CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **September 7, 2021**

ITEM: Motion – Approve a Memorandum of Understanding and Cost Reimbursement Agreement between the City of West Des Moines Police Department and Federal Bureau of Investigation for a Part-Time employee to participate in National Joint Terrorism Task Force and Joint Terrorism Task Forces.

FINANCIAL IMPACT: No anticipated expenses. Potential for cost reimbursement depending on case work based on the Cost Reimbursement Agreement.

BACKGROUND: West Des Moines Police Department (Police Department) and the Federal Bureau of Investigation (FBI) have met to discuss the Police Department's participation in National Joint Terrorism Task Force (NJTTF) and Joint Terrorism Task Forces (JTTF) initiatives. In several cases worked by the FBI, contacts are being made with residents of West Des Moines. To ensure collaborative efforts to deter, defeat and respond to any terrorist activity, the Police Department believes the placement of a part-time task force member at the FBI will enhance the collaborative effort.

The Police Department will use one Support Service Officer from Investigations to participate as the department representative. The Memorandum of Understanding (MOU) shall serve to establish the parameters for the detail of the employee(s) of the Police Department to the FBI supervisor of JTTFs in Iowa. Included with the MOU is the FBI Joint Terrorism Task Force Cost Reimbursement Agreement (CRA).

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Motion directing the Chief of Police to sign the MOU and CRA between the City of West Des Moines Police Department and Federal Bureau of Investigations for a Part Time Task Force Officer of the West Des Moines Police Department to participate with the FBI NJTTF and JTTF initiatives.

Lead Staff Member: Chris Scott, Police Chief

Department Director	
Appropriations/Finance	
Legal	*JDS*
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Date(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation	Yes	No	Split

JOINT TERRORISM TASK FORCE

STANDARD MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FEDERAL BUREAU OF INVESTIGATION

AND

WEST DES MOINES POLICE DEPARTMENT
("Participating Agency")

PREAMBLE

The policy of the United States with regard to domestic and international terrorism is to deter, defeat, and respond vigorously to all terrorist attacks on our territory and against our citizens, or facilities. Within the United States, the Department of Justice, acting through the Federal Bureau of Investigation (FBI), is the lead domestic agency for the counterterrorism effort.

In order to ensure that there is a robust capability to deter, defeat, and respond vigorously to terrorism in the U.S. or against any U.S. interest, the FBI recognizes the need for all federal, state, local, and tribal agencies that are involved in fighting terrorism to coordinate and share information and resources. To that end, the FBI believes that the creation of the FBI National Joint Terrorism Task Force (NJTTF) and Joint Terrorism Task Forces (JTTFs) embodies the objectives of the U.S. policy on counterterrorism as set forth in Presidential Directives.

FBI policy for the NJTTF and JTTFs is to provide a vehicle to facilitate sharing FBI information with the intelligence and law enforcement communities to protect the United States against threats to our national security, including international terrorism, and thereby improve the effectiveness of law enforcement, consistent with the protection of classified or otherwise sensitive intelligence and law enforcement information, including sources and methods. All NJTTF and JTTF operational and investigative activity, including the collection, retention and dissemination of personal information, will be conducted in a manner that protects and preserves the constitutional rights and civil liberties of all persons in the United States.

This Memorandum of Understanding (MOU) shall serve to establish the parameters for the detail of employees (Detailees or members) from the Participating Agency to the FBI-led JTTFs in selected locations around the United States.

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FOR OFFICIAL USE ONLY

I. PURPOSE

A. The purpose of this MOU is to outline the mission of the JTTF, and to formalize the relationship between the FBI and the Participating Agencies in order to maximize cooperation and to create a cohesive unit capable of addressing the most complex terrorism investigations.

B. The MOU specifically represents the agreement between the FBI and the Participating Agency, which will govern the process by which employees of the Participating Agency are detailed to work with the FBI as part of the JTTF.

C. 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, their parent agencies, the U.S., or the officers, employees, agents or other associated personnel thereof.

