

CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2018 NOV 20 PM 1:23

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Anne E. Kirkpatrick
Chief of Police

SUBJECT: OPD-US Marshals MOU

DATE: November 6, 2018

City Administrator
Approval

Date

11/20/18

RECOMMENDATION

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The United States Marshals Service (USMS) To Allow Oakland Police Department (OPD) Participation In The Northern District Of California Regional Fugitive Taskforce For The Purpose Of Locating And Apprehending Fugitives.

EXECUTIVE SUMMARY

The Marshals Service is a federal law enforcement agency within the United States Department of Justice with a mandate to apprehend fugitives and the execution of federal warrants. The USMS Task Forces does not conduct independent investigation of possible criminal activity, but rather works with local and state law enforcement agencies to apprehend individuals with active arrest warrants. The Northern District of California United States Marshals Service Task Force (USMS TF) primary mission is the apprehension of violent fugitives wanted by local, state, federal, and international law enforcement agencies. Eighty percent of the Northern California TF cases stem from criminal activity in Oakland.

Oakland's Ceasefire Strategy benefits from support of the USMS apprehending individuals who continue with criminal and illegal firearm activity and/or break the provisions of their probation or parole restrictions. OPD does not have a fully staffed fugitive unit – the USMS TF fulfills this critical need for OPD. USMS TF participation allows OPD overtime expenses related to USMS operations to be reimbursed by the USMS. OPD previously signed an MOU with the USMS in 2011. The City Charter requires City Council approval for such partnerships.

BACKGROUND AND LEGISLATIVE HISTORY

The USMS is responsible for enforcing federal court orders and serves as the administrative custodian of all federal warrants until they are executed or dismissed. The USMS also manages warrant information, investigates fugitive matters and executes arrest warrants.

Item: _____
Public Safety Committee
December 4, 2018

The US Marshals have a long history of providing assistance and expertise to other law enforcement agencies in support of fugitive investigations. USMS Task Forces do not conduct independent investigations of criminal activity. The USMS only seeks to apprehend individuals with active arrest warrants issued related to crimes that have targeted local residents. These crimes include: murder, rape, child molestation, robbery, felony assault, and large scale fraud. USMS Task Forces work by leveraging information from local police and other data sources (such as interviews of associates and family members).

ANALYSIS AND POLICY ALTERNATIVES

The Northern District of California USMS TF has a primary mission of apprehending violent fugitives wanted by local, state, federal and international law enforcement agencies. The USMS TF in the Bay Area has 25 personnel assigned to three different geographical regions: San Jose, San Francisco, and Oakland. Investigative efforts are made to determine possible locations of a fugitive. Once a possible location is determined the team shifts from an investigative process to an operational and tactical mode for a safe apprehension. The Task Force Officer (TFO) communicates directly with OPD, allowing for safety measures to be implemented to keep the residents of Oakland safe whenever a fugitive is apprehended.

In Oakland, the USMS is a valuable partner for investigations of violent criminal behavior. Oakland's Ceasefire Strategy benefits from support from the USMS. Ceasefire is a data-driven violence-reduction strategy coordinating law enforcement, social services, and the community. The major goal is to reduce gang/group-related homicides and shootings. Ceasefire brings social services and community partners to help gang/group members ready to cease violent activity; partners such as the USMS are critical to locating individuals who continue with criminal and illegal firearm activity and/or break the provisions of their probation or parole restrictions. Results of a recent Oakland Ceasefire study, "Oakland Ceasefire Impact Evaluation: Key Findings," dated August 10, 2018 find that an approximate 30 percent drop in gun-related homicides since 2013 to Ceasefire¹. The USMS helps OPD with its Ceasefire implementation and criminal investigations by locating and arresting violent offenders and sexual predators with warrants for their arrest.

In order to apprehend individuals who have committed crimes in Oakland, law enforcement personnel are sometimes required to seek these individuals outside of California. The USMS TF has the capability and resources to track fugitives across state lines as well as internationally. The USMS TF focuses on violent Oakland gang/group members who are involved in committing homicides, robberies, aggravated assaults, and shootings as well as lesser crimes. The USMS TF arrested 79 fugitives between July 2017 and June 2018. These operations recovered nine firearms and over a kilogram of cocaine. The firearms were related to the ongoing violence plaguing West Oakland and East Oakland communities.

