

**FULLY REIMBURSABLE SPACE ACT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
SAN JOSE POLICE DEPARTMENT
AND
NASA AMES RESEARCH CENTER
FOR
UTILIZATION OF MOFFETT FEDERAL AIRFIELD FOR LAW
ENFORCEMENT AND EMERGENCY RESPONSE CAPABILITIES**

ARTICLE 1. AUTHORITY AND PARTIES

In accordance with The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)), this Agreement is entered into by the NASA Ames Research Center located at Moffett Field, CA 94035 (hereinafter referred to as "NASA ARC," "ARC," or "NASA") and The City of San Jose, San Jose Police Department located at 201 W. Mission Street, San Jose, CA 95110, (hereinafter referred to as "Partner"). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE

This Agreement shall be for the purpose of utilizing Moffett Federal Airfield (MFA) facilities as a base of operation for the helicopters operated and manned by Partner's Police Department. This purpose benefits NASA by providing a public service and unique MFA facilities to Partner and the State of California, and enhances effective local law enforcement and emergency response capabilities.

ARTICLE 3. RESPONSIBILITIES

Partner will use reasonable efforts to reimburse NASA (in accordance with this Agreement) for all facilities, land, equipment and services used at MFA, including, but not limited to: runways, ramp and parking space; hangar space; crash/fire/rescue support services; airfield security; fuel and fuel service; environmental, occupational and health services; and air traffic control. Partner agrees all operations on NASA property shall be compatible with, and will not interfere with, the operations of NASA, other resident federal agencies, or with airfield operations at MFA, as such is determined by NASA.

NASA ARC will use reasonable efforts to provide the necessary equipment and personnel to support the purpose of this Agreement.

In accordance with Article 7, Partner assumes liability for risks associated with activities undertaken in this Agreement.

Partner may request NASA to make additions or modifications to MFA. Nothing in this Agreement obliges NASA to accommodate such a request. If NASA, in its sole discretion, agrees to the requested additions or modifications, all costs will be borne by Partner, including costs to remove additions or restore modifications to their former conditions. All additions, changes, and modifications to MFA become the property of the United States Government.

This Agreement shall not be construed as a grant of any possessory, exclusive or permanent interest in any NASA real or personal property, nor as a grant of any estate of any kind, nor as an abandonment of use and occupancy, but shall merely be considered a temporary agreement for the non-exclusive, non-possessory use of NASA land, facilities, and equipment described in this Agreement. Title to NASA's real property shall be and remain solely with NASA. All Partner personal property constructed, installed, erected, or placed by Partner on NASA property shall be removed by Partner upon termination of this Agreement.

ARTICLE 4. FINANCIAL OBLIGATIONS

1. Partner agrees to reimburse NASA an estimated annual cost (based on fiscal year 2009 rates) of \$35,265 for NASA to carry out its responsibilities under this Agreement. In no event will NASA transfer any U.S. Government funds to Partner under this Agreement. Payment must be made by Partner in advance of initiation of NASA's efforts. Advance payments shall be scheduled to ensure that funds are resident with NASA before Federal obligations are incurred in support of this Agreement.

2. Payment shall be payable to the National Aeronautics and Space Administration through (choose one form of payment): U.S. Treasury FEDWIRE Deposit System, Federal Reserve Wire Network Deposit System, pay.gov at <https://www.nssc.nasa.gov/portal/site/customerservice/menuitem.bb29c518138071c056969daf4dd72749>, or check.

A check should be payable to NASA Ames Research Center and sent to:

NASA Shared Service Center (NSSC)-FMD Accounts Receivable
Attn: For the Accounts of NASA Ames Research Center
Bldg. 1111, C Road
Stennis Space Center, MS 39529

All payments shall be marked "Payment for SAA2-402531."

3. NASA will not provide services or incur costs beyond the available funding amount. Although NASA has made a good faith effort to accurately estimate its costs, it is understood that NASA provides no assurance that the proposed effort under this Agreement will be accomplished for the above estimated amount. Should the effort cost more than the estimate, Partner will be advised by NASA as soon as possible. Partner shall pay all costs incurred and have the option of canceling the remaining effort, or

providing additional funding in order to continue the proposed effort under the revised estimate. Should this Agreement be terminated, or the effort completed at a cost less than the agreed-to estimated cost, NASA shall account for any unspent funds within one (1) year after completion of all effort under this Agreement, and promptly thereafter, return any unspent funds to Partner.

4. Notwithstanding any other provision of this Agreement, all activities under or pursuant to this Agreement are subject to the availability of funds, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. §1341.

