

FUNDING AGREEMENT 2020-1

BETWEEN

COUNTY OF SAN BERNARDINO AND THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY

THIS FUNDING AGREEMENT 2020-1 (“Agreement”) is entered into by and between the **County of San Bernardino (“County”)**, a political subdivision of the State of California duly organized and existing under the Constitution and laws thereof and the **Ontario International Airport Authority (“Authority”)** (singularly, a **“Party”**, collectively, the **“Parties”**).

RECITALS

WHEREAS, the County and the City of Ontario (**“City”**) entered into a Joint Exercise of Powers Agreement (**“JPA”**) in August 2012 to provide overall direction and the continuing operation, maintenance, management, administration, development and marketing of the Ontario International Airport (**“Airport”**) for the benefit of the citizens of the City and the County; and

WHEREAS, Section 8 of the JPA authorizes the City and the County to make contributions, payments or advances of public funds to the Authority for the purposes identified in the JPA; and

WHEREAS, Section 4 of the JPA provides that the Authority possesses the powers common to the Parties “necessary or convenient to the operation, maintenance, management, development, and marketing of the Airport;” and

WHEREAS, the Authority has recognized the need for improving security at the Airport to include upgrade of the current Access Control and Access Management System (ACAMS), procurement of hardware, and software integration services and data migration (**“Project”**). The ACAMS is an automated system for controlling and monitoring access of people crossing areas of differing security levels, and provides airport personnel with information needed to securely operate, enforce, and review airport security operations. The Project will set the foundation for adding bio-metrics and other future access control technologies, and will allow for faster response of law enforcement and fire agencies to alarms due to integration of the ACAMS system with the Computer Aided Dispatch system of these agencies. The Project will also offer greater flexibility of vendors who may offer support, hardware and software integration. Through this Agreement, the County wishes to contribute the sum of \$250,000 towards the costs of the Project.

WHEREAS, the County desires to contribute to the Project utilizing \$250,000 in funds allocated to the Economic Development budget during the County 2019-20 budget process and approved by the County Board of Supervisors on June 11, 2019 (Item No. 106) for projects that support the Airport; and

WHEREAS, Section 8 of the JPA requires that either the City or County must enter into an agreement with the Authority for any funds provided, setting forth the method and manner of payment, disbursement and repayment of the funds; and

WHEREAS, the Parties desire to enter into this Agreement to provide the Authority with funds for use in the Project and to comply with the JPA.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein, the Parties agree as follows:

Section 1. Recitals Correct. All of the above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Assistance to the Authority. Pursuant to Section 8 of the JPA, the County desires to provide \$250,000 ("**County Funds**") to the Authority to assist with the Project. The County Funds will be allocated from the 2019-20 Economic Development budget. County will transmit the County Funds within 60 days of the full execution of this Agreement by both the County Board of Supervisors and the Authority Commission. The Authority will provide any necessary information requested by County staff for the transmission of the County Funds.

Section 3. Use of the County Funds and Repayment. The Authority shall use the County Funds only for the Project. The County Funds shall be paid to the OIAA who will provide evidence to the County for the use of such funds, as set forth in Section 4 below.

3.1 Return of County Funds. If the Authority Commission does not approve the expenditure of the County Funds for the Project, the County shall have no obligation to transmit the County Funds pursuant to Section 2. If the Authority does not use the County Funds to pay appropriate costs associated with the Project by December 31, 2021, the Authority shall return the County Funds, or any unused portion thereof, to the County in accordance with any directions issued by County staff, within 60 days of written demand for the return of the County Funds.

3.2 Repayment. No repayment of the County Funds is required, except as provided in Section 3.1 or if the County, in its sole discretion, determines that the Authority has inappropriately expended the County Funds.

Section 4. Demonstration of Compliance. The Authority will provide the County with documentation to demonstrate that it has used the County Funds for the Project. Such documentation shall be provided to the County no later than January 31, 2021 and will include, but not be limited to, quotes for equipment and installation services indicated in the Project; invoices evidencing use of the County Funds through payment(s) of costs totaling \$250,000. In accordance with Section 9 of the JPA, the Authority agrees to make available the books and records of the Authority relating to this Agreement for County inspection and review upon reasonable notice.

Section 5. Term. The term of this Agreement shall commence when it has been approved and executed by both Parties and will terminate on December 31, 2021.

