

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

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

**AND**

**CALIFORNIA AIR NATIONAL GUARD  
129TH RESCUE WING**

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NASA AMES RESEARCH CENTER

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is dated for reference purposes as January 9, 2010, by and between the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, acting by and through Ames Research Center located at Moffett Field, California ("NASA ARC"), and the California Air National Guard ("CA ANG"). For purposes of this MOU, all actions of the ANG or ANG-sponsored occupants will be considered actions of the CA ANG, and the term CA ANG will include, as applicable, the ANG. NASA ARC and CA ANG will be known collectively as the Parties to this MOU.

RECITALS

A. The California ANG has maintained a presence at and operated from Naval Air Station Moffett Field from 1975 to the takeover under the Base Realignment and Closure (BRAC) law of that property by the NASA ARC on July 1, 1994. Since the transfer the ANG has operated at Moffett Federal Airfield at the NASA Ames Research Center under various written and implied agreements with NASA ARC. Among other things, the ANG has provided airfield security services, aircraft rescue fire fighting, structural fire services, and air traffic control services at the Property, and ANG has used and occupied various buildings and other facilities. ANG desires to maintain a long-term presence at NASA Ames Research Center, including the use of Moffett Federal Airfield.

B. NASA ARC desires to clarify its relationship with the ANG and enter into a comprehensive operating agreement to supplement the real property instrument setting forth the rights and obligations of the ANG, as represented by CA ANG, to use certain buildings and other facilities at the NASA Ames Research Center, Moffett Field. The CA ANG desires to enter into a comprehensive operating agreement relating to the use and occupancy of those buildings and other facilities essential to its mission.

C. NASA ARC has advised CA ANG that the building B47 (commonly known as Hangar 3) is within the Shenandoah Plaza Historic District (District) pursuant to the National Historic Preservation Act of 1966, as amended (the "Act") (16 U.S.C §470 et. seq.) (see Article 1.6).

D. The CA ANG conducted an Environmental Baseline Survey (EBS) in 2004 and has updated it in 2009 for this MOU and the real property instrument. The 2009 EBS is included in Exhibit F-2.

E. NASA ARC prepared the NASA Ames Development Plan and the associated Final Programmatic Environmental Impact Statement and Record of Decision for the redevelopment of the Former Naval Air Station Moffett Field in 2002 and incorporated by reference the 1997 California Air National Guard Master Plan Short Range Projects Final Environmental Assessment and Finding of No Significant Impact (FONSI). NASA ARC will reassess and incorporate in their NASA Ames

1 Development Plan the 129<sup>th</sup> RQW 2009 Master Plan, 129<sup>th</sup> RQW 2009 EBS and the 129<sup>th</sup> RQW 2009  
2 Environmental Assessment and FONSI.

3  
4 F. NASA ARC has advised CA ANG that when the Navy transferred the former Naval  
5 Air Station Moffett Field property to NASA ARC in 1994, the Navy determined that no real,  
6 permanent, quantifiable and enforceable air emission reductions would occur, thus, no air  
7 emission credits were created. Further, the Navy determined that if any such credits were  
8 created, these would be Federal Property and that the Navy would treat such credits as related  
9 Federal Personal Property and transfer them with the Federal Real Property so as to not diminish  
10 the value of the underlying Federal Real Property for reuse. See Article 4.6(e) (12).

11  
12 NOW, THEREFORE, the Parties agree as follows.  
13  
14  
15  
16

ARTICLE 1  
Premises

**1.1: Description of Premises**

Per the real property instrument, NASA ARC granted the US Air Force property at Moffett Federal Airfield, hereinafter set forth, the areas to be known as the Cantonment Area (as defined). The Cantonment Areas and the Temporary Use Areas are known collectively as the "Premises." All of the Premises are located at NASA Ames Research Center, Moffett Field, California 94035-1000 (the "Property").

**1.2: Cantonment Area(s)**

(a) The "Cantonment Areas" consist of (1) "Cantonment Area 1," approximately 111 acres of real property and all buildings, hangars, structures and other improvements located thereon (commonly known now as the ANG's cantonment area, but excluding the shared use ramp area near B-47 and the taxiway tongue). The current Munitions Storage Areas (MSAs) 1, 3, and 4 will be relocated and consolidated. MSAs 1, 3, and 4 will then be returned to NASA ARC. This MOU will be amended to reflect these and any other changes. See Exhibit A-1 for a description of Cantonment Area 1.

(b) The Cantonment Area(s) will be delineated areas for the exclusive use and possession of the ANG and will be subject to the use of deadly force, arrest and detention authority as lawfully possessed by the ANG (but see Article 1.9). The ANG has the sole authority to control all access to the area, and may grant or deny access as it determines, consistent with applicable laws and policies. The CA ANG agrees to comply with all applicable Federal, State, and local laws and regulations, and specifically all applicable Air Force Regulations. CA ANG accepts only the liability and responsibility for environmental and other conditions in the Cantonment Area for which it is or was responsible during its occupancy of the area, otherwise, the environmental conditions (including the soil and groundwater contamination) are the responsibility of the Navy, which will be conducting environmental remediation activities in and around the Cantonment and other areas used by the ANG for an unknown number of years to come (see Articles 4.7 and 4.8), or are the responsibility of other DOD organizations. CA ANG will allow the Navy access to the Cantonment Areas to address the Navy's environmental remediation activities. CA ANG will work with NASA ARC to transfer as appropriate and lawful any and all permits or licenses from any Federal, State, or local regulatory agencies so as to relieve NASA ARC of any responsibilities or liabilities inherent in possessing such permits or licenses. Those permits or licenses not appropriate or lawful to transfer to CA ANG will remain the responsibility of the NASA ARC, and CA ANG will allow NASA ARC access as necessary for activities related to holding such permits or licenses or demonstrating to regulatory agencies that the threshold for obtaining such permit or license has not been met. In addition, NASA ARC will have access to the Cantonment Areas in order to service, repair, or replace utility systems in these areas. Utility systems and easements will be indicated on appropriate maps, included in Exhibit H.

(c) Cantonment Area(s) will be provided by NASA ARC to CA ANG on a no-charge (no Institutional Shared Pool (ISP)) basis. Demand services will be charged to CA ANG as requested by the CA ANG.

1 (d) Cantonment Area(s) is specified in and outlined on the plans attached as Exhibit A-1.  
2 Cantonment Area boundaries with shared use areas will be clearly defined by fence or a white line on  
3 airfield pavements. Use of DoD deadly force authorities will be identified by signs on Cantonment  
4 Area boundary fences or by a red line on the airfield pavements.  
5

6 **1.3: Temporary Use Areas (TUAs)**

7 (a) The "Temporary Use Areas" consist of those areas, buildings, and facilities which the ANG  
8 is currently occupying but plans to vacate as soon as practicable, relocating into the Cantonment  
9 Area(s). The Temporary Use Areas are specified and outlined on the plans attached as Exhibit A-  
10 3. These are areas which are also for the exclusive use and possession of the ANG but which  
11 will not be sealed or subject to the same ANG authority regarding access, use of deadly force,  
12 arrest and detention authority as exercised in the Cantonment Areas.  
13



7(e), 7(f)

14  
15  
16  
17  
18  
19 (c) The CA ANG's use of the Temporary Use Areas, buildings and facilities constitutes agreement  
20 that the CA ANG will sign and be subject to the NASA ISP cost sharing described in the "Services  
21 and Cost Sharing Methodologies For Resident Agencies" (Blue Book) and agrees to pay the Blue  
22 Book rate published in the "Annual Blue Book, Services and Costs, Cost Sharing Addendum" as  
23 long as the ANG is using them. If areas are vacated or temporarily expanded incrementally,  
24 costs will be reduced or increased no later than the end of that current quarter. Demand Services  
25 will be charged to the CA ANG as identified in the Blue book. In addition, NASA ARC will have  
26 access to the Temporary Use Areas in order to service, repair, or replace utility systems in these  
27 areas. Utility systems and easements will be indicated on appropriate maps, included in Exhibit  
28 H. Both parties have discussed the possibility that consolidation from one TUA area to another as  
29 being feasible and potentially beneficial to both parties. Adjustments that result in a reduction in  
30 overall CA ANG use of TUA's may be approved at the Wing level with MAJCOM and Headquarter  
31 Air Force notification. Adjustments resulting in any increase in CA ANG square footage of vertical  
32 structures or square yardage of horizontal surfaces must be approved in writing by NGB or higher in  
33 accordance with AFI 32-1021, Chapter 6 (Temporary Use).  
34

35 (d) The Parties agree that, for purposes of this MOU, the Premises and the Buildings in which  
36 the Premises are located each contains the number of square feet of land area and building area  
37 specified on Exhibit A-3 attached hereto. The Parties also agree to review the square footage  
38 quarterly to ensure that the bill to the ANG and corresponding payment align.  
39

40 **1.4: Common Areas of the Property and Access to Premises**

41  
42 Provisions for common area use are addressed in the real estate permit and will not be duplicated here.  
43 Please refer to permit.  
44  
45  
46



1 **1.5: Historic Property**

2  
3 Provisions for use of the historic properties are addressed in the real estate permit and will not be  
4 duplicated here. Please refer to permit.

