

NONREIMBURSABLE SPACE ACT AGREEMENT
BETWEEN
THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
LYNDON B. JOHNSON SPACE CENTER
AND CITY OF SEABROOK
FOR RECIPROCAL USE OF EMERGENCY OPERATIONS CENTERS.

ARTICLE 1. AUTHORITY AND PARTIES

In accordance with the National Aeronautics and Space Act (51 U.S.C. § 20113), this Agreement is entered into by the National Aeronautics and Space Administration Lyndon B. Johnson Space Center, located at 2101 NASA Parkway, Houston, Texas 77058 (hereinafter referred to as "NASA" or "NASA JSC" or "JSC") and City of Seabrook, Office of Emergency Management, located at 1700 First Street, Seabrook, TX 77586 (hereinafter referred to as "Partner" or "City of Seabrook" or "Seabrook"). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE

The NASA Lyndon B. Johnson Space Center (JSC) and the City of Seabrook, Texas wish to enter into an agreement to provide coordinated responses to a wide spectrum of emergencies affecting JSC and the surrounding communities through reciprocal utilization of the JSC Emergency Operations Center (EOC) and Seabrook's EOC. NASA JSC and local governments share a common interest in maintaining an ability to quickly assess, respond to, and recover from natural disasters and other emergencies. NASA JSC seeks to partner with the Emergency Operations Centers (EOCs) of local governments neighboring the Center. Nonreimbursable agreements with these local governments providing mutual support for emergency operations and response enhances the ability of the Center and local government to quickly assess and respond to emergencies, shortening the time period required to respond to natural disasters and other emergencies, restore critical government services, and return JSC employees and the Center to full operational capacity. The goal of this Agreement is to provide coordinated responses to a wide spectrum of emergencies affecting JSC and the surrounding communities through cross-utilization of the JSC Emergency Operations Center (EOC) and Seabrook's EOC.

ARTICLE 3. RESPONSIBILITIES

A. NASA will use reasonable efforts to:

1. Furnish property, facilities, and utility services for the City of Seabrook to bring up to seven (7) City of Seabrook personnel to JSC during a single incident.
2. Provide work space in the Community Partners Emergency Operations Center (CPEOC), room 3100, Building 30.

3. Provide furniture and other office equipment and supplies (e.g. routine note pads, easels, display boards, etc.) necessary for personnel from the City of Seabrook to operate from the CPEOC.
4. Provide all basic utility services attendant to the operations of the CPEOC, except during emergency conditions when some or all utilities may be unavailable.
5. Provide janitorial services, except during emergency conditions when resources may be unavailable.
6. Ensure facility access and coordination by appropriate JSC communications organizations for the purpose of installing the necessary Seabrook communications equipment.
7. Provide radio antennas and cabling required for pre-planned and programmed CPEOC operating frequencies.
8. Ensure safety and proper operations by providing an official JSC liaison on duty in the CPEOC whenever personnel of the City of Seabrook are present. The general purpose of the liaison is to facilitate access to the CPEOC, provide assistance, and assist in coordination between JSC Operations and Seabrook, as required. The liaison will be available to provide assistance regarding the general layout of the CPEOC, identification of high hazard areas at JSC, specialized or unusual instructions, and other pertinent information required for emergency planning.
9. Provide access to and from the CPEOC 24 hours per day, 7 days per week for personnel of the City of Seabrook. Response will not be impaired by the method chosen to permit site entry/exit during emergency.

B. Partner will use reasonable efforts to:

1. Comply with Federal safety, environmental, and security rules and regulations while operating at JSC.
2. Provide identification (including full name, office and emergency contact telephone number, and entity represented) for all Seabrook officials anticipated to occupy the Community Partners Emergency Operations Center (CPEOC). Seabrook is not allowed to bring family members or pets on site.
3. Provide all personal equipment, including pagers, cellular telephones, medication, and shelter supplies (e.g. food, bedding, clothing, toiletries, etc.) for each person assigned by their entity to the CPEOC for the duration of the emergency/exercise.
4. Provide required radio equipment for Seabrook frequencies, and maintenance of that equipment. JSC will provide facility access and coordination for installation of communications equipment, including telephone lines and radio antennas. Necessary facility/utility modifications associated with the placement of the Seabrook communications equipment will be accomplished by JSC as part of facilities modification, except that Seabrook will make arrangements for connection to appropriate central dispatch (e.g. Harris County Sheriff, Houston Police Department, Precinct 8 Constable's Office, etc.).

