

BILL NO.: 4911

ORDINANCE NO.: \_\_\_\_\_

Introduced by: City Manager Nathan Mai-Lombardo

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING  
THE MAYOR AND POLICE CHIEF TO EXECUTE A MEMORANDUM OF  
UNDERSTANDING (MOU) WITH THE FEDERAL BUREAU OF  
INVESTIGATION (FBI) ST. LOUIS VIOLENT GANGS SAFE STREETS TASK  
FORCE**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY,  
MISSOURI, AS FOLLOWS:**

- Section 1.** The Mayor and Police Chief are hereby authorized to enter into and execute a Memorandum of Understanding (MOU) with the Federal Bureau of Investigation (FBI) St. Louis Violent Gangs Safe Streets Task Force.
- Section 2.** The agreement will be attached and hereby incorporated herein and made a part of this ordinance, as if fully set out herein.
- Section 3.** This Ordinance shall be in full force and effect from and after its passage.

1st Reading this 21<sup>st</sup> day of November 2022

2nd Reading this 21<sup>st</sup> day of November 2022

3rd Reading, PASSED and APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_ 2022

\_\_\_\_\_  
Babatunde Deinbo, Mayor

ATTEST:

\_\_\_\_\_  
Deanna L. Jones, City Clerk

\_\_\_\_\_  
Approved as to Form:  
Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Verges	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Williams	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Anthony	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman Hindeleh	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman-at-Large Crawford-Graham	Aye ___	Nay ___	Absent ___	Abstain ___
Mayor Deinbo	Aye ___	Nay ___	Absent ___	Abstain ___

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**FEDERAL BUREAU OF INVESTIGATION  
ST LOUIS VIOLENT GANGS SAFE STREETS TASK FORCE  
MEMORANDUM OF UNDERSTANDING**

**PARTIES**

1. This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation (FBI) and the **City of Berkeley** (participating agency) (collectively: the Parties). Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation which exists between these agencies.

**AUTHORITIES**

2. Authority for the FBI to enter into this agreement can be found at Title 28, United States Code (U.S.C.), Section (§) 533; 34 U.S.C. § 10211; Title 28, Code of Federal Regulations (C.F.R.), § 0.85; and applicable United States Attorney General's Guidelines.

**PURPOSE**

3. The purpose of this MOU is to delineate the responsibilities of the St. Louis Violent Gangs Safe Streets Task Force (VGSSTF) personnel; formalize relationships between participating agencies for policy guidance, planning, training, public and media relations; and maximize inter-agency cooperation. 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. No assignment or rights, duties, or obligations of this MOU shall be made by any party without the express written approval of a duly authorized representative of all other parties.

**MISSION**

4. The mission of the VGSSTF is to identify and target for prosecution criminal enterprise groups responsible for drug trafficking, money laundering, alien smuggling, crimes of violence such as murder and aggravated assault, robbery, and violent street gangs, as well as to intensely focus on the apprehension of dangerous fugitives where there is or may be a federal investigative interest. The VGSSTF will enhance the effectiveness of federal/state/local law enforcement resources through a well-coordinated initiative seeking the most effective investigative/prosecutive avenues by which to convict and incarcerate dangerous offenders.

