

Modification One to SAA2-400740

REIMBURSABLE SPACE ACT AGREEMENT

BETWEEN

THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

AMES RESEARCH CENTER

AND

LOCKHEED MARTIN SPACE SYSTEMS COMPANY- MISSILES AND

SPACE SUNNYVALE OPERATION

FOR COMMERCIAL SATELLITE SHIPMENTS THROUGH MOFFETT FEDERAL AIRFIELD

Lockheed Martin Space Systems Company- Missiles and Space Sunnyvale Operations (hereinafter "LMSSC-M&SO"), and the National Aeronautics and Space Administration (hereinafter "NASA") executed a Reimbursable Space Act Agreement (hereinafter "Agreement") on January 23, 2001, for the purposes of allowing LMSSC-M&SO to ship commercial satellites through Moffett Field.

LMSSC-M&SO and NASA hereby mutually agree to extend the duration of the Agreement which expires on September 30, 2006 for an additional 5 (five) year period effective one day following expiration date of the initial agreement. The purpose of the extension is to continue activities begun under the original agreement.

In addition to extending the agreement, LMSSC-M&SO and NASA hereby mutually agree to modify the agreement. The purpose of the modification is to change Section 1A- Schedule and Milestones, Section 5.7- Metrics, and Section 5.11- Protective Services.

This modification changes the activity "Dates" to allow satellite shipments to be scheduled on an as needed basis in Section 1A- Schedule and Milestones.

This modification also changes the Point of Contact for Commercial Metrics Reporting from "Commercial Technology Office, Code DK" to "Technology Partnerships Office, Code DTP" in Section 5.7- Metrics.

This modification also updates the location of the *Moffett Federal Airfield Policy Manual* in Section 5.11- Protective Services. Since the address <http://code.arc.nasa.gov/jf/amDocs.html> is no longer active, a hard copy of an updated *Airfield Operations Manual* will be provided to the participant.

This modification affects the duration of the Space Act Agreement, Section 1A- Schedule and Milestones, Section 5.7- Metrics, and Section 5.11- Protective Services. All other terms and conditions of the Agreement shall continue in effect, as originally agreed, until the expiration of the Agreement, as extended herein.

In the event the agreement sought to be extended has expired, this agreement incorporates the provisions of the expired agreement by reference and keeps that agreement in effect for one year from the date of the last signature appearing below.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

BY: 

Lewis S. Braxton III
Director of Center Operations
Ames Research Center
Moffett Field, CA 94035

LOCKHEED MARTIN MISSILES AND SPACE

By: 

William Berenato
Sub Contracts Manager
Lockheed Martin
Commercial Space Systems
100 Campus Drive
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Date: 10/11/06

Date: 12/1/2006

*REIMBURSABLE SPACE ACT AGREEMENT BETWEEN NASA AMES
RESEARCH CENTER
AND LOCKHEED MARTIN SPACE SYSTEMS COMPANY-MISSILES AND
SPACE SUNNYVALE OPERATION
FOR COMMERCIAL SATELLITE SHIPMENTS
THROUGH MOFFETT FEDERAL AIRFIELD*

AUTHORITY

This Reimbursable Space Act Agreement (RSAA) is between LOCKHEED MARTIN SPACE SYSTEMS COMPANY-MISSILES AND SPACE SUNNYVALE OPERATION (hereinafter referred to as the Participant or alternatively as LMSSC-M&SO), with a place of business at 1111 Lockheed Martin Way, Sunnyvale, California, 94088, and the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Ames Research Center located at Moffett Field, California 94035-1000, (NASA). This agreement is entered by NASA under the authority of section 203(c) of the National Aeronautics and Space Act of 1958 as amended, 42 USC 2473 (c)(5) and (6).

