ORDINANCE NO. _____

BILL NO. 92, CD1 (2025)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE FEDERAL BUREAU OF INVESTIGATION FOR A JOINT TERRORISM TASK FORCE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The County of Maui and the Federal Bureau of Investigation seek to enter into an agreement for a joint terrorism task force, as described in the Memorandum of Understanding, attached as Exhibit "1."

Section 2.20.020, Maui County Code, provides, "Unless authorized by ordinance, the mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof."

SECTION 2. Under Section 2.20.020, Maui County Code, the Council authorizes the Mayor to execute the Memorandum of Understanding and any amendments consistent with the purpose and scope of the Memorandum of Understanding that do not increase the County's financial obligation or the agreement's duration.

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Thomas Kolbe
THOMAS KOLBE
Department of the Corporation Counsel
County of Maui
LF2025-0169/LF2024-1721
BFED-4 2025-09-09 Bill 92 CD1 (2025)

Exhibit "1"

UNCLASSIFIED//FOUO

HONOLULU DIVISION

JOINT TERRORISM TASK FORCE (JTTF)

Standard Memorandum of Understanding

Between

THE FEDERAL BUREAU OF INVESTIGATION

And

MAUI POLICE DEPARTMENT

(the "Participating Agency")

PARTIES

This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation (FBI) and the Participating Agency. The FBI and the Participating Agency are also referred to herein individually as a Party or collectively as the Parties.

AUTHORITIES

The FBI is authorized to coordinate intelligence, investigative, and operational responses to various criminal, cyber, and national security threats, attacks, and intrusions pursuant to various statutory and executive authorities. These include 28 U.S.C. § 533, 34 U.S.C. § 10211, 28 C.F.R. 0.85, Executive Order 12333, as amended, the Attorney General Section 905 Guidelines Regarding Disclosure of Foreign Intelligence Acquired in a Criminal Investigation (September 23, 2002); the Attorney General Guidelines for FBI Domestic Operations (AGG-DOM); Annex II to NSPD-46/HSPD-15; NSPD-54/HSPD-23; NSPM-36; and 18 U.S.C. § 1030, 50 U.S.C. § 1801, et seq.

PURPOSE/PREAMBLE

This MOU is to formalize the relationship between the FBI and the Participating Agency in order to maximize cooperation and to create a cohesive unit capable of addressing the most complex terrorism investigations. For purposes of this MOU, all mentions of JTTF also include the National Joint Terrorism Task Force (NJTTF).

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This MOU delineates the responsibilities and commitments of the FBI and the Participating Agency in the FBI Honolulu Joint Terrorism Task Force (JTTF).

This MOU is not intended to, 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 agency, the United States, or the officers, employees, agents, or other associated personnel thereof.

MISSION

The mission of the JTTF is to leverage the collective resources of the Parties 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 participating agencies.

SUPERVISION AND CONTROL

- All JTTF personnel, once on-board, will be under the supervision of the FBI while working on the JTTF to which they are assigned.
- Overall command and management of the JTTF shall be the responsibility of the NJTTF Section Chief (SC) and his/her designee at the level of FBI Headquarters (FBIHQ) or the Assistant Director in Charge (ADIC) or Special Agent in Charge (SAC) of the FBI field office to which the JTTF personnel are assigned, and his/her designee.
- All guidance on investigative matters handled by the JTTF will be issued by the Attorney General (AG) or the FBI. The FBI will make available to the Participating Agency applicable guidelines and policies, including the AGG-DOM and the FBI's Domestic Investigations and Operations Guide (DIOG).
- The ADIC, SAC or the SC shall designate one Supervisory Special Agent (SSA) to supervise day-to-day operational and investigative matters pertaining to the JTTF. Staffing issues are the responsibility of the FBI chain of command.
- In order to comply with Presidential Directives, the policy and program management of the JTTF is the responsibility of FBI Headquarters (FBIHQ). The operational chain of command beginning at the highest level, in each JTTF will be as follows: ADIC (if assigned), SAC or SC, Assistant Special Agent in Charge (ASAC) or Unit Chief (UC), and JTTF SSAs.
- Each FBI ADIC, SAC, or SC, through his or her chain-of-command, is responsible for administrative and operational matters directly associated with the JTTF. Operational activities will be supervised by FBI JTTF SSAs. Staffing issues are the responsibility of the FBI chain of command.
- The relevant FBI JTTF SSA will be responsible for opening, monitoring, directing, and closing JTTF investigations in accordance with existing FBI policy and the applicable United States AG Guidelines.
- Assignments of cases to personnel will be based on, at a minimum, experience, training, and performance in addition to the discretion of the relevant JTTF SSA.