II. MISSION

The mission of the JTTF is to leverage the collective resources of the member agencies for the prevention, preemption, deterrence and investigation of terrorist acts that affect United States interests, and to disrupt and prevent terrorist acts and apprehend individuals who may commit or plan to commit such acts. To further this mission, the JTTF shall serve as a means to facilitate information sharing among JTTF members.

III. AUTHORITY

Pursuant to 28 U.S.C. '533, 28 C.F.R. '0.85, Executive Order 12333, as amended, National Security Presidential Directive (NSPD) 46/ Homeland Security Presidential Directive (HSPD) 15 and Annex II thereto, the FBI is authorized to coordinate an intelligence, investigative, and operational response to terrorism. By virtue of that same authority, the FBI formed JTTFs composed of other federal, state, local, and tribal law enforcement agencies acting in support of the above listed statutory and regulatory provisions.

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IV. CONTROLLING DOCUMENTS

A. Since the JTTF operates under the authority of the Attorney General of the United States, all JTTF participants must adhere to applicable Attorney General Guidelines and directives, to include the following, as amended or supplemented:

1. Attorney General Guidelines for Domestic FBI Operations;

2. Attorney General Guidelines on Federal Bureau of Investigation Undercover Operations;

3. Attorney General Guidelines Regarding Prompt Handling of Reports of Possible Criminal Activity Involving Foreign Intelligence Sources;

4. Attorney General Memorandum dated March 6, 2002, titled "Intelligence Sharing Procedures for Foreign Intelligence and Foreign Counterintelligence Investigations Conducted by the FBI";

5. Attorney General Guidelines Regarding the Use of Confidential Informants;

6. Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions;

7. Attorney General Guidelines Regarding Disclosure to the Director of Central Intelligence and Homeland Security Officials of Foreign Intelligence Acquired in the Course of a Criminal Investigation; and

8. Memorandum from the Deputy Attorney General and the FBI Director re: Field Guidance on Intelligence Sharing Procedures for [Foreign Intelligence] and [Foreign Counterintelligence] Investigations (December 24, 2002).

B. All guidance on investigative matters handled by the JTTF will be issued by the Attorney General and the FBI. The FBI will provide copies of the above-listed guidelines and any other applicable policies for reference and review to all JTTF members. Notwithstanding the above, this MOU does not alter or abrogate existing directives or policies regarding the conduct of investigations or the use of special investigative techniques or controlled informants. The FBI agrees to conduct periodic briefings of the member agencies of the JTTF pursuant to all legal requirements and FBI policies.

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V. STRUCTURE AND MANAGEMENT OF THE TASK FORCE

A. MEMBERS

1. Each JTTF shall consist of a combined body of sworn and non-sworn personnel from the FBI and each Participating Agency. This MOU shall apply to Participating Agencies that join the JTTF subsequent to execution of this agreement.

B. PROGRAM MANAGEMENT, DIRECTION, AND SUPERVISION

1. In order to comply with Presidential Directives, the policy and program management of the JTTFs is the responsibility of FBI Headquarters (FBIHQ). The overall commander of each individual JTTF will be the Special Agent in Charge (SAC) or Assistant Director in Charge (ADIC), if assigned, of the FBI local Field Division. The operational chain of command beginning at the highest level, in each FBI Field Division will be as follows: ADIC if assigned, SAC, Assistant Special Agent in Charge (ASAC), and Supervisory Special Agent [JTTF Supervisor].

2. Each FBI ADIC/SAC, through his or her chain-of-command, is responsible for administrative and operational matters directly associated with the Division JTTF(s). Operational activities will be supervised by FBI JTTF Supervisors. Staffing issues are the responsibility of the FBI chain of command.

3. All investigations opened and conducted by the JTTF must be conducted in conformance with FBI policy, to include the above-stated Controlling Documents. Each FBI ADIC/SAC, through his or her chain-of-command, will ensure that all investigations are properly documented on FBI forms in accordance with FBI rules and regulations. Any operational problems will be resolved at the field office level. Any problems not resolved at the field office level will be submitted to each agency's headquarters for resolution.

