s) of the other Party access to such records upon reasonable written request and during normal business hours. The CITY and the AUTHORITY agree to a similar right to audit records in any subcontract related to performance of this Agreement. The AUTHORITY reserves the right to audit any billing received during the term of this Agreement and request documentation supporting such billing from the CITY. In addition, the AUTHORITY has the right to verify that payments for Municipal Services during the term of this Agreement are only for ONT purposes and that any time spent or equipment used for non-ONT purposes are credited back to the AUTHORITY.

B. The CITY also agrees to provide the AUTHORITY with financial records of the costs associated with the Municipal Services and agrees to provide additional documentation necessary to ensure compliance with all applicable FAA and TSA regulatory requirements for reimbursement.

C. Each Party shall bear its own costs in performing a requested audit.

SECTION 14: AUDIT BY STATE

Pursuant to Government Code Section 8546.7, the AUTHORITY and the CITY shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment by the AUTHORITY to the CITY under this Agreement. AUTHORITY and CITY shall retain all records relating to the performance of this Agreement for said three-year period, except that those records pertaining to any audit then in progress, or to any claim or litigation, shall be retained beyond said three-year period, until final resolution of said audit, claim, or litigation. In addition, the CITY agrees to cooperate with any audit of the AUTHORITY or ONT conducted by FAA or the Department of Transportation Inspector General relating to payments made by the AUTHORITY to the CITY under this Agreement.

SECTION 15: DISPUTES

The AUTHORITY shall select and appoint a "Contract Administrator" who shall, under the supervision and direction of the AUTHORITY, be available for contract resolution or policy intervention with the CITY, when, upon determination by the Director that a situation exists under this Agreement in which a decision to serve the interest of the AUTHORITY has the potential to conflict with the CITY interest or policy. Any dispute concerning a question of fact arising under the terms of this Agreement which is not disposed of within a reasonable period of time by the AUTHORITY and the CITY employees normally responsible for the administration of this Agreement shall be brought to the attention of the Chief Executive Officer (or designated representative) of each organization for joint resolution. For purposes of this provision, a "reasonable period of time" shall be ten (10) days. The AUTHORITY and the CITY agree to continue with the responsibilities under this Agreement during any dispute. Disputes that are not resolved informally by and between the AUTHORITY and the CITY

representatives may be resolved, by mutual agreement of the Parties, through mediation. Such mediator will be jointly selected by the Parties. The costs associated with said mediator shall be shared equally among the Parties. If the mediation does not resolve the issue(s), or if the Parties cannot agree to mediation, the Parties reserve the right to seek remedies as provided by law or in equity. The Parties agree, pursuant to *Battaglia Enterprises v. Superior Court* (2013) 215 Cal.App.4th 309, that each of the Parties are sophisticated and negotiated this Agreement and this venue at arm's length. Pursuant to this Agreement, the Parties agree that venue for litigation shall be in the Superior Court of San Bernardino County. This Agreement shall be governed by the laws of the State of California. Parties recognize that certain parts of this agreement are subject to the federal statutes, regulations, and policies relating to operation of airports that are federally certified or otherwise subject to FAA grant assurance obligations and, therefore, certain disputes may be subject to FAA procedures under 14 C.F.R. Parts 13 and 16.

Any claims or causes of actions, whether they arise out of unresolved disputes as specified in this Section or claims by third parties that are made against CITY, shall be submitted to the Office of the CITY Clerk of CITY in a timely manner.

SECTION 16: DELIVERY OF NOTICES

Any notices to be served pursuant to this Agreement shall be considered delivered when deposited in the United States mail and addressed to:

CITY
City Manager 303
East B Street
Ontario, CA 91764

AUTHORITY
Chief Executive Officer
Ontario International Airport
AUTHORITY 1923 East Avion Street
Ontario, CA 91761

Provisions of this section do not preclude any notices being delivered in person to the addresses shown above. Delivery in person shall constitute service hereunder, effective when such service is made.

SECTION 17: ENTIRE AGREEMENT

This Agreement contains the whole contract between the Parties for the provision of Municipal Services. It may be amended or modified in writing upon the mutual written consent of the Parties hereto where in accordance with applicable state law.

SECTION 18: INDEPENDENT CONTRACTOR STATUS

The CITY and the AUTHORITY shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all services under this Agreement, as required by law. Each Party shall be responsible for all reports and obligations respecting their own personnel, including but not limited to, social security, income tax withholding, unemployment insurance, and worker's compensation insurance. Employees or agents of one Party shall not be deemed employees of the other for any purpose.

