

## LEASE AND FIRE SERVICES AGREEMENT

THIS AGREEMENT is made upon approval by both parties, by and between the San Bernardino County Fire Protection District, existing pursuant to the Constitution and laws of the State of California (the "DISTRICT"), and the San Bernardino International Airport Authority, a joint exercise of powers authority established pursuant to Government Code Section 6500, et seq. (the "SBIAA").

### WITNESSETH

WHEREAS, the SBIAA is the fee title owner of certain property depicted on Exhibit "A" (the "Airport"), including a portion thereof which has situated thereon an Airport fire station suitable for maintaining an aircraft fire crash rescue operation (the "Fire Station" as additionally depicted on Exhibit "B") in support of the aviation related activities of the SBIAA; and

WHEREAS, the SBIAA desires to contract for the provision of certain fire protection and Aircraft Rescue and Fire Fighting (ARFF) services and other services incidental thereto at the San Bernardino International Airport; and

WHEREAS, the DISTRICT is willing and able to perform such services for the benefit of SBIAA and its customers.

NOW, THEREFORE, THE DISTRICT AND THE SBIAA HEREBY AGREE AS FOLLOWS:

#### Section 1. Leased Premises.

(a) The SBIAA leases to the DISTRICT, and the DISTRICT leases from the SBIAA, portions of that certain building known as Building No. 680 on the Airport and further described as the Fire Station as set forth on Exhibits "A" and "B", inclusive of the Common Area as defined below but exclusive of the Excluded Areas as defined below (the Fire Station, exclusive of the Excluded Areas but inclusive of the adjacent parking areas and other areas depicted on said Exhibit "B" shall be considered herein as the "Leased Premises"). This lease for the Leased Premises portion of the Fire Station shall include (i) the Fire Station exclusive of the Excluded Area, (ii) the adjacent parking area to the south of the Fire Station (South Parking Area) for six (6) passenger vehicles located within the secured fence line area which shall be available for the exclusive use of the DISTRICT for the parking of passenger vehicles, and (iii) the paved area extending approximately 30' east of the east wall of the Fire Station (East Paved Area), not including any Airport roadway or walkway, as further depicted in Exhibit "B." The DISTRICT shall also have the right to use the Common Area on a non-exclusive basis together with the tenants and the business guests and invitees of the tenants occupying the Excluded Areas.

(b) The Leased Premises as described in said Exhibit “A” shall specifically exclude (i) that portion of the office areas of the Fire Station which will be separately leased by the SBIAA, or otherwise reserved by the SBIAA, for use and occupancy, and (ii) the HVAC Mechanical Room, Electrical Room, and badging room as depicted on Exhibit “B” (the “Excluded Areas”). The lessees and all occupants and tenants of the Excluded Areas shall have the exclusive right to use, and not to exceed five (5) of the designated public parking spaces at the location depicted on Exhibit “B” (Public Parking Areas) and shall have the right to use, in common with the DISTRICT, the other common area facilities including restrooms, hallways, kitchen areas and entrances and exits as depicted on Exhibit “A” (the “Leased Premises”).

(c) All personnel of the DISTRICT occupying the Leased Premises shall park within (i) the area designated as the On-Site Parking for passenger vehicles only and (ii) the service bays portion of the Fire Station for all other vehicles and apparatus; provided, however, that the two (2) items of apparatus of SBIAA described in Section 8 hereof shall have priority of parking in two such service bays. All other vehicles of the DISTRICT shall be parked within the public parking areas located adjacent to the Fire Station within public access areas of the Fire Station or in other public parking lots in the vicinity of the Fire Station.

## Section 2.            Term.

The term of this Lease Agreement shall commence retroactively to August 1, 2018, and shall remain in effect until June 30, 2023 (the “Initial Term”), subject to the termination provisions set forth in Section 5, below. The DISTRICT shall be entitled to assume possession and the use and occupancy of the Leased Premises immediately upon the effective date of this Lease Agreement.