5  
6 **1.6: Agreement on Use of Personal Property and Equipment**

7  
8 It is not expected that the CA ANG will need to use any NASA personal property during the term  
9 of this MOU.

10  
11 **1.7: Plan for Construction/Modifications/Vacating of Facilities**

12  
13 (a) Cantonment Areas

14  
15 (1) NASA ARC will not require the CA ANG to demolish or raze any buildings or other  
16 structures (Collectively referred to as "facilities") that exist in the Cantonment Areas as of  
17 the signing of this Permit, except for any new facilities constructed after the date of the  
18 signing of this agreement.

19  
20 (2) New facilities are considered to include either a completely new building or  
21 structures, or any major new structural additions to facilities existing prior to the signing  
22 of this agreement. Major additions are considered to be those valued over \$100,000.  
23 CA ANG agrees to comply with the provisions of NPR 8820.2F (Exhibit L), to include  
24 required notices and reporting. All expenses associated with the demolition or razing of  
25 building or other structures will be solely at CA ANG's expense. The scope of the  
26 demolition will be to remove the structure and bring the grounds to match the  
27 surrounding state.

28  
29 (3) Upon permit termination, the Landlord will determine which of the structures should be  
30 demolished by the tenant and which of the structures should be pickled by the Tenant. Pickling  
31 to meet Air Force standards (Exhibit I-1).

32  
33 (b) TUAs

34  
35 (1) The CA ANG has operated facilities on the Premises for more than 33 years. The  
36 CA ANG and NASA ARC agree that it is in their mutual best interest for the CA ANG to  
37 develop a plan, within 9 months of signing the permit, for the relocation of all CA ANG  
38 functions to the Cantonment Areas and vacating the TUAs (See Exhibit J).  
39 The plan should establish a target date in 2015, or earlier if possible, as the date by which all  
40 temporary use areas will be vacated. It is understood that the TUA relocations are subject to the  
41 approval and funding of the required facilities via the Air Force POM and Congressional  
42 authorization/appropriation. For NASA ARC, achieving this relocation results in the ability to  
43 reuse the current TUA's for other NASA purposes. For the CA ANG, vacating the TUA's is  
44 beneficial because it eliminates the ISP charges. CA ANG and NASA ARC will make a good  
45 faith effort to cooperate in completing the requisite reviews in the desired timeframe.  
46

1 (2) NASA ARC will not require the CA ANG to demolish or raze any buildings or other  
2 structures that exist in the TUAs as of the signing of this MOU. The Parties agree that in  
3 exchange for Cantonment Area, the parties will jointly pursue congressional funding support  
4 for the removal of the MSA-1 structures. Other buildings will be left under Air Force pickling  
5 standards as agreed to between NASA ARC and CA ANG (See Exhibit 1-2). CA ANG agrees  
6 to coordinate with NASA ARC regarding whether buildings or other structures constructed  
7 after the signing of this MOU should be demolished at CA ANG's expense or turned over intact  
8 to NASA ARC under Air Force pickling standards, as NASA ARC chooses.  
9

10 **1.8: Use of Moffett Federal Airfield**

11  
12 Use of Moffett Federal Airfield by Tenant is not provided by this MOU, but will be covered by a  
13 separate agreement between Tenant and Landlord. If that Agreement is terminated for any reason, the  
14 Parties will negotiate as to appropriate follow-on arrangements.

15  
16 **1.9: Legislative Jurisdiction**

17  
18 Provisions regarding legislative jurisdiction are addressed in the real estate permit and will not be  
19 duplicated here. Please refer to permit.  
20  
21

1  
2  
3 ARTICLE 2

4 Term

5 **2.1: Term of MOU**

6 The term of this MOU (the "Term") will be one year with 49 automatic annual renewals, commencing  
7 on the date of execution by both Parties (Term Beginning Date), unless sooner terminated as specified  
8 elsewhere in this MOU; provided further that adequate appropriations are available from year to year.  
9 The evaluation of the terms and conditions of MOU renewal will be at a mutually-agreed time and in a  
10 manner consistent with Air Force instructions and NASA's similar authority.  
11

1  
2  
3 ARTICLE 3  
4 Consideration

5 **3.1: Consideration**

6 (a) During the Term, CA ANG shall perform the obligations as set forth in the MOU and pay to  
7 NASA ARC for requested Demand Services. Payments are due quarterly per Article 3.2(a)(4) below.  
8 NASA ARC and CA ANG (or its designee) will enter into an "Intergovernmental Support Agreement"  
9 (Exhibit D outlining Demand Services that NASA ARC can provide to CA ANG, and the initial  
10 estimated costs of such Demand Services. Services include but are not limited to: (i) common  
11 grounds and road maintenance; (ii) security; (iii) structural fire response and periodic Fire Marshal  
12 inspections; (iv) first responder operations (Hazardous Material (as defined in Article 4. 1(a)); (v)  
13 utility infrastructure systems maintenance and repair; (vi) wildlife and wildlife pest management; (vii)  
14 vegetation and weed control; and (viii) routine administrative support and management oversight (i.e.  
15 environmental oversight) related to this MOU. NASA ARC Rates are updated annually and  
16 documented in the Blue Book Cost Sharing Addendum (Exhibit C-3). "Demand Services" shall mean  
17 all materials or services other than ISP Services that may be requested by CA ANG and furnished by  
18 NASA ARC, whether pursuant to the Intergovernmental Support Agreement or otherwise. Demand  
19 services will be charged to CA ANG as requested by the CA ANG in either the Temporary Use Areas  
20 or the Cantonment Areas.

21  
22 **3.2: Procedure**

23  
24 (a) Unless otherwise agreed to by the Parties, the consideration payable by CA ANG shall be  
25 calculated and paid in accordance with the following procedures:

26  
27 (1) Immediately following the execution of this MOU (and thereafter promptly following  
28 the beginning of each Government fiscal year). NASA ARC and CA ANG shall execute the  
29 Intergovernmental Support Agreement or a supplement or amendment thereto covering  
30 the Demand Services that may be requested by CA ANG from NASA ARC.  
31 If requested by NASA ARC, CA ANG shall execute a DD Form 1144 or such other  
32 comparable documents that allow NASA ARC to establish a reimbursable account. The  
33 estimated costs of Demand Services for that fiscal year shall be established by NASA ARC and  
34 shall be set forth in the annual Intergovernmental Support Agreement, or the supplement or  
35 amendment thereto.

36  
37 (2) Cost estimates for services and reimbursement thereof, shall be consistent with  
38 Applicable Laws.