5. Provide dispatching of Seabrook forces occupying the CPEOC. The current security service support contractor Emergency Dispatch Center (EDC) dispatchers will not dispatch Seabrook forces. JSC EDC dispatchers will request services from the City of Seabrook through procedures identified by Seabrook and agreed to by JSC.
6. Provide any auxiliary equipment and supplies normally associated with emergency operations. This equipment includes notebooks, emergency plans, community maps, unique display boards, and telephone books, which are used to perform emergency planning and response duties of a highly qualified municipal emergency management office.
7. Provide JSC the capability to have access to or utilize shared resources as appropriate and available from Seabrook. These shared resources may include communication equipment, portable generators, maintenance/clean-up equipment, etc., which would be used to perform appropriate emergency response activities.
8. In the event that the JSC Emergency Operations Center (EOC) is rendered inoperable, provide JSC access to the City of Seabrook EOC for no more than eight (8) JSC personnel. Said personnel will provide identification (including full name, office and emergency contact telephone number) of all JSC officials anticipated to occupy Seabrook facilities. JSC is not allowed to bring family members or pets on site or utilize shared resources as appropriate and available from the City of Seabrook. JSC personnel will terminate the use of shelter facilities of the City of Seabrook as soon as it is safe to return to JSC.
9. Comply with Federal, NASA, and JSC policies on the official use of computer resources. Use of CPEOC equipment, particularly computers and JSC Internet access, are subject to monitoring for official use. Misuse and/or abuse of Government-furnished computers and JSC Internet access will result in a formal complaint to the City of Seabrook Manager.

ARTICLE 4. SCHEDULE AND MILESTONES

The planned major milestones for the activities defined in the "Responsibilities" Article are as follows:

JSC Security Badging of City of Seabrook Emergency Operations Personnel	Date to be mutually agreed upon
JSC personnel utilize shelter facilities of the City of Seabrook for preparedness exercises	Dates to be mutually agreed upon, not to exceed one exercise per year
City of Seabrook personnel utilize the JSC CPEOC for preparedness exercises	Dates to be mutually agreed upon, not to exceed one exercise per year
JSC personnel utilize shelter facilities of the City of Seabrook during an emergency incident	As needed during the term of the Agreement

City of Seabrook personnel utilize the JSC CPEOC during an emergency incident As needed during the term of the Agreement

ARTICLE 5. FINANCIAL OBLIGATIONS

There will be no transfer of funds between the Parties under this Agreement and each Party will fund its own participation. All activities under or pursuant to this Agreement are subject to the availability of funds, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, (31 U.S.C. § 1341).

ARTICLE 6. PRIORITY OF USE

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

ARTICLE 7. NONEXCLUSIVITY

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

ARTICLE 8. LIABILITY AND RISK OF LOSS

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

B. Partner further agrees to extend this unilateral waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against NASA, its related entities, and employees of NASA and employees of NASA's related entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement.

ARTICLE 9. INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS

A. General

1. "Related Entity" as used in this Data Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner, that is assigned, tasked, or contracted to perform activities under this Agreement.
2. "Data," means recorded information, regardless of form, the media on which it is recorded, or the method of recording.
3. "Proprietary Data," means Data embodying trade secrets developed at private expense or commercial or financial information that is privileged or confidential, and that includes a restrictive notice, unless the Data is:
 - a. known or available from other sources without restriction;
 - b. known, possessed, or developed independently, and without reference to the Proprietary Data;
 - c. made available by the owners to others without restriction; or
 - d. required by law or court order to be disclosed.
4. Data exchanged under this Agreement is exchanged without restriction except as otherwise provided herein.
5. Notwithstanding any restrictions provided in this Article, the Parties are not restricted in the use, disclosure, or reproduction of Data provided under this Agreement that meets one of the exceptions in 3. above. If a Party believes that any exceptions apply, it shall notify the other Party before any unrestricted use, disclosure, or reproduction of the Data.
6. The Parties will not exchange preexisting Proprietary Data under this Agreement unless authorized herein or in writing by the owner.
7. If the Parties exchange Data having a notice that the Receiving Party deems is ambiguous or unauthorized, the Receiving Party shall tell the Providing Party. If the notice indicates a restriction, the Receiving Party shall protect the Data under this Article unless otherwise directed in writing by the Providing Party.
8. The Data rights herein apply to the employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.
9. Disclaimer of Liability: NASA is not restricted in, or liable for, the use, disclosure, or reproduction of Data without a restrictive notice or for Data Partner gives, or is required to give, the U.S. Government without restriction.

