

FULLY REIMBURSABLE SPACE ACT AGREEMENT
BETWEEN
SPACE FLORIDA, AN INDEPENDENT SPECIAL DISTRICT OF THE STATE OF
FLORIDA
AND
NASA JOHN F. KENNEDY SPACE CENTER
FOR
COMMODITIES AND SERVICES FOR EXPLORATION PARK

ARTICLE 1. AUTHORITY AND PARTIES

In accordance with the National Aeronautics and Space Act, as amended (51 U.S.C. 20113(e)), this Agreement is entered into by the NASA John F. Kennedy Space Center, located at Kennedy Space Center, FL 32899 (hereinafter referred to as "NASA KSC," "KSC," or "NASA"), and Space Florida, an Independent Special District of the State of Florida, located at Building M6-0306, Room 9030, Kennedy Space Center, FL 32899 (hereinafter referred to as "SPFL" or "PARTNER"). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE

As background, the Parties entered into an Enhanced Use Lease (hereinafter "EUL") on December 19, 2008, (KCA-4222) for the purpose of developing and operating a mixed-use, multitenant technology and commerce park supporting both Government and commercial space initiatives. In addition, the Parties have also executed a Use Permit for the Space Life Sciences Laboratory (SLSL) (formerly known as the Space Experiment, Research and Processing Laboratory), on February 8, 2001 (KCA-1683). NASA KSC and Partner wish to ensure that the Exploration Park on KSC and the SLSL are provided with commodities, utilities, and related services to allow them both to operate successfully. The purpose of this Agreement is to establish the scope and costs for such commodities and the conditions under which they will be provided.

ARTICLE 3. RESPONSIBILITIES

A. SPFL will use reasonable efforts to:

1. Provide construction support to connect Exploration Park utility systems to KSC systems, including purchase of all appropriate equipment and materials. This includes the purchase and installation of meters for those commodities that are to be provided through existing NASA supply systems, including but not limited to electricity, potable water, and natural gas. Connections to these supply systems will be at designated demarcation points provided by NASA KSC.
2. Pay to NASA KSC appropriate charges for commodities and services as prescribed in Article 5.

3. Exercise discretion over whether to purchase electric power from Florida Power & Light (directly or through NASA KSC) or develop its own power generating capacity from renewable sources. In addition, NASA KSC and Partner agree to work in good faith to transition the communications and information technology (IT) distribution infrastructure. SPFL shall obtain communications and IT services from commercial providers, independent from NASA KSC service contracts, but may require use and service through NASA KSC's communications and IT distribution infrastructure. SPFL shall bear any costs required to extend existing communications and IT infrastructure to the SLSL and Exploration Park and shall reimburse NASA for costs associated with the use of its communications and IT network infrastructure in accordance with Exhibit A.
4. In addition to the above, SPFL has requested NASA to provide additional services to the SLSL and Exploration Park as identified, and at the prices listed, on Exhibit A. Subsequently and from time to time, SPFL may request NASA KSC to provide other specific services, if available, and pursuant to levels of service and price rates negotiated at such times by NASA KSC and SPFL. SPFL may request such additional services via official correspondence signed by a top level administrative official.

B. NASA KSC will use reasonable efforts to:

1. Provide the following utilities and institutional services to the SLSL and Exploration Park properties: protective services (including security, fire, and emergency medical support), electricity, potable water, waste water treatment, and other services as may be requested. The level of service for those services will be 24 hours a day, 7 days a week, 365 days a year. All pricing shall be contained in Exhibit A. Connections to these supply systems will be at designated demarcation points provided to SPFL by NASA KSC.
2. Not terminate any service with fewer than 180 days prior written notice to Partner.
3. Be the supplier of last resort for necessary services to the SLSL and Exploration Park that NASA is not otherwise required to supply and for which Partner cannot reasonably procure via other suppliers.

ARTICLE 4. SCHEDULE AND MILESTONES

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

Milestone	Schedule
Initial deposit of escrow funds to NASA in the total amount of \$450,000.00, which is six times the estimated monthly cost of utilities and services to be provided by NASA pursuant to Exhibit A of this Agreement. This initial deposit will cover charges beginning October 1, 2011.	Within five (5) days of signature of the Agreement
Provide continued funding for services in advance of need. NASA will request deposit thirty (30) days in advance of the due date.	Quarterly, after initial deposit.