SECTION 19: REPRESENTATIVES

Except where expressly stated elsewhere herein, the CITY hereby designates its CITY Manager, or his or her designee, to act as its representative for the performance of this Agreement. The AUTHORITY hereby designates its Chief Executive Officer, or his or her designee, to act as its representative for the performance of this Agreement. Each representative shall have the power to act on behalf of their respective Party for all purposes under this Agreement.

SECTION 20: THIRD PARTY RIGHTS

The CITY and the AUTHORITY agree that the provisions of this Agreement are not intended to create or clarify any rights of third parties not Party to this Agreement. In addition, no third Party shall have any right of action hereunder. This Agreement shall not be enforceable by any Parties other than the CITY and the AUTHORITY.

SECTION 21: SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by either Party without the prior written consent of the other.

SECTION 22: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall constitute an original.

SECTION 23: SEVERABILITY

In the event that any provision of this Agreement shall be held invalid or unenforceable, such provisions shall be severable from this Agreement, and such invalidity or unenforceability shall not be construed to have any effect on the remaining provisions of this Agreement.

SECTION 24: NO WAIVER

In addition to the rights and remedies provided for by this Agreement, the Parties shall be entitled to all rights and remedies afforded to them by law.

SECTION 25: AMENDMENT AND MODIFICATION

This Agreement may be amended or modified only by a written instrument signed by both Parties.

[Signatures on following page]

**SIGNATURE PAGE TO
AMENDED AND RESTATED
AGREEMENT
TO PROVIDE MUNICIPAL SERVICES FOR THE
ONTARIO INTERNATIONAL AIRPORT BETWEEN THE CITY OF ONTARIO AND
THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY**

IN WITNESS WHEREOF, the duly authorized officials of the Parties hereto have, in their respective capacities, set their hands as of the date first hereinabove written.

Dated: 09/24/2021

CITY OF ONTARIO

By: 

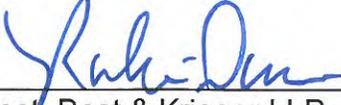
Scott Ochoa
CITY Manager

ATTEST:

By: 

Assistant CITY Clerk

APPROVED AS TO FORM:

By: 

Best, Best & Krieger LLP
CITY Attorney

Dated: 9/13/2021

**ONTARIO INTERNATIONAL AIRPORT
AUTHORITY**

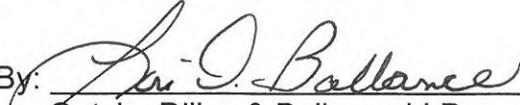
By: 

Mark A. Thorpe
Chief Executive Officer

ATTEST:

By: 

APPROVED AS TO FORM:

By: 

Gatzke Dillon & Ballance LLP
General Counsel

EXHIBIT "A"

POLICE – SCOPE OF SERVICES, LEVEL OF SERVICE, AND COSTS OF SERVICES

Scope of Services

The CITY will provide policing, public safety, security management services, and technical support in fulfilling the Federal Aviation Administration (FAA) and Transportation Security Administration (TSA) regulatory requirements for ONT. The CITY will coordinate with the AUTHORITY's Chief Executive Officer on policing, public safety and security strategies for ONT and appropriate technology, tools and techniques. A more detailed list follows:

- Provide AUTHORITY with policing, public safety and security oversight as well as 24/7 staffing support.
- Patrol airport property and terminals
- Respond to radio calls for service
- Assist with crowd and traffic control
- Enforce Vehicle Code provisions
- Respond to unattended vehicles and baggage
- Assist with searches for missing persons
- Suppress criminal activity through visible and surreptitious enforcement
- Respond to unforeseen emergencies throughout airport
- Conduct vehicular and pedestrian traffic control and enforcement in the ONT airport terminal areas
- Initiate, maintain, secure and provide logistical support for emergency command posts and decision centers
- Assist with bomb/explosive searches and disposal, including response and deployment of the Bomb Detection K-9 Unit
- Dispatch communications

In the event of a major incident, CITY will be responsible for:

- Evacuation of all buildings owned and/or operated by AUTHORITY
- Establishment and maintenance of perimeters on ONT property
- Security an access control of the Airfield Operations Areas
- Establishment and staffing airport command centers and command posts

The Police Chief will have sole discretion in how the Municipal Services described herein are carried out by the CITY personnel who are assigned to the Airport.