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STAFFING COMMITMENT AND RESPONSIBILITIES

- In light of the significant cost and effort in on-boarding new JTTF personnel, as well as the need for continuity to successfully combat national security, criminal, and cyber threats, attacks, and intrusions, the Participating Agency agrees to provide its personnel to the FBI JTTF for a period of at least two (2) years. This MOU imposes no maximum limit as to the time that any individual may remain on the JTTF. The FBI retains discretion over the length of service of JTTF personnel, in coordination with the Participating Agency.
- During periods of heightened threats and emergencies, the JTTF may need to operate 24-hours a day for an extended period of time. To function properly, the JTTF depends upon the unique contributions of each Participating Agency. During these periods, all JTTF personnel are expected to support JTTF activities unless released to the Participating Agency.
- Due to the operational needs of the JTTF, assignment of full time JTTF personnel to special details or duties for their home agency outside the JTTF by the Participating Agency must be coordinated with the relevant JTTF SSA.
- Although JTTF personnel will report to his/her Participating Agency for non-investigative administrative matters, leave requests will be coordinated with the JTTF SSA to ensure staffing availability.
- JTTF personnel must adhere to the FBI's ethical standards and the Supplemental Standards of Ethical Conduct for employees of the Justice Department, and the same rules and regulations as FBI employees with regard to security policies, conduct and activities while in FBI space, the handling of FBI property, the operation of FBI vehicles, and the conduct of JTTF business.
- Continued assignment to the JTTF will be in coordination with the ADIC, SAC or SC, and the Participating Agency. The FBI ADIC, SAC or SC retains the discretion to remove any JTTF personnel from the JTTF.
- JTTF personnel are subject to removal from the JTTF by the FBI for any 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, any other applicable agreements, rules, and regulations, or at the discretion of the FBI.
- JTTF personnel must sign an acknowledgment of their respective roles and responsibilities before coming on-board.
- All JTTF personnel are required to attend FBI legal training in compliance with FBI regulations and any other training deemed mandatory and/or 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 its training required of its own employees.
- The participation of other federal, state, local, tribal, and territorial partners on the JTTF is critical to the long-term success of the endeavor. Due to congressionally mandated reporting, articulating the level of effort for these partnerships is a key measure of the JTTF's performance. Accordingly, all JTTF personnel will be required to record their workload in the Time Utilization Recordkeeping (TURK) system used by the FBI.
- The Participating Agency will ensure that detailed JTTF personnel are medically qualified according to the agency's standards to perform JTTF duties, including law enforcement duties, functions, and responsibilities.

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DEFINITION OF JTTF PERSONNEL

As used in this MOU, the term "JTTF personnel" means and includes Task Force Officer, Task Force Member, and Task Force Participant, as those terms are defined in the Joint Task Force Policy Guide (1178PG) section4.3. This section of the JTFPG is available should it be requested.

DEPUTATION

State, local, tribal, and territorial law enforcement officers (LEOs) who serve on the JTTF must be federally deputized under Title 18 of the USC while assigned to the JTTF. The FBI may likewise require federal LEOs who serve on the JTTF to be deputized while assigned to the JTTF. The FBI will secure the required authorization for deputations, as needed.

Under the terms of this MOU, the Participating Agency agrees that non-LEOs detailed to the JTTF 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.