ARTICLE 5. FINANCIAL OBLIGATIONS

1. Partner agrees to reimburse NASA—according to the fee schedule in Exhibit A—for each service that Partner receives from NASA, for NASA to carry out its responsibilities under this full-cost, reimbursable Agreement. In addition, Partner agrees to pay the applicable percentage rate for general Center Management and Operations (CMO) costs. Partner agrees in no event will NASA transfer any U.S. Government funds to Partner under this Agreement. Payment must be made by Partner in advance of initiation of NASA's efforts. NASA shall provide utilities, security, and other services, as described in Exhibit A, beginning October 1, 2011. These rates shall be reevaluated as specified in Exhibit A, with revisions as necessary, using the same criteria that established initial rates. Any rate changes that KSC receives from its suppliers (City of Cocoa and Florida Power & Light) will be reflected in the rate charged to SPFL. Rates will also be subject to change based on changes in the KSC contracts for these services. Notwithstanding any provision in this Agreement to the contrary, all rates charged by NASA to Partner for utilities provided by third-party providers will be NASA's actual cost, plus an applicable administrative CMO charges/pass-through fee. Other charges for NASA-provided services shall be as shown in Exhibit A. Advance payments shall be scheduled to ensure that funds are resident with NASA before Federal obligations are incurred in support of this Agreement.
2. Payment shall be payable to the National Aeronautics and Space Administration through [choose one form of payment]: U.S. Treasury FEDWIRE Deposit System, Federal Reserve Wire Network Deposit System, pay.gov at <<https://www.nssc.nasa.gov/portal/site/customerservice/menuitem.bb29c518138071c056969daf4dd72749>>, or check. A check should be payable to Kennedy Space Center and sent to:

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

3. NASA will not provide services or incur costs beyond the available funding amount. Although NASA has made a good faith effort to accurately estimate its costs, it is understood that NASA provides no assurance that the proposed effort under this Agreement will be accomplished for the above estimated amount. Should the effort cost more than the estimate, Partner will be advised by NASA as soon as possible, and in any event not later than 180 days before NASA stops providing its services or stops incurring costs. Partner shall pay all costs incurred and have the option of canceling the remaining effort, or providing additional funding in order to continue the proposed effort under the revised estimate. Should this Agreement be terminated, or the effort completed at a cost less than the agreed-to estimated cost, NASA shall account for any unspent funds within one (1) year after completion of all effort under this Agreement, and promptly thereafter, return any unspent funds to Partner.
4. Notwithstanding any other provision of this Agreement, all activities under or pursuant to this Agreement, are subject to the availability of funds. And no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341.1.
5. NASA shall provide Partner any reasonable data regarding utility usage and charges as may be requested from time to time.

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 personnel, test facilities and equipment. In the event that NASA's projected availability changes, Partner shall be given reasonable notice of that change (and in any event not less than 180 days' prior written notice of that change), so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA usage of the test facilities, equipment, and personnel shall have priority over the usage planned in this Agreement. Should a conflict arise, NASA, in its sole discretion, shall determine whether to exercise that priority. Likewise, should a conflict arise as between two commercial users, NASA, in its sole discretion, shall determine the priority as between the two users. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

ARTICLE 7. 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 and SPFL may obtain some, or all of the services and utilities specified in Article 3 from sources other than NASA KSC.

ARTICLE 8. LIABILITY AND RISK OF LOSS

1. Partner hereby waives any claims against NASA, its employees, its related entities (including, but not limited to, contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors and subcontractors, at any tier), and employees of NASA's related entities for any injury to, or death of, Partner employees or the employees of Partner's related entities, or for damage to, or loss of, Partner's property, or the property of its related entities, arising from, or related to, activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.
2. Partner further agrees to extend this unilateral waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against NASA, its related entities, and employees of NASA and employees of NASA's related entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement.
3. To the extent permitted by law, Partner's tort obligations arising from conduct of its obligations hereunder are subject to the limitations of liability as provided in Section 768.28, Florida Statutes, as amended, and nothing herein shall act as a waiver of Partner's entitlement of sovereign immunity as a matter of statutory or common law.