¹¹ <http://www2.oaklandnet.com/w/OAK071457>

USMS MOU Alignment with OPD Policies

The MOU between OPD and the USMS shall state that each member shall comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-lethal devices. In the event of a shooting involving task force personnel, the incident will be investigated by the agency of the involved personnel.

Council Approval and Privacy Advisory Commission (PAC) Review

OPD first entered into a MOU with the USMS to participate in the TF in April 29, 2011. However, Article IV, Section 401(6) of the City Charter requires that the City Council authorize the City Administrator or designee to enter into an agreement between the City and other agency or organization. This MOU was signed by OPD without realizing the requirement of Council approval for all interagency agreements; OPD now recognizes that it cannot continue its partnership with the USMS TF without City Council approval.

Ordinance No. 13457 C.M.S., passed June 29, 2017, requires that OPD submit a "proposed MOU and any orders, policies, and procedures relevant to the subject matter of the MOU for discussion and public comment at an open meeting of the Privacy Advisory Commission" before execution of said agreement. Therefore, OPD plans to bring the USMS TF MOU for review at their special November 26, 2018 meeting; staff will provide a supplemental report to this report with a summary of the PAC's recommendation. OPD recommends that the City Council approve this resolution authorizing the USMS TF MOU.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for this report beyond the standard City Council agenda noticing requirements.

COORDINATION

OPD consulted with the Budget Bureau and the Office of the City Attorney in the development of this report and accompanying resolution.

FISCAL IMPACT

Any reimbursements for overtime expenses made by the USMS to OPD shall be deposited into Fund 2999, Org 102310, Account 46129, Project TBD, and Program PS03.

Item: _____
Public Safety Committee
December 4, 2018

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

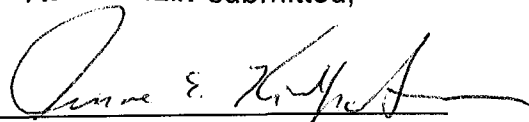
Social Equity: OPD's collaboration with USMS helps OPD apprehend wanted criminal suspects and convicted felons. These law enforcement actions help remove dangerous individuals from the streets of Oakland. All residents and visitors benefit from efforts to improve public safety.

ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The United States Marshals Service (USMS) To Allow Oakland Police Department (OPD) Participation In The Northern District Of California Regional Fugitive Taskforce For The Purpose Of Locating And Apprehending Fugitives.

For questions regarding this report, please contact Lieutenant James Beere, Felony Assault Section, CID, Bureau of Investigations, at (510) 238-3728.

Respectfully submitted,



Anne E. Kirkpatrick
Chief of Police
Oakland Police Department

Reviewed by:
James Beere, Lieutenant
OPD, CID, Bureau of Investigations

Timothy Birch, Police Services Manager I
OPD Training Division, Research and Planning

Prepared by:
Bruce Stoffmacher, Legislation Manager
OPD Training Division, Research and Planning

Attachments (1):

A – Memorandum of Understanding between the Oakland Police Department and the United States Marshals Service

Item: _____
Public Safety Committee
December 4, 2018

United States Marshals Service
Regional Fugitive Task Force - Memorandum of Understanding

PARTIES AND AUTHORITY:

This Memorandum of Understanding (MOU) is entered into by the
Oakland Police Department

and the United States Marshals Service (USMS) pursuant to 28 U.S.C. § 566(e)(1)(B). As set forth in the Presidential Threat Protection Act of 2000 and directed by the Attorney General, the USMS has been granted authority to direct and coordinate permanent Regional Fugitive Task Forces consisting of Federal, state, and local law enforcement authorities for the purpose of locating and apprehending fugitives. The authority of the USMS to investigate fugitive matters as directed by the Attorney General is set forth in 28 USC § 566. The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC § 561(g) and 28 CFR 0.111. The authority of United States Marshals and Deputy U.S. Marshals, "in executing the laws of the United States within a State . . . [to] exercise the same powers which a sheriff of the State may exercise in executing the laws thereof" is set forth in 28 USC § 564. Additional authority is derived from 18 USC § 3053 and Office of Investigative Agency Policies Resolutions 2 & 15. (See also) "Memorandum for Howard M. Shapiro, General Counsel, Federal Bureau of Investigation" concerning the "Authority to Pursue Non-Federal Fugitives", issued by the U.S. Department of Justice, Office of Legal Counsel, dated February 21, 1995. (See also) Memorandum concerning the Authority to Pursue Non-Federal Fugitives, issued by the USMS Office of General Counsel, dated May, 1, 1995. (See also) 42 U.S.C. § 16941(a)(the Attorney General shall use the resources of federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements).