4. Each Participating Agency representative will report to his or her respective agency for personnel administrative matters. Each Participating Agency shall be responsible for the pay, overtime, leave, performance appraisals, and other personnel matters relating to its employees detailed to JTTFs. As discussed later herein at Paragraph XI, the FBI and the

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Participating Agency may provide for overtime reimbursement by the FBI by separate written agreement.

5. Each JTTF member will be subject to the personnel rules, regulations, laws, and policies applicable to employees of his or her respective agency and also will adhere to the FBI's ethical standards and will be subject to the Supplemental Standards of Ethical Conduct for employees of the Department of Justice. Where there is a conflict between the standards or requirements of the Participating Agency and the FBI, the standard or requirement that provides the greatest organizational protection or benefit will apply, unless the organizations jointly resolve the conflict otherwise.

6. JTTF members are subject to removal from the JTTF by the FBI for violation of any provision of this MOU, the FBI's ethical standards, the Supplemental Standards of Ethical Conduct for employees of the Department of Justice, or other applicable agreements, rules, and regulations.

7. The FBI maintains oversight and review responsibility of the JTTFs. In the event of an FBI inquiry into JTTF activities by an investigative or administrative body, including but not limited to, the FBI's Office of Professional Responsibility or the FBI's Inspection Division, each Participating Agency representative to the JTTF may be subject to interview by the FBI.

C. PHYSICAL LOCATION AND SUPPORT:

1. The FBI will provide office space for all JTTF members and support staff. In addition, the FBI will provide all necessary secretarial, clerical, automation, and technical support for the JTTF in accordance with FBI guidelines and procedures. The FBI will provide all furniture and office equipment. Participating agencies may bring office equipment or furniture into FBI space with the approval of the FBI JTTF Supervisor and in compliance with FBI regulations.

2. The introduction of office equipment and furniture into FBI space by Participating Agencies is discouraged, as any such material is subject to examination for technical compromise, which may result in its being damaged or destroyed.

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VI. SECURITY PROGRAM

A. CLEARANCES

1. State, local, and tribal members of the JTTFs, as well as appropriate supervisory personnel responsible for these individuals, must apply for and receive a Top Secret/Sensitive Compartmented Information (TS/SCI) Security Clearance granted by the FBI. JTTF members from other federal agencies must obtain a Top Secret/SCI clearance from their agency and have this information passed to the FBI. No one (including FBI employees) will have access to sensitive or classified documents or materials or FBI space without a valid security clearance and the necessary "need-to-know." Pursuant to the provisions of Section 1.2 of Executive Order 12968, Detailees are required to have signed a nondisclosure agreement approved by the FBI's Security Division. Pursuant to federal law, all JTTF members, including FBI employees, are strictly forbidden from disclosing any classified information to individuals who do not possess the appropriate security clearance and the need to know.

2. All JTTF management personnel must ensure that each participating JTTF officer or agent undertakes all necessary steps to obtain a TS/SCI clearance. Conversion of FBI counterterrorism and JTTF spaces to Sensitive Compartmented Information Facilities (SCIFs) is underway. This will require that all JTTF task force officers enhance their clearances to TS/SCI (SI, TK, Gamma, HCS-P).

3. Federal agency task force officers should contact their Security Officers and request and obtain the following SCI Clearances: SI, TK, Gamma, and HCS-P. If the parent agency refuses or is unable to provide the appropriate clearances, the FBI will request the task force officer's security file. If provided, the FBI will adjudicate SCI clearances. This action may involve a prohibitively long process and should be avoided.

4. All members of the JTTF, TFOs and FBI personnel alike, have a duty to handle information related to official JTTF business appropriately. Specifically, the sharing of information with non-JTTF members must comply with any and all dissemination restrictions, such as classified information, grand jury information, foreign government information, and originator controlled (ORCON) information. An FBI SSA or higher must review and approve the sharing of all official JTTF business information

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to ensure compliance with any such dissemination restrictions and to identify any other sensitivities that require restrictions on sharing.

