

MUTUAL AID AGREEMENT
BETWEEN
THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
JOHN F. KENNEDY SPACE CENTER
AND BREVARD COUNTY, FLORIDA
FOR FIRE PROTECTION

ARTICLE 1. AUTHORITY AND PARTIES

This Agreement is entered into by the National Aeronautics and Space Administration, John F. Kennedy Space Center, located at Kennedy Space Center, Florida 32899-0001 (hereinafter referred to as "NASA") and Brevard County, Florida, located at 1040 South Florida Avenue, Rockledge, FL 32955-2498 (hereinafter referred to as "Partner" or "County") in accordance with 42 U.S.C. § 1856a. NASA and the County may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE

This Mutual Aid Agreement (hereinafter referred to as the "Agreement") establishes the terms and conditions by which the Parties may furnish "fire protection," as defined at 42 U.S.C. § 1856(b), to one another in cases of emergency or disaster that exceed the resources available under the jurisdiction of the requesting Party. "Emergency or disaster" includes fire, medical emergencies, technical rescue, releases of hazardous materials (Hazmat), natural disaster, or other emergencies as agreed upon by the Parties. The scope of this Agreement is limited to requests for assistance within the geographical areas to which the requesting Party customarily provides emergency response services.

ARTICLE 3. RESPONSIBILITIES

When requested by the other Party, NASA and the County will use reasonable efforts to perform the following tasks and other such tasks that may be required to fulfill the purpose of this Agreement. The decisions whether to provide aid in a particular instance, and if providing aid, the specific form and amount of aid provided are at the sole discretion of the Party whose aid is requested.

1. Provide firefighting vehicles and trained firefighting crews for structural, vehicle, or wild-land firefighting operations;
2. Provide emergency medical response vehicles and certified paramedics or emergency medical technician personnel to support the emergency medical services system;
3. Provide technical rescue to include confined space, high angle, and vehicular or machinery rescue operations;

4. Provide Hazmat response capability to control, contain, and/or confine Hazmat operations within the capabilities of the resources and level of training and personal protective equipment available.

All requests for aid shall be made by an authorized Technical Points of Contact representative listed in Article 16, Points of Contact, of the requesting Party to an authorized Technical Point of Contact representative of the responding Party.

ARTICLE 4. 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 5. PRIORITY OF USE

Any schedule or milestone in this Agreement is estimated based upon the Parties' current understanding of the projected availability of each Party's 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 its goods, services, facilities, or equipment shall have priority over the use planned in this Agreement. Conversely, the Parties agree that the Partner's use of its 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 with regard to NASA's goods, services, facilities, or equipment, while the Partner in its sole discretion, shall determine whether to exercise such priority with regard to the County's goods, services, facilities, or equipment. This Agreement does not obligate NASA to seek alternative Government property or services under the jurisdiction of NASA at other locations.

ARTICLE 6. NONEXCLUSIVITY

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

ARTICLE 7. LIABILITY AND RISK OF LOSS

- A. Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's Related Entities (including but not limited to contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors or subcontractor at any tier), or employees of the other Party's Related Entities for any injury to, or death of, the waiving Party's employees or the employees of its Related Entities, or for damage to, or loss of, the waiving Party'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. Each Party further agrees to extend this cross-waiver to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement. Additionally, each Party shall require that their Related Entities extend this cross-waiver to their Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement.
- C. The County expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of the County's immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

ARTICLE 8. INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS

Information and data exchanged under this Agreement is exchanged without restrictions unless required by national security regulations (*e.g.*, classified information) or as otherwise provided in this Agreement or agreed to by the Parties for specifically identified information or data (*e.g.*, information or data specifically marked with a restrictive notice).

ARTICLE 9. 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 10. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA

NASA or the Partner may, consistent with Federal law, this Agreement, and Florida's public records laws, as applicable, release general information, including, but not limited to, the terms and conditions of this Agreement itself, regarding its own participation in this Agreement as desired.

ARTICLE 11. DISCLAIMER OF WARRANTY

Goods, services, equipment, or facilities provided by NASA and the Partner under this Agreement are provided "as is." Neither Party makes any 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 is 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 Parties nor their 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 12. 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 each Party to the other Party's facilities or property, or to either Party's Information Technology (IT) system or application, is contingent upon compliance with each Party's 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. If applicable, 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 recordkeeping 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 13. TERM OF AGREEMENT

This Agreement takes effect upon the date of the last signature below ("Effective Date") and shall remain in effect until the completion of all obligations of both Parties hereto, or five (5) years from the Effective Date, whichever comes first.

ARTICLE 14. RIGHT TO TERMINATE

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

ARTICLE 15. 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 related clauses shall survive such expiration or termination of this Agreement.

ARTICLE 16. 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 John F. Kennedy Space Center
Roger Langevin
(Acting) Chief, Protective Services Office
Mail Stop: SI-P
Kennedy Space Center, Florida 32899
Phone: 321-867-3441
Roger.G.Langevin@nasa.gov

BREVARD COUNTY FIRE RESCUE
Mark Schollmeyer
Fire Chief
1040 South Florida Avenue
Rockledge, Florida 32955-2498
Phone: 321-633-2056
Mark.Schollmeyer@brevardcounty.us

ARTICLE 17. 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 18. MODIFICATIONS

Any modification to this Agreement shall be executed, in writing, and signed by an authorized representative of NASA and the Partner. The Brevard County Board of Commissioners Chairperson is the authorized representative of the Partner.

ARTICLE 19. ASSIGNMENT

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

ARTICLE 20. APPLICABLE LAW

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

ARTICLE 21. INDEPENDENT RELATIONSHIP

This Agreement is not intended to constitute, create, give effect 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 22. INVESTIGATIONS OF MISHAPS AND CLOSE CALLS

In the case of a mishap during the process of providing aid or other activities in the performance of this Agreement, NASA and Partner agree to provide assistance to each other in the conduct of any investigation. In the event that Partner support results in a NASA mishap, Partner agrees to comply with NPR 8621.1, NASA Procedural Requirements for Mishap and Close Call Reporting, Investigating, and Recordkeeping, and NASA KSC safety policies, as appropriate.

ARTICLE 23. LOAN OF GOVERNMENT PROPERTY

The Parties shall enter into a NASA Form 893, *Loan of NASA Equipment*, for NASA equipment loaned to Partner.

ARTICLE 24. 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
JOHN F. KENNEDY SPACE CENTER

BREVARD COUNTY BOARD
OF COUNTY COMMISSIONERS

BY: _____
Robert D. Cabana
Director
Date: _____

BY: _____
Rita Pritchett
Chair

As Approved by the Board on: _____

Reviewed for Legal Form and Content:



Melissa Powers
Assistant County Attorney

ATTEST:

Rachel Sadoff, Clerk