SECURITY CLEARANCE

JTTF personnel may be required to handle sensitive and classified information, have access to classified systems, and/or have access to secure office space. Therefore, JTTF personnel must obtain and maintain a Top Secret clearance and access to Sensitive Compartmentalized Information (SCI) in accordance with the FBI's Security Division Policies.

All JTTF personnel will execute non-disclosure agreements deemed necessary by the FBI for the protection of classified and sensitive information, including but not limited to an SF-312, Classified Nondisclosure Agreement. Supervisors in the Participating Agency responsible for the JTTF personnel may only be provided with classified information in accordance with FBI policy, if they have the appropriate security clearance to receive the classified information, and the requisite "need to know."

All members of the JTTF must certify they have not failed an FBI polygraph at any time. If a potential JTTF member has at one time failed an FBI polygraph, they are not eligible to be in FBI space and, therefore, not eligible to be a member of the task force.

DEADLY FORCE POLICY

Non-FBI JTTF personnel will follow the Participating Agency's policy concerning the use of deadly force.

Less-than-Lethal Devices

- Pursuant to Section VIII of the DOJ Less-Than-Lethal Devices Policy dated May 16, 2011, all state/local officers participating in JTTF operations must be made aware of and adhere to the policy and its limits on DOJ officers.
- The Participating Agency of each individual assigned to the JTTF will ensure the agency's policies and procedures for use of any less-than-lethal device that will be carried by JTTF

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personnel are consistent with the DOJ policy statement on the Use of Less-Than-Lethal Devices.

- The Participating Agency of each individual assigned to the JTTF will ensure that, while the individual is participating in FBI-led JTTF operations in the capacity of JTTF personnel, the individual will carry only less-than-lethal devices the Participating Agency has issued to the individual, and on which the individual has been trained, in accordance with the agency's policies and procedures.

BODY WORN CAMERAS

- Task Force Officers (TFOs), including those federally deputized, enforcing federal law while assigned to the JTTFs under federal supervision and wearing FBI-owned body worn cameras (BWC) must comply with the processes and procedures set forth in BWC Policy Guide 1343PG, including those covering authorized use and activation of BWCs by TFOs in FBI cases.
- TFOs may comply with the FBI's BWC policies, processes, and procedures by wearing and using their home agencies' BWC equipment during FBI pre-planned arrests and searches.
- TFOs electing to use their home agencies' BWC equipment must wear and use their home-agencies' BWCs in accordance with the FBI's BWC policy, during, and after any FBI pre-planned arrests or searches.
- TFOs will provide the FBI with copies of any BWC recordings resulting from FBI pre-planned arrests or searches as soon as possible at the conclusion of the operation. BWC recordings obtained from TFOs are to be considered copies, with their home agencies retaining the originals.
- Agencies intending to release their home agencies' BWC recordings resulting from FBI pre-planned arrests or searches will notify the relevant FBI Assistant Director in Charge (ADIC)/Special Agent in Charge (SAC) as soon as practicable and provide as much advanced notice prior to release. State, local, tribal, and territorial agencies may not release BWC recordings of FBI pre-planned arrests or searches pursuant to state, local, tribal, or territorial laws or regulations, absent the consent of the FBI. Following intended release notifications, ADICs/SACs will coordinate with the TFOs' home agencies to discuss any necessary redactions or withholdings of the BWC recordings prior to public release to protect the privacy and other interests of the FBI, law enforcement personnel, or victims.

COORDINATION

Intelligence, law enforcement, and operational actions will be coordinated and cooperatively carried out within the JTTF. The Participating Agency will not knowingly act unilaterally on any matter affecting the JTTF. The Parties agree the 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 Participating Agency. All law enforcement actions will be coordinated and cooperatively carried out.

The JTTF's criminal investigative procedures will conform to the requirements of the FBI and 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.

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All media releases involving JTTF matters will be conducted by the FBI. No press release involving a JTTF matter will be issued without prior FBI approval.