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**SUPERVISION AND CONTROL**

**A. Supervision**

5. Overall management of the VGSSTF shall be the shared responsibility of the FBI and participating agency heads and/or their designees.
6. The Special Agent in Charge (SAC) of the FBI St. Louis Division shall designate one Supervisory Special Agent (VGSSTF Supervisor) to supervise the VGSSTF. The VGSSTF Supervisor may designate a Special Agent to serve as the VGSSTF Coordinator. Either the SSTF Supervisor or the VGSSTF Coordinator shall oversee day-to-day operational and investigative matters pertaining to the VGSSTF.
7. Conduct undertaken outside the scope of an individual's VGSSTF duties and assignments under this MOU shall not fall within the oversight responsibility of the VGSSTF Supervisor or VGSSTF Coordinator.
8. VGSSTF personnel will report to his or her respective agency for personnel and 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 the VGSSTF. The FBI and the participating agency may provide for overtime reimbursement by the FBI by separate written agreement.
9. All FBI personnel will adhere to the FBI's ethical standards, including Department of Justice (DOJ)/FBI regulations relating to outside employment and prepublication review matters, and will remain subject to the Supplemental Standards of Ethical conduct for employees of the DOJ.
10. All VGSSTF personnel, which includes Task Force Officers, Task Force Members, and Task Force Participants, must adhere to the applicable U.S. Attorney General's Guidelines and Domestic Investigations and Operations Guide (DIOG).
11. VGSSTF personnel will continue to report to their respective agency heads for non-investigative administrative matters not detailed in this MOU.
12. Continued assignment of personnel to the VGSSTF will be based on performance and at the discretion of appropriate management. The FBI SAC and VGSSTF Supervisor will also retain discretion to remove any individual from the VGSSTF.

**B. Case Assignments**

13. The FBI VGSSTF Supervisor will be responsible for opening, monitoring, directing, and closing VGSSTF investigations in accordance with existing FBI policy and the applicable U.S. Attorney General's Guidelines.
14. Assignments of cases to personnel will be based on, but not limited to, experience, training, and performance, in addition to the discretion of the VGSSTF Supervisor.

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15. For FBI administrative purposes, VGSSTF cases will be entered into the relevant FBI computer system.
16. VGSSTF personnel will have equal responsibility for each case assigned. VGSSTF personnel will be responsible for complete investigation from predication to resolution.

### **C. Resource Control**

17. The head of each participating agency shall determine the resources to be dedicated by that agency to the VGSSTF, including personnel, as well as the continued dedication of those resources. The participating agency head or designee shall be kept fully apprised of all investigative developments by his or her subordinates.

## **OPERATIONS**

### **A. Investigative Exclusivity**

18. It is agreed that matters designated to be handled by the VGSSTF will not knowingly be subject to non-VGSSTF law enforcement efforts by any of the participating agencies. It is incumbent on each agency to make proper internal notification regarding the VGSSTF's existence and areas of concern.
19. It is agreed that there is to be no unilateral action taken on the part of the FBI or any participating agency relating to VGSSTF investigations or areas of concern as described in paragraph 4. All law enforcement actions will be coordinated and cooperatively carried out.
20. VGSSTF investigative leads outside of the geographic areas of responsibility for the FBI St. Louis Division will be communicated to other FBI offices for appropriate investigation.

### **B. Confidential Human Sources**

21. The disclosure of FBI informants, or Confidential Human Sources (CHSs), to non-VGSSTF personnel will be limited to those situations where it is essential to the effective performance of the VGSSTF and only with prior FBI approval. These disclosures will be consistent with applicable FBI guidelines and policy.
22. Non-FBI VGSSTF personnel may not make any further disclosure of the identity of an FBI CHS, including to other individuals assigned to the SSTF. No documents or information which identify, tend to identify, or may indirectly identify an FBI CHS may be released without prior FBI approval.
23. In those instances where a participating agency provides a CHS, the FBI may become solely responsible for the CHS's continued development, operation, and compliance with necessary administrative procedures regarding operation and payment as set forth by the FBI.

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24. The U.S. Attorney General's Guidelines and FBI policy and procedure for operating FBI CHSs shall apply to all FBI CHSs opened and operated in furtherance of VGSSTF investigations. Documentation of, and any payments made to, FBI CHSs shall be in accordance with FBI policy and procedure.
25. Operation, documentation, and payment of any CHS opened and operated in furtherance of an VGSSTF investigation must be in accordance with the U.S. Attorney General's Guidelines, regardless of whether the handling agency is an FBI VGSSTF participating agency. Documentation of state, county, or local CHSs opened and operated in furtherance of VGSSTF investigations shall be maintained at an agreed upon location.