ARTICLE 9. INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS

There are no data rights or patent and invention rights involved in this Agreement.

ARTICLE 10. USE OF NASA NAME AND EMBLEMS

1. 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" clause, 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 Assistant Administrator for the Office of Communication or designee ("NASA Communications") for review and approval. Approval by NASA Communications shall be based on applicable law and policy governing the use of the NASA name and initials.

2. 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 CFR Part 1221. Partner must submit any proposed use of the emblems to NASA Communications for review and approval.

ARTICLE 11. 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 12. DISCLAIMER OF WARRANTY

Services provided by NASA KSC under this Agreement are provided "as is" and are provided according to NASA KSC's usual and customary protocol. NASA KSC makes no express or implied warranty as to the provision of these services or that the services provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately owned rights of others. Neither the government nor its contractors shall be liable for special, consequential or incidental damages attributed to such services provided under this Agreement.

ARTICLE 13. DISCLAIMER OF ENDORSEMENT

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

ARTICLE 14. COMPLIANCE WITH LAWS AND REGULATIONS

The Parties shall comply with all applicable laws and regulations including, but not limited to, safety, security, export control, and environmental laws and regulations. Access by Partner to a NASA facility or property, or to a NASA IT system or application, is contingent upon compliance with NASA security and safety policies and guidelines provided to Partner including, but not limited to, standards on badging, credentials, and facility and IT system/application access. NASA shall provide Partner with written updates of any changes in applicable laws, regulations, policies and guidelines prior to implementation. Notwithstanding anything herein to the contrary, the Partner shall have the same right of access as provided for in Section 4.5 of EUL for Exploration Park (KCA-4222) signed December 2008. The Partner will be responsible for ensuring that the provisions of this Article apply to its Related Entities; however, Partner may submit written requests to NASA for waivers of such provisions in cases where NASA regulations, policies, or guidelines conflict with commercially reasonable standards.

ARTICLE 15. TERM OF AGREEMENT

This Agreement becomes effective October 1, 2011 and shall remain in effect for 5 years. Either party may request a review of the charges at any time during the term to determine the accuracy of the charges, and rates contained in Exhibit A.

ARTICLE 16. RIGHT TO TERMINATE

1. NASA's commitment under this Agreement to provide services required by Partner may be terminated by NASA, in whole or in part, (a) upon a declaration of war by the Congress of the United States, or (b) upon a declaration of a national emergency by the President of the United States, or (c) upon Partner's failure to make payments as set forth in the "Financial Obligations" clause after NASA has given Partner not less than thirty (30) days' prior written notice of such failure, (d) upon Partner's failure to meet its obligations under the Agreement (other than as set forth in subparagraph (c) above) after NASA has given Partner not less than ninety (90) days' prior written notice of such termination, or (e) upon a NASA determination, in writing, that NASA is required to terminate such services for reasons beyond its control. For purposes of this article, reasons beyond NASA's control are reasons which make impractical or impossible NASA's or its contractors' or subcontractors' performance of this Agreement. Such reasons include, but are not limited to, acts of God or of the public enemy, acts of the U.S. Government other than NASA, in either its sovereign or contractual capacity (to include failure of Congress to appropriate sufficient funding), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.
2. In the event of termination for reasons given above, NASA will seek to provide reasonable advance notice and will seek to mitigate the effect of such termination, if possible, and will enter into discussions with Partner for that purpose. For the use of property or services provided for on a fixed-price basis, the costs incurred by the United States, including termination costs, shall not exceed the fixed price of the services which would have been provided had termination not taken place. For use of property or services provided on a cost basis, Partner will be liable for all costs, consistent with law and NASA policy, which are incurred by the U.S. Government in the provision of property or services, including termination costs associated with the Agreement activities.
3. NASA shall not be liable for any costs, loss of profits, revenue, or other direct, indirect, or consequential damages incurred by Partner, its contractors, subcontractors, or customers as a result of the termination by NASA pursuant to paragraph 1 of this section.
4. Partner shall have the right to terminate, in whole or in part (including for some or all of the services and utilities specified in Exhibit A), this Agreement with ninety (90) days prior written notice to NASA. In the event of such termination, Partner will be

obligated to reimburse NASA for all Government costs which have been incurred up to the effective date of Partner's notice of termination and are incurred as a result of such termination.