CONFIDENTIAL HUMAN SOURCES

- The disclosure of FBI informants, or Confidential Human Sources (CHSs), to non-JTTF personnel will be limited to those situations where it is essential to the effective performance of the JTTF, and only after approval by an FBI supervisory employee. These disclosures will be consistent with applicable FBI guidelines.
- Non-FBI JTTF personnel may not make any further disclosure of the identity of an FBI CHS, including to other individuals assigned to the JTTF. No documents which identify, tend to identify, or may indirectly identify an FBI CHS may be released without prior FBI approval.
- In those instances where the Participating Agency provides a CHS, the FBI may, at the discretion of the SAC and in coordination with the Participating Agency, 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.
- The United States AG Guidelines and FBI policy and procedure for operating FBI CHSs shall apply to all CHSs opened and operated in furtherance of FBI JTTF investigations. Documentation of, and any payments made to, FBI CHSs shall be in accordance with FBI policy and procedure.
- Operation, documentation, and payment of any CHS opened and operated in furtherance of a JTTF investigation must be in accordance with the United States AG Guidelines, regardless of whether the handling agency is an FBI JTTF Participating Agency. Documentation of state, county, or local CHSs opened and operated in furtherance of JTTF investigations shall be maintained at an agreed upon location.
- All JTTF undercover operations will be conducted and reviewed in accordance with FBI guidelines and the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. The Participating Agency 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.

INFORMATION SHARING/REPORTS AND RECORDS

- All investigative and intelligence reporting will be prepared and disseminated in compliance with FBI policy, including but not limited to DIOG section 14. Subject to any legal or policy restrictions, copies of documents created for a JTTF matter based upon information obtained from participation on the JTTF by any JTTF personnel will be considered to be federal documents under the control of the FBI and shall be maintained in accordance with FBI records management policy and applicable law. All JTTF materials and investigative records, including any MOUs, originate with, belong to, and will be maintained by the FBI.
- All information learned during the course of a JTTF investigation is subject to FBI information sharing policies and may not be disclosed outside of the FBI without the approval of the FBI JTTF Supervisor. Like any FBI employee, JTTF personnel may not disclose any FBI or JTTF -related information outside of the FBI, including any disclosure to the Participating Agency, without the prior approval of the FBI JTTF SSA.

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- All JTTF materials and investigative records originate with, belong to, and will be maintained by the FBI, to include but not limited to: MOUs, interview reports (i.e. FD-302), interview notes, surveillance logs, subpoenaed records, or other investigative information. All information generated in the course of investigations by the JTTF will be controlled solely by the FBI and may only be removed from FBI space with the approval of the JTTF SSA. All official records and information will be kept in accordance with established FBI records management and retention policies.
- JTTF personnel are strictly prohibited from disclosing any unclassified information to individuals without a need to know. Like any FBI employee, JTTF personnel are strictly prohibited from disclosing any classified information to individuals who do not possess the appropriate security clearance and a need to know. The Participating Agency agrees to have JTTF personnel sign an FD-868 (Nondisclosure Agreement for Joint JTTF Members, Contractors, Detailees, Assignees, and Interns). This action obligates an individual participating in the JTTF, who is accepting a position of special trust with access to classified and otherwise sensitive information, to be bound by prepublication review to protect against the unauthorized disclosure of such information.
- JTTF information may identify individuals whose information may be protected by the Privacy Act of 1974 and "United States persons" whose information may be protected by Executive Order 12333 (as amended or any successor thereto). All such information shall be handled lawfully pursuant to the provisions thereof.
- JTTF personnel may be required to handle and process Protected Critical Infrastructure Information, as defined by law and regulated by the U.S. Department of Homeland Security (DHS). All JTTF personnel will use and disclose DHS PCII in accordance with applicable law and regulation.
- JTTF personnel must also comply with all applicable dissemination restrictions when sharing information with non-JTTF individuals. Such restrictions include but are not limited to classification rules, grand jury information, foreign government information, and any originator controlled caveats.
- The FBI and the Participating Agency will immediately report to each other every instance wherein data received from each other is used, disclosed, or accessed in an unauthorized manner (including any data losses or breaches).
- The FBI and the Participating Agency agree to abide by the DOJ Privacy, Civil Rights, and Civil Liberties Protection Policy for the Information Sharing Environment (January 25, 2010) to the extent that any JTTF-related information is covered by that policy. At a minimum, the FBI and Participating Agency shall notify each other of any erroneous disclosure of information concerning a U.S. citizen or legal permanent resident alien and take reasonable steps to correct such error.