TFOs are encouraged to leverage their position on the JTTF to stay abreast of threat information in their area of jurisdiction. TFOs may share threat information, including oral statements and briefings, with their home agency as long as the official with whom the TFO shares the information possesses the appropriate security clearance and the dissemination of the information is cleared by an FBI SSA. The FBI SSA is responsible to ensure that there are no dissemination restrictions or other sensitivities that require additional steps be taken before the information is disseminated.

5. In accordance with the Director of Central Intelligence Directive (DCID) 6/4, entitled Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information (SCI), the FBI will implement protocols to ensure Special Agent (SA) and Task Force Officers (TFO) assigned to Joint Terrorism Task Forces (JTTF) in the field and the National Joint Terrorism Task Force (NJTTF) at FBI Headquarters - Liberty Crossing 1, are in compliance with stated directive. In order to comply with DCID 6/4, all JTTF personnel, including FBI and non-FBI JTTF members and contractors who perform functions requiring access to FBI classified data networks and space, will be given counterintelligence-focused polygraphs. The FBI will recognize polygraph examinations conducted by outside federal agencies that meet the FBI's PSPP requirement. The FBI will make the final determination whether a polygraph examination meets the PSPP requirements.

6. All JTTF members must agree to submit to counterintelligence-focused polygraphs as part of the process for obtaining and retaining a Top Secret Security Clearance.

B. RESTRICTIONS ON ELECTRONIC EQUIPMENT

Personally owned Portable Electronic Devices (PEDs) including, but not limited to, personal digital assistants, Blackberry devices, cellular telephones, and two-way pagers are prohibited in FBI space unless properly approved. No personally-owned electronic devices are permitted to operate within SCIFs as outlined in DCI Directive 6/9 and existing Bureau policy. All other non-FBI owned information technology and systems (such as computers, printers, fax machines, copiers, PEDs, cameras, and media including diskettes, CDs, tapes) require FBI approval prior to introduction, operation, connection, or removal from FBI spaces to include SCIFs. Additionally, if approved by the FBI Security

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Officer, these systems must operate in compliance with the FBI's policies, guidelines, and procedures.

VII. DEPUTATION

Non-federal members of the JTTF who are subject to a background inquiry and are sworn law enforcement officers will be federally deputized while detailed to the JTTF. The FBI will secure the required authorization for their deputation. Deputation of these individuals will ensure that they are able to assist fully in investigations in compliance with applicable federal statutes. On occasion, investigations may be conducted outside of the JTTF's assigned territory. Deputation will allow non-federal members of the JTTF to exercise federal law enforcement authority throughout the United States.

Under the terms of this MOU, all Participating Agencies agree that non-sworn personnel detailed to the JTTF will not: (1) participate in law enforcement activities, (2) carry a weapon; or (3) participate in the execution of search/arrest warrants.

VIII. STAFFING COMMITMENT

A. In view of the need for security clearances and continuity of investigators, all personnel detailed to the JTTF should be expected to be detailed for a period of at least two (2) years. This MOU imposes no maximum limit as to the time that any individual may remain a member of the JTTF. All non-FBI members of the JTTF must adhere to the same rules and regulations as FBI employees with regard to conduct and activities while in FBI space, while operating FBI vehicles, and while conducting JTTF business. All Task Force members detailed from other federal agencies are responsible for maintaining an appropriate case load, as directed by JTTF management.

B. All investigators detailed to the JTTF will be designated either full-time or part-time. The operational needs of the JTTF require that any assignments to special details or duties outside of the JTTF to full-time JTTF members be coordinated with the FBI JTTF Supervisor. Though each JTTF member will report to his or her respective Participating Agency for personnel matters, he or she will coordinate leave with the JTTF's FBI JTTF Supervisor.

C. During periods of heightened threats and emergencies, the JTTFs may be expected to operate 24 hours per day, seven days per week, for extended periods of time. To function properly, the JTTF depends upon the unique contributions of each Participating Agency. Accordingly, during these periods, each Participating Agency member will be expected to be available to support JTTF activities.

