

Original

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

S2020-003

20-561

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative	Terry W. Thompson, Director, Real Estate Services Department
Telephone Number	(909) 387-5252
Contractor	San Bernardino International Airport Authority
Contractor Representative	Michael Burrows
Telephone Number	(909) 382-4100
Contract Term	One Year from 3/23/20 to 3/22/21
Original Contract Amount	\$409,228.80
Amendment Amount	N/A
Total Contract Amount	\$409,228.80
Cost Center	1064332410
GRC/PROJ/JOB No.	7900 4050
Internal Order No.	

Briefly describe the general nature of the contract:

The License Agreement is for a license of certain premises, comprising a total of approximately 21,314 square feet located at 115 Del Rosa Avenue, Building No. 56, Suite A San Bernardino, CA for the period of one year, which retroactively commenced on March 23, 2020 and shall expire on March 22, 2021 with one option to extend the license for one year. The payment of license fees is contingent on District's receipt of emergency reimbursement funds. Until receipt of such funds, license fees shall accrue without interest, penalty, or default by District. If the funds received are less than the accrued fees, District and SBIAA shall work in good faith to agree on an exchange of in-kind services to be documented in an amendment to the License. District shall be responsible for all utility costs and routine, interior maintenance of the facility. Either party may terminate this license agreement upon thirty (30) days prior written notice.

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

Agnes Cheng, Deputy County Counsel

Jim Miller, Real Property Manager, RESD

Date 5/21/2020

Date

Date

FACILITY USE & LICENSE AGREEMENT

THIS LICENSE AGREEMENT is by and between the San Bernardino International Airport Authority, a Joint Powers Authority (hereinafter referred to as the "SBIAA"), and the person or firm referenced in Paragraph 1 of this License Agreement as the Licensee (hereinafter referred to as the "DISTRICT"):

1. GENERAL INFORMATION FOR LICENSE.

LICENSEE NAME: San Bernardino County Fire Protection District				
LICENSEE TELEPHONE NUMBERS: (909) 387-5974				
LICENSEE MAILING ADDRESS: San Bernardino County Fire Protection District 157 West Fifth Street San Bernardino, CA 92408				
LICENSEE BILLING ADDRESS: Same as above				
PERSON TO CONTACT IN AN EMERGENCY: Kathleen Opliger			TELEPHONE 951.288.8952	
FACILITY USE SB County Fire Protection District Emergency Command Center			LIABILITY INSURANCE DISTRICT is self-insured	
NOT USED				
FACILITY OR FACILITIES INCLUDED IN LICENSE: Approximately 21,314 square feet of office and emergency support service space located in Suite "A" of Building No. 56, at 115 North Del Rosa Avenue at the San Bernardino International Airport (see Exhibit "A" attached hereto).			SPECIAL LICENSE TERMS: DISTRICT parking shall be non-exclusive, unassigned and reciprocal with other SBIAA tenants, .	
NOTICES: Same as District's mailing address	SECURITY DEPOSIT: \$0	LICENSE FEE: \$34,102.40	LICENSE TERM START DATE: Commencing March 23, 2020	RECEIPT OF INSURANCE CERT. N/A

2. LICENSE. The SBIAA hereby grants to DISTRICT a license for the use of the facility or facilities ("Facility") described in Paragraph 1 of this License Agreement.

- (a) The Facility shall be used for purposes noted in Section 1, above.
- (b) In addition to the restrictions in Paragraph 16, the Facility may not be used for any other purpose by DISTRICT, except as noted in Section 1, above.
- (c) No bailment is created by this License Agreement. This License Agreement shall not be interpreted as a lease nor shall this License Agreement be deemed to grant any property interest

or

property right, provided that DISTRICT has the right to use the Facility and to receive notices for any defaults and terminations in accordance with this License Agreement. The DISTRICT shall not under any circumstances be afforded the rights, privileges and remedies as are typically available to tenants in the State, nor shall the Authority be deemed to be a landlord or lessor for any purposes under this Agreement.