B. Data First Produced by Partner Under this Agreement

If Data first produced by Partner or its Related Entities under this Agreement is given to NASA, and the Data is Proprietary Data, and it includes a restrictive notice, NASA will use reasonable efforts to protect it. The Data will be disclosed and used (under suitable protective conditions) only for U.S. Government purposes.

C. Data First Produced by NASA Under this Agreement

If Partner requests that Data first produced by NASA under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Partner, NASA will use reasonable efforts to mark it with a restrictive notice and protect it for one year after its development. During this restricted period the Data may be disclosed and used (under suitable protective conditions) for U.S. Government purposes only, and thereafter for any purpose. Partner must not disclose the Data without NASA's written approval during the restricted period. The restrictions placed on NASA do not apply to Data disclosing a NASA-owned invention for which patent protection is being considered.

D. Publication of Results

The National Aeronautics and Space Act (51 U.S.C. § 20112) requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof. As such, NASA may publish unclassified and non-Proprietary Data resulting from work performed under this Agreement. The Parties will coordinate publication of results allowing a reasonable time to review and comment.

E. Data Disclosing an Invention

If the Parties exchange Data disclosing an invention for which patent protection is being considered, and the furnishing Party identifies the Data as such when providing it to the Receiving Party, the Receiving Party shall withhold it from public disclosure for a reasonable time (one (1) year unless otherwise agreed or the Data is restricted for a longer period herein).

F. Copyright

Data exchanged with a copyright notice and with no restrictive notice is presumed to be published. The following royalty-free licenses apply:

1. If indicated on the Data that it was produced outside of this Agreement, it may be reproduced, distributed, and used to prepare derivative works only for carrying out the Receiving Party's responsibilities under this Agreement.
2. Data without the indication of F.1. is presumed to be first produced under this Agreement. Except as otherwise provided in paragraph E. of this Article, and in the Inventions and Patent Rights Article of this Agreement for protection of reported inventions, the Data may be reproduced, distributed, and used to prepare derivative works for any purpose.

G. Data Subject to Export Control

Whether or not marked, technical data subject to the export laws and regulations of the United States provided to Partner under this Agreement must not be given to foreign

persons or transmitted outside the United States without proper U.S. Government authorization.

ARTICLE 10. INTELLECTUAL PROPERTY RIGHTS - INVENTION AND PATENT RIGHTS

A. "Related Entity" as used in this Invention and Patent Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner assigned, tasked, or contracted with to perform activities under this Agreement.

B. The invention and patent rights herein apply to employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.

C. NASA has determined that 51 U.S.C. § 20135(b) does not apply to this Agreement. Therefore, title to inventions made (conceived or first actually reduced to practice) under this Agreement remain with the respective inventing party(ies). No invention or patent rights are exchanged or granted under this Agreement. NASA and Partner will use reasonable efforts to report inventions made jointly by their employees (including employees of their Related Entities). The Parties will consult and agree on the responsibilities and actions to establish and maintain patent protection for joint inventions, and on the terms and conditions of any license or other rights exchanged or granted between them.

ARTICLE 11. USE OF NASA NAME AND NASA EMBLEMS

A. NASA Name and Initials

Partner shall not use "National Aeronautics and Space Administration" or "NASA" in a way that creates the impression that a product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. Except for releases under the "Release of General Information to the Public and Media" Article, Partner must submit any proposed public use of the NASA name or initials (including press releases and all promotional and advertising use) to the NASA Associate Administrator for the Office of Communications or designee ("NASA Communications") for review and approval. Approval by NASA Office of Communications shall be based on applicable law and policy governing the use of the NASA name and initials.

B. NASA Emblems

Use of NASA emblems (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221. Partner must submit any proposed use of the emblems to NASA Communications for review and approval.