PURPOSE AND AGENCY COMMITMENT

This SAA shall be for the purpose of allowing LMSSC-M&SO to ship commercial satellites through Moffett Field. LMSSC-M&SO is a leading supplier of commercial satellites around the world. It has concentrated its commercial satellite manufacturing operations at its facilities in Sunnyvale, California, immediately adjacent to Moffett Federal Airfield, owned and controlled by the NASA Ames Research Center. Due to airport crowding, none of the airports in the area are suitable for shipping the LMSSC-M&SO commercial satellites to their destinations. Various companies in the area have used the airport facilities at Moffett Field to ship military and other United States Government satellites and LMSSC-M&SO desires to ship commercial satellites through Moffett Federal Airfield.

This RSAA establishes the terms and conditions under which the participant may use Moffett Federal Airfield for commercial satellite shipments and the use by Participant of certain facilities, lands, equipment, supplies, and services owned and controlled by NASA at Moffett Federal Airfield. Subject to NASA approval, Participant may employ one or more contractors and subcontractors to handle and ship its satellites from Moffett Federal Airfield.

Equipment, supplies, and services to be provided are to be documented in a separate Cost breakout/subagreement executed between NASA and the Participant under the authority of this RSAA. Reimbursement for equipment, supplies, and services will be enumerated in the Cost breakout. The Cost breakout will be reviewed and updated as needed by NASA and the Participant to ensure that the terms and provisions are current.

This information will benefit the NASA space mission by allowing Lockheed Martin to ship commercial satellites from Moffett runways. This will contribute to the exploration, use and development of space for human enterprise which is a NASA agency mission.

Both parties will use reasonable efforts to perform under this SAA.

1. RESPONSIBILITIES

A. The Participant's Responsibilities

1. Participant and/or participant's contractors and subcontractors will reimburse NASA for all facilities, equipment, land, and services used at Moffett Field including, but not limited to runways, ramp/parking space, Crash/Fire/Rescue, airfield security, fuel service and air traffic control.
2. Participant will ensure all operations on NASA property by Participant or its contractors and subcontractors will be compatible with, and will not interfere with, the operations of NASA, other Resident Agencies, or with airfield operations at Moffett Field. Participant will be responsible to NASA for all activities of its contractors and subcontractors.
3. Participant agrees to follow all applicable NASA facility regulations, guidelines and standards while at Moffett Field and will ensure that its contractors and subcontractors comply with these same regulations, guidelines and standards. These regulations, guidelines and standards, many of which are outlined in the Moffett Federal Airfield Policy Manual, cover, but are not limited to, facility use, land use and zoning, architectural and engineering standards, construction permit process, maintenance standards, and safety, security, and environmental standards.

B. NASA Responsibilities

1. NASA will provide on a reimbursable basis to Participant the facilities, equipment, land, and services used at Moffett Field, including, but not limited to, runways, ramp/parking space, Crash/Fire/Rescue, airfield security, fuel service and air traffic control.
2. NASA makes no warranties whatsoever with respect to the availability or suitability for any particular use of provided information, goods, or services. Both parties will use reasonable efforts to perform under this RSAA. Such items are offered on an "as-is" basis. Nothing in this agreement obliges NASA to maintain goods or services solely to meet Participant's requirements.
3. Participant may request NASA to make additions or modifications to Moffett Field. 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 Participant, including costs to remove additions or restore modifications to their former condition. All additions, changes, and modifications to Moffett Field become the property of the United States Government.

In recognition that NASA does not compete with the U.S. private sector regarding the provision of assets and services, in no case will NASA provide the Participant, any support that is readily available from the U.S. private sector under this or any other Space Act agreement.

1A. SCHEDULE AND MILESTONES

The scheduled major milestones are as follows:

	<u>Activity</u>	<u>Date</u>
2 satellite shipments	(4 landing/take-off events)	FY2001
3 satellite shipments	(6 landing/take-off events)	FY2002
3 satellite shipments	(6 landing/take-off events)	FY2003

The above schedule and milestones are estimates based on the parties' current understanding of the projected use of the facilities and equipment by NASA personnel. In the event NASA's projected use changes, the Participant shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted. The parties agree that NASA's use of its own facilities, equipment, and personnel shall have priority over the usage planned in this agreement. NASA in its sole discretion shall determine whether to exercise that priority, if a conflict arises. Likewise, should a conflict arise between two commercial users, NASA in its sole discretion shall determine the priority between the two users.