3. LOCATION. The initial location of the Facility to be used pursuant to this License Agreement is set forth in Exhibit "A". The SBIAA retains the right to change the location to be used pursuant to this License Agreement to a comparable facility for the following reasons that include: construction, safety, flooding, natural disasters, aircraft access and other similar purposes. The SBIAA, through the EXECUTIVE DIRECTOR, shall provide fifteen (15) days prior written notice to DISTRICT of any change in location, including the reason for such change and any equitable adjustments in the license fees.

4. TERM. The term of this License Agreement shall commence retroactive to the date referenced in Paragraph 1 of this License Agreement as the term start date and shall continue for one (1) year thereafter until March 22, 2021, unless terminated by either party by thirty (30) days prior written notice to the other party. DISTRICT shall have the option to extend the term of this License Agreement on the same provisions and conditions, for a one (1) one-year term ("extended term") by providing written notice to SBIAA.

5. LICENSE FEES.

(a) DISTRICT shall pay to the SBIAA the monthly license fee for the DISTRICT's use of the Facility as referenced in Paragraph 1 herein on or before the end of each month, provided that until DISTRICT's actual receipt of emergency reimbursement funds intended by DISTRICT for the payment of the facility, in connection with the COVID-19 emergency, the fees shall accrue without interest, penalty, or default by DISTRICT. License fee payment for the accrued fees shall occur on or before the end of the month after DISTRICT's actual receipt of said emergency funds. The monthly license fee shall be the amount referenced in Paragraph 1 of this License Agreement as the license fee commencing on the date the term commences, and continuing during the term. In the event that DISTRICT's receipt of reimbursement funds are less than the accrued monthly License Fees, DISTRICT and SBIAA shall in good faith assist and cooperate to pursue potential in-kind services for the mutual benefit of DISTRICT and SBIAA, and prior to performing any such services, the parties will execute an amendment to document the in-kind services to be exchanged. DISTRICT shall reimburse or compensate SBIAA for any liability, expense, loss or damage arising out of DISTRICT's obligation in this License which SBIAA incurs as a result of the DISTRICT's default of its obligations under this License.

(b) DISTRICT shall pay all utility fees and charges for electricity, water, sewer, trash disposal and other utility services which may be used or consumed on or for the Facility. Electrical, water, and sewer consumption shall be charged and invoiced by SBIAA at cost from the utility provider and without mark-up to DISTRICT based on a separate meter for the facility or on an equitable, pro-rata basis (with supporting documentation) if the facility is not separately metered, and due on a net-30 basis and DISTRICT's verification of the invoice based on DISTRICT's actual usage. DISTRICT may, at its sole cost and expense, provide additional utility service to the Facility or upgrade existing utilities as may reasonably be required by DISTRICT subject to SBIAA's prior written approval of plans and specifications therefor, which approval shall not unreasonably be withheld.

6. 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.

7. RELEASE AND DISCHARGE. SBIAA shall not be responsible for, and assumes no liability arising from fire, theft, damage or loss to DISTRICT's property or other items unless such fire, theft, damage or loss is the fault of SBIAA. Unless due to the fault of SBIAA, DISTRICT hereby releases and discharges the SBIAA from all claims and demands by DISTRICT for loss of or damage to DISTRICT's property.

8. INSURANCE REQUIREMENTS.

(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 DISTRICT's performance of the term, conditions or obligations of this agreement.

(b) SBIAA shall provide General Liability (with aggregate limits of \$2,000,000) Automobile Liability, Workers' Compensation and Property Damage and warrants it has adequate coverage or resources to protect against liabilities arising out of the performance of the term, conditions or obligations of this agreement.