## Section 3.            Lease Renewal; Renegotiation.

Either party may inform the other party of the necessity in the sole determination of the party seeking to initiate a renegotiation that such party desired to formally initiate a renegotiation of any term or provision of this Agreement whether due to a change in circumstances regarding the level of activity at the Airport or for any other operational, staffing or financial concerns of either party. Such party seeking to initiate such renegotiation shall provide the other party with at least thirty (30) days’ prior written notice of the intent of such party to renegotiate this Agreement and stating the reasons for such renegotiation and the intended changes or modifications to this Agreement. Neither party shall have any duty or obligation to negotiate with the party delivering such notice of renegotiation, and in the event the party receiving the notice of renegotiation fails or refuses to meet with the other party for any such renegotiation, then the sole recourse available to the party seeking to renegotiate this Agreement shall be to either continue with the existing terms and provisions of this Agreement or to terminate this Agreement pursuant to Section 5.

Section 4.

Lease Payment.

The annual rent payable by the DISTRICT to the SBIAA pursuant to this Lease Agreement shall be one dollar (\$1.00) per year.

Section 5.

Termination.

This Lease Agreement may be terminated by either the DISTRICT or the SBIAA at any time without cause and without any stated reason upon delivery of at least three hundred sixty-five (365) days' written notice to the other party in the manner required for the delivery of notices pursuant to Section 14 hereof. This Lease Agreement shall then be effectively terminated as of the date to be set forth in the notice of termination as may be timely delivered by the party seeking to so terminate this Lease Agreement. Upon termination, the DISTRICT shall be compensated only for those services which have been rendered to the SBIAA by and through the date of termination, and the DISTRICT shall be entitled to no further compensation.

Section 6.

Use of Leased Premises/Scope of Services Provided by DISTRICT.

(a) During the Initial Term and any Extended Term of this Lease Agreement, the DISTRICT may use the Fire Station and the Leased Premises for the purpose of providing (i) Aircraft Rescue and Firefighting services to the Airport and the SBIAA, (ii) such additional levels of structural fire, emergency response and other life safety and paramedic services as the DISTRICT may determine at its sole option based upon demonstrated need and availability of personnel, financial resources and equipment of the DISTRICT, and (iii) fire training services and facilities for the benefit of the Airport and the DISTRICT fire fighters. Parking for vehicles and apparatus of the DISTRICT shall be restricted to the locations as set forth in Section 1(c) hereof.

(b) The DISTRICT shall provide to SBIAA the following services: Aircraft Rescue and Fire Fighting, fire investigation, advanced life support, fire prevention, fire inspection, permit assistance, badging, air show and event support, rescue services, maintain personnel training and equipment records in accordance with the FAA approved Airport Certification Manual, and ARFF services, and standards shall comply with DISTRICT criteria and State and Federal guidelines. Modifications may be mutually agreed to be DISTRICT and SBIAA, provided such modifications are made in writing.

(c) The DISTRICT shall make available to the SBIAA an office at the captain level position to function as Emergency Management liaison, consistent with level of service. The DISTRICT shall participate in annual emergency drills (as requested) and associated airport training.

(d) The SBIAA or any authorized representative shall have access to any books, documents, and records of the DISTRICT, which are pertinent to this Agreement for the purposes of making an audit or examination. All books, records and supporting detail shall be retained for a period of five (5) years after the term of this Agreement. The DISTRICT agrees that in the event audit exceptions are determined by appropriate audit agencies, it shall be the responsibility of the DISTRICT to comply.

Section 7.            Payment.

(a) Within thirty (30) days of both parties executing this agreement, SBIAA shall pay to the DISTRICT an amount not to exceed \$706,932 for August 1, 2018, to June 30, 2019. SBIAA shall pay to the DISTRICT \$775,254 for July 1, 2019, to June 30, 2020. For services provided by DISTRICT for July 1, 2019, to June 30, 2020, SBIAA shall pay to the DISTRICT monthly installments of \$64,604.50 at the beginning of each month during the period of this Agreement. Payments will be negotiated annually based upon the provisions of Section 3 herein and by amendment to this Agreement. DISTRICT and SBIAA have the option to terminate this Agreement if the parties cannot agree on future annual payments, in accordance with Section 5, "Termination." Termination pursuant to this Section 7(a) does not require three hundred sixty-five (365) days' notice and shall take effect on the start of the following fiscal year (July 1<sup>st</sup>). Payments shall be due by the fifth (5<sup>th</sup>) day of each month. Payments received after sixty (60) days of when due shall include 10% simple interest after the sixtieth (60<sup>th</sup>) day against the amount owing.

(b) DISTRICT shall have the right to terminate this Agreement sooner than provided for in Section 2 if SBIAA does not make timely payments of its obligations hereunder to DISTRICT.