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IX. RECORDS, REPORTS AND INFORMATION SHARING

A. All JTTF materials and investigative records, including any Memorandum of Understanding, originate with, belong to, and will be maintained by the FBI. All investigative reports will be prepared by JTTF personnel solely on FBI forms. All information generated by the FBI or the JTTF will be controlled solely by the FBI and may not be removed from FBI space without the approval of the JTTF Supervisor. Dissemination, access or other use of JTTF records will be in accordance with Federal law, Executive Orders, and Department of Justice and FBI regulations and policy, including the dissemination and information sharing provisions of the FBI Intelligence Policy Manual. As FBI records, they may be disclosed only with FBI permission and only in conformance with the provisions of federal laws and regulations, including the Freedom of Information Act, 5 U.S.C. Section 552, and the Privacy Act of 1974, 5 U.S.C. Section 552a, as well as applicable civil and criminal discovery privileges. This policy includes any disclosure of FBI information, including JTTF materials and investigative records, to employees and officials of a Participating Agency who are not members of a JTTF, which must be approved by the JTTF supervisor. All electronic records and information, including, but not limited to, systems, databases and media, are also regulated by FBI policy. JTTF members may request approval to disseminate FBI information from the JTTF Supervisor.

B. Each Participating Agency agrees to have its Detailees to the JTTF execute an FD-868, or a similar form approved by the FBI. This action obligates the Detailee, who is accepting a position of special trust in being granted access to classified and otherwise sensitive information as part of the JTTF, to be bound by prepublication review to protect against the unauthorized disclosure of such information.

C. The participation of other federal, state, local, and tribal partners on the JTTF is critical to the long-term success of the endeavor. Articulating the level of effort for these partnerships is a key measure of the JTTF's performance. Accordingly, all task force members will be required to record their workload in the Time Utilization Recordkeeping (TURK) system used by the FBI.

X. COORDINATION

A. The Participating Agency agrees to not knowingly act unilaterally on any matter affecting the JTTF without first coordinating with the FBI. The parties agree that matters designated to be handled by the JTTF shall not knowingly be subject to non-JTTF or non-FBI intelligence, law enforcement, or operational efforts by the

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Participating Agency. Intelligence, law enforcement, and operational actions will be coordinated and cooperatively carried out within the JTTFs.

B. JTTF criminal investigative procedures will conform to the requirements for federal prosecution. It is expected that the appropriate United States Attorney, in consultation with the FBI and affected JTTF partners, will determine on a case-by-case basis whether the prosecution of cases will be at the federal or state level, based upon which would better advance the interests of justice.

XI. FUNDING

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Even where one party has agreed (or later does agree) to assume a particular financial responsibility, written agreement must be obtained before incurring an expense expected to be assumed by another party. All obligations of and expenditures by the parties are subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years. The FBI and the Participating Agency may enter into a separate agreement to reimburse the Participating Agency for approved overtime expenses.

XII. TRAVEL

All JTTF-related travel of non-FBI personnel requires the approval of the appropriate JTTF Supervisor and Participating Agency authorization prior to travel. In order to avoid delay in operational travel, the Participating Agency will provide general travel authority to all of its participating employees for the duration of the employee's membership in the JTTFs. For domestic travel, each agency member will be responsible for appropriate notifications within his or her own agency, as well as standard FBI travel approvals and notification. The FBI will obtain FBIHQ authorization and country clearances for all JTTF members who are required to travel outside the United States. As noted above, the appropriate security clearance must be obtained prior to any international travel. The FBI will pay costs for travel of all members of the JTTFs to conduct investigations outside of the JTTF's assigned territory.

XIII. VEHICLES AND EQUIPMENT

A. In furtherance of this MOU, employees of the Participating Agency may be permitted to drive FBI owned or leased vehicles for surveillance, case management and investigation in connection with any JTTF investigation. FBI vehicles must

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only be used for official JTTF business and only in accordance with applicable FBI rules and regulations.

