

REIMBURSABLE SPACE ACT AGREEMENT
BETWEEN
NASA AMES RESEARCH CENTER
AND
COLLINGS FOUNDATION
FOR
BOMBERS AT MOFFETT AIR SHOW EVENT

1. AUTHORITY

This Reimbursable Space Act Agreement (RSAA) is entered by the Collings Foundation, a non profit corporation incorporated in the state of Massachusetts, with a principle place of business at 137 Barton Road, Stow, MA 01775, and additional places of business at Brooksville, FL, Houston, TX, New Smyrna Beach, FL, and Uvalde TX. (hereinafter referred to as the Participant) and the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Ames Research Center located at Moffett Field, California 94035-1000 (hereinafter referred to as "NASA"). The Participant and NASA will be referred to as the Parties. The legal authority for NASA to enter into this agreement is found in sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, 42 U.S.C. 2473(c)(5) and (6), (hereinafter the Space Act).

2. PURPOSE

2.1 The purpose of this Agreement is to establish the framework under which the Participant may use Moffett Federal Airfield, and certain facilities, lands, equipment, and services owned and controlled by NASA at Moffett Field for an air show event. The event will be held over a three-day period and will further two NASA objectives: NASA's aeronautics mission and NASA's education outreach goal. NASA's aeronautics mission began in 1915 with NASA's predecessor, the National Advisory Committee for Aeronautics. NASA's educational outreach goal is in mandated by the NASA Strategic Plan and Ames' implementation of that plan. The purpose of the air show is to educate the public about the history and development of aeronautics. This will be accomplished at the air show event through static displays and flight demonstrations of two fully restored World War II era aircraft; a B-24 (formally called "All American") now named "Dragon and His Tail" and a B-17 "Nine-O-Nine".

The public will be able to tour inside the planes, ask docents about aeronautics technology employed during WW II --much of which determined the direction of present aero-technology and to participate in the flight experience by taking

airplane rides. This event will provide a means to reach and inform a broad spectrum of the public about aeronautics. This Agreement will benefit NASA by enabling it to meet its goals of disseminating information about its activities in aeronautics and space in accordance with section 203(a)(3) of the National Aeronautics and Space Act of 1958, as amended, 42 USC 2473(a)(3).

Subject to NASA approval, the Participant may employ or otherwise engage one or more contractors, subcontractors, or other entities to assist in staging the air show event.

- 2.2. Equipment, supplies and services, to be provided are to be documented in a separate Services Agreement executed between NASA and the Participant. Reimbursement for equipment, supplies, and services will be enumerated in the Services Agreement.

3. RESPONSIBILITIES

- 3.1 Under the terms and conditions of this Agreement, NASA will provide to Participant, and Participant 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, and air traffic control.
- 3.2 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.
- 3.3 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.
- 3.4 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.

3.5 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.

4. KEY PERSONNEL

The following 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.

NASA

Name: Casey Call
Title: Deputy Chief, Airfield
Management Office
Address: M/S 158-1
NASA Ames Research Center
Moffett Field, CA 94035-1000
Tel. No.: (415) 604-0931

Participant

Name: Kory Stendell
Title: Coordinator
Address: 1636 Duvall Drive
San Jose, CA 95130
Tel. No.:
(408) 807-0950: cell
(408) 379-4807: home

5. FINANCIAL OBLIGATIONS

5.1 This Agreement is not intended to be the means to transfer funds between the parties. Reimbursement for land, facilities, equipment, supplies; services or other property provided between the parties will be funded by a separate Services Agreement executed between NASA and the Participant.

5.2 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.

5.3 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.

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

- (i) Payment shall be in United States dollars.
- (ii) Payment shall be payable to the "NASA Ames Research Center."
- (iii) Payment shall be sent to the NASA-ARC, Chief, Financial Management Division, Attn. Karen Gentry, Mail Stop 203-17, Moffett Field, CA 94035.
- (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.

5.5 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 15.

6. NO PARTNERSHIP/NONEXCLUSIVITY

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. 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.

7. GOVERNING LAW

NASA will perform this Agreement consistent with obligations, laws, published policy, and regulations of the United States. This Agreement shall be governed by the federal laws of the United States.

8. LIABILITY AND RISK OF LOSS

8.1 In consideration of the use of land, facilities, equipment and/or services provided by NASA or its related entities at Moffett Field under this Agreement, the Participant waives and agrees not to make any claims against the United States Government (the Government), its employees, its related entities or the employees of its related entities for damage 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 of the Government or its related entities.

8.2 In consideration for the use of land, facilities, equipment and/or services provided to Participant on a reimbursable basis under this Agreement, Participant agrees to indemnify and hold the Government, its employees, its related entities or the employees of its related entities harmless against any claim, liability or damage resulting to any person, entity or 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 the willful misconduct of the Government or its related entities.

8.3 For purposes of this Agreement: (1) The term "damage" includes, but is not limited to: death of, bodily injury to, or other impairment of health of, any person; damages to, loss of, or loss of use of any property, including environmental contamination or damage; loss of revenue or profits; and any other direct, indirect, or consequential damage. (2) The term "liability" includes liability for payments made pursuant to any United States treaty, any judgment or decision by a court or administrative tribunal of competent jurisdiction, administrative and litigation costs, and after consultation with Participant, settlement payments. (3) The term "related entities" includes NASA agents, invitees, contractors and subcontractors and other federal or state agencies and their agents, invitees, contractors or subcontractors at Moffett Field.