(i) SBIAA agrees all policies, except for the Worker' Compensation, Error and Omissions and Professional Liability policies, shall contain endorsements naming the DISTRICT, the County of San Bernardino ("County") and its officers, employee, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of SBIAA's services or obligations hereunder. The additional insured endorsements shall not limit the scope of coverage for the DISTRICT and County to vicarious liability but shall allow coverage for the DISTRICT and County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(ii) SBIAA shall require the carriers of required coverages to waive all rights of subrogation against the DISTRICT, County and its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor

hereby waives all rights of subrogation against the DISTRICT and County.

(c) DISTRICT and SBIAA shall, within sixty (60) days of commencement of this Agreement, furnish certificates of insurance or self-insurance to the other evidencing the insurance coverage including endorsements, above required prior to the commencement of use of the Facility hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to SBIAA or DISTRICT, and SBIAA and DISTRICT shall maintain its respective insurance from the time DISTRICT uses the Facility hereunder until the expiration of this License Agreement.

9. REPAIR AND MAINTENANCE. DISTRICT shall immediately inform the EXECUTIVE DIRECTOR of any and all repairs to the Facility that DISTRICT believes necessary or appropriate. SBIAA shall maintain the Facility structure and roof in good working order, condition, and repair. SBIAA shall deliver the Facility and the parking areas in compliance with all applicable laws in effect on the commencement of this License Agreement, including all requirements of the Americans with Disabilities Act. DISTRICT shall be responsible for the routine, interior maintenance of the Facility, including doors, locks, heating ventilation and air conditioning (HVAC) systems, plumbing, restrooms, fixtures, and electrical systems to the extent located entirely within the Facility in good and neat appearance and in as good a condition as received upon commencement of this License Agreement, ordinary wear and tear excluded. Upon termination of this License Agreement, DISTRICT shall return the Facility to the SBIAA in substantially the same condition as the facility existed at the commencement of this License Agreement, ordinary wear and tear excepted.

10. RULES AND REGULATIONS. DISTRICT shall, at DISTRICT's sole cost and expense, comply with all of the written requirements of all SBIAA, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to DISTRICT's use of the Facility, and shall faithfully observe in the use of the Facility all local ordinances and state and federal statutes and regulations, now in force or which may hereafter be in force. This License Agreement, and all provisions herein, shall be subordinate to SBIAA's federal grant assurance obligations and deed covenants as promulgated by the FAA.

11. RIGHT TO INSPECT. The SBIAA and its authorized officers, agents, employees, volunteers, contractors, subcontractors and other representatives shall have the right to inspect the facility for the following purposes:

(a) To inspect the Facility at reasonable intervals during regular business hours with prior written notice (or at any time in case of emergency) to determine whether DISTRICT has complied with or is complying with the terms and conditions of this License Agreement;

(b) To make repairs, additions or alterations in accordance with this License Agreement;

(c) For emergency purposes;

(d) In the exercise of SBIAA, local, state and federal security requirements or regulations upon prior reasonable written notice with minimal interference to DISTRICT; and

(e) For periodic inspections by the San Bernardino Fire Department for compliance with fire safety codes. SBIAA shall schedule the inspection with Fire Department personnel and DISTRICT shall provide access to the Facility during the inspection period specified by the Fire Department. The SBIAA will make reasonable attempts to notify DISTRICT prior to conduct any inspection. No inspection by or on behalf of the SBIAA of the Facility shall cause or constitute a termination of the License Agreement, or be deemed to constitute an interference with DISTRICT's use thereof.

12. SECURING THE FACILITY. DISTRICT shall close and lock the Facility doors or gates (if any are provided) when the Facility is unattended.

13. RESERVED-NO TEXT.

14. COMMERCIAL ACTIVITY. DISTRICT *shall not conduct any commercial activity*, except as noted in Section 1 above, at or in the Facility or at or on the San Bernardino International Airport unless such activities are pursuant to a separate written agreement signed by both DISTRICT and the SBIAA.