ARTICLE 5. PRIORITY OF USE

Any schedule or milestone in this Agreement is estimated based upon the Parties' current understanding of the projected availability of NASA personnel, facilities and equipment. In the event that NASA's projected availability changes, Partner shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA usage of the facilities, equipment, and personnel shall have priority over the usage planned in this Agreement. Should a conflict arise, NASA in its sole discretion shall determine whether to exercise that priority. Likewise, should a conflict arise as between two commercial users, NASA, in its sole discretion, shall determine the priority as between the two users. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

ARTICLE 6. NONEXCLUSIVITY

This Agreement is not exclusive; accordingly, NASA may enter into similar agreements for the same or similar purpose with other U.S. private or public entities.

ARTICLE 7. LIABILITY AND RISK OF LOSS

1. Partner hereby waives any claims against NASA, its employees, its related entities, (including, but not limited to, contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors and subcontractors, at any tier) and employees of NASA's related entities for any injury to, or death of, Partner employees or the employees of Partner's related entities, or for damage to, or loss of, Partner's property or the property of its related entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

2. Partner further agrees to extend this unilateral waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against NASA, its related entities, and employees of NASA and employees of NASA's related entities for injury,

death, damage, or loss arising from or related to activities conducted under this Agreement.

3. In the event U.S. Government property is damaged as a result of activities conducted under this Agreement, Partner shall be solely responsible for the repair and restoration of such property subject to NASA direction. Partner's liability for such repair and restoration shall not be limited by the amount of an insurance policy (if any) or other protection method limits.

Insurance

NASA retains the right to require Partner to obtain insurance or to provide evidence of self - insurance, and Partner agrees to obtain insurance or maintain its self-insurance program, at no cost to the U.S. Government, protecting Partner, the U.S. Government, its employees, its related entities and the employees of its related entities from all claims, liability and damage specified in this Agreement.

4. At all times during the term of this Agreement, and at its sole cost and expense, Partner shall obtain and keep in force commercial general liability and, if necessary, commercial umbrella liability insurance, with such limits as may be required by NASA from time to time, but in any event not less than One Million Dollars (\$1,000,000) for each occurrence, including all legal liability of Partner, including, but not limited to, injury to third persons or damage to any real or personal property, including damage caused by fire or other peril, arising out of or incident to the negligence of Partner or Partner's employees, agents, contractors or invitees. Commercial general liability insurance shall be written on a form acceptable to NASA and shall cover any liability which may arise out of or be incident to use of the land and facilities at NASA by Partner or its employees, agents, contractors or invitees.

5. NASA and NASA's directors, officers and employees shall be included as additional insureds under the commercial general liability insurance policy, and under the commercial liability umbrella if any. Partner's certificate of insurance shall have attached a copy of the endorsement from each policy providing for NASA and NASA's directors, officers and employees status as additional insureds, such endorsement signed by a duly authorized official of the insurer.

6. As requested by NASA or as required by applicable federal, state, or local law, Partner shall maintain all other insurance adequate to protect NASA's facilities and land and any of Partner's activities at NASA. Other insurance may include (as applicable), but is not limited to:

- Workers Compensation and Employers Liability Insurance
- Property Insurance (Fire and Extended Coverage)
- Automobile Liability Insurance
- Aviation or Aircraft Liability Insurance

If any such insurance is required, Partner shall provide limits that shall be adequate to protect NASA's facilities and land, and the interests of NASA. NASA reserves the right to require specific coverage of any such other insurance exposure, and the amounts and form of such other insurance must be acceptable to NASA.

7. Each policy of insurance required by this Agreement covering bodily injury or third party property damage shall contain an endorsement reading substantially as follows:

“The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy.”

8. All of the insurance required under this Agreement, and all renewals thereof, shall be issued by one or more companies of recognized responsibility authorized to do business in the State of California and acceptable to NASA.

9. All policies provided for in this Agreement expressly shall be endorsed to state that coverage shall not be canceled, non-renewed, or materially changed except after thirty (30) days prior written notice to NASA.

10. Partner shall provide to NASA (to the NASA Ames Research Center Office of the Chief Counsel or other designated NASA representative) evidence (reasonably satisfactory to NASA) of all applicable insurance policies at least one month prior to commencement of the covered activity, unless NASA agrees to a shorter time period.

11. Partner shall maintain all policies provided for in this Agreement throughout the term of this Agreement, and Partner shall renew such policies before their respective expiration dates. Failure to maintain the required insurance may result in termination of this Agreement at NASA's option.