1B. 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.

1C. DISCLAIMER OF WARRANTY

NASA DOES NOT WARRANT THE RESULTS OF ANY ACTIVITIES UNDER THIS AGREEMENT, THEIR AVAILABILITY OR THEIR SUITABILITY FOR ANY PARTICULAR USE. BY PARTICIPATING IN THIS AGREEMENT, NASA MAKES NO ASSURANCES TO THE PARTICIPANT OR OTHERS REGARDING THE PERFORMANCE OF OBJECTS TESTED IN NASA FACILITIES NOR DOES NASA ENDORSE ANY RESULTING DESIGNS, HARDWARE, OR OTHER MATTERS.

2. KEY PERSONNEL

The following *technical and business* personnel are designated as the key officials for their respective party. These key officials are the principal points of contact between the parties in the performance of this Agreement.

Technical Key Personnel:

NASA

Name: Geary Tiffany
Title: Chief Airfield
Mgmt. Office

Address: M/S 158-1
NASA Ames Research Center
Moffett Field, CA 94035 - 1000

Tel. No. (650) 604 - 0685

Participant

Name: Lloyd Bass
Title: Manager Subcontracts, Lockheed Martin
Space Systems Company-Missiles and
Space Sunnyvale Operation
Address: 1272 Borregas Ave.
Sunnyvale, CA 94089

Tel. No. (408) 743-4857

The persons identified as the technical points of contact for NASA and the Participant will attempt to resolve all issues arising from the implementation of this agreement. If they are unable to come to agreement on any issue, then the dispute will be referred to the supervisors of the technical points of contact, or their designated representatives, for joint resolution. If the parties are unable to resolve the dispute, the NASA Ames Research Center Director will issue a written decision, which shall be a final Agency decision for all purposes including judicial review.

In the case of a mishap or mission failure, the parties agree to provide assistance to each other in the conduct of any investigation. In the case of activities, which might result in death or serious injury to persons, or substantial loss or damage to property as a result of activities under this agreement, the parties agree to establish a process

for investigating each such mishap as part of their program/project implementation agreements.

Business Key Personnel:

NASA	Participant
Name: Phil Herth Title: Tech. Comm. Mgr.	Name: Lloyd Bass Title: Manager Subcontracts, Lockheed Martin Space Systems Company-Missiles and Space Sunnyvale Operation
Address: M/S 202A-3 NASA Ames Research Center Moffett Field, CA 94035 - 1000	Address: 1272 Borregas Ave. Sunnyvale, CA 94089
Tel. No. (650) 604 - 0625	Tel. No. (408) 743-4857

3.0 Rights in Data

3.1. Definitions: The term "the Participant," as used herein, means any non-Federal Government entity that is a party to this agreement. The rights in data and patent and invention rights set forth herein are applicable to any employees, contractors or subcontractors, or other entities having a fiduciary or contractual relationship with the Participant that are assigned, tasked, or contracted with to perform specified Participant activities under this agreement.

The term "data," as used in this agreement, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation, and data comprising commercial and financial information.

3.2. General: Data exchanged between NASA and the Participant under this agreement will be exchanged without restriction as to disclosure, use, or duplication except as otherwise marked or as otherwise provided in this provision. No preexisting proprietary data will be provided to the Participant under this agreement unless specifically authorized, in writing, by the owner of the proprietary data.

3.3. Data Produced by the Participant under this Agreement: If in the course of performing its duties under this agreement, the Participant furnishes NASA with trade secret data or commercial or financial information that is privileged or confidential, NASA and its contractors (under suitable protective conditions) will keep the data in confidence and disclose and use the data only for carrying out NASA's responsibilities under the agreement, provided that the data is identified with a conspicuous notice or legend.