Police Fleet:

The CITY will provide all technical and professional labor, materials, lease charges, fueling and parts necessary and required to maintain the fleet of vehicles used to support police and law enforcement services provided by CITY to AUTHORITY. These services include, but are not limited to the following:

- Preventative Maintenance. CITY shall perform regular preventive maintenance on the fleet assigned to ONT. Such preventive maintenance shall be in accordance with manufacturer’s service recommendations for the mileage interval of the vehicle with safety inspections.
- Loaner Vehicles. CITY shall notify the AUTHORITY which fleet vehicles are scheduled for preventive maintenance and provide the AUTHORITY with a loaner vehicle for any period of time for which the vehicle is unavailable.
- Collision Repair. CITY shall perform collision repairs, including frame damage repairs, though may use third party contractors for such repairs in accordance with the CITY’s current practices.

STAFFING MODEL

The following staffing model is the Base Service Level for the Term (subject to adjustment as set forth in Section 4)

Police Staffing	Base Service Level
Police Captain	1
Police Lieutenant	1
Police Sergeant	6
Sergeant - K9	0.55
Police Detective	1
Police Corporal	6
Police Officer	21
Officers - K9	6
Community Service Officers	5
Senior Police Dispatcher	4 Full Time and 4 @50%

EXHIBIT "B"
FIRE – SCOPE OF SERVICES, LEVEL OF SERVICE, AND COSTS OF SERVICES

General

This Scope of Work represents the level of service necessary for the CITY to provide the AUTHORITY with Fire Protection Services as necessary for the safe operation of the Airport and for the AUTHORITY to comply with its requirements under 14 C.F.R. Part 139, in a manner consistent with the AUTHORITY's obligations as the operator of a federally-certificated airport subject to FAA grant assurances and will provide a unified, cooperative, integrated, and effective fire services system to ONT. The CITY's performance under this Agreement is subject to the terms and conditions herein.

The CITY shall provide services sufficient to ensure that the AUTHORITY meets its obligations under 14 C.F.R. Part 139 with regard to fire and emergency services at ONT, including, without limitation: (a) the "Aircraft rescue and firefighting: Equipment and agents" requirements in 14 C.F.R. 139.317; (b) the "Airport rescue and firefighting: Operational requirements" in 14 C.F.R. 139.319; (c) the "Self-inspection program" requirements in 14 C.F.R. 139.327; (d) the provisions in FAA Advisory Circular No. 150/5210-7D titled "Aircraft Rescue and Fire Fighting Communications"; (e) the provisions in FAA Advisory Circular No. 150/5220-10E titled "Aircraft Rescue and Fire Fighting (ARFF) Vehicles"; and (f) the provisions in FAA Advisory Circular No. 150/5220-17B titled "Aircraft Rescue and Fire Fighting (ARFF) Training Facilities." The CITY also shall coordinate with the AUTHORITY on the development, updating and implementation of an Airport Emergency Plan for ONT which complies with federal requirements imposed by FAA at ONT, and on ensuring that ONT and the AUTHORITY comply with the requirements for ARFF set forth in ONT's Airport Certification Manual.

DESIGNATION OF FIRE CHIEF

The CITY will assign an existing Chief Officer as the Fire Department Liaison ("Fire Liaison"). The Chief may delegate certain authority to the Fire Liaison, as the Chief's duly authorized designee and the Fire Liaison shall be responsible for directing the Fire Services provided to the AUTHORITY as set forth in Exhibit "A".

CITY shall submit to the AUTHORITY on or before March 1 a written request regarding any proposed fire-related capital expenditures exceeding two hundred and fifty thousand dollars (\$250,000.00). The request shall include: (1) A description of the proposed improvement(s) or project(s), and the intended use of each; (2) The cost estimate of the improvement or project and whether any of the costs are expected to be recovered from grants received by the AUTHORITY; (3) Expected maintenance and operation expenses, if any, resulting from the improvement or project; and (4)

Project/equipment design and construction schedule. Within forty-five (45) days of submittal, the Signatory Airlines shall, for those projects requiring Majority-In-Interest approval as determined in Section 6.03 of the Air Carrier Operating Use and Lease Agreement, notify the AUTHORITY as to whether or not the capital projects have been approved. Each capital project shall be deemed approved by the Signatory Airlines unless written disapproval is evidenced by a Majority-In-Interest of the Signatory Airlines. If the AUTHORITY approves the request, it will incorporate the expenditure into its annual operating budget as set forth in Section 5 of this Agreement and seek Board approval. Pursuant to the FAA Policy, it is actual costs rather than budgeted amounts that ultimately will govern the amount of money paid by the AUTHORITY to the CITY for fire protective services under this Agreement.