15. RESERVED-NO TEXT.

16. PROHIBITED MATERIALS: NUISANCE PROHIBITED. DISTRICT shall not store or use combustible chemicals or materials at or in the Facility except as permitted by the Fire Department. DISTRICT shall not store, dispense or otherwise handle fuel, compressed gasses or other hazardous materials in violation of applicable laws. DISTRICT shall properly dispose of all wastes and hazardous materials in a legal manner and in appropriate receptacles. DISTRICT shall not create a nuisance or perform any other act or thing which interferes with the quiet enjoyment of the airport by any other licensee or tenant or member of the public. For purposes of this paragraph, hazardous materials include, but are not limited to: (A) Substances which are flammable, explosive, corrosive, radioactive, toxic; (B) Those asbestos-containing materials defined and described in Environmental Protection Agency Report No. 56/5-85-024 (June 1985) whether or not friable, or any related or successor report, or other applicable government regulations defining or describing such materials; (C) Pesticides as defined by Section 136(u) of FIFRA (7 U.S.C. Section 136) as may be present in soil or groundwater; (D) "Hazardous wastes" as defined in Section 25117 of the California Health and Safety Code, or as a chemical that is known to the State of California "to cause cancer or reproductive toxicity" under the Safe Drinking Water and Toxic Enforcement Action of 1986, California Health and Safety Code sections 25249.5, *et. seq.*; and (E) Any material or substance defined hazardous materials, substances or waste, or toxic materials, substances or waste as those terms or similar terms are defined by any other federal, state or local law, rule, regulation, ordinance or order.

17. NO DAMAGE: COMPLIANCE WITH CODES. DISTRICT shall not by his own or his agents', employees' or invitees' actions cause any damage to the Facility. DISTRICT's use of the Facility shall conform to all Airport rules and regulations and local building and fire codes.

18. ALTERATIONS TO FACILITY. DISTRICT shall not make or cause to be made any alterations or improvements to the facility, including modifications or alterations of the facility's electrical installations or equipment without the consent of SBIAA.

19. RESERVED-NO TEXT.

20. TAXATION. The privileges granted in this License Agreement may be subject to taxation and/or assessment, including but not limited to Possessory Interest taxes. In such event, DISTRICT shall pay before delinquency, all taxes or assessments which at any time may be levied by the State, County of San Bernardino, or any other tax assessment levying body upon the licensed premises and any improvements or fixtures located thereon. DISTRICT shall also pay, or cause to be paid, all taxes, assessments, fees, and charges on all merchandise, fixtures, and equipment owned or used thereon.

21. RESERVED-NO TEXT.

22. NOTICES. Any notices required to be given under this License Agreement shall be in writing and shall be deemed properly delivered, given or served when personally delivered to the SBIAA or DISTRICT, or in lieu of such personal service, delivered by reputable overnight courier service or sent by United States mail, registered or certified, return receipt requested, addressed to DISTRICT at the address referenced in Paragraph 1 of this License Agreement as licensee mailing address and to the SBIAA as follows: EXECUTIVE DIRECTOR , San Bernardino International Airport Authority, 1601 E. 3rd Street, San Bernardino, California 92408.

In the event of personal service, notice shall be deemed given when personally served. In the event of service by reputable overnight courier service or mail, notice shall be deemed to have been given upon the delivery date or the date of the signed return receipt. DISTRICT shall keep his current mailing address and telephone number on file with the EXECUTIVE DIRECTOR during the term of this agreement and shall notify the EXECUTIVE DIRECTOR in writing within fifteen (15) days of any change of address or telephone number.

23. ASSIGNMENT. The License is personal to DISTRICT and shall not be assigned, sublet or otherwise transferred in whole or in part to any other person or entity.

24. TERMINATION. This license may be terminated by either the SBIAA or DISTRICT upon thirty (30) days prior written notice to the other party.