3.4. Data First Produced by NASA: Data first produced by NASA in carrying out it's responsibilities under this agreement that may have some commercial or proprietary value to the Participant, (i.e., data that would embody trade secrets or would contain commercial or financial information that is privileged or confidential if it had been obtained from the Participant) will be maintained in confidence for a period of 5 years after development of the information, with the express understanding that, during this period, such data may be disclosed and used by NASA and its contractors (under

suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this agreement, providing the data is appropriately marked with a conspicuous notice or legend. Upon completion of the activities under this agreement, such data will be disposed of as requested by the Participant.

Optional: The parties agree that the following data is proprietary data:

4.0. Patent and Invention Rights

Title to inventions made (conceived or first actually reduced to practice) as a result of activities under this agreement will remain with the respective inventing party. No patent or invention rights are exchanged or granted by the parties under this agreement except that, NASA and the Participant agree to use reasonable efforts to identify and report to each other any invention that is believed to have been made jointly by employees or contractors of the Participant and NASA and to consult and agree on the responsibilities and costs of actions to be taken to establish and maintain patent protection (in any country) on such invention and on the terms and conditions of any license or other rights to be exchanged or granted by or between NASA and the Participant.

5. ADDITIONAL PROVISIONS

5.1 FINANCIAL OBLIGATIONS

There will be a transfer of funds or other financial obligation from Participant, Lockheed Martin Missiles and Space and/or participant's contractors and subcontractors, to NASA in connection with this Agreement. The terms, conditions, and schedule of payment are as follows:

NASA shall be reimbursed by Participant in connection with the use of Government property, equipment, and services provided to Participant by NASA under this Agreement. Requests from Participant to NASA for support may be in the form of yearly (level of effort) support or individual mission or individual project-related support. NASA will provide to Participant a cost estimate for the support requested by Participant and for any other services that are deemed necessary by NASA.

Participant must recognize that projected cost information is only an estimate. Goods and services will be billed consistent with law and NASA policy. Cost estimates for the use of property and /or services and payment schedules shall be established under subagreement or subagreement annexes between Participant and NASA Ames Research Center, and shall be consistent with law and NASA policy, including the requirement for payment in advance of the incurrence of costs. Payment schedules for either yearly support activities or individual project or individual mission support activities shall include an initial payment of not less than 10 percent of the total estimated cost.

No adjustment will be made in Participant's annual Airfield pool cost share in the event of a change, including termination, in Moffett Federal Airfield services provided by NASA to others or for damage caused by an Act of God, including but not limited to earthquake, fire, and flood.

Nothing in this Agreement waives Participant's obligation to reimburse the Government in accordance with the terms of other agreements or contracts with the Government which provide for Participant's use, or any of Participant's contractors or

subcontractors use of the same Government property or services used by Participant or its contractors or subcontractors pursuant to this Agreement.

Advance payments shall be scheduled to keep pace with the rate at which NASA anticipates incurring costs. Both the overall cost and the payment schedule shall be mutually agreed to prior to the use of Government property and services. Prompt payment is the essence of this Agreement. If Participant fails to make payment by the payment due date, NASA may terminate this Agreement for Participant's breach of this Agreement after notice to Participant of the Breach and Participant's failure to cure such breach within a reasonable period of time.

All payments defined in this Agreement shall be in accordance with the following:

- I. Payment shall be in the United States dollars.
- II. Payment shall be payable to the "NASA Ames Research Center".
- III. Payment shall be sent to the Chief, Financial Management Division, Ames Research Center.
- IV. Payment shall be received by NASA by the first U.S. Government working day which is also a day on which commercial banks are open for business in both New York, NY and Washington, DC, in the fiscal quarter in which such payments are scheduled, unless otherwise explicitly stated herein, or directed or agreed to by NASA in writing as an alternative to sending payments as specified in (III.) above.