B. *[non-Federal entities only]* Any civil liability arising from the use of an FBI-owned or leased vehicle by a Participating Agency task force member while engaged in any conduct other than his or her official duties and assignments under this MOU shall not be the responsibility of the FBI or the United States. To the extent permitted by applicable law, the Participating Agency will hold harmless the FBI and the United States for any claim for property damage or personal injury arising from any use of an FBI owned or leased vehicle by a Participating Agency JTTF member which is outside of the scope of his or her official duties and assignments under this MOU.

C. For official inventory purposes, all JTTF equipment including badges, credentials and other forms of JTTF identification subject to FBI property inventory requirements will be produced by each JTTF member upon request. At the completion of the member's assignment on the JTTF, or upon withdrawal or termination of the Participating Agency from the JTTF, all equipment will be returned to the supplying agency.

XIV. FORFEITURE

The FBI shall be responsible for the processing of assets seized for federal forfeiture in conjunction with JTTF operations, as provided by these rules and regulations. Asset forfeitures will be conducted in accordance with federal law and the rules and regulations set forth by the U.S. Department of Justice and the FBI. Forfeitures attributable to JTTF investigations may be distributed among the Participating Agencies in JTTF-related operations at the discretion of the FBI.

XV. HUMAN SOURCES

A. All human sources developed through the JTTF will be handled in accordance with the Attorney General's and the FBI's guidelines, policies and procedures.

B. All human sources developed during the course of any JTTF investigation shall be operated with all appropriate FBI suitability paperwork completed prior to use. All source debriefings or written products of information obtained from any human source will use FBI document format and handling procedures.

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C. The FBI, as permitted by federal law, agrees to pay reasonable and necessary human source expenses incurred by the JTTF. All expenses must be approved by the FBI before they are incurred. No payments may be made to JTTF human sources without prior FBI approval.

XVI. MEDICAL

A. All Participating Agencies will ensure that detailed JTTF members are medically qualified according to their agencies' standards to perform law enforcement duties, functions and responsibilities.

B. To ensure protection for purposes of the Federal Employees' Compensation Act (FECA), JTTF members should be detailed to the FBI consistent with the provisions of the Intergovernmental Personnel Act (IPA), 5 U.S.C. '3374(d). This Act stipulates that "[a] State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated . . . as though he were an employee as defined by section 8101 of this title who has sustained the injury in the performance of duty." Other provisions of federal law may extend FECA benefits in more limited circumstances. The Department of Labor's Office of Workers' Compensation Programs is charged with making FECA coverage determinations and is available to provide guidance concerning specific circumstances.

XVII. TRAINING

All JTTF members are required to attend FBI legal training in compliance with FBI regulations and any other training deemed necessary by the FBI chain of command. The FBI is responsible for the costs of such training. The Participating Agency will bear the costs of any training required of its own employees detailed to the JTTF.

XVIII. DEADLY FORCE AND SHOOTING INCIDENT POLICIES

Members of the JTTF will follow their own agency's policy concerning use of deadly force.

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XIX. DEPARTMENT OF DEFENSE COMPONENTS

The Posse Comitatus Act, 18 U.S.C. ' 1385, prohibits the Army and Air Force (Department of Defense regulations now restrict the activities of all branches or components of the Armed Services under this Act) from being used as a posse comitatus or otherwise to execute the laws entrusted to civilian law enforcement authorities. The restrictions of the Act do not apply to civilian employees of the Department of Defense who are not acting under the direct command and control of a military officer. Other statutory provisions specifically authorize certain indirect and direct assistance and participation by the military in specified law enforcement functions and activities. All Department of Defense components (except strictly civilian components not acting under direct command and control of a military officer) who enter into this agreement, shall comply with all Department of Defense regulations and statutory authorities (describing restrictions, authorizations and conditions in support of law enforcement) including but not limited to Department of Defense Directives 5525.5, and 3025.15, Chapter 18 of Title 10 of the United States Code dealing with military support for civilian law enforcement agencies and any other or subsequent rules, regulations, and laws that may address this topic or that may amend, or modify any of the above provisions. This MOU shall not be construed to authorize any additional or greater authority (than already described) for Department of Defense components to act in the support of law enforcement activities.

