

SAMPLE JOINT LEAD AGENCY AGREEMENT

BETWEEN PARTY ONE, AND PARTY TWO

I. Introduction and Purpose:

It is agreed between the parties to this agreement that Party One through the relevant agencies, Party Two through the listed agency, and Party Three, shall cooperate for the purpose of preparing environmental documentation related to the proposed project. The term “environmental documentation” includes an Environmental Assessment (EA), draft and final Environmental Impact Statement (EIS), any reports or studies used in the preparation of the EA and/or EIS, and any associated documentation required under Federal and State law. It is the purpose of this agreement to set forth the responsibilities of the parties hereto in the development and preparation of such environmental documentation.

II. General Provisions:

- A. Party One shall be responsible for ensuring that the EA or Draft and Final EIS demonstrate compliance with all Federal environmental laws. As the lead Federal agency Party One, shall coordinate preparation of the EA/EIS with other Federal agencies.
- B. Party Two shall be responsible for ensuring that the EA or Draft and Final EIS demonstrate compliance with all applicable State and local environmental laws. Party Two as joint lead agency, shall coordinate preparation of the EA/EIS with all State and local agencies and relevant tribal governments.
- C. All environmental issues that must be addressed under Federal, State, and local laws, including impacts of proposed actions and alternatives, shall be analyzed in any EA/EIS prepared pursuant to the provisions of this Agreement.
- D. Section 4(f) of the Department of Transportation Act permits the Secretary of the Department of Transportation to approve a transportation program or project requiring the use of publicly owned land of a public park, recreation areas or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State or local significance only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm resulting from the use (49 U.S.C. ' 303 (c)). Accordingly, if it is determined that Section 4(f) applies to the sites selected for a commercial space launch complex in the proposed location, analysis of alternatives and mitigation measures will be a critical part of the licensing determination.

- E. Until a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), in the event only an EA is prepared, is issued in connection with the proposed action, the proponent shall not take any action which would (1) have an adverse environmental impact, or (2) limit the choice of reasonable alternatives.
- F. The proponent may, at its own expense, engage a consultant to prepare the environmental documentation subject to proper agency approval of consultation selection. Any consultant engaged by the proponent shall not be deemed an employee, contractor, or agent of any kind of the federal agency involved. The employment by the proponent shall be contingent upon such consultant's execution of a disclosure statement and certification as follows: "We, _____, do hereby certify that we have no financial or other interest in the execution or outcome of the proposed southwest commercial space launch complex." Any contract between the proponent and a consultant engaged in accordance with this paragraph shall be consistent with the provisions of this agreement and State law.
- G. The joint lead agencies will jointly determine the scope and content of the EA/EIS and all other environmental documentation prepared pursuant to the provisions of this agreement, to ensure that all Federal and State law requirements are met.
- H. The joint lead agencies shall:
- 1.) Appoint a representative and inform the other party in writing of the identity of its representative to accomplish the coordination necessary for the satisfactory preparation of environmental documentation. Notice to a party's designated representative shall, thereafter, constitute notice to that party. As of the date of signing this agreement, the principal contact persons for Party One and Party Two are as follows:

Party Two will be the principal point of contact for all work performed by or required of Party Two's consultants. Party One will be the principal point of contact for all work performed or required of Party One's consultants.
 - 2.) Review all substantive phases of the preparation of all environmental documentation. The length of the review periods will be determined and agreed upon by Party One and Party Two on a case-by-case basis.

- 3.) Have their respective representatives confer with Federal, State, regional, and local governmental agencies, and tribal governments having legal rights, responsibilities or special expertise for the purpose of providing information and obtaining comments as may be necessary or desirable to the development and preparation of environmental documentation. Party One shall be responsible for identifying and conferring with cooperating agencies at the Federal level, and Party Two shall be responsible for identifying and conferring with cooperating agencies at all non-federal levels and with tribal governments.
 - 4.) Ensure coordination of effort and exchange of information, including holding meetings and teleconferences as needed.
 - 5.) Coordinate the release of public information and notices.
 - 6.) Coordinate the preparation for and the conduct of scoping meetings.
 - 7.) Develop an outline for the EA/EIS by [Date to be Determined].
- I. All costs incurred in connection with the employment of consultants by Party Two shall be the sole responsibility of Party Two. As between the parties, each party acknowledges that it will be responsible for claims of damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees or agents. The liability of Party Two shall be subject in all cases to the immunities and limitations of the relevant state tort claims act.
 - J. Party Two may identify a preferred launch site in the EA or final EIS from among the alternatives included in the draft. Party One shall independently evaluate the legal sufficiency of the final document. If Party One has objections to or requires additional analysis or clarification regarding the final document or the preferred alternative, those objections or requirements will be documented and provided to Party Two in writing.
 - K. Upon request by Party Two, Party One will review and comment on any State required documents to determine whether these documents satisfy Federal requirements for environmental documentation. If Party One has objections to or requires additional analyses or clarification regarding the documents, those objections or requirements will be documented and provided to Party Two in writing.

III. Procedures:

- A. Party Two shall prepare all environmental documentation for the project described in Part I of this agreement and shall do so in accordance with all applicable Federal and State laws.

- B. If scoping meetings are determined to be required by Party One, Party One and Party Two shall be jointly responsible for scoping (as defined in the Council on Environmental Quality (CEQ) Regulations, 40 CFR ' 1501.7) the EA or EIS in accordance with the CEQ regulations. Party One shall be responsible for publishing all applicable Federal notices.
- C. Draft sections of preliminary or final environmental documentation shall be submitted by Party Two to Party One for review. Environmental documentation shall be modified as required by Party One, consistent with Federal requirements.
- D. Party Two shall be responsible for the cost of stenographic and clerical services, graphics, layout and printing, and for the costs of preparing and providing to Party One a total of ___ copies of all preliminary or draft environmental documentation and ___ copies of all final environmental documentation , including one unbound copy of all draft and final environmental documentation suitable for reproduction. Party Two shall not be responsible for the costs Party One incurs in reviewing, evaluating, and recommending revisions of the data, or for the costs of printing additional copies of the EA or draft and final EIS.
- E. Party One and Party Two will mutually agree on the distribution list and responsibility for distribution of the EA or draft and final EIS, which will include cooperating agencies, interested parties and the public. Party One will be responsible for filing any draft and final EIS with the Environmental Protection Agency.
- F. Party One and Party Two shall cooperate in formulating responses to any comments on a draft or final EIS.
- G. Party One shall be responsible for the preparation and issuance of the Record of Decision for the final EIS, if any. In accordance with the CEQ Regulations (40 CFR ' 1506.10), no decision on the proposed action shall be made or recorded until ninety (90) days after the publication of the notice of availability of the draft EIS by the Environmental Protection Agency in the Federal Register, and thirty days after publication of the notice of availability of the final EIS in the Federal Register, whichever date is later. Any Finding of No Significant Impact (FONSI) prepared as a result of this agreement will also be made available by Party One for public review for a 30-day period before issuing a final finding, pursuant to the CEQ Regulations (40 CFR ' 1501.4 (e)).

IV. Implementation:

This agreement shall take effect when fully executed by both parties and shall remain in force until terminated. This agreement may be terminated by either party upon 30 days written notice to the other party.

Party One Responsible Official

Party Two Responsible Official