39  
40 (3) If the Term commences or ends on a day other than the first or last day of the  
41 Government's fiscal year, respectively, the amounts payable by CA ANG applicable to the  
42 fiscal year in which such term commences or ends shall be prorated according to the ratio  
43 which the number of days during the Term in such fiscal year bears to three hundred  
44 sixty-five (365). Termination of this MOU shall not affect the obligations of NASA ARC  
45 and CA ANG to be performed after such termination.  
46

1 (4) CA ANG shall make estimated payments on the first day of each calendar quarter  
2 during the Term for Demand Services requested by CA ANG. If any such  
3 payment exceeds the actual costs, then the excess amount shall be credited against the  
4 next quarterly payment due (or if the MOU is terminated, shall be refunded to CA ANG). If  
5 any such estimated payment is less than the actual costs, then CA ANG shall pay the  
6 amount due promptly after NASA ARC delivers to CA ANG notice of the amount due.  
7

8 **3.3: Payment Address**  
9

10 Unless otherwise agreed to by the Parties and notified by the NASA ARC in writing, CA ANG shall  
11 pay all consideration under this MOU to "NASA Ames Research Center" at the address provided in  
12 the "Intergovernmental Support Agreement" (ISA) or ISA amendment memorandum. NASA ARC  
13

14 NASA AMES RESEARCH CENTER  
15 NASA Shared Services Center--FMD Accounts Receivable  
16 ATTN: For the Accounts of Ames Research Center  
17 Bldg. 1111, C-Road  
18 Stennis Space Center, MS 39529  
19

20  
21 CA ANG shall make payment using Treasury's Intra-Governmental Payment and Collections (IPAC)  
22 System.  
23  
24

1 ARTICLE 4

2 Permitted Uses of the Premises & Environmental Matters

3 **4.1: Definitions Applicable to All Areas**

4 Provisions regarding "Hazardous Material", "Environmental Law", "Permitted Activities", and  
5 "Permitted Materials" are addressed in the real estate permit and will not be duplicated here. Please  
6 refer to permit.  
7

8 **4.2: Representations**

9 Provisions regarding Representations are addressed in the real estate permit and will not be duplicated  
10 here. Please refer to permit.  
11

12 **4.3: Permitted Uses/Ground Rules Applicable to all Areas**

13 (Cantonment/TUA/Shared/Common)

14 (a) CA ANG shall, on the Premises, and at CA ANG's sole cost and expense, promptly comply with  
15 all applicable Federal, State and local laws, ordinances, rules, regulations, codes (including the  
16 Public Building Act of 1959, as amended, and as implemented by local authorities), orders and  
17 other requirements of any government regulatory authority now in force or which may hereafter  
18 be in force, with all requirements of any board of fire underwriters such as the National Fire  
19 Protection Association or other similar body now or hereafter constituted, insofar as any thereof  
20 relate to or are required by the condition, use or occupancy of the Premises or the operation, use  
21 or maintenance of any Personal Property, machinery or improvements on the Premises  
22 (collectively, "Applicable Laws").  
23

24 (b) On the Premises, CA ANG shall provide copies of completed AF813 environmental review  
25 forms or their equivalent to the NASA ARC. CA ANG shall give 120 days written notice of proposed  
26 actions that may be outside the scope of existing NEPA documentation by providing copies of  
27 completed AF813 forms or equivalent form to the NASA ARC Environmental Division. On the  
28 Premises, if CA ANG proposes an action outside of the scope of the NASA Ames Development  
29 Plan, Final Programmatic Environmental Impact Statement (the "NADP-EIS") (July 2002), and  
30 the Record of Decision (the "ROD"), CA ANG shall engage NASA ARC in the process of preparing  
31 the required environmental documentation as per Applicable Laws, including regulations of the  
32 Council on Environmental Quality (CEQ), USAF, and NASA. Costs for preparing appropriate  
33 environmental documentation and any related costs shall be the CA ANG responsibility or be borne  
34 by CA ANG as a Demand Service. NASA ARC and CA ANG shall work together to do any due  
35 diligence as required by law.  
36

37 (c) The CA ANG shall take reasonable steps to notify the NASA ARC of an emergency, mitigate  
38 harm to the NASA ARC, including by allowing access by NASA ARC to respond to emergencies  
39 affecting NASA ARC's interests and responsibilities (e.g., drinking water system), and provide  
40 information to NASA ARC to assist in reporting to regulatory agencies.  
41

42 (d) CA ANG shall not disturb or remove any archeological resources without NASA ARC's  
43 permission and shall immediately report any discoveries to NASA ARC's Cultural Resource  
44 manager or Facilities Preservation Officer.

1  
2 **4.4: Permitted Uses/Ground Rules Applicable to Cantonment Areas**

3 (a) The Cantonment Areas shall be for the exclusive use of the CA ANG to conduct its lawful  
4 duties and activities. NASA ARC shall have no responsibilities or liabilities to CA ANG within the  
5 Cantonment Areas, except to perform Demand Services for the CA ANG. NASA ARC shall have no  
6 access into the Cantonment Areas except to perform such Demand Services, unless otherwise  
7 granted by CA ANG. CA ANG shall be responsible and liable for any duties and activities it  
8 conducts or allows to be conducted in the Cantonment Areas. This includes but is not limited to  
9 third party liability as per Article 7. CA ANG shall obtain all applicable Federal, State, or local  
10 permits, licenses, and other legal documents and authorities necessary for legally conducting its  
11 duties and activities in the Cantonment Areas, and NASA ARC shall not be responsible for  
12 obtaining such for CA ANG's activities. If NASA ARC has been obtaining any permits, licenses, or  
13 other legal documents or authorities for CA ANG in the past or present, CA ANG shall promptly take  
14 all necessary actions to obtain in its own name such permits, licenses, or other legal documents  
15 or authorities. A list of all such documents will be provided by the NASA ARC and included as  
16 Exhibit F-1.

17  
18 (b) If CA ANG cannot obtain in its own name any particular permit, license, or other legal  
19 document or authority, finding that NASA ARC must be the legal entity which obtains and holds  
20 such, then NASA ARC shall continue to do this for CA ANG, and it will be considered a Demand  
21 Service and handled as any other Demand Service.

22  
23 (c) If CA ANG can obtain any particular permit, license, or other legal document or authority but  
24 decides that it does not wish to do so, NASA ARC will continue to perform such duties and such  
25 will be considered Demand Services. Until such time as the CA ANG finds that it cannot or does  
26 not want to obtain in its own name any particular permit, license, or other legal document or  
27 authority, the NASA ARC shall continue to have access to the Cantonment Areas to maintain and  
28 administer such permit, license, or other legal document or authority or, if required by regulation  
29 or statute, to demonstrate that the threshold for obtaining such permit, license, or other legal  
30 document or authority has not been met (i.e., a negative finding), and be reimbursed by CA ANG as  
31 a Demand Service, although NASA ARC shall first contact CA ANG to arrange such access each time  
32 it needs such access.

33  
34 (d) CA ANG shall make notices as may be required by law to the National Response Center and  
35 other agencies for removal or discharges to the environment. CA ANG shall also inform NASA  
36 when such notices have given.

37  
38 **4.5: Permitted Uses/Ground Rules Applicable to TUAs**

39 (a) CA ANG shall use each portion of the Temporary Use Areas for the purposes set forth on  
40 Exhibit A-3 attached hereto, and for lawful purposes incidental thereto, and no other purpose  
41 whatsoever. CA ANG shall not do anything, and shall not permit anything to be done, in or about  
42 the Temporary Use Areas in violation of Applicable Laws, or which constitutes a nuisance, or  
43 which will unreasonably obstruct or interfere with the rights of NASA ARC or other CA ANGs or  
44 users of the Property. CA ANG shall not receive, store or otherwise handle any product or material that  
45 is explosive or highly flammable, except in accordance with Applicable Laws and delivering the  
46 notice required in the [REDACTED] Due to the nearby Shenandoah

7(e), 7(f)

1 Plaza Historic District, CA ANG shall not install any signs on the Temporary Use Areas (or  
2 elsewhere on the Property, except in the Cantonment Areas) without the prior written consent of  
3 NASA ARC. CA ANG shall, at CA ANG's expense, remove all such signs prior to or upon termination  
4 of this MOU, repair any damage caused by the installation or removal of such signs from all  
5 Areas, and restore the Temporary Use Areas (or other portions of the Property, if any signs are  
6 installed thereon) to the condition that existed before installation of such signs.

7  
8 (b) CA ANG shall comply with all policy directives, procedural requirements, procedures and  
9 guidelines, and standards promulgated by NASA ARC or NASA Ames Research Center pertaining  
10 to construction activities, facility use, land use, historic preservation (Exhibit F-3), security and  
11 environmental standards (including Environmental Law. NASA ARC shall use reasonable efforts to  
12 provide notice to CA ANG of changes to policy directives, procedural requirements, procedures  
13 and guidelines, and standards promulgated by NASA ARC or NASA Ames Research Center  
14 pertaining to construction activities, facility use, land use, historic preservation, security and  
15 environmental standards (including Environmental Law), and CA ANG acknowledges that it will  
16 have access to NASA ARC's computer system to access the same and to confirm the most recent  
17 versions thereof.

18  
19 (c) With respect to safety and health matters, the Parties acknowledge and agree that CA ANG, its  
20 employees and contractors (and not NASA ARC or its employees or contractors) are using and  
21 operating the Premises and, therefore, CA ANG shall comply, and shall cause its contractors to  
22 comply, with CA ANG's applicable laws, regulations, policies and standards with respect to safety  
23 and health (collectively, "CA ANG's Safety Standards")

24  
25  
26  
27  
28 [REDACTED] NASA ARC shall have the right to approve (and  
29 establish requirements for, or conditions of, approval) before CA ANG manufactures, uses, stores  
30 or transports any such items.