XX. MEDIA

All media releases will be mutually agreed upon and jointly handled by the member Participating Agencies of the appropriate JTTF. Press releases will conform to DOJ Guidelines regarding press releases. No press release will be issued without prior FBI approval.

XXI. LIABILITY

The Participating Agency acknowledges that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of each employee detailed to the JTTF remains vested with his or her employing agency. However, the Department of Justice (DOJ) may, in its discretion, determine on a case-by-case basis that an individual should be afforded legal representation, legal defense, or indemnification of a civil judgment, pursuant to federal law and DOJ policy and regulations.

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A. COMMON LAW TORT CLAIMS

1. Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the U.S. Government, acting within the scope of his or her employment, shall be an action against the United States under the FTCA, 28 U.S.C. '1346(b), and 2671 - 2680.

2. Notwithstanding the provisions contained in Article XIII of this MOU, for the limited purpose of defending civil claims arising out of JTTF activity, a state, local, or tribal law enforcement officer who has been federally deputized and who is acting within the course and scope of his or her official duties and assignments pursuant to this MOU may be considered an employee of the U.S. government, as defined at 28 U.S.C. '2671. See 5 U.S.C. '3374(c)(2).

3. Under the Federal Employee Liability Reform and Tort Compensation Act of 1998 (commonly known as the Westfall Act), 28 U.S.C. '2679(b)(1), if an employee of the United States is named as a defendant in a civil action, the Attorney General or his or her designee may certify that the defendant acted within the scope of his or her employment at the time of the incident giving rise to the suit. 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 alleged in the action. 28 U.S.C. '2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suit on any tort claim arising out of the incident.

4. 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 his office or employment. 28 U.S.C. '2679(d)(3).

5. Liability for any negligent or willful acts of JTTF members undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved.

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B. CONSTITUTIONAL CLAIMS

1. Liability for violations of federal constitutional law may rest with the individual federal agent or officer pursuant to Bivens v. Six Unknown Names Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. ' 1983 for state officers.

2. Federal, state, local, and tribal 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).

3. If a Participating Agency JTTF officer is named as a defendant in his or her individual capacity in a civil action alleging constitutional damages as a result of conduct taken within the course of the JTTF, the officer may request representation by DOJ. 28 C.F.R. ' '50.15, 50.16.

4. An employee may be provided representation when the actions for which representation is requested reasonably appears to have been performed within the scope of the employee's employment, and the Attorney General, or his or her designee, determines that providing representation would otherwise be in the interest of the United States. 28 C.F.R. ' 50.15(a).

5. A JTTF member'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 JTTF. The CDC will forward the representation request to the FBI's Office of the General Counsel (OGC), together with a letterhead memorandum concerning the factual basis of the lawsuit. FBI's OGC will then forward the request to the Civil Division of DOJ, together with an agency recommendation concerning scope of employment and DOJ representation. 28 C.F.R. ' 50.15(a)(3).

6. If a JTTF member is found to be liable for a constitutional tort, he or she may request indemnification from DOJ to satisfy an adverse judgment rendered against the employee in his or 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).

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7. Determinations concerning legal representation and indemnification by the United States are discretionary and are made by DOJ on a case-by-case basis. The FBI cannot guarantee that the United States will provide legal representation, legal defense, or indemnification to any federal or state employee detailed to the JTTF, and nothing in this Article shall be deemed to create any legal right on the part of any JTTF personnel.

C. EXPRESS RESERVATIONS

1. Nothing in this Article shall be deemed to create an employment relationship between the FBI or the United States and any Participating Agency JTTF member other than for exclusive purposes of the FTCA, as outlined herein.

2. The participating agencies do not waive any available defenses and/or limitations on liability. No Participating Agency shall be considered to be an agent of any other Participating Agency.