25. BREACH OR DEFAULT OF LICENSE AGREEMENT. The occurrence of any of the following shall constitute a breach or default of this License Agreement by DISTRICT:

(a) Failure to pay any fee due under this License Agreement when due, if the failure to pay continues for three (3) days after written notice of the failure has been given to DISTRICT; and

(b) Except as otherwise specifically provided in this License Agreement, failure to perform any other provision of this License Agreement if the failure to perform is not cured within ten (10) days after notice of the failure has been given to DISTRICT. If the breach or default cannot be reasonably cured within ten (10) days, DISTRICT shall not be in breach or default of this License Agreement if DISTRICT commences to cure the breach or default within the ten (10) day period and diligently and in good faith continues to cure the default.

Notices given under this paragraph shall specify the alleged breach or default, and shall demand that DISTRICT perform the provisions of this License Agreement or pay the fee that is in arrears, as the case may be, within the applicable time period, or the License Agreement is terminated. No such notice shall be deemed a termination of this License Agreement unless the SBIAA so elects in the notice.

The occurrence of the following shall constitute a breach or default of this License Agreement by SBIAA: failure to perform any provision of this License Agreement if the failure to perform is not cured within ten (10) days after notice of the failure has been given to SBIAA. If the breach or default cannot be reasonably cured within ten (10) days, SBIAA shall not be in breach or default of this License Agreement if SBIAA commences to cure the breach or default within the ten (10) day period and diligently and in good faith continues to cure the default. Notices given under this paragraph shall specify the alleged breach or default, and shall demand that SBIAA perform the provisions of this License Agreement within the applicable time period or the License Agreement is terminated

26. ATTORNEY'S FEES. VENUE. AND CONTROLLING LAW. In any action between the SBIAA and DISTRICT, each party, including the prevailing party shall be responsible for its own attorney's fee and costs.

This License Agreement shall be governed by and construed in accordance with the laws of the state of California. Should any action, motion, or other legal proceeding be initiated to enforce or interpret the terms of this License Agreement, venue shall be held exclusively in the San Bernardino County Superior Court or in the United States District Court, Central District of California.

27. HEADINGS. REFERENCE. LAW AND JOINT AND SEVERAL LIABILITY. The titles and headings of the various paragraphs of this License Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this License Agreement. Masculine and feminine, or neutral gender and the singular and the plural number shall each be considered to include the other whenever the context so requires. If either party consists of more than one person, each such person shall be jointly and severally liable.

28. NO WAIVER. No waiver by a party of any provision of this License Agreement or of the regulations governing the use of the Facility shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this License Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this License Agreement or at law.

29. NO PARTY DEEMED DRAFTER. In the event of a dispute between any of the parties hereto over the meaning of this License Agreement, no party shall be deemed to have been the drafter hereof, and the principle of law that contracts are construed against the drafter shall not apply.

30. ENTIRE AGREEMENT. This License Agreement contains all the representations and the entire understanding and agreement between the parties pertaining to the use of the facility or any other matters connected therewith. All correspondence, memoranda, or

oral or written agreements pertaining to the facility between the parties hereto, which originated before the date of this License Agreement are null, void and no longer in force and with no effect, and are replaced in total with this License Agreement unless otherwise expressly stated in this License Agreement. This License Agreement shall not be altered, amended, or modified except by a writing signed by the SBIAA and DISTRICT.

31. DATE OF AGREEMENT. The date of this License Agreement shall be that date that it shall have been signed by both the SBIAA and the DISTRICT.

32. COUNTERPARTS. This License may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement. The parties shall be entitled to sign and transmit an electronic signature of this License (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to execute and deliver to the other party an original signed License upon request. The parties agree that original signatures are required for any subsequent amendments to the License, unless otherwise expressly set forth in said amendment.