31  
32 (d) NASA ARC shall have the right to enter the TUAs upon reasonable prior notice (which may be  
33 oral or written) provided to CA ANG's Administrative POC (Article 12.1) (except in case of an  
34 emergency or other circumstance in which prior notice cannot reasonably be given) in order to  
35 (a) inspect the TUAs (including the storage, use and handling of any Hazardous Material), (b)  
36 determine whether CA ANG is performing all of CA ANG's obligations, (c) supply any service to be  
37 provided by NASA ARC, and (d) do any maintenance, make any repairs to any adjoining space or  
38 utilities, or make any repairs, alterations or improvements to any other portion of the Property,  
39 provided all such work shall be done as promptly as reasonably practicable and so as to cause as  
40 little interference to CA ANG as reasonably practicable. NASA ARC also specifically reserves the  
41 following rights: (i) to control ingress to and egress from the Property, to erect and maintain  
42 gates, and to regulate or prevent traffic; and (ii) on behalf of NASA ARC, the United States  
43 Environmental Protection Agency, the State of California and other entities and governmental  
44 agencies that are involved in the remediation of, or that are responsible to remediate, existing  
45 contamination on or about the Property, the right to have unobstructed access to known or  
46 suspected areas of contamination or other areas upon which any containment system, treatment

7(c), 7(c)



1 system, monitoring system, or other environmental response action is installed or implemented,  
2 or to be installed or implemented, for the purposes of the complying with Environmental Law.  
3 CA ANG shall provide NASA ARC with copies of keys for all locks for all doors in, on or about the  
4 TUAs (excluding CA ANG's vaults, safes and similar special security areas designated in writing  
5 by CA ANG). NASA ARC retains the right to use any and all means which NASA ARC may deem  
6 proper to open such doors in an emergency to obtain entry to the TUAs. An "emergency" is  
7 defined as an imminent threat of severe bodily injury or harm to persons or property on or about  
8 the TUAs, and it shall include severe environmental harm.

9  
10 **4.6: Environmental Ground Rules Applicable to All Areas**  
11 (Cantonment/TUA/Shared Use/Common)

12 (a) Except as otherwise specifically provided in this MOU, or unless the presence of Hazardous  
13 Substances was caused by the activities of CA ANG, if CA ANG prepares an updated EBS, in  
14 accordance with applicable Air Force instructions, CA ANG assumes no liability for existing  
15 Hazardous Material identified in the EBS; no obligation for any existing conditions identified by  
16 the EBS (including any obligation to undertake the defense of any claim or action related to any  
17 such existing conditions); and no obligation to incur any costs for any clean-up or management  
18 of any existing Hazardous Material identified in the EBS or which is on, under, in or about the  
19 Property as of the Commencement Date. NASA ARC reserves the right to prepare an independent  
20 EBS at any time. (Environmental reports are addressed in Article 4.9 and attached (Exhibit F-2.)

21  
22 (b) CA ANG has prepared a detailed Hazardous Materials Business Plan (HMBP) to prevent the  
23 removal of additional Hazardous Material and to prevent CA ANG or its employees, agents or  
24 contractors from exacerbating or causing a removal of the existing Hazardous Material described  
25 in CA ANG's 2004 Environmental Baseline Survey (EBS), included in Exhibit F-2. CA ANG agrees  
26 to provide an updated HMBP in response to an updated EBS to be completed by CA ANG and  
27 submitted to NASA ARC within one (1) year of the signing of the MOU, and each year thereafter.

28  
29 (c) CA ANG hereby agrees that, for the Premises:

30  
31 (1) CA ANG shall not conduct, or permit to be conducted any activity which is not a Permitted  
32 Activity;

33  
34 (2) CA ANG shall not use, store or otherwise handle, or permit any use, storage or other  
35 handling of, any Hazardous Material which is not a Permitted Material;

36  
37 (3) CA ANG shall obtain and maintain in effect all permits and licenses required pursuant to  
38 any Environmental Law for CA ANG's activities;

39  
40 (4) CA ANG shall at all times comply with all applicable Environmental Law;

41  
42 (5) CA ANG shall not engage in the storage, treatment or disposal of any Hazardous Material  
43 except for any temporary accumulation of waste generated in the course of Permitted  
44 Activities;

45  
46 (6) CA ANG shall not install any aboveground or underground storage tank or any subsurface

1 lines for the storage or transfer of any Hazardous Material, except in accordance with  
2 Environmental Law;

3  
4 (7) CA ANG shall store all Hazardous Materials in a manner that protects the Premises, the  
5 Buildings, the Property and the environment from accidental spills and removal;

6  
7 (8) CA ANG shall not cause or permit to occur any removal of any Hazardous Material or any  
8 condition of pollution or nuisance on or about the Premises, whether affecting surface water  
9 or groundwater, air, the land or the subsurface environment;

10 (9) CA ANG shall promptly remove from the Premises any Hazardous Material introduced, or  
11 permitted to be introduced, onto the Premises by CA ANG which is not a Permitted Material  
12 and, on or before the date CA ANG ceases to occupy the Premises, CA ANG shall remove  
13 from the Premises all Hazardous Materials and all Permitted Materials handled by or permitted  
14 on the Premises by CA ANG;

15  
16 (10) if any removal of a Hazardous Material to the environment, or any condition of pollution  
17 or nuisance, occurs on or about or beneath the Premises or any of the Buildings as a result of  
18 any act or omission of CA ANG or its agents, employees, contractors, invitees, permittees or  
19 licensees, CA ANG, at CA ANG's sole cost and expense, shall promptly undertake all remedial  
20 measures required to clean up and abate or otherwise respond to the removal, pollution or  
21 nuisance in accordance with all applicable Environmental Laws; and

22  
23 (11) as soon as possible following the expiration or earlier termination of this MOU (and in  
24 all events within one hundred eighty (180) days thereafter), CA ANG shall document any  
25 environmental changes in, on, under or about the Premises in accordance with Air Force  
26 Instruction 32-7266.

27  
28 (12) Any air emission credits resulting from the permanent reduction in air emissions from  
29 CA ANG's permitted air emission sources on the Premises in accordance with the Bay Area  
30 Air Quality Management District regulations on emissions banking shall be considered  
31 related Personal Property. (See Navy memorandum "EMISSIONS REDUCTION  
32 CREDITS FROM THE CLOSURE OF NAS MOFFETT FIELD," 2 June 1993, included in  
33 Exhibit F-2.)  
34

35 **4.7: Environmental Matters Applicable to Cantonment Areas**

36 (a) CA ANG will be responsible for complying with all lawful orders from regulatory agencies or  
37 the Courts pertaining to the cleanup of the groundwater contamination. NASA has no  
38 responsibility for any contamination in the Cantonment Areas, and will expect that either the  
39 Navy or the CA ANG will be responsible for cleaning up such contamination.  
40

41 (b) CA ANG's activities in the Cantonment Areas that the CA ANG requests continue to be included  
42 under the NASA ARC's site wide permits and other legal authorities will continue to be included in  
43 those permits, reports, and plans as applicable, which also will be described in Exhibit F-I.  
44 CA ANG is responsible for obtaining applicable individual Hazardous Material storage permits  
45 with respect to its use of the Premises and its activities thereon and at the Property. CA ANG  
46 agrees not to apply for an air permit unless CA ANG proposes a new air pollution source, and if

1 any such new source results in additional costs to NASA ARC (whether related to the Premises or  
2 the Property) under Environmental Laws (including the Clean Air Act, as amended, 42 U.S.C.  
3 §7401 et seq.), then CA ANG shall reimburse NASA ARC for such costs as additional consideration  
4 under this MOU. NASA ARC agrees to cooperate in good faith to assist CA ANG in complying with  
5 any of these requirements, which cooperation and assistance shall constitute a Demand Service.  
6