12. If NASA at any time believes that the limits or extent of coverage or deductibles with respect to any of the insurance required in this Agreement are either excessive or insufficient, NASA may determine the proper and reasonable limits and extent of coverage and deductibles for such insurance and such insurance shall thereafter be carried with the limits and extent of coverage and deductibles as so determined until further change pursuant to the provisions of this Agreement. Notwithstanding any of the foregoing to the contrary, the limits of commercial general liability insurance required under this Agreement may be increased but shall in no event be reduced.

13. No approval by NASA of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by NASA of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible. By requiring insurance herein, NASA does not represent coverage and limits will necessarily be adequate to protect Partner, and such coverage and limits shall not be deemed as a limitation on Partner's liability under this Agreement.

14. Failure of NASA to demand such certificate or other evidence of full compliance with these insurance requirements or failure of NASA to identify a deficiency from evidence that is provided shall not be construed as a waiver of Partner's obligation to maintain such insurance.

15. NASA acknowledges that Partner is self - insured and agrees that Partner may deliver a "certificate of coverage" evidencing a self - insurance program which satisfies all of NASA insurance requirements set forth above based upon Partner's planned activities and expected use of facilities at MFA as of the commencement of this Agreement. If the scope of such activities or use of facilities changes during the term of this Agreement, or if Partner's self - insurance program either ceases or coverage is reduced below the limits set forth in the "certificate of coverage," then NASA may require Partner to obtain Commercial General Liability and Umbrella Liability Insurance (and other insurance coverage, if applicable) as set forth above. Partner's "certificate of coverage" shall state that Partner's self - insurance program shall not be canceled or reduced without thirty (30) days prior written notice to NASA.

ARTICLE 8. USE OF NASA NAME AND NASA EMBLEMS AND RELEASE OF GENERAL INFORMATION TO THE PUBLIC

1. NASA Name and Initials

Partner agrees the words "National Aeronautics and Space Administration" and the letters "NASA" will not be used in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. In addition, with the exception of release of general information in accordance with paragraph 3 below, Partner agrees that any proposed public use of the NASA name or initials (including press releases resulting from activities conducted under this Agreement and all promotional and advertising use) shall be submitted by Partner in advance to the NASA Assistant Administrator for Public Affairs or designee ("NASA Public Affairs") for review and approval. Approval by NASA Public Affairs shall be based on applicable law and policy governing the use of the NASA name and initials.

2. NASA Emblems

Use of NASA emblems/devices (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) are governed by 14 C.F.R. Part 1221. Partner agrees that any proposed use of such emblems/devices shall be submitted to NASA Public Affairs for review and approval in accordance with such regulations.

3. Release of General Information to the Public

NASA or Partner may, consistent with Federal law and this Agreement, release general information regarding its own participation in this Agreement as desired. Partner

acknowledges that NASA is not bound by any provision of State law, including but not limited to the California Public Records Act Request ("CPRA"). However, NASA agrees to assist Partner's efforts to promptly and completely respond to and comply with any CPRA request Partner receives related to the issues covered by this Agreement.

ARTICLE 9. DISCLAIMER OF WARRANTY

Equipment, facilities, technical information, and services provided by NASA under this Agreement are provided "as is." NASA makes no express or implied warranty as to the condition of such equipment, facilities, technical information, or services, or as to the condition of any research or information generated under this Agreement, or as to any products made or developed under or as a result of this Agreement including as a result of the use of information generated hereunder, or as to the merchantability or fitness for a particular purpose of such research, information, or resulting product, or that the equipment, facilities, technical information, or services provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately owned rights of others. Neither the U.S. Government nor its contractors shall be liable for special, consequential or incidental damages attributed to such equipment, facilities, technical information, or services provided under this Agreement or such research, information, or resulting products made or developed under or as a result of this Agreement.

ARTICLE 10. DISCLAIMER OF ENDORSEMENT

NASA does not endorse or sponsor any commercial product, service, or activity. NASA's participation in this Agreement or supply of equipment, facilities, technical information, or services under this Agreement does not constitute endorsement by NASA. Partner agrees that nothing in this Agreement will be construed to imply that NASA authorizes, supports, endorses, or sponsors any product or service of Partner resulting from activities conducted under this Agreement, regardless of the fact that such product or service may employ NASA-developed technology.