(c) DISTRICT shall have the right to annually renegotiate the rate of services performed under this Agreement. SBIAA shall be responsible for any future MOU and/or Compensation Plan for salary/benefit increases that may occur during the term of the Agreement. Unless otherwise negotiated, the annual increase for supplies (excluding Dispatching/Radio Charges) shall not exceed the annual All Urban Consumer Price Index (CPI) for the Los Angeles/Riverside/Orange County areas for any given year. The calculation period for the CPI will be January 1 to December 31 of the preceding year.

(d) DISTRICT may give notice to SBIAA of increased costs incurred by DISTRICT in providing the services pursuant to this Agreement, and this Agreement may be amended to reflect the increased costs to DISTRICT, with any such amendment to be effective the date the costs for DISTRICT are increased. DISTRICT and SBIAA have the option to terminate this Agreement if the parties cannot agree on that amount of additional costs proposed by DISTRICT, in accordance with Section 5, "Termination." In the event of such termination, DISTRICT shall be paid for all services rendered until such termination date at the rates set forth in this Agreement.

(e) Annually, SBIAA and DISTRICT shall review staffing levels and SBIAA shall have the right at any time during the term of this Agreement to request a change in the level of fire protection services provided for herein. In such event, all provisions of this Agreement with respect to compensation paid by SBIAA shall remain in full force and effect, but in addition to payment of the sums herein provided, SBIAA shall pay DISTRICT in monthly installments the cost of such additional fire protection service.

(f) SBIAA shall not hold DISTRICT responsible for a reduction in fire protection services resulting from labor relation actions and SBIAA's obligation to pay DISTRICT shall be reduced for services not performed for that reason.

#### Section 8. Acceptance of Leased Premises; Improvements.

The DISTRICT agrees that it shall utilize qualified DISTRICT personnel to inspect the Fire Station prior to assuming actual possession thereof and shall report in writing to the SBIAA as to any physical deficiencies in the major components set forth in the next succeeding sentence to be cured by the SBIAA prior to such possession by the DISTRICT. The SBIAA shall have no obligation to cause to be made any structural change, improvement, modification, alteration or addition to the Fire Station. The SBIAA shall not be obligated for compliance with any other occupancy requirements that may be imposed upon the DISTRICT, including, but not limited to, access by disabled persons and earthquake structural safety. The DISTRICT may at its own expense and with the prior written approval of the SBIAA cause to be made any structural or non-structural changes, improvements, modifications, alterations or additions as may better adapt the use of the Fire Station to the requirements of the DISTRICT for aircraft fire crash rescue purposes and for providing structural fire, emergency response and other life safety and paramedic services as the DISTRICT may determine at its sole option.

#### Section 9. Equipment Provided by the SBIAA.

(a) The SBIAA hereby agrees to provide a license to DISTRICT for use of the SBIAA owned items of apparatus, which shall be the only apparatus furnished by the SBIAA to the DISTRICT during both the Initial Term and any Extended Term of this Lease Agreement, as set forth in Exhibit "C" ("Fire Equipment"). During the term of this Lease, the DISTRICT shall maintain in good repair the fire equipment and shall be financially responsible for said maintenance and repairs.

(b) The SBIAA agrees to be responsible for all major apparatus and equipment repairs and/or replacements unless the need for such repairs and/or replacements are the result of the negligent or willful misconduct of the DISTRICT, in which case the DISTRICT shall be responsible for promptly completing and paying for the costs of such repairs and/or replacements. Major apparatus and equipment repairs shall be defined as engine, transmission, drive train, pump and tank repairs which exceed \$1,000 for fire ARFF apparatus (including labor costs). SBIAA will remain financially responsible for new and replacement ARFF apparatus. If

the SBIAA fails to respond to the DISTRICT in a reasonable time, the DISTRICT shall include these costs as an element of the compensation paid by the SBIAA. Repairs to SBIAA owned vehicles for which the DISTRICT is responsible, unless such repairs are the result of the negligent or willful misconduct of the DISTRICT, shall be limited to an amount not to exceed \$40,000 annually. The SBIAA shall be directly billed for repairs exceeding this limit, only if the DISTRICT provided reasonable advanced written notification to the SBIAA, and the SBIAA duly authorized such repairs.