(Signatures to follow)

Dated: 5/20/2020

SBIAA:

San Bernardino International Airport Authority

By: 
Michael Burrows
Executive Director

Dated: 5/22/20

LICENSEE (DISTRICT):

San Bernardino County Fire Protection District

By: 
Name: Gary McBride
Title: Authorized Agent

EXHIBIT "A"

Licensed Facility

(See Following Page)

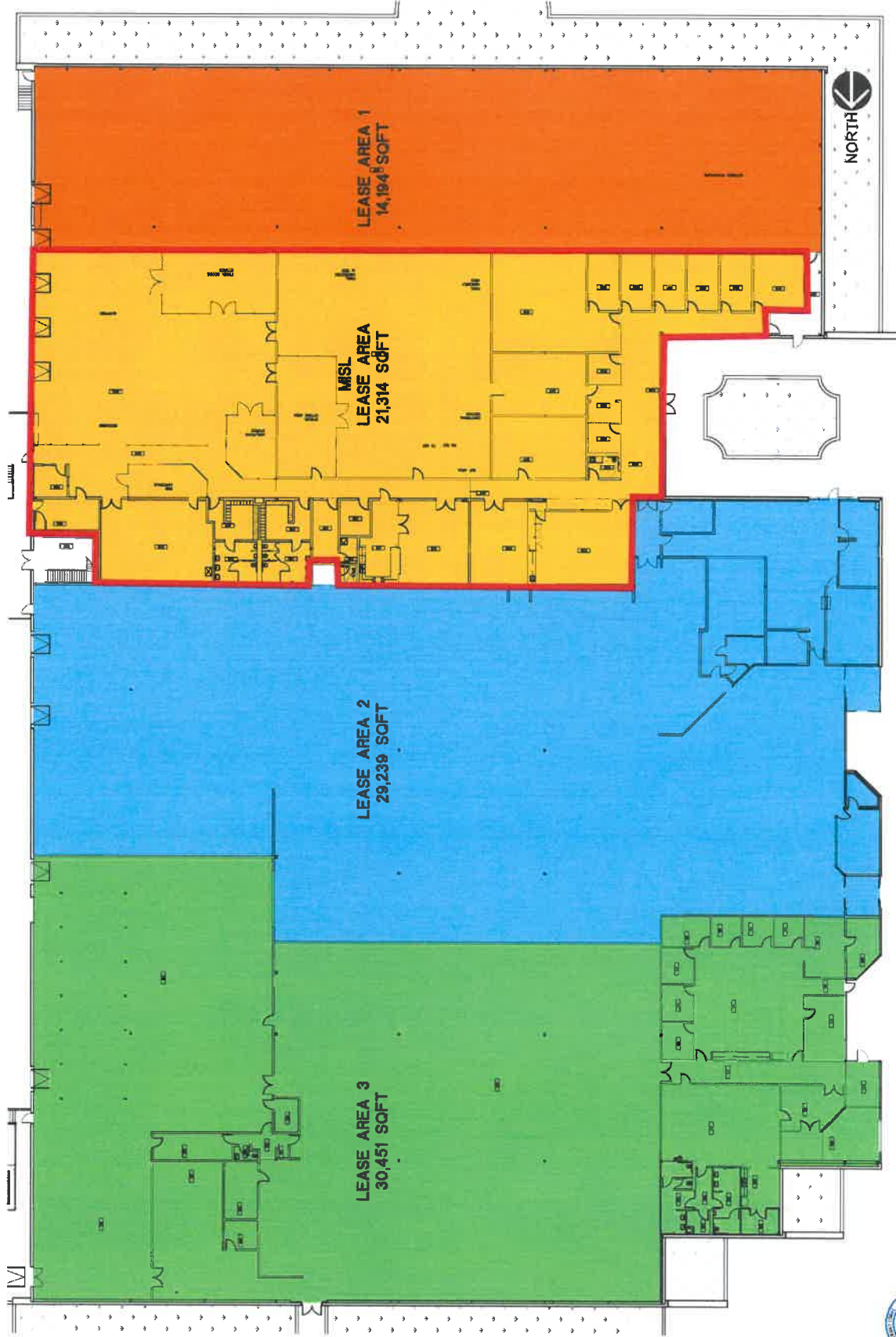


EXHIBIT A2



GKK GOVERNMENT
FEBRUARY 2005

COMMISSARY BUILDING
LEASE EXHIBIT



SAN BERNARDINO INTERNATIONAL
AIRPORT AUTHORITY