ARTICLE 11. COMPLIANCE WITH LAWS AND REGULATIONS

The Parties shall comply with all applicable laws and regulations including, but not limited to, safety, security, export control, and environmental laws and regulations. Access by Partner to a NASA facilities or property, or to a NASA Information Technology (IT) system or application, is contingent upon compliance with NASA security and safety policies and guidelines including, but not limited to, standards on badging, credentials, and facility and IT system/application access.

Partner shall comply with the MFA Operations Manuals and Regulations set forth on Exhibit A, attached hereto.

Without limiting the foregoing, Partner shall comply with all policy directives, procedural requirements, procedures and guidelines, and standards promulgated by

NASA ARC from time to time, including with respect to construction activities, facility use, land use, historic preservation, health, safety, security and environmental standards. Notwithstanding the immediately preceding sentence, Partner shall not be obligated to comply with Ames Procedural Requirements 1700.1 available at: <http://servermpo.arc.nasa.gov/Services/CDMSDOcs/Centers/ARC/DirS/APR/APR1700.1.html>, except with respect to explosive materials; radioactive materials (as defined by the Nuclear Regulatory Commission); Class IIIa, IIIb or IV lasers or microwave or radio frequency transmitters; cryogenics; pressure systems; or human pathogens that require Center for Disease Control Biosafety level III or IV containment. Partner shall deliver prior written notice to NASA ARC before Partner manufactures, uses, stores or transports any such items on or about the MFA, and NASA shall have the right to approve (and establish requirements for, or conditions of, approval) before Partner manufactures, uses, stores, or transports any such items.

With respect to any export control requirements:

(a) The Parties will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in performing work under this Agreement. In the absence of available license exemptions/exceptions, the Partner shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data and software, or for the provision of technical assistance.

(b) The Partner shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of work under this Agreement, including instances where the work is to be performed on-site at NASA and where the foreign person will have access to export-controlled technical data or software.

(c) The Partner will be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions or exceptions.

(d) The Partner will be responsible for ensuring that the provisions of this Article apply to its Related Entities.

ARTICLE 12. TERM OF AGREEMENT

This Agreement becomes effective upon the date of the last signature below and shall remain in effect until the completion of all obligations of both Parties hereto, or one (1) year from the date of the last signature, whichever comes first. Partner may request that the term be extended by delivering written notice to NASA at least ninety (90) days before the expiration of the term. Upon NASA's receipt of any such notice, NASA shall promptly consider Partner's request and deliver to Partner written notice granting or withholding NASA's consent in NASA's sole and absolute discretion; provided, however, if NASA fails to deliver to Partner any such notice on or before the date that is forty – five (45) days before the expiration of the term, then NASA shall be conclusively

deemed to have withheld its consent and the term shall expire as provided in the first sentence of this Article 12. If duly requested and approved, the extension of the term shall be set forth in a modification of this Agreement in compliance with Article 18.

ARTICLE 13. RIGHT TO TERMINATE

1. NASA's commitment under this Agreement to make available government property and services required by Partner may be terminated by NASA, in whole or in part, (a) upon a declaration of war by the Congress of the United States, or (b) upon a declaration of a national emergency by the President of the United States, or (c) upon Partner's failure to make payments as set forth in the "Financial Obligations" clause, or (d) upon Partner's failure to meet its obligations under the Agreement, or (e) upon a NASA determination, in writing, that NASA is required to terminate such services for reasons beyond its control. For purposes of this article, reasons beyond NASA's control are reasons which make impractical or impossible NASA's or its contractors' or subcontractors' performance of this Agreement. Such reasons include, but are not limited to, acts of God or of the public enemy, acts of the U.S. Government other than NASA, in either its sovereign or contractual capacity (to include failure of Congress to appropriate sufficient funding), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.
2. In the event of termination for reasons given above, NASA will seek to provide reasonable advance notice and will seek to mitigate the effect of such termination, if possible, and will enter into discussions with Partner for that purpose. For the use of property or services provided for on a fixed-price basis, the costs incurred by the United States, including termination costs, shall not exceed the fixed price of the services which would have been provided had termination not taken place. For use of property or services provided on a cost basis, Partner will be liable for all costs, consistent with law and NASA policy, which are incurred by the U.S. Government in the provision of property or services, including termination costs associated with the Agreement activities.
3. NASA shall not be liable for any costs, loss of profits, revenue, or other direct, indirect, or consequential damages incurred by Partner, its contractors, subcontractors, or customers as a result of the termination by NASA pursuant to paragraph 1 of this section.
4. Partner shall have the right to terminate, in whole or in part, this Agreement at any time. In the event of such termination, Partner will be obligated to reimburse NASA for all Government costs which have been incurred up to the effective date of Partner's notice of termination and are incurred as a result of such termination.
5. This article is not intended to limit or govern the right of NASA or Partner in accordance with law, to terminate its performance under this Agreement, in whole or in part, for Partner's or NASA's breach of a provision in this Agreement.