(c) The cost of providing, maintaining, and operating all property, furnishings, equipment, real or personal, furnished fire equipment set forth in Exhibit "C" ("Fire Equipment") as provided for above shall be borne by the DISTRICT unless otherwise provided for herein or by separate written agreement. New additional equipment and replacement of equipment with a value in excess of \$2,000 will be borne by the SBIAA.

(d) The DISTRICT and the SBIAA shall assist and cooperate, and shall participate and coordinate efforts to obtain all available grants, reimbursements, and related programs to enhance funding for the SBIAA.

(e) In order to achieve economies of scale, the SBIAA may authorize the DISTRICT to purchase equipment, apparatus, and supplies on behalf of the SBIAA. Recognizing that fire and emergency medical equipment, apparatus, and supplies are specialized for these functions, the SBIAA agrees to coordinate with the DISTRICT's specifications when the SBIAA makes such purchases.

## Section 10. Repairs and Maintenance.

(a) The SBIAA shall be responsible for all major structural repairs and/or replacements which exceed \$1,000 per occurrence (including labor costs) to SBIAA owned facilities. Major structural repairs shall be defined as major plumbing problems where the slab or wall must be broken to access, major concrete replacement, major asphalt replacement, roof replacement, apparatus door replacement, major electrical or HVAC problems, and the structural integrity of the building and facility replacement due to fire, flood, earthquake, or any other natural or man-made disaster causing the facility to be rendered uninhabitable. The foregoing shall apply unless the need for such repairs and/or replacements are the result of the negligent or willful misconduct of the DISTRICT, in which case DISTRICT shall be responsible for promptly completing and paying for the costs of such repairs and/or replacements. Except as specifically set forth herein, SBIAA will remain financially responsible for new and replacement SBIAA facilities.

(b) The DISTRICT shall be responsible for the cleaning, sweeping, and maintenance of all exterior areas of the Fire Station including structural exterior walls, landscaping, concrete access areas adjacent to both the Fire Station and the Leased Premises and including the refuse container area. The DISTRICT shall, at its own expense, maintain and keep

the interior walls, electrical and utilities, HVAC, plumbing, living quarters and furnishings and appliances, interior passage doors and windows with in the exterior walls of the entire Fire Station in a safe and maintained condition.

Section 11.            Utilities.

The DISTRICT shall pay all utility service charges, including charges for electrical, gas, telephone, data, water, refuse disposal, janitorial, and maintenance related expenses for services provided to the Premises.

Section 12.            Removal of Equipment and Personal Property.

(a) The DISTRICT shall, upon the expiration or termination of this Lease Agreement and for a period of time not to exceed thirty (30) calendar days thereafter, have the right to remove all furniture, movable equipment and other items of personal property that are not considered as fixtures and additions to the Fire Station. Nothing shall be removed by the DISTRICT which is in any manner affixed or attached to the floors or walls and the removal of which would render the Fire Station less usable or would cause damage to any walls, floors, ceilings or windows.

(b) Any personal property or other equipment that is placed in the Leased Premises by the SBIAA pursuant to an inventory list delivered to the DISTRICT shall remain the personal property of the SBIAA unless ownership thereof is otherwise specifically transferred by the SBIAA to the DISTRICT by appropriate written instrument.

Section 13.            Destruction of Leased Premises.

If during the term hereof the Leased Premises are damaged or destroyed by fire or other casualty, neither party shall have any obligation to repair any portion of the Leased Premises and this Lease Agreement shall be subject to immediate termination effective upon receipt of notice of termination delivered by the terminating party to the other party; provided however, that the DISTRICT shall have the right, but not the obligation, to repair the Leased Premises to the extent necessary to continue in possession of the Leased Premises for the remainder of the then current term of this Lease Agreement.

Section 14.            Notices.

Any and all notices required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered, or (ii) mailed certified or registered mail, via United States Postal Service, return receipt requested, postage prepaid, or (iii) delivered by express delivery

service or messenger service, or (iv) dispatched through other electronic means or by verified fax transmission, to the respective parties at the addresses indicated below.

If to SBIAA:

San Bernardino International Airport Authority

1601 East Third Street, Suite 100

San Bernardino, CA 92408

Attn: Executive Director

Tel: 909-382-4100

Fax: 909-382-4106

If to the DISTRICT:

San Bernardino County Fire Protection District –Administration

157 W. 5<sup>th</sup> Street, 2<sup>nd</sup> Floor

San Bernardino, CA 92410

Attn: Fire Chief/Fire Warden

Tel: 909-387-5779

Fax: 909-387-5742

Any party may change its address by delivery of notice to the other party in the manner as set forth above.