### **C. Reports and Records**

26. 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 VGSSTF personnel will be made available for inclusion in the respective investigative agencies' files as appropriate.
27. SSTF reports prepared in cases assigned to VGSSTF personnel will be maintained at an FBI approved location; original documents will be maintained by the FBI.
28. Records and reports generated in SSTF cases which are opened and assigned by the VGSSTF Supervisor with designated oversight for investigative and personnel matters will be maintained in the FBI investigative file for SSTF.
29. VGSSTF investigative records maintained at the St. Louis Field Office of the FBI will be available to all VGSSTF personnel, as well as their supervisory and command staff subject to pertinent legal, administrative and/or policy restrictions.
30. All evidence and original tape recordings (audio and video) acquired by the FBI during the course of the VGSSTF 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 VGSSTF personnel.
31. All SSTF investigative records will be maintained at an approved FBI location. Placement of all or part of said information into participating agency files rests with the discretion of supervisory personnel of the concerned agencies, subject to VGSSTF Supervisor approval.
32. Classified information and/or documents containing information that identifies or tends to identify an FBI CHS shall not be placed in the files of participating agencies unless appropriate FBI policy has been satisfied and only with prior FBI approval.

### **INFORMATION SHARING**

33. Records or reports created or obtained by the VGSSTF are the property of the FBI and disclosure of such records, if it occurs, shall be pursuant to applicable federal law, with

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the approval of the FBI. If such records are shared outside of the [Abbreviated Name of Task Force] with state and/or local law enforcement agencies, such records are merely loaned to the non-Federal agency and are subject to retrieval by the FBI at its discretion. In the event that the City of Berkeley or **Berkeley, Missouri Police Department (BPD)** receives a request pursuant to Missouri's public records statute, §610, RSMo., also known as the Sunshine Law, the civil or criminal discovery process, or other judicial, legislative, or administrative process, to disclose VGSSTF records, the **City of Berkeley or the BPD** will immediately notify the FBI of any such request in order to allow sufficient time for the FBI to seek to prevent disclosure through appropriate channels, if necessary.

34. No information possessed by the FBI, to include information derived from informal communications between VGSSTF personnel and FBI employees not assigned to the VGSSTF, may be disseminated by VGSSTF personnel to non-VGSSTF personnel without the approval of the VGSSTF Supervisor and in accordance with the applicable laws and internal regulations, procedures, or agreements between the FBI and the participating agencies that would permit the participating agencies to receive that information directly. Likewise, VGSSTF personnel will not provide any participating agency information to the FBI that is not otherwise available to it unless authorized by appropriate participating agency officials.
35. The Parties acknowledge that this MOU may provide VGSSTF personnel with access to information about U.S. persons which is protected by the Privacy Act of 1974 and/or Executive Order 12333. The Parties expressly agree that all such information will be handled lawfully pursuant to the provisions thereof. The Parties further agree that if this access to information by VGSSTF personnel requires a change in privacy compliance documents, those changes will be accomplished prior to access being granted.
36. Each Party that discloses personally identifiable information (PII) is responsible for making reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.
37. The FBI is providing access to information from its records with the understanding that in the event the recipient becomes aware of any inaccuracies in the data, the recipient will promptly notify the FBI so that corrective action can be taken. Similarly, if the FBI becomes aware that information it has received pursuant to this MOU is inaccurate, it will notify the contributing Party so that corrective action can be taken.
38. Each Party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing Party, and that information is only made available to the receiving Party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing Party.
39. Each Party will immediately report to the other Party each instance in which data received from the other Party is used, disclosed, or accessed in an unauthorized manner (including any data losses or breaches).

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40. Each party agrees to provide, upon request, details regarding the handling and maintenance of data in electronic and paper recordkeeping systems maintained pursuant to the provisions of this MOU, in order to allow the other party to ensure that appropriate security and privacy protections are in place. Such information shall be provided to the extent allowable by the laws, regulations, and policies governing each party.