7 **4.8: Environmental Matters Applicable to TUAs**

8 CA ANG's activities in the TUAs will continue to be included in NASA ARC's site wide permits,  
9 reports, and plans, as applicable (Exhibit F-1). CA ANG shall promptly supply information to  
10 NASA ARC's Environmental Office that is needed to complete these documents, and CA ANG shall  
11 comply with the conditions of these permits, reports, and plans. CA ANG is responsible for  
12 obtaining applicable individual Hazardous Material storage permits with respect to its use of the  
13 Premises and its activities thereon and at the Property. CA ANG agrees not to apply for an air  
14 permit unless CA ANG proposes a new air pollution source, and if any such new source results in  
15 additional costs to NASA ARC (whether related to the Premises or the Property) under  
16 Environmental Laws (including the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.), then  
17 CA ANG shall reimburse NASA ARC for such costs as additional consideration under this MOU.  
18 NASA ARC agrees to cooperate in good faith to assist CA ANG in complying with any of these  
19 requirements, which cooperation and assistance shall constitute a Demand Service.  
20

21 **4.9: Environmental Reports**

22 CA ANG hereby acknowledges receipt of the NASA ARC's environmental reports listed on attached  
23 Exhibit F-2.  
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4 ARTICLE 5  
5 Utilities

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35 **5.1: Utility Terms/Ground Rules Applicable to all Areas**  
36 (Cantonment/TUA/Shared/Common)

37 (a) NASA ARC and CA ANG hereby agree that utilities will be provided to the Premises in  
38 accordance with the Utility Plan (Exhibit H) and Intergovernmental Support Agreement (Exhibit D).  
39 The Utility Plan sets forth the basis for determining the utility charges for the Premises.

40 (b) NASA ARC shall not be in default under this MOU or be liable for any damage or loss directly  
41 or indirectly resulting from any interruption of or failure to supply or delay in supplying any  
42 utilities which results from mandatory restrictions or voluntary compliance with guidelines. The  
43 foregoing sentence includes any limitation, curtailment, rationing or restriction on use of water,  
44 electricity, gas, sewers, or stormwater drains or any resource or form of energy or other service  
45 serving the Premises or the Property.

46 (c) CA ANG is authorized to design and develop utility corridors to and from the Cantonment  
Areas, TUAs, NASA ARC utility service points, and utility company service points as required by  
the CA ANG. NASA ARC agrees to work with the CA ANG in such design and development, but  
any costs associated with such efforts such as digging and permit processing will be borne by  
the CA ANG. Moreover, CA ANG agrees to comply with NASA ARC policies and procedures for  
work in areas outside of Cantonment Areas.

NASA ARC will support the CA ANG design and development of utility corridors to and from the  
Cantonment Areas, the TUAs, the NASA ARC utility service points, and utility company service  
points as required by the CA ANG. Support includes items like digging permit processing.

(d) CA ANG will coordinate utility systems and corridor improvements with NASA ARC prior to  
commencing any work.

(e) CA ANG shall pay for all utilities supplied (Gas, Electric, Water, Sewer, Storm water,  
communications... ) and services provided to the Premises as Demand Services in accordance  
with Article 3 as implemented by Exhibit D.

35 **5.2: Utility Terms/Ground Rules Applicable to Cantonment Areas**

36 CA ANG will fund and install of meter, backflow devices, sampling ports, and other such  
37 equipment in or necessary for the Cantonment Areas. Any plans to use a service provider other  
38 than the NASA ARC will be coordinated with the NASA ARC.

39  
40 **5.3: Utility Terms/Ground Rules Applicable to TUAs**

41 NASA ARC shall furnish utilities to the TUAs in accordance with NASA ARC's current practices and  
42 standards for the Property, subject to temporary shut down for repairs, for security purposes, for  
43 compliance with any Applicable Laws or due to any event or occurrence beyond NASA ARC's  
44 reasonable control.

45  
46 ARTICLE 6

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3 Maintenance and Repairs

4 **6.1: Maintenance and Repairs/Ground Rules Applicable to all Areas**

5 (Cantonment/TUA/Shared/Common)

6 (a) CA ANG shall give NASA ARC written notice of the need for any maintenance or repair for  
7 which NASA ARC is responsible, after which NASA ARC shall have a reasonable opportunity to  
8 perform the maintenance or make the repair. Any damage to any part of the Property for which NASA  
9 ARC is solely responsible that is caused by CA ANG or any agent, employee, contractor, invitee,  
10 permittee or licensee of CA ANG shall be investigated for line of duty determination and under the  
11 accident and mishap investigation procedures described in Article 12. CA ANG reimbursement will  
12 follow the investigation findings for CA ANG's prompt reimbursement of the repairs incurred by  
13 NASA ARC.

14 (b) During the Term, CA ANG shall, at CA ANG's sole cost and expense, maintain and repair and  
15 upgrade the Premises and the Buildings and every part thereof (except only the parts for which  
16 NASA ARC is expressly made responsible under this MOU) and all equipment, fixtures and  
17 improvements therein, and keep all of the foregoing clean and in good order and operating  
18 condition, ordinary wear and tear excepted. CA ANG agrees that its obligations under this article  
19 6.1 include with respect to all buildings: (1) with respect to the electrical power (including  
20 auxiliary supporting systems and equipment, such as HVAC equipment) and natural gas utility  
21 systems, to the points of connection described on, and shown on the diagram of utility  
22 connections, attached hereto as Exhibit H; and (2) with respect to any common areas of the  
23 Property and the utility systems other than electrical power and natural gas, to the point which is  
24 five (5) feet from the exterior walls of all TUA buildings. CA ANG shall promptly repair any  
25 damage to the Premises caused by CA ANG or any agent, employee, contractor, invitee, permittee  
26 or licensee of CA ANG.

27  
28 **6.2: Maintenance and Repairs /Ground Rules Applicable to Cantonment Areas**

29 (a) In the Cantonment Areas, any service NASA ARC provides will be a Demand Service included  
30 but not limited to hydrant flushing and high voltage transformer maintenance (Exhibit H)

31  
32 (b) CA ANG shall be responsible for the exterior and interior of these facilities, including but not  
33 limited too, roofs, structural elements, mechanical and electrical systems.

34  
35 (c) Alterations By CA ANG: CA ANG agrees to comply with the provisions of NPR 8820.2, to  
36 include required notices and reporting. CA ANG shall maintain plans and specifications (including  
37 as - built plans) and shall obtain any permits required for such work. For improvements to the to the  
38 NASA ARC buildings greater than \$100,000, NASA ARC must coordinate with NASA HQs and CA  
39 ANG and receive authority prior to CANG proceeding. Permittee acknowledges that the NASA ARC  
40 buildings must gain NASA HQ's authorization to proceed with the action because it is a NASA  
41 responsibility for real property reporting. Assuming Permittee has timely provided the list of  
42 improvements to be constructed in future years, Permittor understands that untimely authorization may  
43 result in the loss of both federal and state funding and will make every effort to ensure the  
44 authorization is provided in a timely manner. Permittor will not unreasonably withhold authorization.

45  
46 (d) The CA ANG agrees to provide the NASA ARC with a list of improvements projected to be

1 constructed in future years. The list will be provided to the NASA ARC at least semi-annually or  
2 more often when the 129th Rescue Wing (RQW) Facility Board approves the list. The CA ANG  
3 expects to receive NASA approval within 30 days. In the case of a bona fide emergency (to  
4 protect health and safety of the personnel and/or property from further damage) the CA ANG may  
5 begin repairs prior to NASA approval. The CA ANG will notify the NASA ARC of the emergency  
6 repairs as soon as practicable.

7  
8 (e) NASA ARC shall maintain and repair electrical, gas, sewer, water and storm drain systems up to  
9 the boundary of the Cantonment areas. The CA ANG shall be responsible for all distribution utilities  
10 inside the boundaries of the Cantonment Areas. NASA will retain ownership of mainline transmission  
11 utilities that service other Moffett Tenants by passing through the Cantonment Areas. The CA ANG  
12 shall be responsible inside the boundaries of the Cantonment Areas. The CA ANG may elect to have  
13 NASA ARC make repairs as a demand service.

14  
15 (f) CA ANG is responsible for paying sewer costs in Cantonment Areas based on actual water  
16 meter readings.

17  
18 (g) CA ANG is responsible for paying storm water costs in Cantonment Areas. The amount of this  
19 cost will be determined in the calculation of the DD1144 Demand Service section.

20  
21 **6.3: Maintenance and Repairs Ground Rules Applicable to TUAs**

22 (a) CA ANG shall be responsible for the exterior and interior of these facilities, including but not  
23 limited too, roofs, structural elements, mechanical and electrical systems. NASA ARC retains  
24 leadership and responsibility for Hangar 3, and CA ANG will maintain the interior of the facility to the  
25 extent of its utilization of that facility. In MSAs 1, 3 and 4, besides the exterior and interior of the  
26 facilities, the CA ANG shall be responsible for the security fencing, lighting and alarm systems, since  
27 they are the sole beneficiary of these security elements.

