

Memorandum of Understanding
Between
The Alameda County District Attorney's Office
and
The Oakland Police Department

I. PARTIES – PARTICIPATING AGENCIES

This agreement, referred to herein as a “Memorandum of Understanding” (MOU) is entered into by and between the law enforcement agencies collectively referred to herein as “Participating Agencies”, specifically the:

- A. Alameda County District Attorney's Office (ACDA)
- B. Oakland Police Department (OPD)

A “Participating Agency” is an allied state or local law enforcement agency that has made a commitment of resources for an agreed upon period of time. This commitment is on a case by case basis to access and deploy the specific equipment and technology referred to herein as the “CSS Program.”

PARTICIPATING AGENCIES HEREBY AGREE AS FOLLOWS:

II. PURPOSE/MISSION

OPD desires access to Cellular-Site Simulator (CSS) technology and equipment possessed and controlled by ACDA, to enhance investigative capabilities. This includes the ability to quickly and safely apprehend fugitives, locate missing and at risk individuals, provide search and rescue support in natural disasters and emergencies, and locate persons involved in serious crimes that put the public at risk.

This MOU is sets forth of the terms and conditions of access to the CSS Program. This MOU outlines responsibilities of participating agencies as they relate to the requirements for pre-deployment, deployment, use and post-use of the CSS Program technology and equipment. As with any law enforcement capability, ACDA and OPD must use the CSS Program in a manner consistent with the requirements and protections of the United States Constitution, including the Fourth Amendment, and applicable statutory authorities, including the Pen Register Statute. Information resulting from the use of a cell-site simulator must be handled consistent with applicable statutes, regulations, and policies that guide law enforcement in the collection, retention, and disclosure of data.

The mission of the CSS Program is to enhance public safety by acquiring real time intelligence to:

- Increase opportunities to protect the public, enhance officer safety, and reduce deadly force encounters.
- Apprehend fugitives.
- Locate missing or at risk individuals.
- Locate victims of natural disasters.

III. EFFECTIVE DATE/DURATION/TERMINATION

- A. This MOU shall become effective upon execution by all their respective representatives.
- B. The term of this MOU is five years from the effective date.
- C. The participating agencies will review the mission objectives and the need for continued operation under this MOU every 12 months.
- D. Either agency may withdraw from this agreement by written notice. Written notice of intent to withdraw must be provided to the other participating agencies within 30 days prior to the date of the intended withdrawal.
- E. Any amendment or extension shall be agreed upon by both parties.

IV. PROGRAM OVERSIGHT, MANAGEMENT, AND SUPERVISION

A. PROGRAM OVERSIGHT COMMITTEE

- 1. The Program Oversight Committee (Committee) shall be comprised of the Chief's designee from each participating agency.
- 2. The Committee shall meet annually to review and assess:
 - a. Program policies and procedures
 - b. Pre-deployment requirements
 - c. Operational guidelines
 - d. Reports of deployment
 - e. Policy compliance
 - f. Equipment condition
 - g. MOU terms and provisions
- 3. The Committee shall prepare a report to summarize its review and assessment and provide the report to each participating agency's Chief within ten days of completing the review and assessment.

B. PROGRAM MANAGEMENT

- 1. ACDA Responsibilities:

- a. Assess and approve or deny CSS Program deployment requests
- b. Management and daily operation of the CSS Program
- c. Developing and preparing CSS Program policies and operating procedures
- d. Media releases regarding the CSS Program and its use
- e. CSS Program equipment maintenance and storage in a secured facility
- f. CSS Program equipment operating costs

2. Participating Agency Responsibilities

The following provisions will guide the participating agencies regarding resources, deployment, policy, training, and supervision.