ARTICLE 14. CONTINUING OBLIGATIONS

The rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of this Agreement, e.g., "Liability and Risk of Loss" and "Financial Obligations" shall survive such expiration or termination of this Agreement.

ARTICLE 15. MANAGEMENT POINTS OF CONTACTS

The following personnel are designated as the principal points of contact between the Parties in the performance of this Agreement.

NASA Ames Research Center
Technical Point of Contact:

Roy A. Williams
Chief, Aviation Management Office
Mail Stop: 158-1
Moffett Field, CA 94035
Phone: (650) 604-5050
Fax: (650) 604-3144
Roy.A.Williams@nasa.gov

Business Point of Contact

Elena Serna
Mail Stop: 158-1
Moffett Field, CA 94035
Phone: (650) 604-4135
Elena.Serna@nasa.gov

The City of San Jose
San Jose Police Department
Technical Point of Contact:

Santiago Trejo
Police Lieutenant
201 W. Mission Street
San Jose, CA 95110
Phone: (408) 277-4099
santiago.trejo@ci.sj.ca.us

Business Point of Contact

Joseph Kulas
201 W. Mission Street
San Jose, CA 95110
Phone: (408) 277-3496
Fax: (408) 277-3775

ARTICLE 16. DISPUTE RESOLUTION

Except as otherwise provided in the article entitled "Priority of Use" and those situations where a pre-existing statutory or regulatory system exists (e.g. under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under this Agreement shall be referred by the claimant in writing to the appropriate person identified in this Agreement as the "Management Points of Contact." The persons identified as the "Management Points of Contact" for NASA and the Partner will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this Agreement, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA signatory or that person's designee, as applicable will issue a written decision that will be the final agency decision for the purpose of judicial review. Nothing in this section limits or prevents either Party from pursuing any other right or remedy available by law upon the issuance of the final agency decision.

ARTICLE 17. MISHAP INVESTIGATION

In the case of a mishap or mission failure, the Parties agree to provide assistance to each other in the conduct of any investigation. For all NASA mishaps, Partner agrees to comply with NPR 8621.1B, "NASA Procedural Requirements for Mishap and Close Call Reporting, Investigating and Record keeping" and ARC safety policies.

ARTICLE 18. MODIFICATIONS

Any modification to this Agreement shall be executed, in writing, and signed by an authorized representative of NASA and the Partner. Any modification that creates an additional commitment of NASA resources must be signed by the original NASA signatory authority, or successor, or a higher-level NASA official possessing original or delegated authority to make such a commitment.

ARTICLE 19. ASSIGNMENT

Neither this Agreement nor any interest arising under it will be assigned by the Partner or NASA without the express written consent of the officials executing this Agreement.

ARTICLE 20. APPLICABLE LAW

U.S. Federal law governs this Agreement for all purposes, including, but not limited to, determining the validity of the Agreement, the meaning of its provisions, and the rights, obligations and remedies of the Parties.

ARTICLE 21. INDEPENDENT RELATIONSHIP

This Agreement is not intended to constitute, create, give effect or otherwise recognize a joint venture, partnership, or formal business organization, or agency agreement of any kind, and the rights and obligations of the Parties shall be only those expressly set forth herein.

ARTICLE 22. SIGNATORY AUTHORITY

Partner's signatory to this Agreement covenants and warrants that he/she has authority to execute this Agreement. By signing below, the undersigned agrees to the above terms and conditions.

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION
AMES RESEARCH CENTER**

**THE CITY OF SAN JOSE
SAN JOSE POLICE
DEPARTMENT**

BY: Deborah L. Feng
Deborah L. Feng
Director of Center Operations (Acting)

BY: Deanna Santana
Deanna Santana
City Managers Office

DATE: 10.15.09

DATE: 9/29/09

Approved as to form:

Evet S. Loewen
Evet S. Loewen
Chief Deputy City Attorney

EXHIBIT A

List of MFA Operations Manuals and Regulations

- JO-1, Accident/Incident Response Plan
- JO-2, Airfield Operations Manual
- JO-3, Flight Operations Manual
- JO-6, Ramp and Hangar Safety Manual
- JO-7, Wildlife Hazard Management Plan