28  
29 (b) Alterations By CA ANG: CA ANG shall provide NASA ARC with plans and specifications  
30 (including as - built plans) and shall obtain any permits required for such work as provided  
31 below. Permits shall be only for purposes of notification to NASA ARC. In addition, CA ANG shall  
32 obtain hot-work permits from the NASA Safety, Health and Medical Services Division during  
33 normal business hours at least twenty - four (24) hours prior to performing any welding, cutting,  
34 torching or similar open flame work in the TUAs. CA ANG shall make all such alterations,  
35 additions and improvements in or to the Premises at CA ANG's sole cost and expense as follows:

36  
37 (1) CA ANG shall provide NASA ARC with complete plans and specifications for all  
38 alterations, additions and improvements. Such plans and specifications shall be prepared  
39 in accordance with CA ANG's existing regulations and NASA ARC's policies and standards  
40 with respect to plans and specifications generally at the Property, and with respect to the  
41 applicable portions) of the Premises in particular. For improvements greater than  
42 \$100,000, NASA ARC must coordinate with NASA HQs and CA ANG and receive  
43 authorization prior to Tenant proceeding. Permittee acknowledges that the Permitter must gain  
44 NASA HQ's authorization to proceed with the action because it is a NASA responsibility for  
45 real property reporting. Permitter will make every effort to ensure the authorization is provided  
46 in a timely manner. Permitter will not unreasonably withhold authorization.

1  
2 (2) The CA ANG agrees to provide the NASA ARC with a list of improvements projected to  
3 be constructed in future years. The list will be provided to the NASA ARC at least semi-  
4 annually or more often when the 129th Rescue Wing (RQW) Facility Board approves the  
5 list.

6  
7 (3) The CA ANG expects to receive NASA approval within 30 days. In the case of a bona  
8 fide emergency (to protect health and safety of the personnel and/or property from further  
9 damage) the CA ANG may begin repairs prior to NASA approval. The CA ANG will notify  
10 the NASA ARC of the emergency repairs as soon as practicable. The CA ANG shall deliver to  
11 the NASA ARC a reasonably detailed description of the work together with a statement of  
12 total design and construction costs and such other information as CA ANG includes in its  
13 real property records with respect to the Premises.

14  
15 (4) CA ANG shall obtain any permits for the work required from the Ames Construction  
16 Permit Office in accordance with Ames Policy Directive 8829.1; provided, however,  
17 because the Parties agree that CA ANG shall comply with CA ANG's Safety Standards,  
18 CA ANG shall not have to comply with the Ames Health and Safety Manual as required by  
19 section 5.A.5 of Ames Policy Directive 8829.1. CA ANG's contractors shall carry such  
20 liability and builder's risk insurance as NASA ARC may reasonably require with respect to  
21 the work, and NASA ARC and its employees shall be named as additional insured on all  
22 liability policies. CA ANG shall perform all work in accordance with the applicable plans  
23 and specifications, in a good and workmanlike manner, in compliance with all Applicable  
24 Laws. CA ANG shall pay to NASA ARC all direct costs and, with respect to any work which  
25 requires NASA ARC's prior written consent, shall reimburse NASA ARC for all expenses  
26 incurred by NASA ARC in connection with the review, approval and supervision of any  
27 alterations, additions or improvements made by CA ANG.

28  
29 (c) NASA ARC shall maintain and repair the electrical, gas, sewer, water and storm drain systems up  
30 to 5 feet from the facility in the TUA, and keep them in good condition, reasonable wear and tear  
31 excepted.  
32

1  
2 ARTICLE 7  
3 Allocation of Liability

4 **7.1: Liability Matters/Ground Rules Applicable to all Areas**  
5 (Cantonment/TUA/Shared/Common)

6 (a) Mutual Risk and Release: Each Party agrees to assume liability for its own risks associated  
7 with activities undertaken in this MOU. Each Party hereby waives and agrees not to make any  
8 claims against the other Party or its employees for any damage, loss, claim or liability arising  
9 from or related to the this MOU, whether such damage, loss, claim or liability is caused by  
10 negligence or otherwise. The foregoing release does not apply to CA ANG's obligations to  
11 reimburse NASA ARC for services pursuant to the Intergovernmental Agreement or to pay other  
12 consideration as set forth in this MOU.

13  
14 (b) Third Party Liability:

15 Discussion of Third Party Liability is included in the real estate/property permit between the Parties.  
16 To remain consistent it will not be repeated here. Refer to the Permit.  
17  
18





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3 ARTICLE 9  
4 Termination, Events of Default and Remedies

5 **9.1 Termination**

6  
7 (a) This MOU may be terminated as follows:

8  
9 (1) CA ANG may terminate this MOU if fee title to the portion of the Property on which  
10 the Premises is located is no longer held by or on behalf of the United States in  
11 accordance with Article 11.2.

12  
13 (2) During Term, either Party may terminate this MOU for any reason by delivering at  
14 least ninety (90) days prior written notice to the other Party. Any such  
15 notice shall specify the date on which this MOU shall terminate. By mutual agreement of  
16 the Parties, this MOU may be terminated at any time.

17  
18 (3) As otherwise provided herein.  
19  
20

21 **9.2: Default by CA ANG**

22  
23 (a) The occurrence of anyone or more of the following events ("Event of Default") shall  
24 constitute a breach of this MOU by CA ANG:

25  
26 (1) CA ANG fails to pay any consideration or other amount of money or charge payable by  
27 CA ANG within thirty (30) days after the date on which it is due; or

28  
29 (2) CA ANG fails to perform or breaches any other agreement or covenant of this MOU to  
30 be performed or observed by CA ANG as and when performance or observance is due and  
31 such failure or breach continues for more than one hundred twenty (120) days after  
32 NASA ARC gives written notice thereof to CA ANG; provided, however, that if, by the nature  
33 of such agreement or covenant, such failure or breach cannot reasonably be cured within  
34 such period of one hundred twenty (120) days, an Event of Default shall not exist as long  
35 as CA ANG commences with due diligence and dispatch the curing of such failure or  
36 breach within such period of one hundred and twenty (120) days and, having so  
37 commenced, thereafter prosecutes with diligence and dispatch and completes the curing  
38 of such failure or breach; or

39  
40 (3) CA ANG abandons the Premises.  
41

42 **9.3: Default by NASA ARC**

43  
44 If NASA ARC fails to perform or breaches any agreement or covenant of this MOU to be performed  
45 or observed by NASA ARC, CA ANG shall give written notice to NASA ARC specifying such failure  
46 or breach, and NASA ARC shall have one hundred twenty (120) days after receipt of such notice

1 within which to cure the same; provided, however, that if by its nature such failure or breach  
2 cannot reasonably be cured within such period of one hundred twenty (120) days, NASA ARC shall  
3 not be in default as long as NASA ARC commences with due diligence and dispatch the curing of  
4 such failure or breach within such period of one hundred twenty (120) days and, having so  
5 commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such  
6 failure or breach,

#### 7 8 **9.4: Remedies**

9  
10 If an Event of Default occurs, the non - defaulting Party shall have the right at any time to give a  
11 written termination notice to the other Party and, on the date specified in such notice, CA ANG's  
12 right to possession shall terminate and this MOU shall terminate. Upon such termination,  
13 NASA ARC shall have the full and immediate right to possession of the Premises and each Party  
14 shall have the right to recover from the other Party all unpaid amounts due pursuant to this  
15 MOU.