8.4 Participant also agrees to obtain insurance, including liability insurance for flight operations, at no cost to the Government, protecting Participant, the Government, its employees, its related entities or the employees of its related entities from all claims, liability and damage specified above. The amount of insurance shall be determined by NASA and agreed to by Participant. The insurance policy must name the Government, its employees, its related entities, and the employees of its related entities as additional insureds. Participant shall provide a copy of the proposed insurance policy to the NASA Ames Research Center Office of the Chief Counsel as soon as possible. In addition, the Participant will provide proof of liability insurance for flight operations. It is understood and agreed that NASA shall be under no obligation to provide reimbursable services under this agreement until the insurance required by this section has been obtained and accepted by NASA.

9. ASSIGNMENT/AMENDMENT

9.1 This Agreement may be modified at any time by a written document signed by officials authorized to bind the parties.

9.2 Neither this Agreement nor any interest arising under it shall be assigned, subleased, or transferred in anyway by either party without the consent of the officials authorized to bind the parties.

10. ENVIRONMENTAL AND SAFETY

10.1 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*. Any hazardous wastes generated from the air show event shall be managed by the Participant in accordance with Federal, state and local laws and regulations, and shall be turned over to NASA for proper disposal.

10.2 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, 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.

10.3 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.

10.4 The environmental responsibilities of NASA and the 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.

10.5 The environmental responsibilities of NASA and the Middlefield-Ellis Whisman (MEW) companies at Moffett Field are set forth in the Allocation And Settlement Agreement for MEW Remedial Program Management Between the National Aeronautics and Space Administration and Fairchild Semiconductor Corporation, Raytheon Corporation, and Intel Corporation. Participants will be

responsible for paying all costs of any damage to MEW environmental restoration activities caused by their fault, negligence, or failure to comply with this Agreement.

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

11. PROTECTIVE SERVICES

11.1 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*, and will ensure that its contractors and subcontractors comply. Included in the manual are standards on badging and facility access, fire suppression and response, fire prevention, law enforcement jurisdictions, security, dispatch, and emergency response and preparedness.

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

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

11.4 Participant agrees to provide appropriately badged, U.S. Citizen escorts, for Foreign National Air Crew or others, while entering, exiting, or on-board Moffett Field.. Deviations from escort requirements, parameters, or requests for Protective Services support, must be pre-coordinated with the Protective Services Office.

11.5 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.

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.

13. INTELLECTUAL PROPERTY

Patent and Invention Rights

13.1 Title to inventions made (conceived or first actually reduced to practice) as a consequence of, or in direct relation to, the performance of activities under this agreement will remain with the party inventing them. However, NASA and Participant agree to use reasonable efforts to identify and report to each other any inventions which may be made jointly by them. The parties agree to consult and agree upon responsibilities and costs of actions necessary to establish and maintain patent protection (in any country) on joint inventions along with the terms and conditions of any license or other rights exchanged or granted by or between NASA and Participant. This patent and invention rights provision applies to both NASA and Participant, their employees, contractors and subcontractors.

Data Rights

13.2 Data exchanged between NASA and Participant under this agreement will be exchanged without restriction on disclosure, use, or duplication unless it is reduced to a tangible form, and conspicuously marked as proprietary or confidential matter. This does not include the Participant's models and/or prototypes. Participant shall have exclusive control of these at all times, and NASA assumes no responsibility for them whatsoever.

13.3 If it is necessary for either party to provide the other with data which is confidential or proprietary, the receiving party will maintain the data in confidence and use the data only for the purpose of carrying out its responsibilities under this agreement. Upon completion of activities under this agreement, the confidential data will be disposed of as requested by the party that provided it. This data rights provision applies to both NASA and Participant, their employees, contractors and subcontractors.

13.4 Disclaimer of Liability: Notwithstanding the above, neither party shall be restricted in, nor incur liability for the disclosure and use of (1) data not identified with a conspicuous notice or legend; (2) information contained in any data which becomes generally known without breach of confidence on the part of the receiving party; (3) data generated by either of the parties independently and outside this agreement; (4) data which is rightfully received from a third party without restriction; or (5) data which is required to be furnished to the U.S. Government without restriction on disclosure and use.

14. TERM OF AGREEMENT

This Agreement becomes effective upon the date of the last signature below and shall remain in effect until the completion of all activities under this agreement or one (1) year from the date of signature of both parties, whichever comes first.

15. RIGHT TO TERMINATE

15.1 Either party may unilaterally terminate this Agreement prior to the expiration date by providing written notice to the other party at least one week before the scheduled air show event. In the event of such termination, Participant shall be obligated to reimburse NASA for all Government costs which have been incurred up to the effective date of the notice of termination and are incurred as a result of such termination. NASA shall not be liable for any costs, loss of profits, revenue, or other direct, indirect, or consequential damages incurred by Participant, its contractors, subcontractors, or customers as a result of termination by NASA.

15.2 The obligations of the parties set forth in the provisions of paragraphs 5, 8, and 13 of this Agreement concerning Financial Obligations, Liability and Risk of Loss, and Intellectual Property shall continue to apply after the expiration or termination of this Agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the date indicated below.

NATIONAL AERONAUTICS
AND SPACE ADMINISTRATION

COLLINGS FOUNDATION

BY: _____
HENRY MCDONALD
Director
Ames Research Center
Moffett Field, CA 94035-1000

BY: _____
Robert Collings
Founder, Collings Foundation
137 Barton Road
Stow, MA 01775

Date: _____

Date: _____