5. This article is not intended to limit or govern the right of NASA or Partner in accordance with law, to terminate its performance under this Agreement, in whole or in part, for Partner's or NASA's breach of a provision in this Agreement.

ARTICLE 17. 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" and "Financial Obligations"), shall survive such expiration or termination of this Agreement.

ARTICLE 18. MANAGEMENT POINTS OF CONTACTS

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

Technical Points of Contact

NASA John F. Kennedy Space Center
Wayne Martin
Lead Engineer
Mail Code: TA-B4A
Kennedy Space Center, FL 32899
Phone: 321-861-3267
Fax: 321-867-7529
wayne.r.martin@nasa.gov

Space Florida
Mark Bontrager
VP Spaceport Operations
Mail Code: SPFL M6-306
Building M6-306
Room 9030
Kennedy Space Center, FL 32899
Phone: 321-730-5301 x235
Fax: 321-730-5307
mbontrager@spaceflorida.gov

Business/Administrative Points of Contact

NASA John F. Kennedy Space Center
Mario Busacca
Asst. Program Manger, Spaceport
Development
Mail Code: AA-D
Kennedy Space Center, FL 32899
Phone: 321-867-8456
Fax: 321-867-1670
mario.busacca@nasa.gov

Space Florida
Desiree Mayfield
Manager, Contract Compliance
Mail Code: SPFL M6-306
Building M6-306
Room 9030
Kennedy Space Center, FL 32899
Phone: 321-730-5301 x237
Fax: 321-730-5307
dmayfield@spaceflorida.gov

ARTICLE 19. DISPUTE RESOLUTION

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

ARTICLE 20. MODIFICATIONS

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

ARTICLE 21. ASSIGNMENT

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

ARTICLE 22. 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 23. INDEPENDENT RELATIONSHIP

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

ARTICLE 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

SPACE FLORIDA, AN INDEPENDENT
SPECIAL DISTRICT OF THE STATE
OF FLORIDA

BY: Robert D. Cabana
Robert D. Cabana
Director
Mail Code: AA
Kennedy Space Center, FL 32899

BY: Frank DiBello By Howard He
Frank DiBello
President
SPFL M6-306
Room 9030
Kennedy Space Center, FL 32899

DATE: December 23, 2011

DATE: December 28, 2011

Exhibit A: Charges for Utilities and Services to the Space Life Sciences Lab (SLSL) and Exploration Park

Commodity/Service	Charges	Level of Service	Comments
Police/Fire/EMS	\$0.35/sq ft + CMO	Police/Security services: Security patrols will occur once every eight hour shift. No security internal to facilities will be provided. Emergency security and law enforcement response will be provided 24/7 Fire: Emergency response will be provided 24/7 EMS: Emergency response will be provided 24/7	Based on built out square footage of the SLSL or buildings constructed in Exploration Park. Charges for the SLSL will commence on October 1, 2011 and charges for Exploration Park would begin upon construction ground-breaking for each building and be based on planned square footage. Rates will be reevaluated every three years and revised as necessary.
Potable Water	Commercial rate + CMO pass through fee/charge	Provided through KSC's existing distribution system. Pressures and quantities to meet fire flow requirements.	This commodity will be provided by NASA and billed to SPFL as a pass through charge. The charge would consist of a blended rate applied to actual gallons used + CMO pass through fee/charge. For reference, the blended rate effective January 1, 2011 will be: \$2.61/kgal. The blended rate is adjusted as billing rates are changed by the commercial provider. Alternately, this commodity could be supplied directly from the outside commercial provider at prevailing rates.
Wastewater/Sewer	Commercial rate + CMO pass through fee/charge	Wastewater and sewer disposal to meet flow requirements.	This commodity will be provided by NASA and billed to SPFL as a pass through charge. KSC currently pays 60% of the total costs of the Air Force Treatment Plant. Charges would be based on percent of overall KSC potable water used times the 60% charge from the Air Force. Initial costs would be based on SLSL usage (4%). The percentage rate would be reassessed annually relevant to actual usage. For reference, based on 4% of FY10 actuals, the cost would be \$8,227 + CMO pass through fee/charge. Alternately, this commodity could be supplied directly from the outside commercial provider (Brevard County) at prevailing rates.