### **PROSECUTIONS**

41. VGSSTF investigative procedures, whenever practicable, are to conform to the requirements which would allow for either federal or state prosecution.
42. A determination will be made on a case-by-case basis whether the prosecution of VGSSTF 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 VGSSTF.
43. In the event that a state or local matter is developed that is outside the jurisdiction of the FBI or it is decided to prosecute a VGSSTF case at the state or local level, the FBI agrees to provide all relevant information to state and local authorities in accordance with all applicable legal limitations.

#### **A. Investigative Methods/Evidence**

44. For cases assigned to an FBI Special Agent or in which FBI CHSs are utilized, the Parties agree to conform to federal standards concerning evidence collection, processing, storage, and electronic surveillance. However, in situations where the investigation will be prosecuted in the State Court where statutory or common law of the state is more restrictive than the comparable federal law, the investigative methods employed by FBI case agents shall conform to the requirements of such statutory or common law pending a decision as to venue for prosecution.
45. 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 as outlined in the DIOG 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.
46. The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policies and procedures of the FBI.

#### **B. Undercover Operations**

47. All SSTF undercover operations will be conducted and reviewed in accordance with FBI guidelines and the U.S. Attorney General's Guidelines on FBI Undercover Operations. All

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participating agencies may be requested to enter into an additional agreement if an employee of the participating agency is assigned duties which require the officer to act in an undercover capacity.

### **USE OF LESS-THAN-LETHAL-DEVICES<sup>1</sup>**

48. The parent agency of each individual assigned to the VGSSTF will ensure that while the individual is participating in FBI-led task force operations in the capacity of a task force officer, task force member, or task force participant, the individual will carry only less-lethal devices that the parent agency has issued to the individual, and that the individual has been trained in accordance with the agency's policies and procedures.
49. The parent agency of each individual assigned to the VGSSTF will ensure that the agency's policies and procedures for use of any less-lethal device that will be carried by the task force officer, task force member, or task force participant are consistent with the DOJ policy statement on the Use of Less-Than-Lethal Devices.<sup>2</sup>

### **DEADLY FORCE AND SHOOTING INCIDENT POLICIES**

50. VGSSTF personnel will follow their own agencies' policies concerning firearms discharge and use of deadly force.

### **DEPUTATIONS**

51. Local and state law enforcement personnel designated to the VGSSTF, subject to a limited background inquiry, shall be sworn as federal task force officers either by acquiring Title 21 or Title 18 authority (via the 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 VGSSTF or until the termination of the VGSSTF, whichever comes first.

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<sup>1</sup> Pursuant to Section VIII of the DOJ Less-Than-Lethal Devices Policy dated May 16, 2011, all state/local officers participating in joint task force operations must be made aware of and adhere to the policy and its limits on DOJ officers.

<sup>2</sup> Less-lethal – When use of force is required, but deadly force may not be appropriate, law enforcement officers may employ less-lethal weapons to gain control of a subject. Less-lethal weapons are designed to induce a subject to submit or comply with directions. These weapons give law enforcement officers the ability to protect the safety of officers, subjects, and the public by temporarily incapacitating subjects. While less-lethal weapons are intended to avoid causing any serious harm or injury to a subject, significant injuries and death can occur from their use.

The term "less-than-lethal" is synonymous with "less-lethal", "non-lethal", "non-deadly", and other terms referring to devices used in situations covered by the DOJ Policy on the Use of Less-Than-Lethal Devices. "Less-lethal" is the industry standard and the terminology the FBI has elected to utilize in reference to this policy.



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52. Deputized VGSSTF personnel will be subject to the rules and regulations pertaining to such deputation. Administrative and personnel policies imposed by the participating agencies will not be voided by deputation of their respective personnel.
53. State, local, tribal, and territorial law enforcement officers (LEOs) who serve on the VGSSTF must be federally deputized under Title 18 and/or Title 21 of the USC while assigned to the VGSSTF. The FBI may likewise require federal LEOs who serve on the VGSSTF to be deputized while assigned to the VGSSTF. The FBI will secure the required authorization for deputations, as needed.
54. Under the terms of this MOU, the Participating Agency agrees that non-LEOs detailed to the VGSSTF will not: (1) participate in law enforcement activities; (2) carry a weapon, either lethal or non-lethal; or (3) participate in the execution of search/arrest warrants.