SALARY/OVERTIME COMPENSATION/FUNDING

- Subject to funding availability and legislative authorization, the FBI may reimburse the Participating Agency for the cost of overtime worked by deputized non-federal LEOs assigned full time to the JTTF, provided overtime expenses were incurred as a result of JTTF related duties. A separate Cost Reimbursement Agreement (CRA) must be executed between the FBI and the Participating Agency, consistent with regulations and policy. Otherwise, overtime shall be compensated in accordance with applicable Participating Agency overtime provisions.

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- The Participating Agency JTTF personnel will each report to his or her respective agency for personnel administrative matters. The Participating Agency shall be responsible for the pay, overtime, leave, performance appraisals, and other personnel matters relating to its employees detailed to an FBI JTTF. The Participating Agency will, at their discretion, solicit input from the JTTF SSA for performance appraisals based on their employees work on the JTTF.
- The FBI will provide office space for all JTTF personnel 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.
- The introduction of office equipment and furniture into FBI space by the Participating Agency is discouraged, as any such material is subject to examination for technical compromise, which may result in its being damaged or destroyed.
- Subject to funding availability and legislative authority, the FBI may provide equipment, such as a vehicle (but only to non-federal LEOs who work on the JTTF), fuel purchase card (but only to non-federal LEOs who work on the JTTF), and smart phone, to JTTF personnel for use in carrying out JTTF related duties. Receiving personnel will be required to execute acceptable use agreements before being issued these items.
- As the FBI will not provide vehicles to LEOs from federal agencies, it is the responsibility of the Participating Agency (if federal) to ensure the LEO assigned to the JTTF is assigned a vehicle in a manner which enables them to fully perform the duties as assigned on the JTTF.
- Employees of the Participating Agency (non-federal LEOs only) may be permitted to drive FBI owned or leased vehicles for surveillance, case management and investigation in connection with any JTTF investigation. FBI owned or leased vehicles will only be made available to non-federal LEOs, and may only be used in accordance with applicable FBI rules and regulations.
- Employees of the Participating Agency (including federal agencies), specifically assigned to the NJTTF may be permitted to drive FBI owned or leased vehicles in connection with NJTTF related duties. FBI owned or leased vehicles may only be used in accordance with applicable FBI rules and regulations.
- Employees of the Participating Agency who are assigned an FBI owned or leased vehicle must sign and abide by the following agreement: "FBI NATIONAL VEHICLE LEASE VEHICLE USE AGREEMENT – NON-FBI PERSONNEL."
- *[non-Federal entities only]* Any civil liability arising from the use of an FBI-owned or leased vehicle by an individual from a Participating Agency 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 an individual from the Participating Agency that is outside of the scope of his or her official duties and assignments under this MOU.
- For official inventory purposes, all equipment including fuel cards, radios, badges, credentials and other forms of JTTF identification subject to FBI property inventory requirements will, upon request, be produced by each individual who participates in the JTTF.
- At the completion of an individual's assignment on the JTTF, upon request, or upon withdrawal or termination of the Participating Agency from the JTTF, all FBI equipment and property will be returned to the supplying agency in accordance with FBI policy.

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- This MOU is not an obligation or commitment of funds nor a basis for a transfer of funds. Even where one of the Parties to this MOU has agreed (or later does agree) to assume a particular financial responsibility, such Party's express written approval must be obtained before incurring any expense expected to be assumed by the other Party. All obligations of an expenditures by the Parties to this MOU will be subject to each Party's respective budgetary and fiscal processes and availability of funds pursuant to all applicable laws, regulations, and policies. The Parties to this MOU acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

TRAVEL

All JTTF related travel of non-FBI personnel requires the approval of the JTTF SSA, and Participating Agency authorization, prior to travel. 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 JTTF.