NASA shall forward to Participant a financial status report on a periodic basis showing the status of payments received and costs incurred for services under this Agreement. Depending upon the level of activity, this can occur quarterly, semiannually, or annually. Each status report will be segregated by mission, payload, project or as otherwise requested by Participant and will identify the associated cost of each activity since the previous report. If, as a result of this status report, additional payment from Participant is required, prompt payment is required and the payment schedule must be adjusted accordingly. If an overpayment has occurred, credit will be reflected on the next status report under this Agreement.

NASA shall send a final status report to Participant identifying costs for services as soon as possible after the completion of the last service provided. The final status report will address any refund due Participant.

If, as a result of the final status report, an additional payment from Participant is required, such payment shall be due 60 days after the date of the final status report. If, as a result of the final status report, a refund is due Participant, NASA will make such refund in the amount of the overpayment within 60 days after the date of the final status report.

NASA's ability to perform its obligations under this Agreement is subject to the availability of appropriated funds. Nothing in this Agreement commits the United States Congress to appropriate funds for the purposes stated herein (Pursuant to the Anti-Deficiency Act, 31 U.S.C. 1341). If NASA does not have sufficient funding to meet its responsibilities hereunder, NASA may terminate this Agreement in whole or in part under paragraph 5.13.

5.2 NO PARTNERSHIP

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. Both parties will remain independent contractors, each responsible for its own employees, costs, risks, liabilities, and expenses incurred in the performance of this Agreement. Each party will bear the cost of discharging its own responsibilities.

5.3 GOVERNING 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.

5.4 LIABILITY AND RISK OF LOSS

General: In consideration of the use of U.S. Government facilities, equipment, and/or services provided by NASA or NASA contractors under this agreement, the Participant waives and agrees not to make any claims against the U.S. Government or U.S. Government contractors or subcontractors, or their respective employees for damage or injury arising from or related to activities under this agreement, whether such damage is caused by negligence or otherwise, except in the case of willful misconduct.

For purposes of this agreement, the term "damage" includes, but is not limited to: bodily injury, impairment of health, death of any person; damage, loss, or loss of use of any property; loss of revenue or profits; other direct damages; indirect, or consequential damage.

The Participant agrees to indemnify and hold the U.S. Government and the U.S. Government contractors or subcontractors, and their respective employees tasked to carry out activities under this agreement, harmless from any claim, judgment, or cost arising from the injury or death of any person, or for damage or loss of any property, including U.S. Government property (and intellectual property), as a result of activities under this agreement, whether such damage is caused by negligence or otherwise, except in the case of willful misconduct.

Facility Damage: In addition to the above, the Participant assumes responsibility for any facility/equipment damage it causes resulting from the activities under this agreement and agrees to pay all costs associated with the repair of such damage. Facility/equipment damage as used here refers to any damage to U.S. Government facilities and equipment beyond the normal wear and tear reasonably to be expected as arising from the type of activity contemplated under this agreement.

NASA retains the right to require the Participant to obtain insurance, at no cost to NASA, protecting the Participant, the U.S. Government, and the related entities of each from any claim, liability, or damage resulting to any person, entity or property (including intellectual property) arising from or related to the activities pursued under this agreement, except to the extent such claim, liability, or damage is the result of willful misconduct of NASA or its related entities.

5.5 ASSIGNMENT/MODIFICATION

(a) Any modification to this agreement shall be executed, in writing, and signed by an authorized representative of each party. 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.

(b) Neither this Agreement nor any interest arising under it shall be assigned by either party without the express written consent of the officials authorized to bind the parties.

5.6. USE OF NASA NAME AND INITIALS

The Participant agrees to submit to NASA for its approval all promotional and advertising material, which uses the NASA name, initials or logo prior to publication. Approval by NASA shall be based on applicable law (e.g. 42 U.S.C. §§ 2459(b), 2472(a) and 2473(c)(1); and 14 CFR §1221.100 et seq.) and policy governing the use of the words "National Aeronautics and Space Administration" and the letters "NASA."

