



**AGREEMENT**

**BETWEEN**

**TRANSPORTATION SECURITY ADMINISTRATION (TSA)**

**AND**

**AIRPORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**Relating to**

**EXPLOSIVE STORAGE MAGAZINE**

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**AGREEMENT NUMBER**  
***HSTS02-09-A-CAN348***

**ACCOUNTING AND APPROPRIATION DATA**  
See Article V. - Funding and Limitations

## ARTICLE I - PARTIES

This agreement (hereinafter referred to as "Agreement") is entered into between the United States of America (hereinafter referred to as the "Government") as represented by the Transportation Security Administration (hereinafter referred to as "TSA") and the CITY AND COUNTY OF SAN FRANCISCO, acting by and through the Airport Commission (hereinafter referred to as "Airport") relating to the use of certain airport land for the placement of explosive storage magazines. The TSA and the Airport agree to cooperate in good faith and to perform their respective obligations using their cooperative good faith efforts in executing the purpose of this Agreement.

## ARTICLE II - PURPOSE

- A. TSA has the need to use approximately 2,500 square feet of land (the "premises") on the Airport's property, as more specifically described on Exhibit A, attached hereto and made part hereof, in connection with explosives detection canine teams under the TSA National Explosives Detection Canine Team Program (NEDCTP). TSA's use of such space shall be confined to storing canine explosives training aids ("Materials"). The Airport is willing to grant to TSA the right to install, use, and monitor TSA-provided explosive storage magazines to ensure proper operation and maintenance of the Materials in conjunction with the NEDCTP.
- B. TSA will construct a cement pad and related safety and security features, and a road for ingress and egress to the premises on the site and location. The cement pad and related safety and security features will be constructed in accordance with the necessary state, city, local, and federal government approvals.
- C. TSA will acquire and deliver or cause to be delivered two (2) explosive storage magazines. TSA, at its sole expense, will be responsible for offloading and installing these explosive storage magazines on the pad.
- D. The explosive storage magazines shall remain the property of TSA.
- E. The Airport will allow TSA access to the closest point of connection for electrical service to the explosive storage magazine.
- F. TSA shall pay for the whole cost for all utilities invoiced to the Airport and for other special services, which TSA may require at the premises. TSA waives any and all claims for damages against the Airport arising or resulting from failures or interruptions of utility services to the premises.

- G. TSA may alter, relocate or add to existing utilities, provided written approval by the Airport of plans for such alteration or relocation is first obtained. TSA shall be responsible for sufficiently identifying, locating and ensuring protection of its respective appurtenances and connecting subsurface pipelines, telecommunications equipment, utility equipment and pipes, and other subsurface items from damage caused by any such construction within the Premises and any right of way or easements.
- H. TSA shall at all times during the Term and at TSA's sole cost and expense, keep the premises, access roadway, and every part thereof in good condition and repair, and in compliance with applicable laws and the Airport's TI Guide. TSA hereby waives all right to make repairs at the expense of the Airport. Airport shall have no maintenance and repair responsibilities with respect the premises or roadway, the TSA shall be solely responsible.
- I. Notwithstanding any other provision in this Agreement to the contrary, TSA, at its sole cost, shall comply with all applicable laws, statutes, ordinances, regulations, rules and other governmental requirements collectively, referred to as "laws"), in performing or observing its obligations under this Agreement.

### **ARTICLE III AUTHORITY**

TSA and the Airport enter into this Agreement under the authority of the Aviation and Transportation Security Act, Pub. L. 107-71, 115 Stat. 597, specifically 49 U.S.C. 114(j), and 114(j) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

### **ARTICLE IV - EFFECTIVE DATE AND TERM**

The effective date of this Agreement is the date on which it has been signed by both TSA and the Airport, and shall be the date of the last signature. This Agreement shall continue in effect until January 1, 2014, unless earlier terminated by the parties as provided in this Agreement in Article X or extended by mutual agreement. This Agreement may be extended by mutual, written agreement of the Parties.

### **ARTICLE V - FUNDING AND LIMITATIONS**

Beginning sixty (60) days after TSA receives final approval from all required sources to construct the cement pad and related safety and security features referenced in Article II above, TSA shall pay Airport the sum of \$4,026.00 annually (\$335.50 monthly), to be paid monthly in arrears. The following accounting information shall apply:

Agreement #: HSTS02-09-A-CAN348

PR#: 2109209CAN348

Appropriation Code: 5AV089A000D2009ADE010GE000031006100616CAN-5904112300000000-252R

Total Funding: \$4,026.00

TSA's liability to make payments to the Airport is limited to the amount of funds obligated and available for payment hereunder, including written modifications to this Agreement.

## ARTICLE VI- PAYMENT

Payment by TSA will be in accordance with Article V and is conditioned upon the Airport's submission of invoices to TSA as specified in the Agreement, and that the Airport meets the terms of this Agreement. A properly executed invoice should be submitted to TSA at the billing address identified below, and a copy of each request for payment shall be submitted to the Contracting Officer Representative listed below.

Billing Address:

United States Coast Guard Finance Center  
TSA Commercial Invoices  
P.O. Box 4111  
Chesapeake, VA 23326-4111

The Airport's invoice format is acceptable. However, the invoice shall, as a minimum, include the following:

1. Agreement Number – HSTS02-09-A-CAN348
2. Invoice Date
3. Invoice Number
4. Name and Address of the Airport Requesting Fund Disbursement
5. Point of Contact, with Address, Telephone, Fax and E-mail Contact Information
6. Tax Identification Number
7. Supporting Documentation to include Invoices or Other Documentation that Substantiates the Amount of Funds to be Disbursed by TSA, if applicable
8. Total Amount of Funds Requesting to be Disbursed by TSA
9. Electronic Funds Transfer (EFT) Banking Information (If Applicable)
10. Remittance Address
11. Certification of Requestor, including the following language: *This is to certify that the incurred costs billed were actually expended in furtherance of this Agreement, and we understand that intentional falsification of the information contained herein may be subject to civil and criminal penalties under applicable federal laws and/or regulations.*
12. Name and Address of the Airport's facility

Notwithstanding any other payment clause in this Agreement, the Government shall make invoice payments under the terms and conditions specified in this Article. Payment shall be considered

made on the day the check is dated and deposited in the US mail, or an electronic funds transfer is completed. All days referred to in this clause are calendar days, unless otherwise specified.

#### **ARTICLE VII – AUDITS**

- A. TSA shall have the right to examine or audit relevant Airport financial records, while this Agreement, or any part thereof, remains in force and effect, and for a period of three (3) years after expiration of the terms of this Agreement. The Airport shall maintain, and shall require that its contractor(s) maintain, project records pursuant to an established accounting system that complies with generally accepted accounting principles, while this Agreement, or any part thereof, remains in force and effect, and, for a period of three (3) years after the expiration or termination of this Agreement. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement. Records relating to appeals under the “Disputes” provision in Article XI or to litigation or the settlement of contract disputes arising under or relating to this Agreement shall be made available until such appeals, litigation, or contract disputes are finally resolved.
- B. As used in this provision, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form that relate to the construction of the explosive storage magazines.
- C. The Airport shall maintain all records and other evidence sufficient to reflect costs claimed to have been incurred. The Contracting Officer Technical Representative, COTR, or the authorized representatives of these officers shall have the right to examine and audit those records at any time, or from time to time. This right of examination shall include inspection at all reasonable times at the Airports offices directly responsible for managing the project.
- D. The Comptroller General of the United States, or an authorized representative, shall also have access to and the right to examine any directly pertinent records involving transactions related to this Agreement.
- E. This article shall not be construed to require the Airport, or its contractors or subcontractors, to create or maintain any record that they do not maintain in the ordinary course of business pursuant to a provision of law, provided that those entities maintain records which conform to generally accepted accounting procedures.

#### **ARTICLE VIII - LIMITATIONS ON LIABILITY**

- A. Each party expressly agrees without exception or reservation that it shall be solely and exclusively liable for the acts or omissions of its own agents and/or employees, subject in the case of TSA to the overriding provisions of the Federal Tort Claims Act, and that neither party looks to the other to save or hold it harmless for the consequences of any act or omission on the part of one or more of its own agents or employees.

- B. The Airport has the affirmative duty to notify TSA's Contracting Officer in the event that the Airport believes that any act or omission of a TSA agent or employee would increase the Airports costs and cause the Airport to seek compensation from TSA beyond TSA's liability as stated in Article II (Purpose), or Article V (Funding And Limitations). Claims against TSA for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages not to exceed the aggregate outstanding amount of funding obligated under this Agreement at the time the dispute arises. If the Airport receives any communication which it interprets as instructions to change the work encompassed in this Agreement, or to incur costs not covered by funding obligated at that time, the Airport must not act on that communication, and must contact the Contracting Officer verbally and in writing immediately.
- C. In no event shall either party be liable to the other for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.
- D. No third party shall assert any rights under this Agreement unless expressly provided herein.

#### **ARTICLE IX - DISPUTES**

Where possible, disputes shall be resolved by informal discussion between the Contracting Officer for TSA and an authorized representative of the Airport. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute shall be escalated for resolution to the TSA Deputy Assistant Administrator for Acquisition. The decision is final unless it is appealed to the TSA Administrator or his designee within sixty (60) days of receipt of the decision. The Administrator or his designee's decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.

#### **ARTICLE X - TERMINATION**

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, by giving the other party at least thirty (30) days' prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations that might require payment.

#### **ARTICLE XI - CHANGES AND/OR MODIFICATIONS**

Changes or modifications to this Agreement shall be in writing and signed by the TSA Contracting Officer and the authorized representative of the Airport. The modification shall cite the subject provision to this Agreement and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement. Reasonable administrative modifications may be issued unilaterally by TSA.

## ARTICLE XII - CONSTRUCTION OF THE AGREEMENT

This Agreement is issued under 49 U.S.C. §114 (j) and (m) and is not a procurement, grant or cooperative agreement. It is not intended to be, nor shall it be construed as, a partnership, corporation, procurement, contract or other business organization. Both parties agree to provide their best efforts to achieve the objectives of this Agreement. The Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, understanding, negotiations and discussions whether oral or written of the parties. Each party acknowledges that there are no exceptions taken or reserved under this Agreement.

## ARTICLE XIII - PROTECTION OF INFORMATION

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

### A. RELEASE OF TECHNICAL DATA

No information, oral or written, concerning the scope of this Agreement, shall be published or released to the public without the prior written approval of the TSA Contracting Officer.

### B. RECORDS AND RELEASE OF INFORMATION

1. All Sensitive Security Information (SSI), as defined in 49 CFR Part 1520, shall be handled in accordance with TSA policies and regulations. All members assigned to work under this Agreement are subject to the provisions of 49 CFR Part 1520, Protection of Sensitive Security Information. SSI may not be disclosed except in accordance with the provisions of that rule or where TSA otherwise approves.
2. No party to this Agreement may provide testimony or produce records in legal proceedings that contain information acquired or developed as part of the performance of their duties under this Agreement, unless TSA has authorized the disclosure of that information or a court order has been issued requiring such testimony or production of records.

### C. MEDIA

All media releases and other contact with or by media related to this Agreement and in accordance with the terms of this Agreement shall be referred to the Contracting Officer.

### D. POINTS OF CONTACT

- TSA: JR Prevatte  
Field Canine Coordinator  
Transportation Security Administration  
7000 Airport Boulevard  
Suite 200  
Burlingame, CA 94010  
Phone: (605) 581-2431  
Cell: (415) 516-3102  
Email: [Ernest.Prevatte@dhs.gov](mailto:Ernest.Prevatte@dhs.gov)

Kelly Lewis  
Western Area Canine Coordinator  
Transportation Security Administration  
7000 Airport Boulevard  
Suite 200  
Burlingame, CA 94010  
Phone: (408) 961-0376  
Cell: (408) 204-6166  
Fax: (408) 451-1273  
Email: [Kelly.Lewis@dhs.gov](mailto:Kelly.Lewis@dhs.gov)

- Airport: City and County of San Francisco, a municipal corporation, acting by and through its Airport Commission, John L. Martin, Airport Director, San Francisco International Airport, Building 100, International Terminal, North Shoulder Building, 5<sup>th</sup> Floor, P.O. Box 8097, San Francisco, CA 94128, Tel No. (650) 821-5000; Fax No. (650) 821-5005

#### **ARTICLE XIV – RESTORATION**

Within sixty (60) days of expiration or termination, the TSA shall restore the premises to as good condition as that existed at the time of the TSA's initial entry upon the premises under this Agreement to include the removal of the concrete pad and berm, if any, with the exception for ordinary wear and tear or damage by natural elements. Notwithstanding the foregoing, TSA shall not be required to remove the access road to the Premises.

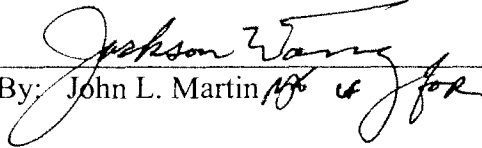
No implied obligations: Any obligation of the TSA under this Agreement that requires the expenditure or obligation of funds is subject to the availability of funds. The TSA shall incur no liability under the Agreement until funds that may be used for that purpose are appropriated. No provision of this Agreement shall be interpreted to require expenditure of obligation in violation of the Anti-Deficiency Act, 31. U.S.C. 1341.

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IN WITNESS WHEREOF, the parties have entered into this Agreement by their duly authorized officers the day and year first above written.

San Francisco International Airport

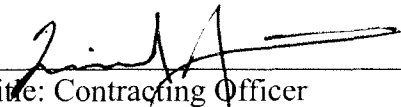
By:  John L. Martin *for*

Title: Airport Director

Date: 6.23.09

TRANSPORTATION SECURITY ADMINISTRATION

By: Michael Derrios

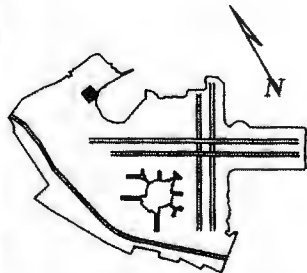
  
Title: Contracting Officer

Date: 7/7/09

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**NON-EXCLUSIVE ROAD**

**TSA  
NEDCTP**



**KEY PLAN**

<b>TENANT PERMIT LOCATION DRAWING</b>		<b>LOCATION</b>	<b>TENANT</b>	<b>CAT</b>	<b>AREA</b>	<b>CONTRACT</b>	<b>EFF DATE</b>
<b>LOCATION: NORTH FIELD NEAR BUILDING 1019 - COAST GUARD</b>		<b>BUNKER/YD</b>	<b>NEDCTP</b>		<b>2500'</b>	<b>NEDCTPMOA</b>	
<b>TSA NATL EXPLOSIVES DETECTION CANINE TEAM PROGRAM</b>		<b>ROAD</b>	<b>NEDCTP</b>		<b>6633'</b>	<b>NEDCTPMOA</b>	
<b>CITY &amp; COUNTY OF SAN FRANCISCO</b>	<b>DWG: CANINE</b>						
<b>AIRPORTS COMMISSION</b>	<b>SCALE: 1"=100.0'</b>						
<b>SAN FRANCISCO INTERNATIONAL AIRPORT</b>	<b>DATE: 12/02/2008</b>						