For domestic travel, JTTF personnel will be responsible for appropriate notifications within his or her Participating Agency, as well as standard FBI travel approvals and notification. The JTTF will obtain FBIHQ authorization and country clearances for JTTF personnel required to travel outside the United States. The FBI will pay costs for travel in accordance with the Federal Travel Regulations of all JTTF personnel to conduct investigations outside the field office or home agency territory.

[FOR DEPARTMENT OF DEFENSE ENTITIES ONLY]:

The Posse Comitatus Act, 18 U.S.C. §1385, prohibits the U.S. 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 3025.18 and 3025.21, Chapter 15 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.

LIABILITY

General. The Parties acknowledge that this MOU does not alter applicable law governing any claim for civil liability arising out of any activity conducted pursuant to this MOU or otherwise relating to this MOU. The Department of Justice (DOJ) may, in its discretion, determine on a case-by-case basis that

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an individual should be afforded legal representation, legal defense, or indemnification of a civil judgment, pursuant to federal law and DOJ policy and regulations.

Common Law Tort Claims

- 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 (FTCA), 28 U.S.C. § 1346(b), and §§ 2671 - 2680.
- For the limited purpose of defending civil claims arising out of JTTF activity, an 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).
- 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(1)&(2), are made on a case-by-case basis, and such certification cannot be guaranteed.
- 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).

Constitutional Claims

- 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.
- 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).
- If any Participating Agency's JTTF personnel are 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 scope of JTTF-related duties, the individual may request representation by DOJ. 28 C.F.R. §§ 50.15, 50.16.
- An employee may be provided representation "when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment, and the Attorney General, or his or her designee,

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determines that providing representation would otherwise be in the interest of the United States." 28 C.F.R. § 50.15(a).

- A written request for representation by JTTF personnel 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).
- If any JTTF personnel 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).
- 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 MOU shall be deemed to create any legal right on the part of any JTTF personnel.

Express Reservations

- The Parties do not waive any applicable defenses and/or limitations on liability.
- No assignment of 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.

DURATION

This MOU shall be reviewed every three years based upon its effective date, but may be terminated at any time upon written mutual consent of the FBI and the Participating Agency involved. This MOU will remain in effect until it is terminated by written mutual consent of the FBI and Participating Agency, or until such time a new MOU is executed between the FBI and the Participating Agency.

Any Participating Agency may withdraw from the JTTF at any time by written notification to the ADIC, SAC, SC or substantive unit at FBI Headquarters at least 60 days prior to withdrawal.

Upon termination of this MOU, all equipment provided to the JTTF will be returned to the supplying Participating Agency. In addition, when a Participating Agency withdraws from the MOU, the Participating Agency will return equipment to the supplying Participating Agency. Similarly, any remaining Participating Agency will return to a withdrawing Participating Agency any unexpended equipment supplied by the withdrawing Participating Agency.

FORFEITURE

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The FBI shall be responsible for processing assets seized for federal forfeiture in conjunction with JTTF operations. 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 JTTF investigations may be equitably shared with the agency participating in the JTTF.

DISPUTE RESOLUTION

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

MODIFICATIONS

This agreement in no manner affects any existing 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 or effect unless such modifications are reduced to writing and signed by an authorized representative of the FBI and the Participating Agency.

SIGNATORIES: APPROVAL RECOMMENDED:

Date: 7/2/25

John Pellettier
Maui Police Department

Date: 6/17/25

David K. Porter
Special Agent in Charge
Honolulu Division
Federal Bureau of Investigation

APPROVED AS TO FORM AND LEGALITY:

THOMAS KOLBE
Deputy Corporation Counsel
LF# 2024-1721

COUNTY OF MAUI:

Date:

By RICHARD T. BISSEN, JR
Its Mayor

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INTRODUCED BY:

Upon the request of the Mayor.