ARTICLE 12. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA

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

ARTICLE 13. DISCLAIMER OF WARRANTY

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

ARTICLE 14. DISCLAIMER OF ENDORSEMENT

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

ARTICLE 15. COMPLIANCE WITH LAWS AND REGULATIONS

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

B. With respect to any export control requirements:

1. The Parties will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120 through 130, and

the Export Administration Regulations (EAR), 15 C.F.R. Parts 730 through 799, in performing work under this Agreement or any Annex to this Agreement. In the absence of available license exemptions or exceptions, the Partner shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data and software, or for the provision of technical assistance.

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

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

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

C With respect to suspension and debarment requirements:

1. The Partner hereby certifies, to the best of its knowledge and belief, that it has complied, and shall comply, with 2 C.F.R. Part 180, Subpart C, as supplemented by 2 C.F.R. Part 1880, Subpart C.

2. The Partner shall include language and requirements equivalent to those set forth in subparagraph C.1., above, in any lower-tier covered transaction entered into under this Agreement.

ARTICLE 16. TERM OF AGREEMENT

This Agreement becomes effective upon the date of the last signature below (herein referred to as "Effective Date") and shall remain in effect for five years from the Effective Date.

ARTICLE 17. RIGHT TO TERMINATE

Either Party may unilaterally terminate this Agreement by providing thirty (30) calendar days written notice to the other Party.

ARTICLE 18. CONTINUING OBLIGATIONS

The rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of this Agreement, e.g., "Liability and Risk of Loss" and "Intellectual Property Rights"-related clauses shall survive such expiration or termination of this Agreement.

ARTICLE 19. POINTS OF CONTACT

The following personnel are designated as the Points of Contact between the Parties in the performance of this Agreement.

Management Points of Contact

NASA Lyndon B. Johnson Space Center
Alan T. Mather
Chief, Protective Services Division
Mail Stop: JS
2101 NASA Parkway
Houston, Texas 77058
Phone: 281-483-2619
alan.t.mather @nasa.gov

City of Seabrook
Office of Emergency Management
Charles "Jeff" Galyean
Director of Office of Emergency Management
1700 First Street
Seabrook, TX 77586
Phone: 281-291-5700
jgalyean@seabrooktx.gov

ARTICLE 20. DISPUTE RESOLUTION

Except as otherwise provided in the Article entitled "Priority of Use," the Article entitled "Intellectual Property Rights – Invention and Patent Rights" (for those activities governed by 37 C.F.R. Part 404), and those situations where a pre-existing statutory or regulatory system exists (e.g., under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under this Agreement shall be referred by the claimant in writing to the appropriate person identified in this Agreement as the "Points of Contact." The persons identified as the "Points of Contact" for NASA and the Partner will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this Agreement, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA signatory or that person's designee, as applicable, will issue a written decision that will be the final agency decision for the purpose of judicial review. Nothing in this Article limits or prevents either Party from pursuing any other right or remedy available by law upon the issuance of the final agency decision.

ARTICLE 21. MODIFICATIONS

Any modification to this Agreement shall be executed, in writing, and signed by an authorized representative of NASA and the Partner.

ARTICLE 22. ASSIGNMENT

Neither this Agreement nor any interest arising under it will be assigned by the Partner or NASA without the express written consent of the officials executing, or successors, or officials possessing original or delegated authority to execute this Agreement.

ARTICLE 23. APPLICABLE LAW

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

ARTICLE 24. INDEPENDENT RELATIONSHIP

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

ARTICLE 25. LOAN OF GOVERNMENT PROPERTY

The parties shall complete and enter into a separate NASA Form 893, Loan of NASA Equipment, for any NASA equipment which is to be loaned to Partner in support of the activities under this Agreement.

ARTICLE 26. SIGNATORY AUTHORITY

The signatories to this Agreement covenant and warrant that they have authority to execute this Agreement. By signing below, the undersigned agrees to the above terms and conditions.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION
LYNDON B. JOHNSON SPACE
CENTER

CITY OF SEABROOK
OFFICE OF EMERGENCY
MANAGEMENT

BY: _____
Joel B. Walker
Director, Center Operations

BY: _____
The Honorable Glenn Royal
Mayor

DATE: _____

DATE: _____