MISSION:

The primary mission of the task force is to investigate and arrest, as part of joint law enforcement operations, persons who have active state and federal warrants for their arrest. The intent of the joint effort is to investigate and apprehend local, state and federal fugitives, thereby improving public safety and reducing violent crime.

Each participating agency agrees to refer cases for investigation by the RFTF (Regional Fugitive Task Force). Cases will be adopted by the RFTF at the discretion of the RFTF Chief Inspector. Targeted crimes will primarily include violent crimes against persons, weapons offenses, felony drug offenses, failure to register as a sex offender, and crimes committed by subjects who have a criminal history involving violent crimes, felony drug offenses, and/or weapons offenses. Upon receipt of a written request, the RFTF may also assist non-participating law enforcement agencies in investigating, locating and arresting their fugitives. Task force personnel will be assigned federal, state, and local fugitive cases for investigation. Investigative teams will consist of personnel from different agencies whenever possible. Participating agencies retain responsibility for the cases they refer to the RFTF.

Federal fugitive cases referred to the task force for investigation by any participating agency will be entered into the National Crime Information Center (NCIC) by the USMS or originating agency, as appropriate. State or local fugitive cases will be entered into NCIC (and other applicable state or local lookout systems) as appropriate by the concerned state or local agency.

SUPERVISION:

The RFTF will consist of law enforcement and administrative personnel from federal, state, and local law enforcement agencies. Agency personnel must be approved by the RFTF Chief Inspector prior to assignment to the RFTF. Agency personnel may be removed at any time at the discretion of the RFTF Chief Inspector.

Direction and coordination of the RFTF shall be the responsibility of the USMS RFTF Chief Inspector. Administrative matters which are internal to the participating agencies remain the responsibility of the respective agencies. Furthermore, each agency retains responsibility for the conduct of its personnel.

A Task Force Advisory Committee, consisting of representatives of participating agencies and USMS RFTF personnel, may be established at the discretion of the RFTF Chief Inspector and will meet and confer as necessary to review and address issues concerning operational matters within the RFTF.

PERSONNEL:

In accordance with Homeland Security Presidential Directive 12, personnel assigned to the task force are required to undergo background investigations in order to be provided unescorted access to USMS offices, records, and computer systems. The USMS shall bear the costs associated with those investigations. Non-USMS law enforcement officers assigned to the task force will be deputized as Special Deputy U.S. Marshals.

Task force personnel may be required to travel outside of the jurisdiction to which they are normally assigned in furtherance of task force operations. State or local task force officers (TFOs) traveling on official business at the direction of the USMS shall be reimbursed directly by the USMS for their travel expenses in accordance with applicable federal laws, rules, and regulations.

REIMBURSEMENT:

If the Marshals Service receives Asset Forfeiture funding for either 1) overtime incurred by state and local investigators who provide full time support to USMS RFTF joint law enforcement task forces; or 2) travel, training, purchase or lease of police vehicles, fuel, supplies or equipment for state and local investigators in direct support of state and local investigators, the USMS shall, pending availability of funds, reimburse your organization for expenses incurred, depending on which category of funding is provided.

Reimbursement of overtime work shall be consistent with the Fair Labor Standards Act. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-1811-12, Step 1, of the general pay scale for the RUS. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted quarterly on a fiscal year basis, and which provides the names of the investigators who incurred overtime for the RFTF during the quarter; the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total quarterly cost.

The request for reimbursement must be submitted to the RFTF Chief Inspector, who will review the request for reimbursement, stamp and sign indicating that services were received and that the request for reimbursement is approved for payment. Supporting documentation must accompany requests for reimbursement for equipment, supplies, training, fuel, and vehicle leases.

VEHICLES:

Pending the availability of Asset Forfeiture funding, the USMS may acquire vehicles to be utilized by state and local investigators assigned to the RFTF. Vehicles provided by the USMS remain in the control of the USMS and must be used solely in support of RFTF operations. The vehicles must be available for exclusive use of the TFOs assigned to the RFTF by the undersigned participant agency for the duration of the agency's participation on the task force. If the agency is no longer a participating member of the RFTF, any vehicle provided to TFOs from the agency must be returned to the USMS. Operators of USMS provided vehicles must adhere to USMS policy regarding the use of government owned vehicles. Any violation of the USMS vehicle policy may result in the vehicle being repossessed by the USMS and the operator and/or agency forfeiting the opportunity to utilize a USMS provided vehicle in the future. Vehicles provided to state and local investigators may be subject to additional regulations or restrictions pursuant to USMS lease agreements. Replacement or removal of any vehicle provided by the USMS will be at the discretion of the USMS and/or subject to lease agreement terms.