### **VEHICLES**

55. In furtherance of this MOU, employees of participating agencies may be permitted to drive FBI owned or leased vehicles for official VGSSTF business and only in accordance with applicable FBI policy, rules and regulations, including those outlined in the FBI Government Vehicle Use Policy Guide (1093PG). The assignment of an FBI owned or leased vehicle to participating agency VGSSTF personnel will require the execution of a separate Vehicle Use Agreement.
56. The participating agencies agree that FBI vehicles will not be used to transport passengers unrelated to VGSSTF business.
57. Neither the FBI nor the United States shall be responsible for any liability arising from the use of an FBI owned or leased vehicle by VGSSTF while engaged in any conduct outside the scope of their duties and assignments pursuant to their federal deputation on the VGSSTF.
58. To the extent permitted by applicable law, **City of Berkeley** agrees to 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 VGSSTF which is outside the scope of their duties and assignments.

### **SALARY/OVERTIME COMPENSATION**

59. The FBI and each participating agency remain responsible for all personnel costs for their VGSSTF representatives, including salaries, overtime payments, and fringe benefits consistent with their respective agency, except as described in paragraph 60 below.
60. Subject to funding availability and legislative authorization, the FBI will reimburse to participating agencies the cost of overtime worked by non-federal VGSSTF personnel assigned full-time to VGSSTF, provided overtime expenses were incurred as a result of VGSSTF-related duties, and subject to the provisions and limitations set forth in a

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separate Cost Reimbursement Agreement to be executed in conjunction with this MOU. A separate Cost Reimbursement Agreement must be executed between the FBI and participating agencies for full-time employee(s) assigned to VGSSTF, consistent with regulations and policy, prior to any reimbursement by the FBI. Otherwise, overtime shall be compensated in accordance with applicable participating agency overtime provisions and shall be subject to the prior approval of appropriate personnel.

### **PROPERTY AND EQUIPMENT**

61. Property utilized by the VGSSTF in connection with authorized investigations and/or operations and in the custody and control and used at the direction of the VGSSTF, will be maintained in accordance with the policies and procedures of the agency supplying the equipment. Property damaged or destroyed which was utilized by VGSSTF in connection with authorized investigations and/or operations and is in the custody and control and used at the direction of VGSSTF, will be the financial responsibility of the agency supplying said property.

### **FUNDING**

62. 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**

63. The FBI shall be responsible for processing assets seized for federal forfeiture in conjunction with VGSSTF operations.
64. Asset forfeitures will be conducted in accordance with federal law and the rules and regulations set forth by the FBI and DOJ. Forfeitures attributable to VGSSTF investigations may be equitably shared with the agencies participating in the VGSSTF.

### **DISPUTE RESOLUTION**

65. In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the VGSSTF's objectives.
66. The participating agencies 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**

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- 67. All media releases and statements will be mutually agreed upon and jointly handled according to FBI and participating agency guidelines.
- 68. Press releases will conform to DOJ Guidelines regarding press releases. No release will be issued without FBI final approval.

### **SELECTION TO SSTF AND SECURITY CLEARANCES**

- 69. If a participating agency candidate for the SSTF will require a security clearance, he or she will be contacted by FBI security personnel to begin the background investigation process prior to the assigned start date.
- 70. If, for any reason, the FBI determines that a participating agency candidate is not qualified or eligible to serve on the VGSSTF, the participating agency will be so advised and a request will be made for another candidate.
- 71. Upon being selected, each candidate will receive a comprehensive briefing on FBI field office security policies and procedures. During the briefing, each candidate will execute non-disclosure agreements (SF-312 and FD-868), as may be necessary or required by the FBI.
- 72. Before receiving unescorted access to FBI space identified as an open storage facility, VGSSTF personnel will be required to obtain and maintain a "Top Secret" security clearance. VGSSTF personnel will not be allowed unescorted access to FBI space unless they have received a Top Secret security clearance.
- 73. Upon departure from the VGSSTF, each individual whose assignment to the VGSSTF is completed will be given a security debriefing and reminded of the provisions contained in the non-disclosure agreement to which he or she previously agreed.