- a. Each participating agency shall commit personnel to staff the CSS Program. ACDA will assign staff to each participating agency CSS Program deployment to assist with and monitor use of the equipment, data collection, and policy compliance.
- b. Each participating agency will assign supervisors and equipment operators (Operators) to the CSS Program. The personnel initially assigned to the CSS Program will be listed on Attachment A to this MOU. Additions, deletions, and temporary reassignments of personnel will be at the discretion of the respective participating agencies, with notice to the other participating agencies.
- c. Each participating agency will provide for the salary and employment benefits, including overtime, of their personnel assigned to the CSS Program. Each participating agency will retain control of its personnel's work hours, including the approval of overtime.
- d. Each participating agency shall designate qualified personnel (Operators) to complete training to operate the equipment and appropriately manage data obtained through its use. Only properly trained peace officers may

operate the CSS Program equipment. Training is completed at the participating agency's expense.

- e. CSS Program Operators must meet the following minimum qualifications:

1. Must be Peace Officers (830.1 PC)
2. Must complete required training
3. Must be familiar with the ACDA policy "Use of a Cell-Site Simulator"
4. If operating the CSS vehicle, must have a valid California Driver's License

- f. CSS Program Coordinators

Each participating agency agrees to designate a Program Coordinator (Coordinator) to the CSS Program. These Coordinators are responsible for insuring compliance with this MOU and all related policies affecting CSS Program deployment and operations. The personnel assigned as Coordinators will be listed on Attachment B to this MOU. Additions, deletions, and temporary reassignments of personnel will be at the discretion of the respective participating agencies, with notice to the other participating agencies.

- g. Operational Dispute Mediation

Operational disputes will normally be mutually addressed and resolved by the on-scene designated CSS Program supervisors. Any problems not resolved at this level will be referred to the CSS Program Coordinators identified in Attachment B of this MOU. However, the ACDA Chief of Inspectors or his/her designee is vested with the authority to resolve any dispute and to reverse decisions made at any level. Decisions by the ACDA Chief of Inspectors are final.

- h. Identifying Cases for Deployment

The ACDA Chief of Inspectors or his/her designee shall assess and approve or deny each request for deployment based on the criteria set forth below.

The participating agencies agree to limit requests to use CSS Program resources to the following:

1. **Pursuant to a search warrant¹:**
 - a. Investigations involving danger to the life or physical safety of an individual.
 - b. Apprehension of a fugitive.
2. **Emergency:**
 - a. The CSS program may be used, absent a search warrant, if a participating agency, in good faith, believes that *an emergency* involving danger of death or serious physical injury to any person exists.
 - b. Search and rescue operations
 - c. Missing or at risk person operations
 - d. Warrantless CSS Program deployments must be approved per the provisions of this MOU.

C. PROGRAM SUPERVISION

1. Operations

The Operator Supervisor is responsible for initiating, assigning, directing, monitoring, supervising, concluding and reporting CSS Program deployments for their respective agency.

2. Reporting (deployment)

The Operator Supervisor shall complete, consistent with applicable procedures, the required Incident Report to document the participating agency's use of the CSS Program equipment and will forward the report to the ACDA Chief of Inspectors within five days of concluding a CSS Program deployment.

3. Reporting (equipment)

The Operator Supervisor shall complete, consistent with applicable procedures, the required Incident Report to document any equipment failure, equipment damage or operational concern(s) related to

¹ Any valid search warrant, including telephonic search warrants, satisfy this requirement.

equipment and will forward the report to the ACDA Chief of Inspectors as soon as is practical.

4. Complaints (personnel)

Each participating agency shall be responsible for receiving, investigating and adjudicating any personnel complaint(s) regarding their employee(s) arising out of the use of the CSS Program equipment or use of data obtained by the equipment.

5. General Guidelines

While all personnel assigned to the CSS Program will give primary consideration to the regulations and guidelines imposed by their own agency, they shall not violate policies and procedures imposed by the ACDA regarding the CSS Program. ACDA policies and procedures are controlling when participating agencies, authorized by this MOU, are assigned to a CSS Program deployment operation.

Each participating agency member assigned to the CSS Program will be provided with copies of the relevant ACDA policies and procedures. Participating agencies' policies may be more restrictive than ACDA policies in their decisions to request deployments of the CSS Program equipment. In those instances where participating agencies' policies are more restrictive than ACDA, then the participating agencies' policies are controlling.