EQUIPMENT:

Pending the availability of Asset Forfeiture funding, the USMS may purchase equipment for state and local investigators assigned to the RFTF. Equipment purchased by the USMS using Asset Forfeiture funding must be used solely in support of RFTF operations. The equipment must be available for exclusive use of the TFOs assigned to the RFTF by the undersigned participant agency for the duration of the agency's participation on the task force. If the agency is no longer a participating member of the RFTF, any equipment purchased with Asset Forfeiture and provided to TFOs from the agency may be retained by the agency.

Equipment provided by the USMS that is not purchased using Asset Forfeiture funding remains the property of the USMS and will be issued to state and local investigators for exclusive use in support of the RFTF. If the investigator or agency is no longer a participating member of the RFTF, any equipment issued that was not purchased with Asset Forfeiture funding will be returned to the USMS.

RECORDS AND REPORTS:

Original reports of investigation, evidence, and other investigative materials generated, seized, or collected by the RFTF shall be retained by the agency in the RFTF responsible for the case. However, evidence may be turned over to other law enforcement agencies as appropriate. Copies of investigative reports and other materials may be provided to other agencies in accordance with applicable laws, rules, and regulations. Task force statistics will be maintained in the USMS Justice Detainee Information System (JDIS) - Warrant Information Network (WIN). Statistics will be made available to any participating agency upon request.

INFORMANTS:

Pending the availability of funds, the USMS may provide funding for the payment of informants. However, all payments of informants utilizing USMS funding shall comply with USMS policy.

USE OF FORCE:

All members of the RFTF will comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-than lethal devices, to include completing all necessary training and certification requirements. All members of the RFTF and their parent agencies will read and adhere to the DOJ Policy Statement on the Use of Less-Than-Lethal Devices, dated May 16, 2011. Copies of all applicable firearms, deadly force, and less-than-lethal policies shall be provided to the RFTF Commander and each concerned TFO. In the event of a shooting involving task force personnel, the incident will be investigated by the appropriate agency(s). Additionally, in the event of a shooting, the required reporting for the FBI National Use of Force Data Collection (NUOFDC) should be accomplished by the involved task force personnel's employing agency when the TFO is inside their primary/physical jurisdiction and by the USMS when the TFO is outside their employing agency's primary/physical jurisdiction. If the employing agency wishes to submit such NUOFDC entries regardless of the physical location of the event, that is allowed under this MOU with prior written notice to the USMS.

NEWS MEDIA:

Media inquires will be referred to the RFTF Commander. A press release may be issued and press conference held, upon agreement and through coordination with participant agencies' representatives. All press releases will exclusively make reference to the task force.

RELEASE OF LIABILITY:

Each agency shall be responsible for the acts or omissions of its employees. Participating agencies or their employees shall not be considered as the agents of any other participating agency. Nothing herein waives or limits sovereign immunity under federal or state statutory or constitutional law.

EFFECTIVE DATE AND TERMINATION:

This MOU is in effect once signed by a law enforcement participant agency. Participating agencies may withdraw their participation after providing 30 days advanced written notice to the RFTF Commander.

RFTF:

Pacific Southwest RFTF

United States Marshal or RFTF Commander:

Print Name:

Donald M. O'Keefe

Signature:

Date:

Participant Agency:

Name:

Oakland Police Department

Phone:

510-238-3365

Location (City and State):

Oakland, CA

Participant Agency Representative:

Print Name and Title:

Anne Kirkpatrick, Chief of Police

Signature:

Date:

Assistant Director, Investigative Operations Division:

Print Name:

Signature:

Date:

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

City Attorney

2010 NOV 20 PM 1:22

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR
DESIGNEE TO ENTER INTO A MEMORANDUM OF
UNDERSTANDING (MOU) WITH THE UNITED STATES MARSHALS
SERVICE (USMS) TO ALLOW OAKLAND POLICE DEPARTMENT (OPD)
PARTICIPATION IN THE NORTHERN DISTRICT OF CALIFORNIA
REGIONAL FUGITIVE TASKFORCE FOR THE PURPOSE OF
LOCATING AND APPREHENDING FUGITIVES**