Commodity/Service	Charges	Level of Service	Comments
Electricity	Commercial rate + CMO pass through fee/charge	Provided through the existing distribution system. NASA to provide all offsite maintenance and repair necessary to ensure consistent power and minimal outages to the Premises.	<p>This commodity could be supplied directly from the outside commercial provider (FP&L) at prevailing rates.</p> <p>Alternately, this commodity could be provided by NASA and billed to SPFL as a pass through charge. The charge would consist of the Orsino substation rate applied to actual kilowatt hours used + CMO pass through fee/charge. For reference, the current Orsino rate is \$0.071/kwhr. The Orsino rate is adjusted as billing rates are changed by the commercial provider.</p>
Gas (Florida City Gas)	Commercial rate + CMO pass through fee/charge	Florida City Gas will maintain offside infrastructure to ensure consistent supply of natural gas to the Premises.	<p>This commodity could be supplied directly from the outside commercial provider (Florida City Gas) at a rate negotiated by SPFL. The line to the park would be constructed by Florida City Gas.</p> <p>Alternately, this commodity could be provided by NASA and billed to SPFL as a pass through charge, as it is possible that KSC may negotiate a lower overall rate. The charge would consist of the KSC rate applied to actual dekatherms used + CMO pass through fee/charge. For reference, the current rate is \$9.21/dekatherm, and this rate fluctuates monthly.</p>
Solid Waste	Commercial rate + CMO pass through fee/charge	Solid Waste Services provided by NASA will be at the same level of service as that provided to other NASA and on center facilities.	<p>This service could be obtained from an outside commercial provider subject to terms and rates negotiated by the developer.</p> <p>Alternately, this service could be provided by NASA and billed to SPFL as a pass through charge. For FY2011 through FY2013, the charge would consist of the rates referenced in Table 1 + 6% Admin Cost. Rates for FY2014 and beyond will be determined at a later date.</p>

Commodity/Service	Charges	Level of Service	Comments
Copper, Fiber, or Data connection between facilities	Actual cost to establish new service. Recurring cost of \$75/circuit each month + CMO	This service will be provided through KSC's existing cable and transmission distribution system to a defined demarcation point.	The expected steady state recurring items needed in FY12 is 13 items. This is comprised of 5 ESS circuits, 2 fire alarms, 2 KCCS circuits, and 4 miscellaneous circuits.
Cable Television	Recurring cost of \$75 per month + CMO	This service will be provided to a defined demark point.	Space Florida shall be responsible for all costs beyond the demarcation point.
Construction and Inspection Services	\$43,600 + CMO		This item is for those services required to support the construction activities within the KSC Security Perimeter. These include safety, environmental and power outage and other support as required by NASA KSC.

Table 1: Solid Waste Disposal Charges

Container Type	Quantity	Charge (FY2011)	Charge (FY2012)	Charge (FY2013)
2 CY Regulated Food Container	Ea	\$151.63	\$163.73	\$176.86
4 CY Solid Waste Dumpster	Ea	\$90.98	\$98.26	\$106.12
6 CY Solid Waste Dumpster	Ea	\$121.31	\$131.01	\$141.49
8 CY Solid Waste Dumpster	Ea	\$151.63	\$163.76	\$176.86
20 CY Rolloff Container	Ea	\$227.45	\$245.65	\$265.30
30 CY Rolloff Container	Ea	\$227.45	\$245.65	\$265.30
40 CY Rolloff Container	Ea	\$227.45	\$245.65	\$265.30