### **LIABILITY**

- 74. The Parties acknowledge that this MOU does not alter the applicable law governing civil liability, if any, arising from the conduct of personnel assigned to the VGSSTF.
- 75. Each party agrees to notify the other in the event of receipt of a civil claim arising from scope of the FBI's relationship with the **City of Berkeley**. Both parties agree to cooperate fully with one another in the event of any investigation arising from alleged negligence or misconduct arising from acts or omissions related to the operational relationship. Nothing in this paragraph prevents any party from conducting an independent administrative review of any incident giving rise to a claim. In the event that a civil claim or complaint is brought against a state or local officer assigned to the VGSSTF, the officer may request legal representation and/or defense by DOJ, under the circumstances and pursuant to the statutes and regulations identified below.
- 76. COMMON LAW TORT CLAIMS

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- A. 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 Federal Tort Claims Act, 28 U.S.C. § 1346(b), and §§ 2671-2680.
  - B. Notwithstanding any other provision contained in this MOU, for the limited purpose of defending civil claims arising out of [operational relationship] activity, any employee detailed from a Participating Agency 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).
  - C. Under the Federal Employee Liability Reform and Tort Compensation Act of 1998 (commonly known as the Westfall Act), see 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)(1)&(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)(1)&(2). Decisions to certify that an employee was acting within the scope of his or her employment at the time of the incident giving rise to the suit, see 28 U.S.C. § 2679(d)(1)&(2), are made on a case-by case-basis, and such certification cannot be guaranteed.
  - D. 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).”
77. For the limited purpose of defending against a civil claim arising from an alleged violation of the U.S. Constitution pursuant to 42 U.S.C. § 1983 or Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971): an individual assigned to the SSTF who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request individual-capacity representation by DOJ to defend against the claims. 28 C.F.R. §§ 50.15, 50.16. Any such request for individual-capacity representation must be made in the form of a letter from the individual defendant to the U.S. Attorney General. The letter should be provided to Chief Division Counsel (CDC) for the FBI St. Louis Division, who will then coordinate the request with the FBI Office of the General Counsel. In the event of an adverse judgment against the individual, he or she may request indemnification from DOJ. 28 C.F.R. § 50.15(c)(4). Requests for DOJ representation and indemnification are determined by DOJ on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation or indemnification to any VGSSTF personnel.
78. Liability for any conduct by VGSSTF personnel undertaken outside of the scope of their duties and assignments pursuant to their federal deputation on the VGSSTF shall not be the responsibility of the FBI or the United States.

## DURATION

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79. The term of this MOU is for the duration of the VGSSTF's operations, contingent upon approval of necessary funding, but may be terminated at any time upon written mutual consent of the agency involved.
80. Any participating agency may withdraw from the VGSSTF at any time by written notification to the VGSSTF Supervisor with designated oversight for investigative and personnel matters or program manager of the VGSSTF at least 30 days prior to withdrawal.
81. Upon termination of this MOU, all equipment provided to the VGSSTF 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 VGSSTF participation.

**MODIFICATIONS**

82. This agreement may be modified at any time by written consent of all involved agencies.
83. 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.

**SIGNATORIES**

\_\_\_\_\_  
Jay Greenberg  
Special Agent in Charge  
Federal Bureau of Investigation  
St. Louis Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Col. Art Jackson Jr. #386  
Chief of Police  
Berkeley, Missouri Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized by  
Babatunde Deinbo  
Mayor  
City of Berkeley

\_\_\_\_\_  
Date