#### Section 15.           Amendments.

This Lease Agreement may be amended or modified by the parties at their sole discretion only by the written agreement duly approved pursuant to official action of and executed by both parties in the manner as required by State Law. Failure on the part of either party to enforce any provisions of this Lease Agreement shall not be construed as a continuing waiver of the right to compel enforcement of such provision or provisions, and such failure to enforce any provision of this Lease Agreement shall never constitute nor be deemed to constitute an amendment to this Lease Agreement without the official action of the parties to specifically approve any such amendment.

#### Section 16.           Indemnification.

(a) DISTRICT, to the extent permitted by law, agrees to indemnify and hold harmless the SBIAA, its officers, agents, employees and volunteers from any and all claims including employment related claims, actions or losses, damages, and/or liability resulting from



DISTRICT's negligent acts or omissions which arise from DISTRICT's performance of its obligations under this Agreement.

(b) The SBIAA, to the extent permitted by law, agrees to indemnify and hold harmless DISTRICT and its officers, employees, agents and volunteers from any and all claims including employment related claims, actions, losses or damages and/or liability arising out of the SBIAA's negligent acts or omissions which arise from SBIAA's performance of its obligations under this Agreement.

(c) In the event SBIAA and/or DISTRICT is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, SBIAA and/or DISTRICT shall indemnify the other to the extent of this comparative fault.

(d) Notwithstanding indemnification for any claim, action losses, or damage involving a third party, the SBIAA and DISTRICT hereby waive any and all rights or subrogation recovery against each other.

#### Section 17.            Insurance.

(a) DISTRICT is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability, Workers' Compensation and Property Damage and warrants that through its respective programs of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the term, conditions or obligations of this agreement.

(b) DISTRICT shall provide vehicle collision and comprehensive coverage through its JPA Insurance Program. For first party damages resulting in a total loss by DISTRICT use, reimbursement from DISTRICT's JPA Insurance shall be based on a depreciated value. Each party shall be responsible for providing and maintaining comprehensive insurance as necessary for the ongoing operations of the SBIAA.

(c) DISTRICT shall, within sixty (60) days of commencement of this Agreement, furnish certificates of insurance or self-insurance to SBIAA evidencing the insurance coverage including endorsements, above required prior to the commencement of performance of service hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to SBIAA, and DISTRICT shall maintain such insurance from the time DISTRICT commences performance of services hereunder until the completion of such services.

#### Section 18.            Validity.

If any of the terms, conditions, provisions or covenants of this Lease Agreement shall to any extent be judged to be invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, conditions, provisions and covenants of this Lease Agreement shall not be affected thereby and shall remain in full force and effect and be valid and enforceable to the fullest extent permitted by applicable law.

Section 19.            Entire Agreement.

No other understandings or agreements exist between the parties except as herein expressly stated herein with respect to the lease of the Fire Station. Any modifications or amendments to this Lease Agreement must be approved by the official actions of both the District and the governing board of the SBIAA and duly executed by authorized representatives of both parties.

Section 20.            Attorney Fees and Costs.

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own cost and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Section 16.

Section 21.            Venue.

The venue of any action for claim brought by any party to this Agreement will be the San Bernardino County Superior Court. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by a third party, the parties hereto agree to use their best efforts to obtain a change of venue to the San Bernardino County Superior Court.

Section 22.            Successors and Assigns.

This Agreement shall be binding on the successors and assigns of the parties.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties have duly executed this Lease and Fire Services Agreement on the day and date identified below.

**San Bernardino Fire Protection District**

►

\_\_\_\_\_  
Curt Hagman, Chairman, Board of Directors

Dated: \_\_\_\_\_

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

Laura H. Welch, Secretary

By \_\_\_\_\_  
Deputy

**San Bernardino International Airport Authority**

\_\_\_\_\_  
(Print or type name of corporation, company, contractor, etc.)

By ► \_\_\_\_\_  
(Authorized signature - sign in blue ink)

Name Michael Burrows  
(Print or type name of person signing contract)

Title Executive Director  
(Print or Type)

Dated: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_