
MEMORANDUM OF UNDERSTANDING

BETWEEN THE COUNTY OF SAN MATEO AND THE NORTHERN CALIFORNIA HIGH INTENSITY DRUG TRAFFICKING AREA (NCHIDTA) EXECUTIVE BOARD

THIS MEMORANDUM OF UNDERSTANDING (hereinafter called "MOU"), entered into this ____ day of October 2008, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and the NORTHERN CALIFORNIA HIGH INTENSITY DRUG TRAFFICKING AREA hereinafter called "NCHIDTA" and the NORTHERN CALIFORNIA REGIONAL TERRORISM THREAT ASSESSMENT CENTER hereinafter called "NCRTTAC" FUSION CENTER;

WITNESSETH:

WHEREAS, since 1997, NCHIDTA has administered and continues to administer federal and state funding to implement a variety of public safety initiatives focusing on narcotics eradication; and

WHEREAS, since 2004, the NCRTTAC has administered and continues to administer federal and state funding to implement a variety of public safety initiatives focusing on anti terrorism; and

WHEREAS, NCHIDTA and NCRTTAC are managed by the NCHIDTA Executive Board, and because NCHIDTA and NCRTTAC are funding streams and are not legal entities, and therefore do not have the ability to enter into contracts or to conduct financial transactions, the NCHIDTA Executive Board has therefore designated the San Mateo County Sheriff's Office to serve as the fiduciary and fiscal agent for NCHIDTA; and

WHEREAS, in that capacity the Board of Supervisors has authorized the Sheriff, on behalf of NCHIDTA and NCRTTAC, to enter into contracts and conduct fiscal transactions to which the County is a party, which contracts are funded entirely by grant funding; and

WHEREAS, NCHIDTA and NCRTTAC have no full time employees, and are staffed by a combination of independent contractors and employees of member law enforcement and public safety agencies, including the County of San Mateo, who have been assigned to NCHIDTA or NCRTTAC "Fusion Center"; and

WHEREAS, in support of NCHIDTA and NCRTTAC, the Sheriff has assigned several Sheriff's Office employees to work at NCHIDTA and NCRTTAC, including but not limited to a Sheriff's Captain to serve as the Executive Director of the NCHIDTA;

and

WHEREAS, this Board of Supervisors has previously adopted Resolutions Nos. 65551, 65856, and 67236, which authorize the Sheriff to execute Agreements in connection with the NCHIDTA, and the NCRTTAC; Resolution No. 66484, which authorized the Controller to advance funds in connection with NCHIDTA initiatives; and Resolution No. 68446, which authorized the execution of earlier MOUs authorizing the County staff and services that support NCHIDTA and NCRTTAC, as well as payment for those staff and services; and

WHEREAS, the parties now wish to specify the employees that the County is assigning and the services that the County is providing to NCHIDTA/NCRTTAC Fusion Center, and the transfer of funds that NCHIDTA/NCRTTAC Fusion Center is authorizing the County to make on its behalf, to compensate the County for said employees and services:

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS CONTAINED HEREIN, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. EXHIBITS.

Exhibit A, attached hereto and incorporated by reference herein, describes the staff, support and services the County provides to NCHIDTA and NCRTTAC, and authorizes the County to use HIDTA and RTTAC funds to compensate the County for said staff, support, and services.

2. SERVICES TO BE PERFORMED BY COUNTY.

In consideration of the payments set forth herein, County shall assign employees and provide services to NCHIDTA/NCRTTAC, which employees will be assigned to work at the NCHIDTA/NCRTTAC Fusion Center Office in San Francisco, as set forth herein and in Exhibit A. All County employees assigned to NCHIDTA or NCRTTAC shall be subject to the policies and procedures of the County of San Mateo and the San Mateo County Sheriff.

3. PAYMENTS TO BE MADE/AUTHORIZED BY NCHIDTA/NCRTTAC.

In consideration of the services provided by County in accordance with Exhibit A, NCHIDTA and NCRTTAC authorizes the County, in its capacity as fiscal officer and fiduciary for said entities, to use HIDTA and RTTAC funds to compensate County based on the rates set forth in Exhibit A. Payment shall be made by the Sheriff's designee's transfer of funds from NCHIDTA or NCRTTAC to the County, according to procedures approved by the County Controller.

The projected total amount of funds directly reimbursed to County from NCHIDTA and NCRTTAC for the fiscal year 2008-09, under various federal funding streams, is

approximately \$2,067,000 (approximately \$1,665,000 for salaries and benefits, and approximately \$352,000 for various County Service Charges and operating budget expenses, and \$100,000 for unforeseen contingencies.)

The projected total amount of funds reimbursed directly to County from NCHIDTA in fiscal year 2009-10 is expected to be approximately \$2,770,000, and for fiscal year 2010-11 is expected to be approximately \$2,860,000.

Actual federal allocations to NCHIDTA in 2009-10 and 2010-11 are subject to annual Congressional budget approval, and will not be known until those budgets for those years are approved and funding is appropriated.

4. TERM AND TERMINATION.

The term of this MOU shall be from July 1, 2008 through June 30, 2011. This MOU may be extended by a written amendment approved and signed by the parties.

This MOU may be terminated by either NCHIDTA, or the County without a requirement of good cause upon thirty (30) days written notice to the other party. This MOU is contingent on the federal government's annual appropriation and award of NCHIDTA and, as applicable, NCRTTAC funds.

Either party may terminate this MOU or a portion of the services referenced in the Exhibits on ten (10) days written notice to the other party in the event of the unavailability of Federal or State, or County funds. However, in this case, the County will be fully reimbursed with HIDTA or RTTAC funds for all services, staff, and support provided through the date of termination.

5. HOLD HARMLESS.

NCHIDTA/NCRTTAC agrees there shall be no liability imposed on the County as a result of NCHIDTA/NCRTTAC activities, other than the liability to which employees of the County would otherwise be subjected as a result of their daily activities outside of this MOU. In the event any claims of lawsuits arise out of the terms and conditions of this Agreement, NCHIDTA/NCRTTAC funding shall be used to defend, hold harmless and indemnify the NCHIDTA, the County of San Mateo and its officers, agents and employees from any and all liability related to this MOU. This section shall include, without limitation, any actions, claims, suits, demands, and liability of every name, kind, and description brought for, or on account of injuries to or death of any person, or damage to property of any kind whatsoever and to whomsoever belonging.

6. NON-ASSIGNABILITY.

Neither party may assign the benefits nor delegate the duties set forth in this MOU.

7. PERMITS AND LICENSES

It shall be the responsibility of NCHIDTA/NCRTTAC to obtain any license, permit or

approval required from any agency or contractor for work/services to be performed under this MOU, at NCHIDTA/NCRTTAC's expense, prior to commencement of said work/services.

8. SUSPENSION AND DISBARMENT

As required by Executive Order 12549, "Suspension and Debarment", and as implemented under 21 CFR Part 1404, NCHIDTA/NCRTTAC hereby acknowledges that it shall research and certify that any agencies, subcontractors or third parties performing work for NCHIDTA/NCRTTAC under this scope of activities provided for under this MOU:

a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from the covered transactions by any Federal department or agency; or

b) Has not within a three-year period preceding this contract been convicted of or and a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

c) Is not presently indicted for or otherwise criminally or civilly charged by a government entity terminated for cause or default.

9. INSURANCE.

Both parties shall maintain sufficient insurance, self-insurance or a combination thereof to comply with the following requirements, and, if requested, each party shall furnish the other party with certificates of insurance evidencing the required coverage. Thirty (30) days notice must be given, in writing, to the Sheriff's Office and County of any pending change in the limits of liability or of any cancellation or modification of the policy. In the event of double coverage for the same type of claim, HIDTA insurance shall be primary and the County's shall be secondary.

A. Worker's Compensation and Employer's Liability Insurance.

NCHIDTA/NCRTTAC and County shall have in effect during the entire life of this MOU, Worker's Compensation and Employer's Liability Insurance, or an acceptable program of self-insurance providing full statutory coverage. In signing this MOU, NCHIDTA/NCRTTAC certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this

MOU.

Employees of agencies other than San Mateo County, who are temporarily assigned to perform work for NCHIDTA/NCRTTAC and/or report to the offices of NCHIDTA/NCRTTAC, shall be covered by their own agencies' Worker's Compensation insurance program, as required by law, NCHIDTA/NCRTTAC shall negotiate and have in force Agreements or MOU's with said affiliate law enforcement and public safety agencies, for purposes of their participation in approved activities and receipt of funds for said purpose. Said Agreements or MOU's shall include language addressing the issue of hold harmless indemnification, duty-to-defend, liability, and insurance, which shall be reviewed and approved by County's Risk Manager.

Any person assigned to the NCHIDTA/NCRTTAC under this MOU or under above-mentioned MOU's or Agreements as affiliate agencies to the NCHIDTA/NCRTTAC, in the course of future activities, shall be deemed to be continuing under the employment of the agency assigning such person, even though such person will be working under the supervision and direction of the NCHIDTA/NCRTTAC Director. Any injury, disability, or death incurred by any person while working with the NCHIDTA/NCRTTAC shall be deemed to have arisen out of and to have been sustained in the course of such person's employment with the agency assigning him or her for purposes of Worker's Compensation and all other benefits. Any person assigned to the NCHIDTA/NCRTTAC who sustains an injury arising out of and in the course of his work with the NCHIDTA/NCRTTAC shall be accorded by the agency assigning him or her all of the same benefits, including Worker's Compensation benefits, which he or she would have received if they had been acting under the immediate direction of the agency assigning him.

B. Liability Insurance. NCHIDTA/NCRTTAC and County shall take out and maintain during the life of this MOU such Bodily Injury Liability and Property Damage Liability Insurance as shall protect County personnel while performing work covered by this MOU from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from NCHIDTA/NCRTTAC's and County's operations under this MOU, whether such operations be by County personnel or by any sub-contractor or by anyone directly or indirectly employed by either the NCHIDTA/NCRTTAC or the County.

Said insurance may include a combination of separate insurance policies and County self-insurance, as deemed appropriate by the County Risk Manager, who shall have final decision-making authority as regards all NCHIDTA/NCRTTAC insurance matters.

Insurance coverages shall be combined single limit bodily injury and

property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | | |
|----|-----------------------------------|--------------------|
| 1. | Comprehensive General Liability | <u>\$5,000,000</u> |
| 2. | Motor Vehicle Liability Insurance | <u>\$5,000,000</u> |

10. NON-DISCRIMINATION.

No person shall, on the grounds of race, color, religion, ancestry, gender, age, national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this MOU.

NCHIDTA/NCRTTAC and County shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this MOU.

11. RETENTION OF RECORDS.

Each party agrees to provide to the other party, to any federal or state department having monitoring or reviewing authority, to County's or NCHIDTA/NCRTTAC's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules, and regulations, and this MOU, and to evaluate the quality, appropriateness and timeliness of services performed.

NCHIDTA/NCRTTAC and County shall maintain and preserve all financial records relating to this MOU for a period of four (4) years from the termination date of this MOU, or until audit findings are resolved, whichever is greater.

12. MERGER CLAUSE.

This MOU, including the Exhibit hereto constitutes the sole agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

13. CONTROLLING LAW.

The validity of this MOU and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this MOU shall be governed by the laws of the State of California.

14. COMPLIANCE WITH ALL LAWS.

All services to be performed pursuant to this MOU shall be performed in accordance with all applicable Federal, State, County, and municipal laws, and all Federal regulations promulgated thereunder, as amended. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this MOU and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this MOU.

15. USE OF POSITION

No employee of either party shall use his/her position for a purpose that constitutes or present the appearance of personal or organizational conflict of interest or personal gain.

16. NOTICES

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, and addressed to:

In the case of County, to:

San Mateo County Sheriff's Office
ATTN: Sheriff of San Mateo County
Hall of Justice, 3rd Floor
400 County Center
Redwood City, CA 94061

In the case of Contractor, to:

Northern California HIDTA
Chairperson, Executive Board
450 Golden Gate Ave., 14th Floor
San Francisco, CA 94102

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

A Political Subdivision of the

State of California

By: _____
PRESIDENT, BOARD OF SUPERVISORS

Date: _____

ATTEST: _____

By: _____
CLERK OF SAID BOARD

NORTHERN CALIFORNIA HIDTA

By: _____
CHAIRPERSON, EXECUTIVE COMMITTEE

PRINTED NAME

Date: _____

EXHIBIT A

County Services and Reimbursements

MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF SAN MATEO AND NCHIDTA / NCRTTAC

1. COUNTY POSITIONS ASSIGNED TO NCHIDTA/NCRTTAC.

A. The County shall assign to NCHIDTA/NCRTTAC Fusion Center, County employees to serve in the following positions, and NCHIDTA/NCRTTAC shall reimburse County for the full cost of salaries, benefits and expenses of said employees as specified below. The employees assigned to the positions will be subject to the mutual agreement of the Sheriff or the Sheriff's designee and the NCHIDTA Board or the Board's designee. In consideration of County's assignment of its employees to serve the NCHIDTA/NCRTTAC, said entity will reimburse County quarterly for any and all costs, including but not limited to salary, benefits and expenses as follows:

- 1) County agrees to assign a Sheriff's Captain to serve as the Executive Director of the NCHIDTA/NCRTTAC. The Executive Director will supervise, specify the job duties of, and evaluate the other County employees assigned to work at NCHIDTA/NCRTTAC.
 - a) For the period of Fiscal Year 2008-09, NCHIDTA's reimbursement for the services of the Executive Director shall not exceed ONE HUNDRED EIGHTY-FOUR THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$184,680).
 - b) For the period of Fiscal Year 2009-10, NCHIDTA's estimated reimbursement for the services of the Executive Director shall be approximately ONE HUNDRED NINETY-THREE THOUSAND NINE HUNDRED TWENTY DOLLARS (\$193,920).
 - c) For the period of Fiscal Year 2010-11, NCHIDTA's estimated reimbursement for the services of the Executive Director shall be approximately TWO HUNDRED THREE THOUSAND SIX HUNDRED TWENTY DOLLARS (\$203,620).

d) Travel

Consistent with provision of necessary federal funding and the NCHIDTA budget initiative, the cost of the Executive Director's travel (including cost of leasing a vehicle, but excluding liability insurance for the use of the vehicle), per diem, training, and NCHIDTA-related expenses incurred by the Executive Director in the performance of his NCHIDTA duties, will be paid by NCHIDTA, and County will not incur any liability for these expenses.

e) Benefits

The Executive Director will remain an employee of County and although NCHIDTA will reimburse County for these costs, County will be responsible for providing the Executive Director's employment benefits, including health insurance, retirement contributions, workers' compensation insurance, and automobile insurance.

Pursuant to Section XI: Fiscal Guidelines, 11.06 Restricted Expenditures (a) of the NCHIDTA's Standard Operations Manual, NCHIDTA Executive Director Compensation of the NCHIDTA Program Policy and Budget Guidance, compensation for the NCHIDTA Executive Director must be budgeted in the Management and Administration Initiative and must conform to the federal pay level GS-15, step 5 (to include locality adjustments) with the addition of 30% for fringe benefits.

- 2) One (1) Sheriff's Department Manager or Supervisor to serve as one of the Fusion Center's Assistant Deputy Directors with a FY 2008-09 projected salary reimbursement of \$220,188, adjustable by the allowable federal cost-of-living adjustment in the remaining two fiscal years of the MOU. NCR TTAC shall reimburse County for the full cost of salary, benefits and expenses of said employee
- 3) One (1) Sheriff's Deputy to serve as an intelligence officer assigned to the Fusion Center with a FY 2008-09 projected salary reimbursement of \$211,680, adjustable by the allowable federal cost-of-living adjustment in the remaining two fiscal years of the MOU. NCR TTAC shall reimburse County for the full cost of salary, benefits and expenses of said employee.
- 4) One (1) Senior Accountant/Financial Manager (NCHIDTA/NCR TTAC) with a FY 2008-09 projected salary reimbursement of \$115,500, adjustable by the County's negotiated salary adjustment in the remaining two fiscal years of the MOU. NCHIDTA/NCR TTAC shall reimburse County for the full cost of salary, benefits and expenses of said employee.
- 5) Four Intelligence Analysts (NCHIDTA) with a FY 2008-09 combined projected salary reimbursement of \$440,000, adjustable by the County's negotiated salary adjustment in the remaining two fiscal years of the MOU. NCHIDTA shall reimburse County for the full cost of salaries, benefits and expenses of said employees.

- 6) Two Intelligence Analysts (NCRTTAC) with a FY 2008-09 combined projected salary reimbursement of \$220,000, adjustable by the County's negotiated salary adjustment in the remaining two fiscal years of the MOU. NCRTTAC shall reimburse County for the full cost of salaries, benefits and expenses of said employees.
- 7) One Lead Intelligence Analyst (NCRTTAC) with a FY 2008-09 combined projected salary reimbursement of \$120,000, adjustable by the County's negotiated salary adjustment in the remaining two fiscal years of the MOU. NCRTTAC shall reimburse County for the full cost of salary, benefits and expenses of said employee.

2. COUNTY SERVICES PROVIDED TO NCHIDTA/NCRTTAC:

A. County-Provided Services & Reimbursement. County and Sheriff shall provide such services as are required for the practical and statutory operation of NCHIDTA and/or NCRTTAC within the County organizational and financial system. These may include, but shall not necessarily be limited to, the following: County Management services; County Counsel services; County Purchasing services; County Real Property services; County Risk Management services; County Human Resources services; County Treasurer & Controller services; County Auditor services; County Information services, including radio, telephone, and information processing services; County Motor Pool services; Sheriff's fiscal services; Sheriff's administrative services; Sheriff's budgetary services; Sheriff's contract management services; Sheriff's grant management services; Sheriff's personnel services; Sheriff's information technology services; and other such emergent service needs as may be required for successful operation of NCHIDTA and/or NCRTTAC.

B. Services provided to NCHIDTA by County along with County reimbursable yearly fees are specified below.

1) Fiscal Annual Fee:

Administration – NCHIDTA	\$ 106,681.00
Administration - NCRTTAC	\$ 120,000.00
Uniform Allowance (Executive Director, Lieutenant)	\$ 1,784.00
Worker's Compensation Expense (NCHIDTA/NCRTTAC)	\$ 32,904.00

2) County Service Charges: NCHIDTA / NCRTTAC

Telephone Service Charges	\$ 10,800.00	
Information Services	\$ 78,736.00	
Department Expense		
Radio Service Charges	\$ 3,936.00	
Motor Vehicle Mileage	\$ 40,600.00	
Motor Vehicle Replacement	\$ 12,000.00	Estimated

Auto Liability Insurance *	\$ 2,100.00	* County premium only – additional policy purchased, with Risk Mgmt guidance
General Liability Insurance *	\$ 5,830.00	* County premium only – additional policy purchased, with Risk Mgmt guidance
Official County Bond Insurance	\$ 200.00	
3) Services provided as needed and billed monthly according to hourly rates:		
County Purchasing Services	\$ \$50.00/hr	
Legal Services to be provided by the San Mateo County Counsel	\$ (\$15,000.00) payment as specified below	Estimated annual
4) Contingency (for unforeseen emergent expense(s))	\$ 100,000.00	Estimated annual Only if needed

C. Reimbursement for Services. Reimbursement shall be made for such services as follows:

- 1) County Services – reimbursement shall be made on a separate annual billing basis, by submission of an invoice by the County servicing agency to NCHIDTA and, where appropriate, to NCRTTAC. Tracking of costs shall be on an “actual cost” basis, and will require tracking of billable personnel hours and other billable expenses for County services. County servicing agencies shall, in March of each year, provide NCHIDTA and NCRTTAC with an estimate of service costs for the forthcoming fiscal year, for NCHIDTA/NCRTTAC budgeting purposes. It is understood by all parties that in most cases, this shall be an estimate only, based on prior year’s experience, and that year-end billing shall be based on actual services used for that year. Reimbursement may be made by the County Journal Entry process, during or before County’s year-end closing cycle.
- 2) Sheriff Services – reimbursement shall be made via an annual “Administrative Fee”, which shall be agreed-upon in advance between NCHIDTA/NCRTTAC and Sheriff. Said Administrative Fee shall be subject to an annual cost-of-living adjustment, and shall be paid in two bi-annual payments, upon submission of an invoice from Sheriff to NCHIDTA/NCRTTAC.

County Counsel Services - In consideration of the legal services provided by the County Counsel to NCHIDTA, NCRTTAC, and/or to the Sheriff in connection with NCHIDTA and/or NCRTTAC, NCHIDTA will reimburse the County Counsel at the current rate of \$188.00 per hour for services, with

said hourly rate to be adjusted from time to time to be the same hourly rate that is charged by the County Counsel to departments of the County of San Mateo. County Counsel will provide thirty (30) days written notice of any such increase. Additionally, NCHIDTA shall the actual costs of any out-of-pocket and extraordinary regular costs incurred by County Counsel in connection with the provision of its legal services, e.g., deposition costs, transcript costs, investigation fees, filing fees, extraordinary mailing costs, etc. County Counsel will submit monthly invoices, and NCHIDTA will pay the County Counsel within 30 days of receipt of the invoice.

D. Purchases. In its capacity as fiscal agent and fiduciary for NCHIDTA/NCRTTAC, County of San Mateo shall enter into purchasing and service contracts on behalf of NCHIDTA/NCRTTAC, as deemed necessary by the NCHIDTA Board. Except as specifically authorized by the Board of Supervisors, said contracts shall be subject to all policies and procedures that apply to contracts entered into by the County of San Mateo.