V. OUTSIDE AGENCY REQUESTS

Outside agency requests for use of the CSS Program may be directed to any of the participating agencies. The participating agency shall forward the request only if the outside agency request meets the criteria described herein and the requesting agency's search warrant includes the Pen-Register and request for the use of the Cell-Site Simulator. It is the responsibility of the participating agency to review the search warrant and ensure that it is accurate and that there is probable cause to justify deployment. Participating agencies shall forward policy compliant requests to the ACDA Chief of Inspectors or his or her designee. If the request is (a) warrantless, ~~and~~ (b) an emergency, and (c) meets the criteria described in Part 4.B.2.h.2. of this MOU, ~~if possible,~~ the request ~~shall~~ may be granted.

VI. REPORTING

ACDA will prepare and provide an Annual Report of CSS Program deployment activity to the Alameda County Board of Supervisors no later than February 15th of each year. The report will summarize the preceding calendar year's program activities.

VII. MEDIA RELATIONS

1. CSS Program (general inquiries)

Media relations specific to the CSS Program, program equipment, program technology and program policies and procedures will be handled by the ACDA Public Information Officer.

Participating agencies will refer all press and media requests and inquiries regarding the CSS Program, program equipment, program technology and program policies and procedures to the ACDA Public Information Officer to the extent permissible by law.

2. CSS Program Deployments

Participating agencies will not give statements or release information to the media regarding any CSS Program deployment without the concurrence, where appropriate, of the prosecuting attorney and the ACDA Public Information Officer to the extent permissible by law.

VIII. PROGRAM AUDIT

The operations under this MOU are subject to audit by the ACDA. OPD agrees to permit such audits and to maintain records relating to the terms, provisions and compliance of this agreement for the term of this MOU and, if an audit is being conducted, until such time as the audit is officially completed, whichever is greater. These audits may include review of any and all records, documents, and reports relating to this MOU, as well as the interview of any and all personnel involved in relevant CSS Program deployment operations. Examples of records are:

- Program Operator Training Record
- Search Warrant and Affidavit
- Agency policies and procedures

IX. LIABILITY

Notwithstanding any other agreements, the City of Oakland agrees to hold harmless and indemnify Alameda County and/or ACDA against any legal liability with respect to bodily injury, death, and property damage arising out of the City's use of CSS equipment belonging to Alameda County and/or ACDA pursuant to this agreement except for such losses or damages which were caused by the sole negligence or willful misconduct of ACDA.

Further, Alameda County and/or ACDA agrees to hold harmless and indemnify the City of Oakland against any legal liability with respect to bodily injury, death, and

property damage arising out of the ACDA's use CSS equipment belonging to the AC and/or ACDA pursuant to this agreement except for such losses or damages which were caused by the sole negligence or willful misconduct of the City of Oakland.

X. NOTICES

Unless otherwise indicated elsewhere in this agreement, all written communications sent by the parties may be by U.S. mail, email or by facsimile, and shall be addressed as follows:

To: Alameda County District Attorney's Office
Lieutenant Daniel Lee
Alameda County District Attorney's Office
1225 Fallon Street
Oakland, California
Phone: (510) 208-9879
Fax: (510) 271-5157
Email: daniel.lee@acgov.org

To: Oakland Police Department
Captain Darren Allison
Oakland Police Department
455 7th Street
Oakland, California 94607
Phone: (510) 238-3958
Fax: (510) 637-0166
Email: dallison@oaklandnet.com

XI. REVISIONS

The terms of this MOU may be amended, modified, or revised in writing. Such amendment, modification, or revision will become effective upon the signatures of authorized representatives of all of the participating agencies.

IX. SIGNATORIES

By: _____ Date: _____
Name: Nancy E. O'Malley
Title: District Attorney
Agency: Alameda County District Attorney's Office

By: _____ Date: _____

Name: Robert Chenault
Title: Chief of Inspectors
Agency: Alameda County District Attorney's Office

By: _____ Date: _____

Name: Sean Whent
Title: Chief of Police
Agency: Oakland Police Department