#### 16 17 **9.5: Disputes**

18  
19 If either Party believes that a dispute exists under this MOU, then such Party may elect to declare a  
20 dispute by delivering notice of such dispute ("Dispute Notice") to the other Party, which notice shall  
21 describe the nature of the dispute in reasonable detail and shall invoke the procedure for dispute  
22 resolution set forth in this article. If a dispute is so declared, the Administrative POCs shall meet and  
23 communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably  
24 possible during the sixty (60) days following delivery of the Dispute Notice in a good faith effort to  
25 resolve the dispute. If such individuals are unable to resolve the dispute within that sixty (60) day  
26 period, then the dispute shall be referred to each such individual's supervisor or manager. Such  
27 supervisors or managers shall meet and communicate (in person, by telephone, electronically or  
28 otherwise) as frequently as reasonably possible during the sixty (60) days following referral of the  
29 dispute in a good faith effort to resolve the dispute. If such supervisors or managers are unable to  
30 resolve the dispute within that sixty (60) day period, then the dispute shall be referred to the NASA  
31 ARC Center Director and the Director of the Air National Guard Readiness Center. If the dispute  
32 continues remain unresolved after ninety (90) the dispute may be elevated to the NASA Administrator  
33 and the Secretary of the Air Force (or their respective designees), who shall meet and communicate (in  
34 person, by telephone, electronically or otherwise) as frequently as reasonably possible during the thirty  
35 (30) days following referral of the dispute in a good faith effort to resolve the dispute. If such  
36 individuals are unable to resolve the dispute within that thirty (30) day period, then either Party may  
37 exercise any right or remedy set forth in this Agreement or which is otherwise available at law or in  
38 equity.

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ARTICLE 10  
Damage or Destruction

Discussion of total or partial destruction is included in the real estate/property permit between the Parties. Refer to the Permit.

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ARTICLE 11  
Subordination and Sale

Discussion of subordination and sale are included in the real estate/property permit between the Parties. Refer to the Permit.

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4 **ARTICLE 12**

5 **Notices**

6 **12.1: Notices/Ground Rules Applicable to all Areas (Cantonment/TUA/Shared/Common)**

7 (a) All requests, approvals, consents, and other communications under this MOU shall be  
8 properly given only if made in writing and either deposited in the United States mail, postage  
9 prepaid, certified with return receipt requested, or delivered by hand (which may be through a  
10 messenger or recognized delivery, courier or air express service), or sent via facsimile, and  
11 addressed to the applicable Party as set forth below (or to such other personnel or place as a  
12 Party may from time to time designate in a written notice to the other Party). Such requests,  
13 approvals, consents, and other communications shall be effective on the date: of receipt  
14 (evidenced by the certified mail receipt) if delivered by United States mail; of hand delivery if  
15 hand delivered; or of transmission as evidenced by a machine - generated receipt or proof of  
16 transmission if sent via facsimile. If any such request, approval, consent, or other  
17 communication is not received or cannot be delivered due to a change in the address of the  
18 receiving Party of which notice was not previously given to the sending Party or due to a refusal  
19 to accept by the receiving Party, such request, approval, consent, notice or other communication  
shall be effective on the date delivery is attempted.

If to Landlord:

Title: Deputy Director  
Address: NASA Ames Research Center  
Mail Stop 200 - 2  
Building 200, Room 207  
Moffett Field, CA 94035 - 1000  
  
Telephone: (650) 604 - 5898  
Facsimile: (650) 604 - 3786

If to Tenant:

Title: Commander  
Address: California Air National Guard  
129<sup>th</sup> RQW  
P.O. Box 130  
Bldg 680 Mail Stop 20  
Moffett Field, CA 94035 - 1000  
  
Telephone: (650) 603 - 9129  
Facsimile: (650) 603 - 9095

With a copy to:

Title: ANG/A7C  
Address: 3500 Fetchet Ave  
Andrews AFB MD 20762-5157  
Telephone: (301) 836-6060  
Facsimile: (301) 836-8371

20  
21 (b) Administrative POCs: The personnel listed below are hereby designated as each Party's  
22 administrative and operations point of contact (each, an "Administrative POC"). Among other  
23 things, the Administrative POCs shall be the primary point of contact between the Parties to  
24 discuss and address routine administrative and operational issues related to the operation of the  
25 Premises and CA ANG's presence at the Property. All such routine requests, approvals, consents,  
26 notices and other communications under this MOU shall be given orally by telephone or in  
27 writing (and deposited in the United States mail, or delivered by hand, or sent via facsimile or

1 electronic mail), and addressed to the other Party's Administrative POC (or to such other  
2 personnel or place as a Party may from time to time designate in a written notice to the other  
3 Party).  
4  
5

Landlord's Administrative POC:

Title: Associate Director of Center  
Operations  
Address: Mail Stop 200 – 9  
Building 233, Room 102  
Moffett Field, CA 94035 – 1000  
Telephone: (650) 604 – 5302  
Facsimile: (650) 604 – 0031  
Email: Philip.R.Fluegemann@nasa.gov

Tenant's Administrative POC:

Title: Air Force Site Director  
Address: California Air National Guard  
129<sup>th</sup> RQW  
Mail Stop  
Moffett Field, CA 94035 – 1000  
Telephone:  
Facsimile:  
Email:

6  
7 **12.2: Notices Applicable to Cantonment Areas**

8 Reference Article 12.3 regarding safety and mishap reporting. While compliance regarding  
9 notification by CA ANG to NASA ARC does not apply within Cantonment Areas, in the spirit of  
10 cooperation, the CA ANG is encouraged to provide "courtesy" notification to NASA ARC of any  
11 Close Call, mishap or injury. This communication may be made to the NASA ARC's POC  
12 identified in Section 12.1, above.  
13

14 **12.3: Notices Applicable to TUAs/Shared Use and Common Areas**

15 (a) For purposes of this MOU, the following terms shall have the following meanings: (i)  
16 "Close Call" shall mean an occurrence or a condition of employee concern in which there is no  
17 injury, or only minor injury requiring first aid, or damage to property or equipment of less than  
18 one thousand dollars (\$1,000), but which possesses a potential to cause a Mishap (as defined  
19 below); and (ii) "Mishap" shall mean an unplanned event on or about the Property and arising  
20 from the acts or omissions of CA ANG or its employees, agents, contractors or invitees that results  
21 in at least one (1) of the following: (1) injury to any person; (2) damage to public or private  
22 property (including foreign property); (3) occupational injury or occupational illness to any  
23 person; or (4) failure of a NASA mission. If, in CA ANG's discretion, CA ANG believes that a Close  
24 Call or Mishap may become highly visible outside of CA ANG's organization (such as by the  
25 media or a governmental agency), then CA ANG shall promptly notify NASA ARC by telephoning the  
26 NASA Ames Safety, Health and Medical Services Division at 650-604-5602.  
27

28 (b) In addition, if a Mishap involves the death of an employee, or the hospitalization for  
29 inpatient care of three (3) or more employees, then as soon as possible after the Mishap but in no  
30 event more than eight (8) hours after CA ANG has knowledge of any such Mishap, CA ANG shall  
31 notify both the Occupational Safety and Health Administration ("OSHA") by telephoning the  
32 area office nearest the site of the Mishap or OSHA's toll-free number, 800 - 321 - 6742 and the  
33 NASA Ames Safety, Health and Medical Services Division at 650 - 604 - 5602 during normal  
34 working hours, and 650 - 604 - 5416 after hours.  
35

1  
2 (c) The NASA ARC recognizes that DoD and the USAF are subject to federal safety investigation  
3 requirements and have the authority to investigate Mishaps involving DoD personnel and equipment in  
4 accordance with DoD, FAA, FBI, and USAF regulation. The CA ANG has presented the following  
5 references as illustration of this authority, and DoD's and the USAF's compliance with federal safety  
6 investigation requirements: 29 CFR Part 1960; Executive Order 12196; NPR 8621.1B; the 9 Dec 1982  
7 DoD/NASA MOU titled "Agreement between the Department of Defense and the National  
8 Aeronautics and Space Administration for Joint Investigation of Aircraft or Space System Mishaps";  
9 DODI 6055.7; and Air Force regulations in the 51 (Law) and 91 (Safety) series.

10  
11 (1) The NASA ARC reserves the right to request full participation in any Mishap investigation  
12 directly impacting NASA personnel or facilities in accordance with NASA policies and procedures.  
13 CA ANG recognizes NASA ARC's right to request full participation. Should DoD, USAF, or CA  
14 ANG need to prohibit access by NASA ARC to information or equipment involved in the mishap, then  
15 DoD, USAF, or CA ANG will provide NASA with access to whatever information is not prohibited.  
16 The Parties understand that the severity of each individual accident will define the level of the  
17 convening authority and the composition of any Safety Investigation Board. Even in cases where the  
18 CA ANG is not included as a member the CA ANG will make certain NASA ARC requests for  
19 participation are fully vetted by the convening authority. The Parties restate that the convening  
20 authority makes the final determination on who may participate in any legal or safety investigation.  
21

22 (2) Aviation Mishap. In the event the Air Force experiences an aviation mishap that requires an  
23 Accident Investigation Board (AIB) to be convened in accordance with AFI 51-503, NASA may  
24 make a request to the convening authority to participate in the AIB. The final decision on the  
25 composition of the AIB rests with the convening authority. Reference AFI 51-503, 5.2. NASA  
26 may also conduct its own investigation, subject to paragraph 12.3(c) above.  
27



1  
2 ARTICLE 13  
3 Further Assurances; Cooperation

4 **13.1: Further Assurances**

5  
6 Each Party will use reasonable efforts to perform its responsibilities and obligations under this  
7 MOU. During the Term, the Parties agree to do such things, perform such acts, and make,  
8 execute, acknowledge and deliver such documents as may be reasonably necessary or proper to  
9 carry out the purpose of this MOU in accordance with this MOU.