Section 6. Indemnification. The Authority shall indemnify, defend (with counsel reasonably approved by the County) and hold harmless the County and its authorized officers, employees, agents and volunteers ("Indemnitees") from any and all claims, actions, losses, damages and/or liability arising out of this Agreement or the Project from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification will not apply to the negligence or willful misconduct of County or Indemnitees.

Section 7. Authorization. The County Chief Executive Officer, on behalf of the County is authorized to provide any notices required pursuant to this Agreement.

Section 8. Miscellaneous.

8.1 Americans with Disabilities Act. The Authority agrees to comply with the Americans with Disabilities Act.

8.2 Assignment. The Authority may not assign or transfer this Agreement or any of its rights or delegate any of its duties without the prior written consent of the County. Any attempted assignment, transfer or delegation in contravention of this Section of the Agreement shall be null and void. This Agreement shall inure to the benefit of and be binding on the Parties hereto and their permitted successors and assigns.

8.3 Counterparts. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each Party for all purposes.

8.4 Cooperation of Parties. The Parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Agreement.

8.5 Entire Agreement. County and the Authority acknowledge that they have read this Agreement and any attached Exhibits which are incorporated herein by this reference, understand them and agree to be bound by their terms and conditions. Further, this Agreement, including any Exhibits, is the complete and exclusive statement of the Agreement between the Parties relating to the subject matter of this Agreement and supersedes all letters of intent or prior contracts, oral or written, between the Parties relating to the subject matter of this Agreement.

8.6 Governing Law. This Agreement shall be governed in all respects by the law and statutes of the State of California, without reference to conflict of law principles. The exclusive jurisdiction and venue of any action hereunder shall be in the State courts of San Bernardino County, California. The Authority accepts the jurisdiction of such courts.

8.7 Headings. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the

interpretation, construction or meaning of the provisions of this Agreement.

8.8 Independent Status. The Parties in the performance of this Agreement will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The Parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one Party shall not be deemed or construed to be the employees or agents of the other Party for any purpose whatsoever.

8.9 Modifications and Amendments.

8.9.1 No modification, amendment, alteration, addition or waiver of any Section or condition of this Agreement shall be effective or binding unless it is in writing and signed by an authorized representative of the Authority and County.

8.9.2 Only the County Board of Supervisors and the Authority Commission shall have the express, implied, or apparent authority to alter, amend, modify, or waive any substantive clause or condition of this Agreement on behalf of their respective Parties. Furthermore, any alteration, amendment, modification, or waiver of any substantive clause or condition of this Agreement is not effective or binding until made in writing and signed by the Board of Supervisors and the Authority Commission unless otherwise provided herein.

8.9.3 The Authority shall notify County of the names of individuals, if any, who have authority to bind the Authority to modifications to the Agreement and of the limits of such authority at the time the Authority executes this Agreement and at such other times as required.

8.10 Non-Discrimination. During the term of this Agreement, the Authority shall not discriminate against any employee or applicant for employment or service recipient because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age or military and veteran status. The Authority shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

8.11 Non-waiver. Except as otherwise specifically provided herein, any failure or delay by either Party to exercise or partially exercise any right, power or privilege under this Agreement shall not be deemed a waiver of any such right, power, or privilege under this Agreement. Any waivers granted by either Party for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. Either Party's pursuit or non-pursuit of a remedy under this Agreement for other Party's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that the non-breaching Party may have at law or equity for any other occurrence of the same or similar breach, nor estop the non-breaching Party from pursuing such remedy.

8.12 Notice of Address Change. The Authority shall notify County in writing of any change in mailing address listed in the Notice section of the Agreement and/or physical location within five (5) days of the change, and shall immediately notify County of changes in telephone or facsimile numbers

or email addresses.

8.13 Notice of Delay. When either Party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that Party shall, within two working days, give Notice thereof, including all relevant information with respect thereto, to the other Party.

8.14 Notices.

8.14.1 Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the Parties at the addresses and fax number, and email addresses (if provided) set forth below:

County of San Bernardino
385 N. Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415
Attn: Chief Executive Officer
(909) 387-5430 (facsimile)

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

8.14.2 Notices shall be effective upon receipt or four (4) business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

8.15 Remedies. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

8.16 Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

SIGNATURES ON FOLLOWING PAGE

COUNTY OF SAN BERNARDINO

ONTARIO INTERNATIONAL AIRPORT AUTHORITY

By _____
Curt Hagman, Chairman, Board of Supervisors

By _____
Mark A. Thorpe, Chief Executive Officer

Dated: _____

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Address: _____

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy