

COST REIMBURSEMENT AGREEMENT
BETWEEN
THE FEDERAL BUREAU OF INVESTIGATION (FBI)
AND
CONTRA COSTA COUNTY SHERIFF'S OFFICE (CCCSO)

TASK FORCE FILE # 281D-SF-124919

Pursuant to Congressional appropriations, the FBI receives authority to pay overtime for police officers assigned to the formalized **SAFE STREETS OAKLAND TASK FORCE (SSOTF)** as set forth below for expenses necessary for detection, investigation, and prosecution of crimes against the United States. It is hereby agreed between the FBI and the CCCSO, located at 1980 Muir Road, Martinez, California (CA), Taxpayer Identification Number: _____, Phone Number: _____ that:

1) Commencing upon execution of this agreement, the FBI will, subject to availability of the required funding, reimburse the CCCSO for overtime payments made to the officers assigned full-time to the task force.

2) **Requests for reimbursement will be made on a monthly basis and should be forwarded to the FBI field office as soon as practical after the first of the month which follows the month for which reimbursement is requested.** Such requests should be forwarded by the Supervisor of the CCCSO to the FBI Task Force Squad Supervisor and Special Agent in Charge for their review, approval, and processing for payment.

3) **Overtime reimbursements will be made directly to the CCCSO by the FBI.** All overtime reimbursement payments are made by **electronic fund transfer (EFT)**. An ACH Vendor/Miscellaneous Payment Enrollment Form must be on file with the FBI to facilitate EFT.

4) **Overtime reimbursements will be** calculated at the usual rate for which the individual officer's time would be compensated in the absence of this agreement. However, said reimbursement, per officer, shall not exceed monthly and/or annual limits established annually by the FBI. The limits, calculated using Federal pay tables, will be **in effect for the Federal fiscal year running from October 1st of one year through September 30th of the following year**, unless changed during the period. The FBI reserves the right to change the reimbursement limits, upward or downward, for subsequent periods based on fiscal priorities and appropriations limits. The FBI will notify the agency of the applicable annual limits prior to October 1st of each year.

5) The number of CCCSO officer(s) assigned full-time to the task force and entitled to overtime reimbursement by the FBI shall be approved by the FBI in advance of each fiscal year. Based on the needs of the task force, this number may change periodically, upward or downward, as approved in advance by the FBI.

6) Prior to submission of any overtime reimbursement requests, the CCCSO must prepare an official document setting forth the identity of each officer assigned full-time to the task force, along with the regular and overtime hourly rates for each officer. Should any officers change during the year, a similar statement must be prepared regarding the new officers prior to submitting any overtime reimbursement requests for the officers. The document should be sent to the field office for FBI review and approval.

7) Each request for reimbursement will include the name, rank, ID number, overtime compensation rate, number of reimbursable hours claimed, and the dates of those hours for each officer for whom reimbursement is sought. The request must be accompanied by a certification, signed by an appropriate Supervisor of the CCCSO, that the request has been personally reviewed, the information described in this paragraph is accurate, and the personnel for whom reimbursement is claimed were assigned full-time to the task force.

8) Each request for reimbursement will include an invoice number, invoice date, taxpayer identification number (TIN), and the correct banking information to complete the electronic fund transfer. The necessary banking information is the Depositor Account Title, Bank Account Number, Routing Number, and Type of Account (either checking, savings, or lockbox). If the banking information changes, a new ACH Vendor/Miscellaneous Payment Enrollment Form must be submitted to the FBI.

9) Requests for reimbursement must be received by the FBI no later than December 31st of the next fiscal year for which the reimbursement applies. For example, reimbursements for the fiscal year ending September 30, 2006 must be received by the FBI by December 31, 2006. The FBI is not obligated to reimburse any requests received after that time.

10) This agreement is effective upon signature of the parties and will remain in effect for the duration of the CCCSO's participation in the task force, contingent upon approval of necessary funding, and unless terminated in accordance with the provisions herein. This agreement may be modified at any time by written consent of the parties. It may be terminated at any time upon mutual consent of the parties, or unilaterally upon written notice from the terminating party to the other party at least 30 days prior to the termination date.

FOR THE CONTRA COSTA COUNTY SHERIFF'S OFFICE:

FOR THE FBI:

Sheriff

Date

Special Agent in Charge

Date

Contracting Officer
FBI Headquarters

Date

TASK FORCE MEMORANDUM OF UNDERSTANDING (MOU)

PARTIES

This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation (FBI) and the Contra Costa County Sheriff's Office (CCCSO).

AUTHORITIES

Authority for the FBI to enter into this agreement can be found at 28 U.S.C. § 533; 42 U.S.C. § 3771; and 28 C.F.R. § 0.85.

PURPOSE

The purpose of this MOU is to delineate the responsibilities of TASK FORCE participants, maximize inter-agency cooperation, and formalize relationships between the participating agencies for policy guidance, planning, training, public and media relations. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof.

This mission of the **SAFE STREETS OAKLAND TASK FORCE (SSOTF)** is to maintain a cohesive TASK FORCE of local and federal officers in order to disrupt and dismantle violent gangs utilizing the enterprise theory of investigation. The SSOTF will also conduct investigations to locate and apprehend fugitives who have committed serious acts of violence in the East Bay Area and who are believed to have fled the State of California in order to avoid prosecution.

SUPERVISION AND CONTROL

Supervision

- Overall supervision of the personnel on the SSOTF shall be the shared responsibility of the participants.
- The Special Agent in Charge (SAC) of the San Francisco Division of the FBI shall designate one Supervisory Special Agent (SSA) to have direct and daily responsibility for all personnel and investigative matters pertaining to the SSOTF.
- Responsibility for conduct, not under the direction of the SAC or SSA, of each SSOTF member, both personally and professionally, shall remain with the respective agency head and each agency shall be responsible for the actions of their respective employees.

- Each agency member who is a SSOTF member will be subject to the personnel rules, regulations, laws, and policies applicable to those of their respective agencies. FBI participants will continue to adhere to the Bureau's ethical standards and will remain subject to the Supplemental Standards of Ethical Conduct for employees of the Department of Justice.
- Each SSOTF member will continue to report to his or her respective agency head for non-investigative administrative matters not detailed in this MOU.
- Subject to other provisions in this document, continued membership on the SSOTF will be based on performance and will be at the discretion of each member's respective supervisor.

Case Assignments

- The FBI SSA with designated oversight for investigative and personnel matters will be responsible for opening, monitoring, directing, and closing SSOTF investigations in accordance with existing FBI policy and the applicable United States Attorney General's Guidelines.
- Assignments of cases to personnel will be based on, but not limited to, experience, training and performance, in addition to the discretion of the SSA with designated oversight for investigative and personnel matters.
- For FBI administrative purposes, SSOTF cases will be entered into the relevant FBI computer system.
- SSOTF members will have equal responsibility for each case assigned. SSOTF personnel will be totally responsible for the complete investigation from predication to resolution.

Resource Control

- Specific control of SSOTF resources, including personnel, and the continual dedication of SSOTF resources shall be retained by the participating agency heads, who will be kept fully apprised of all investigative developments by their respective subordinates.

OPERATIONS

Investigative Exclusivity

- It is agreed that matters designated to be handled by the SSOTF will not knowingly be subject to non-SSOTF law enforcement efforts by any of the participating agencies. It is incumbent on each agency to make proper internal notification regarding the SSOTF'S existence and areas of concern.

- It is agreed that there is to be no unilateral action taken on the part of the FBI or participating agencies relating to SSOTF investigations or areas of concern. All law enforcement actions will be coordinated and cooperatively carried out.

Informants

- The disclosure of FBI informants to non-FBI SSOTF members will be limited to those situations where it is essential to the effective performance of the SSOTF. These disclosures will be consistent with applicable FBI guidelines.
- Non-FBI SSOTF members may not make any further disclosure of the identity of an FBI informant, including to other members of the SSOTF. No documents are to be prepared or disseminated outside the FBI, which identify or tend to identify an FBI informant.
- In those instances where a participating agency provides an informant, the FBI may, at the discretion of the SAC, become solely responsible for the informant's continued development, operation, and for compliance with necessary administrative procedures regarding operation and payment as set forth by the FBI.
- The United States Attorney General's guidelines and FBI policy and procedure for operating FBI informants and cooperating witnesses (CWs) shall apply to all FBI informants and CWs opened and operated in furtherance of SSOTF investigations. Documentation of, and any payments made to, FBI informants and CWs shall be in accordance with FBI policy and procedure.
- Operation, documentation, and payment of solely state, country, or local informants and CWs opened and operated by Non-SSOTF members in furtherance of SSOTF investigations shall be in accordance with appropriate respective state, country or local policies and procedures provided these policies and procedures do not conflict with the United States Attorney General's guidelines. Documentation of state, county, or local informants and CWs opened and operated in furtherance of SSOTF investigations shall be maintained at an agreed to location.

Reports and Records

- All investigative reporting will be prepared in compliance with existing FBI policy. Subject to pertinent legal and/or policy restrictions, copies of pertinent documents created by each member of the SSOTF will be made available for inclusion in the respective investigative agencies' files as appropriate.
- SSOTF reports prepared in cases assigned to state, county and local participants will be maintained at a FBI approved location; original documents will be maintained by the FBI.

- Records and reports generated in SSOTF cases which are opened and assigned by the FBI SSA with designated oversight for investigative and personnel matters will be maintained in the FBI investigative file for SSOTF cases in the Oakland Resident Agency of the FBI.
- SSOTF investigative records maintained at the Oakland Resident Agency of the FBI will be available to all SSOTF members, as well as their supervisory and command staff subject to pertinent legal, administrative and /or policy restrictions.
- All evidence and original tape recordings (audio and video) acquired during the course of the SSOTF investigations will be maintained by the FBI. The FBI 's rules and policies governing the submission, retrieval and chain of custody will be adhered to by SSOTF personnel.

PROSECUTIONS

- SSOTF investigative procedure is to conform to the requirements for Federal Prosecution.
- A determination will be made on a case-by-case basis whether the prosecution of SSOTF cases will be at the State or Federal level. This determination will be based on the evidence obtained and a consideration of which level of prosecution would be of the greatest benefit to the overall objectives of the SSOTF.
- In the event that a state or local matter is developed that is outside the jurisdiction of the FBI, the FBI agrees to provide all relevant information to state and local authorities.
- Whether to continue and/or conduct additional investigation of the state or local crimes involved will be at the sole discretion of the respective state and local authorities.

Investigative Methods/Evidence

- For cases assigned to an FBI Special Agent or in which FBI informants or cooperating witnesses are utilized, the parties agree to conform to federal standards concerning evidence collection, processing, storage, and electronic surveillance.
- In all cases assigned to state, county, or local law enforcement participants, the parties agree to utilize federal standards pertaining to evidence handling and electronic surveillance activities to the greatest extent possible. However, in situations where the statutory or common law of the state is more restrictive than the comparable federal law, the investigative methods employed by state and local law enforcement agencies shall conform to the requirements of such statutory or common law pending a decision as to venue for prosecution.

- The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policy and procedures of the FBI.

Undercover Operations

- All SSOTF undercover operations will be conducted and reviewed in accordance with FBI guidelines and the United States Attorney General's Guidelines on Undercover Operations.

DEPUTATIONS

- Local and state law enforcement personnel designated to the SSOTF, subject to a limited background inquiry, may be sworn as federally deputized Special Deputy United States Marshals, with the FBI securing the required deputation authorization. These deputations should remain in effect throughout the tenure of each investigator's assignment to the SSOTF or until the termination of the SSOTF, whichever comes first.
- Administrative and personnel policies imposed by the participating agencies will not be voided by deputation of their respective personnel.

VEHICLES

- Participating agencies agree to provide sufficient vehicles to the SSOTF.
- On a case by case basis, the FBI may authorize members of the SSOTF to use vehicles owned or leased by the FBI when necessary in connection with SSOTF surveillance, case management and investigations, and if available.
- When authorized, participating agency personnel using FBI vehicles agree to operate the vehicles in accordance with all applicable FBI rules and regulations as outlined in the FBI Manual of Administrative Operations and Procedures (MAOP), Part I Section 3.1.
- FBI vehicles, including Government-owned, rented, and leased vehicles, are to be used for official business only.
- The participating agencies agree that FBI vehicles will not be used to transport passengers unrelated to SSOTF business.
- The responsibility for all other liability attributed to the participating agencies resulting from the use of SSOTF vehicles by their employees, confidential informants, or by cooperating witnesses rests with the individual participating agency.

- The participating agencies agree to be responsible for any damage incurred to SSOTF vehicles caused by any act or omission on the part of their respective employees and participating agencies agree to assume financial responsibility for property damage to said vehicles.

SALARY/OVERTIME COMPENSATION

- The salaries of SSOTF members will be determined by the current Contract Reimbursement Agreement, which is incorporated into this document by reference.

PROPERTY AND EQUIPMENT

- Other property of the FBI and participating agencies may be provided on a case by case basis when needed to conduct SSOTF investigations and operations.
- Property damaged or destroyed which was utilized by the SSOTF in connection with authorized investigations and/or operations and is the custody and control and used at the direction of the SSOTF, will be the financial responsibility of the agency supplying said property.

FUNDING

- This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties hereto of the tasks and methods for performing the tasks described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the above language in no way implies that Congress will appropriate funds for such expenditures.

FORFEITURES

- The FBI shall be responsible for the processing of assets seized for federal forfeiture in conjunctions with SSOTF operations.
- Asset forfeitures will be conducted in accordance with Federal law, and the rules and regulations set forth by the FBI and Department of Justice (DOJ). Forfeitures attributable to SSOTF investigations may be distributed among the agencies participating in the SSOTF.

DISPUTE RESOLUTION

- In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the SSOTF's objectives.
- The parties agree to attempt to resolve any disputes regarding jurisdiction, case assignments, workload, etc., at the field level first before referring the matter to supervisory personnel for resolution.

MEDIA RELEASES

- All media releases and statements will be mutually agreed upon and jointly handled according to FBI and participating agency guidelines.
- The parties agree that information will only be disseminated to the media in accordance with the terms of this MOU.

SECURITY CLEARANCES

- Personnel from participating agencies will be required to undergo a full background investigation for a "Top Secret" security clearance. If, for any reason, the candidate is not eligible for a security clearance, the participating agency will be so advised and requested to supply another candidate.
- Sixty days prior to be assigned to this SSOTF, each candidate will be required to furnish the FBI with a completed "Questionnaire for Sensitive Positions" (SF-86) and two "Applicant Fingerprint Cards" (FD-258). Sometime thereafter, an FBI representative will conduct an interview of each candidate.
- At the completion of the background investigation, each candidate selected will be granted a "Top Secret" security clearance by the DOJ and will receive a comprehensive briefing on the security policy and procedures of the FBI field office, to include the handling and protection of national security information. During the briefing, each candidate will execute a non-disclosure agreement (SF-312) and FD-868, as may be necessary or required by the FBI.
- Upon departure from the SSOTF, each candidate will be given a security debriefing and reminded of the provisions contained in the non-disclosure agreement previously agreed to by the SSOTF member.
- In certain circumstances, SCI clearance may also be required.

LIABILITY

- Unless specifically addressed by the terms of this MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Legal representation by the United States is determined by DOJ on a case by case basis. The FBI cannot guarantee the United States will provide legal representation to any Federal, state or local law enforcement officer.
- Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the United States government, acting within the scope of his employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), §§ 2671-2680.
 - ⌘ For the limited purpose of defending claims arising out of SSOTF activity, state or local law enforcement officers who have been specially deputized and who are acting within the course and scope of their official duties and assignments pursuant to this MOU, may be considered an "employee" of the United States government as defined in 28 U.S.C. § 2671. See 5 U.S.C. § 3374(c)(2).
 - ⌘ Under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (commonly known as the Westfall Act), 28 U.S.C. § 2679(b)(1) the Attorney General or her designee may certify that an individual defendant acted within the scope of his employment at the time of the incident-giving rise to the suit. Id., 28 U.S.C. § 2679(d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. 28 U.S.C. § 2679(D)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suits in his official capacity.
 - ⌘ If the Attorney general declines to certify that an employee was acting within the scope of employment, "the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of this office or employment." 28 U.S.C. § 2679(D)(3).
 - ⌘ Liability for negligent or willful acts of SSOTF employees, undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved.
- Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (197A) or pursuant to 42 U.S.C. § 1983 for state and local officers or cross-deputized federal officers.

- ✧ Both state and federal officers enjoy qualified immunity from suit for constitutional torts "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. "Harlow v. Fitzgerald, 457 U.S. 800 (1982).
- ✧ SSOTF officers may request representation by the U.S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment. 28 C.F.R §§ 50.15, 50.16.
- ✧ An employee may be provided representation "when the actions for which representation requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or [her] designee determines that providing representation would otherwise be in the interest of the United States." 28 C.F.R. § 50.15(a).
- ✧ A SSOTF officer's written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI division coordinating the SSOTF. The CDC will then forward the representation request to the FBI's Office of the General Counsel (OGC) together with a Letterhead memorandum concerning the factual basis for the lawsuit. FBI/OGC will then forward the request to the Civil Division of DOJ together with an agency recommendation concerning scope of employment and Department representation. 28 C.F.R. § 50.15(a)(3).
- ✧ If a SSOTF officer is found to be liable for a constitutional tort, he/she may request indemnification from DOJ to satisfy an adverse judgment rendered against the employee in his/her individual capacity. 28 C.F.R. § 50.15(c)(4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to DOJ representation under 28 C.F.R. § 50.15(a).

— In the case that a SSOTF member is not made a Special Deputy, each participating SSOTF agency acknowledges that its liability, if any, for the negligent or wrongful acts or omissions committed by its employees while they are participating as members of the SSOTF is governed by applicable local law. SSOTF agencies and individual SSOTF members agree that they will not be responsible or liable for acts performed by personnel of other member agencies during the duration of this MOU.

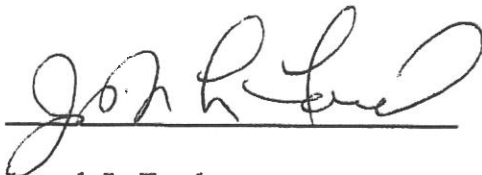
- In the case that a SSOTF member is not made a Special Deputy, each participating agency acknowledges that the federal government does not contract or promise to consider indemnifying the individual SSOTF officer, substituting the United States as a party defendants in civil litigation, or providing representation to state and local law enforcement officers who cooperate with the FBI on an informal basis as apart of their state or local duties unless they have been deputized as a federal law enforcement officer or have been detailed to a federal agency under the Intergovernmental Personnel Act (IPA), 5 U.S.C. § 3374(c)(2).

DURATION

- The term of this MOU is for the duration of the SSOTF's operations, contingent upon approval of necessary funding, but may be terminated at any time upon written mutual consent of the agency involved.
- Any participating agency may withdraw from the SSOTF at any time by written notification to the SSA with designated oversight for investigative and personnel matters or program manager of the SSOTF at least 30 days prior to withdrawal.
- Upon termination of this MOU, all equipment provided to the SSOTF will be returned to the supplying agency/agencies. In addition, when an entity withdraws from the MOU, the entity will return equipment to the supplying agency/agencies. Similarly, remaining agencies will return to a withdrawing agency any unexpended equipment supplied by the withdrawing agency during any SSOTF participation.

MODIFICATIONS

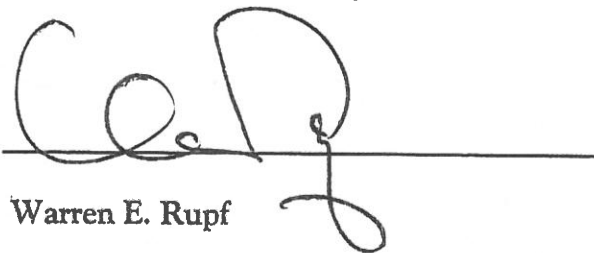
- This agreement may be modified at any time by written consent of all involved agencies.
- Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.



Joseph L. Ford

Special Agent in Charge

Federal Bureau of Investigation



Warren E. Rupf

Sheriff

Contra Costa County Sheriff's Office

3/28/06

Date

3/24/2006

Date



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Contracting Officer

FBI Headquarters

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