10  
11 **13.2: Cooperation**

12  
13 The Parties agree to cooperate with each other to minimize adverse impacts to, and unreasonable  
14 interference with, the other Party's operations and activities on and about the Property. At least  
15 once per calendar quarter, the Parties' respective Administrative POCs (or their respective  
16 designees), and such other personnel as may be appropriate, shall meet to discuss any matters of  
17 mutual interest related to the operation and activities at the Premises and Property. Such matters  
18 may include, but not be limited to (a) CA ANG's schedule of operations at the Property, including a  
19 brief description of the nature of the operations; (b) NASA ARC's schedule of maintenance, repair,  
20 or other necessary access requests to the Premises and other scheduled maintenance, repair,  
21 restoration work or other work to be accomplished near the Premises that may impact operation  
22 or testing in the Premises; (c) coordinating notice to the public and media, and preparing media  
23 operations plans; (d) coordinating work on common areas of the Property that may impact  
24 CA ANG's use of the Premises; (e) evaluating the need to evacuate personnel from portions of the  
25 Property or the surrounding area; and (f) preparing safety plans and emergency response plans.  
26 The Parties also agree to cooperate with each other to minimize interruptions of utility services,  
27 and to provide as much advance notice as possible of the need to disrupt utility service for  
28 maintenance work or other needs. If any utility service is interrupted or reduced as a result of an  
29 emergency, order of any government or governmental agency or other cause beyond the  
30 reasonable control of the Parties, then the Parties agree to restrict or reduce consumption of such  
31 utility proportionally during the period of such service interruption or reduction. Finally, Parties  
32 will work closely to coordinate their respective duties under 50 USC 797 (Internal Security Act  
33 of 1950, as amended, regarding security of NASA and DOD physical facilities).  
34  
35

1 ARTICLE 14  
2 Miscellaneous  
3

4 **14.1: General**  
5

6 The words "NASA ARC" and "CA ANG" as used herein shall include the plural as well as the  
7 singular. The word "Parties" as used herein shall mean NASA ARC and CA ANG, and the word  
8 "Party" shall mean either one of them. The words "include," "includes" and "including" shall be  
9 deemed to be followed by the phrase "without limitation." If there is more than one CA ANG, the  
10 obligations hereunder imposed upon CA ANG shall be joint and several Time is of the essence of  
11 this MOU and each and all of its provisions. This MOU shall benefit and bind NASA ARC and  
12 CA ANG and the permitted successors and assigns of NASA ARC and CA ANG. If any provision of  
13 this MOU is determined to be illegal or unenforceable, such determination shall not affect any other  
14 provision of this MOU and all such other provisions shall remain in full force and effect. CA ANG  
15 shall not record this MOU or any memorandum or short form of it.  
16

17 **14.2: No Waiver**  
18

19 The waiver by NASA ARC or CA ANG of any breach of any covenant in this MOU shall not be  
20 deemed to be a waiver of any subsequent breach of the same or any other covenant in this MOU,  
21 nor shall any custom or practice which may grow up between NASA ARC and CA ANG in the  
22 administration of this MOU be construed to waive or to lessen the right of NASA ARC or CA ANG to  
23 insist upon the performance by NASA ARC or CA ANG in strict accordance with this MOU. The  
24 subsequent acceptance of consideration hereunder by NASA ARC or the payment or performance of  
25 consideration by CA ANG shall not waive any preceding breach by CA ANG of any covenant in this  
26 MOU, nor cure any Event of Default other than the failure of CA ANG to pay or perform the  
27 particular consideration so accepted, regardless of NASA ARC's or CA ANG's knowledge of such  
28 preceding breach at the time of acceptance or payment or performance of such consideration.  
29

30 **14.3: Exhibits**  
31

32 The Exhibits and any other attachments specified in this MOU are attached to and made a part of  
33 this MOU, and may be changed/modified as set forth in Article 14.9.  
34

35 **14.4: Entire Agreement**  
36

37 There are no oral agreements between NASA ARC and CA ANG affecting this MOU, and this MOU  
38 supersedes and cancels any and all previous negotiations, arrangements, offers, agreements and  
39 understandings, oral or written, if any, between NASA ARC and CA ANG with respect to the subject  
40 matter of this MOU. There are no commitments, representations or assurances between NASA ARC  
41 and CA ANG or between any real estate broker and CA ANG other than those expressly set forth in  
42 this MOU and all reliance with respect to any commitments, representations or assurances is solely  
43 upon commitments, representations and assurances expressly set forth in this MOU. This MOU may  
44 not be amended or modified in any respect whatsoever except by an agreement in writing signed by  
45 NASA ARC and CA ANG.  
46

1 **14.5: Governing Law**

2  
3 The laws of the United States shall govern the validity, construction and effect of this MOU. In  
4 instances where the laws of the United States refer to the laws of the State applicable to a transaction,  
5 such reference shall be made to the laws of the State of California.  
6

7 **14.6: Anti - Deficiency Act**

8  
9 NASA ARC's and CA ANG's ability to perform its respective obligations under this MOU is subject  
10 to the availability of appropriated funds. Nothing in this MOU commits the United States  
11 Congress to appropriate funds for the purposes stated herein (pursuant to the Anti-Deficiency  
12 Act, 31 U.S.C. §1341).  
13

14 **14.7: Reporting**

15  
16 The requirements of 10 U.S.C. §2662 have been met.  
17

18 **14.8: Statutory and Regulatory References**

19  
20 Any reference to a statute or regulation in this MOU shall be interpreted to being a reference to a  
21 statute or regulation as it has been or may be amended from time to time.  
22

23 **14.9: Delegated Authority**

24 (a) The Offices of NASA ARC and the CA ANG are committed to delegating the authority to execute  
25 any change/ modification to the lowest legally authorized level. The majority of exhibits are  
26 executable at the local level.  
27

28 (b) Real Property permit authority cannot be delegated through this document. Refer to the Real  
29 Property permit.  
30

31 (c) To adjust the CA ANG use Temporary use facilities (real property), the CA-ANG must follow the  
32 guidelines spelled out in AFI 32-1012, Chapter 6. And obtain NASA ARC approval  
33

34 **14.10: Use of NASA Name**

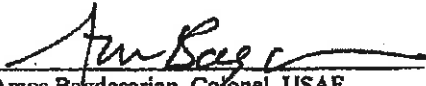
35 This MOU does not grant CA ANG any rights to use the NASA or NASA Ames Research Center  
36 name, initials or logo. CA ANG agrees to submit to NASA ARC for its approval all material that uses  
37 the NASA or NASA Ames Research Center name, initials or logo prior to publication. Approval  
38 by NASA ARC shall be based on Applicable Laws (e.g. 42 U.S.C. §§ 2459b, 2472(a) and 2473(c)  
39 (I); and 14 C.F.R. §1221.100 et seq.) and policy governing the use of the words "National  
40 Aeronautics and Space Administration" and the letters "NASA."  
41  
42

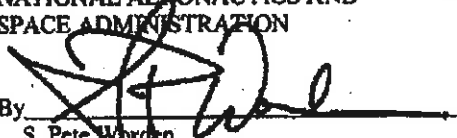
1  
2  
3  
4  
5

IN WITNESS WHEREOF, NASA ARC and CA ANG have executed this MOU as of the date first set forth above.

Tenant:  
UNITED STATES AIR FORCE

Landlord:  
NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION


By   
Amos Bagdasarian, Colonel, USAF  
Commander, 129<sup>th</sup> Rescue Wing

By   
S. Pete Worden  
Director, Ames Research Center

Dated: 10 NOV, 2009

Dated: Sept 30, 2009

6

  
CHARLES E. BOURBEAL  
Colonel, NGB  
USPFO for California