XXII. DURATION

A. The term of the MOU shall be an indefinite period. The MOU may be terminated at will by any party, provided written notice is provided to the other parties of not less than sixty (60) days. Upon termination of the MOU, all equipment will be returned to the supplying agency(ies). It is understood that the termination of this agreement by any one of the Participating Agencies will have no effect on the agreement between the FBI and all other participating agencies.

B. Notwithstanding this provision, the provisions of Paragraph IX, entitled RECORDS, REPORTS AND INFORMATION SHARING, and Paragraph XXI, entitled LIABILITY, will continue until all potential liabilities have lapsed. Similarly, the inherent disclaimer limitation contained in the EXPRESS RESERVATION provision will survive any termination.

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XXIII. AMENDMENTS

This agreement in no manner affects any existing MOUs or agreements with the FBI or any other agency. This agreement may be amended only by mutual written consent of the parties. The modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of the FBI and the Participating Agency.

SIGNATORIES:

_____ Date: _____

Chief of Police
West Des Moines Police Department

_____ Date: _____

Special Agent in Charge
Omaha Division
Federal Bureau of Investigation

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FEDERAL BUREAU OF INVESTIGATION
JOINT TERRORISM TASK FORCE
Cost Reimbursement Agreement

JTTF File No.: 415-OM-C2203787

Pursuant to Congressional appropriations, the Federal Bureau of Investigation (FBI) receives authority to pay overtime for police officers assigned to the formalized CENTRAL IOWA Task Force (JTTF), 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 West Des Moines Police Department (WDMPD), located at 250 Mills Civic Pkwy, West Des Moines, IA 50265, Taxpayer Identification Number: [42-6005359], and Telephone Number: 515-222-3320, that:

1. This Agreement is entered into pursuant to, and as an annex to, the FBI JTTF Memorandum of Understanding (MOU) signed by the Chief of Police of WDMPD and must be read and interpreted in conformity with all terms of that document.

2. Commencing upon execution of this Agreement, the FBI will, subject to availability of required funding, reimburse WDMPD for overtime payments made to officers assigned to and working full time on JTTF related matters.

3. Requests for reimbursement will be made on a monthly basis and should be forwarded to the FBI Omaha 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 a Supervisor at WDMPD to the FBI JTTF Squad Supervisor and FBI Omaha Special Agent in Charge for their review, approval, and processing for payment.

4. Overtime reimbursement payments from the FBI will be made via electronic funds transfer (EFT) directly to WDMPD using the FBI's Unified Financial Management System (UFMS). To facilitate EFT, WDMPD must establish an account online in the System for Award Management (SAM) at www.sam.gov. Each request for reimbursement will include an invoice number, invoice date, and a taxpayer identification number (TIN). Verification of WDMPD banking information is required on an annual basis in order to keep payment information current. For additional information regarding the UFMS and SAM, contact the FBI Omaha Financial Manager.

5. 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 WDMPD of the applicable annual limits prior to October 1st of each year.

6. The number of WDMPD officers assigned full-time to the JTTF 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 JTTF, this number may change periodically, upward or downward, as approved in advance by the FBI.

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7. Prior to submission of any overtime reimbursement requests, WDMPD must prepare an official document setting forth the identity of each officer assigned full-time to the JTTF, 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 Omaha Field Office for FBI review and approval.

8. Each request for reimbursement will include the name, rank, identification 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 and signed by an appropriate Supervisor at WDMPD 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 JTTF.

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, 2017, must be received by the FBI by December 31, 2017. The FBI is not obligated to reimburse any requests received after that time.

10. This Agreement is effective upon signatures of the parties and will remain in effect for the duration of WDMPD's participation on the JTTF, 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.

Signatories:

_____
Special Agent in Charge
Federal Bureau of Investigation

Date: _____

_____
Chief of Police
West Des Moines Police Department

Date: _____

_____
Financial Manager
Federal Bureau of Investigation

Date:_____

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