WHEREAS, the primary mission of USMS task forces (TF) is to investigate and arrest, as part of joint law enforcement operations, persons who have active state and federal warrants for their arrest; and

WHEREAS, in the City of Oakland each year scores of individuals face warrants for their arrest due to proven and/or suspected criminal activity including violent crimes against persons, weapons offenses; felony drug offenses, failure to register as a sex offender, and crimes committed by subjects who have a criminal history involving violent crimes, felony drug offenses, and/or weapons offenses; and

WHEREAS, OPD does not have a fully staffed fugitive unit to independently investigate and apprehend the many fugitives who must be apprehended each year to protect the safety of Oakland residents and visitors; and

WHEREAS, the USMS has created numerous regional fugitive taskforces (TF) to investigate and apprehend local, state and federal fugitives; and

WHEREAS, Federal fugitive cases referred to the task force for investigation by any participating agency such as OPD are entered into the National Crime Information Center (NCIC) by the USMS or originating agency, as appropriate; and

WHEREAS, in Oakland, the USMS is a valuable partner for investigations of violent criminal behavior; and

WHEREAS, Oakland's Ceasefire Strategy, a data-driven violence-reduction effort that coordinates law enforcement, social services, and the

community; the major goal of Ceasefire is to reduce gang/group-related homicides and shootings; Ceasefire brings social services and community partners to help gang/group members ready to cease violent activity; partners such as the USMS are critical to locating individuals who continue with criminal and illegal firearm activity and/or break the provisions of their probation or parole restrictions; and

WHEREAS, the USMS helps OPD with its Ceasefire implementation and criminal investigations by locating and arresting violent offenders and sexual predators with warrants for their arrest; and

WHEREAS, recovering fugitives who have committed crimes in Oakland usually can lead to out of state pursuits; the TF has the capability and resources to track fugitives across state lines and those criminals attempting to flee the Country; and

WHEREAS, most the offenders assigned to the USMS are violent Oakland gang/group members who are involved in committing homicides, robberies, aggravated assault and shootings as well as lesser crimes; and

WHEREAS, the MOU between OPD and the USMS shall state that each member (such as OPD) shall comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-lethal devices, and in the event of a shooting involving task force personnel, the incident will be investigated by the agency of the involved personnel; and

WHEREAS, the MOU between OPD and the USMS shall state that each agency that shall be responsible for the acts or omissions of its employees, and that participating agencies or their employees shall not be considered as the agents of any other participating agency; and

WHEREAS, Article IV, Section 401(6) of the City Charter requires that the City Council authorize the City Administrator or designee to enter into an agreement between the City and other agency or organization;

WHEREAS, OPD previously signed an MOU authorizing OPD participation in the USMS TF on April 29, 2011 but shall not participate in the USMS TF without Council approval; therefore be it

RESOLVED: that City Council does hereby authorize the City Administrator or designee to enter into a MOU with the USMS to allow OPD to participate in the Northern District of California Regional Fugitive Taskforce for the purpose of locating and apprehending fugitives; and be it

FURTHER RESOLVED: that all members of the USMS TF shall comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-lethal devices; and be it

FURTHER RESOLVED: that if the USMS receives asset forfeiture funding for either 1) overtime incurred by state and local investigators who provide full time support to USMS TF; or 2) travel, training, purchase or lease of police vehicles, fuel, supplies ,or equipment for state and local investigators in direct support of state and local investigator, the USMS shall, pending availability of funds, reimburse participating agencies for the expenses incurred, depending on which category of funding is provided; and be it

FURTHER RESOLVED: that any asset forfeitures attributable to the JTTF investigations may be distributed among participating JTTF agencies at the discretion of the FBI; and be it

FURTHER RESOLVED: that any reimbursements for overtime expenses made by the USMS to OPD shall be deposited into Fund 2999, Org 102310, Account 46129, Project TBD, and Program PS03; and be it

FURTHER RESOLVED: that this MOU shall be in effect unless either party notifies the other party of its intent to end participation in the USMS TF with 30 days' written notice; and be it

FURTHER RESOLVED: That the City Administrator or designee is authorized to complete all required negotiations, certifications, assurances, and documentation required to execute, modify, extend and/or amend the MOU without returning to the City Council; and be it

FURTHER RESOLVED: That in accordance with Article IV, Section 401(6) of the City Charter, the MOU authorized by this resolution shall be approved by as to form and legality before execution, and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, GIBSON MCELHANEY AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California