The Fire Chief and/or the Fire Liaison will have sole discretion in how the Municipal Services described herein are carried out by the CITY personnel who are assigned to the Airport.

Additional Scope of Services

The CITY will provide aircraft rescue and firefighting, fire protection, disaster preparedness and response, fire prevention, rescue, hazardous materials mitigation, technical rescue response, medical emergency services and public service assists in fulfilling the Federal Aviation Administration ("FAA") and Transportation Security Administration ("TSA") regulatory requirements for ONT. The CITY will coordinate with the AUTHORITY's Chief Executive Officer on aircraft rescue and firefighting, fire protection, disaster preparedness and response, fire prevention strategies for ONT and appropriate technology, tools and techniques. A more detailed list follows:

- A. Aircraft Rescue and Fire Fighting (ARFF)
- B. Structural Fire Fighting
- C. Technical Rescue
- D. Emergency Medical Services (BLS and ALS) Emergency Response
- E. Hazardous Materials Emergency Response and Hazard Mitigation
- F. Explosive Ordinance Disposal (EOD) Emergency Response and Mitigation
- G. Fire Prevention Inspection and Enforcement
- H. Fire Investigation Cause and Origin
- I. Disaster Emergency Response
- J. Emergency Management Response
- K. Fire-Rescue Emergency Dispatch

In the event of a major incident, CITY will be responsible for:

- A. Situation Assessment and Resource Assessment
- B. Establishing Incident Command System and managing the incident using

- established incident management practices and principles
- C. Identification, prioritization and execution of life saving and property protection strategies and tactics
- D. Fire suppression, containment and control
- E. Aircraft passenger evacuation and rescue
- F. Provision of emergency medical lifesaving activities
- G. Incident Investigation when jurisdictionally applicable

STAFFING MODEL

The following staffing model is the Base Service Level for the Term (subject to adjustment as set forth in Section 4).

Fire Staffing	Base Service Level
Deputy Fire Chief	0.75
Fire Captain	3
Fire Engineer	12
Firefighter	9
Senior Fire Dispatchers	2

**EXHIBIT “C”
ANCILLARY MUNICIPAL SERVICES**

Description of Human Resources/Risk Management Services:

CITY will provide AUTHORITY with Human Resources and Risk Management consulting services by providing professional support on operations, tasks, assignments, and projects. The services include and are not limited to the administration of Human Resources and Risk Management programs and related service as follows:

- Human Resources Administration
- Organizational Strategy
- Employee Relations and Performance Management
- Staffing, Recruitment, Selection, and Onboarding
- Classification and Compensation
- Benefits and Leave Administration
- Training and Development
- Payroll Administration
- Risk Management: Liability, Workers Compensation and safety programs.

CITY is not responsible for employment decisions and will make recommendations based on available information, analysis and experience with or without legal consultation.

AUTHORITY agrees to provide reasonable access to needed data, information and/or documents and provide the cooperation needed by the CITY to be able to do the work.

Activity schedule will be based upon agreed deliverables of said activities and project.

Human Resources Staffing
HR Analyst
Sr.HR Analyst

Description of Information Technology Services:

CITY will provide AUTHORITY with assessments, strategic planning, budgeting, consultation, management and support services at AIRPORT on a 24/7 basis.

CITY will install and maintain a robust, secure and autonomous computer network at AIRPORT.

CITY will provide technical support functions, inherit administrative privileges and be responsible for:

- Computers, Laptops, Printers, Copiers and Tablets
- Computer and networks security
- Office 365 email and productivity software system.
- Cisco Unity phones / network
- IT asset management.
- Vendors, contracts and relationships that are supporting legacy systems at AIRPORT.
- Systems replacements, systems implementations, short and long term planning.

- On-site technical support, software updates, printer management and support.

Information Technology Staffing
Principal Analyst
Sr. Systems Analyst
IT Specialist
IT Technician