5.7 METRICS

The Participant will supply at the end of the agreement data to the Ames Commercial Technology Office on: jobs created, jobs retained, net sales increases, new products or services, productivity gains, patents, royalties, and licenses. NASA Ames Research Center recognizes the sensitive nature of this data and will protect it consistent with the provisions found in this document. Proprietary data will remain proprietary to the Participant and will be exempt from release to the extent permissible under the Freedom of Information Act (FOIA) 5 USC 552 et seq. Point of Contact for Commercial Metrics Reporting is:

NASA-Ames Research Center
Commercial Technology Office, Code DK
Mail stop 202A-3
Moffett Field, CA 94035-1000
(650) 604-1592 FAX

5.8 INDEPENDENCE OF CONTRACTS

The parties agree that this Agreement is independent of any other contract between the United States Government and the Participant. The Participant is not released from its obligations under other existing contracts with the Government.

5.9 ANTI-DEFICIENCY ACT: All activities under this agreement are subject to the availability of appropriated funds, and no provision shall be interpreted to require obligation or provision of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

5.10. ENVIRONMENTAL AND SAFETY

Participant will be responsible for complying with all environmental laws, rules, regulations and ordinances, whether Federal, state, or local, which apply to its activities and operations at Moffett Field, and will ensure that its contractors and subcontractors comply. Many of these laws, rules, regulations, and ordinances are outlined in the *Moffett Federal Airfield Policy Manual*.

Participant agrees to pay all applicable environmental fees, fines, and penalties which may be properly assessed against it by any Federal, state, or local agencies,

5.10. and will be responsible for representing and defending itself before any such agencies in any proceedings in which Participant may become involved to the extent such involvement results from Participant's activities and operations at Moffett Field.

Participant will be responsible for paying all costs of the restoration or remediation of any release of any pollutant, contaminant or hazardous substance, including petroleum products, to the extent such release results from or was caused by Participant, and Participant will be responsible for any liability resulting therefrom.

The environmental responsibilities of NASA and Navy at Moffett Field are set forth in the Memorandum of Understanding (MOU) between the Department of the Navy and NASA regarding Moffett Field, signed and effective on December 22, 1992. Participant will be responsible for paying all costs of any damage to Navy environmental restoration activities caused by its fault, negligence, or failure to comply with this Agreement.

NASA and Participant agree to consult and cooperate on matters of mutual interest or responsibility concerning the environment.

5.11. PROTECTIVE SERVICES.

Participant will comply with all applicable NASA security, law enforcement and fire safety policies and guidelines as outlined in the *Moffett Federal Airfield Policy Manual* <http://code.arc.nasa.gov/jf/amDocs.html>, and will ensure that its contractors and subcontractors comply included in the manual are standards on bagging and facility access, fire suppression and response, fire prevention, law enforcement jurisdictions, security, dispatch, and emergency response and preparedness.

NASA and Participant agree to consult and cooperate on matters of mutual interest or responsibility concerning Protective Services.

Participant agrees to advise NASA concerning any changes to its operations or facilities, which might impact any Protective Services function.

Participant agrees to appropriately badge, U.S. Citizen escorts for Foreign National AirCrew or others, while entering, exiting, or on-board Moffett Field. The Foreign Nationals will not be authorized access to any other NASA facility, except the Cafeteria, or other public place. Deviations from escort requirements, parameters, or requests for Protective Services support, must be coordinated in advance with the Protective Services Office.

Security incidents directly related to Foreign Nationals (e.g. unauthorized access to NASA facilities, suspicious activity/behavior, failure to provide proper escort, etc.) will be immediately reported to the Protective Services Office or Moffett Field Emergency Communications Center.

5.12. COMMUNICATIONS.

Participant agrees to comply with all applicable NASA communications policies and guidelines as outlined in the *Moffett Federal Airfield Policy Manual*, and will ensure that its contractors and subcontractors comply. Included in the manual are standards for building wiring, underground cabling and ducts, telephones and telephone services, data and video communications, and radio spectrum management.