

United States Marshals Service
Short-Term Joint Operation – Memorandum of Understanding

Rev. 01/25

PARTIES AND AUTHORITY:

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

Duluth Police Department

and the United States Marshals Service (USMS) pursuant to 28 U.S.C. § 566(e)(1)(B). As set forth in the Presidential Threat Protection Act of 2000, codified at 34 U.S.C. 41503, and directed by the Attorney General, the USMS has been granted authority to direct and coordinate permanent Regional Fugitive Task Forces consisting of federal, state, and local law enforcement authorities for the purpose of locating and apprehending fugitives. The authority of the USMS to investigate fugitive matters as directed by the Attorney General is set forth in 28 USC § 566. The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC § 561(g) and 28 CFR 0.111. The authority of United States Marshals and Deputy U.S. Marshals, "in executing the laws of the United States within a State . . . [to] exercise the same powers which a sheriff of the State may exercise in executing the laws thereof" is set forth in 28 USC § 564. Additional authority is derived from 18 USC § 3053 and Office of Investigative Agency Policies Resolutions 2 & 15. *See also* Memorandum for Howard M. Shapiro, General Counsel, Federal Bureau of Investigation concerning the "Authority to Pursue Non-Federal Fugitives," issued by the U.S. Department of Justice (DOJ), Office of Legal Counsel, dated February 21, 1995; Memorandum concerning the "Authority to Pursue Non-Federal Fugitives," issued by the USMS Office of General Counsel, dated May, 1, 1995; 42 U.S.C. § 16941(a) ("The Attorney General shall use the resources of Federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements."). Additional authority is derived from the Attorney General's Memorandum, Implementation of National Anti-Violent Crime Initiative (March 1, 1994); Attorney General's Memorandum, Policy on Fugitive Apprehension in FBI and DEA Cases (dated August 11, 1988); Memorandum of Understanding between the Drug Enforcement Administration and the United States Marshals Service (dated September 28, 2018, or as hereafter amended); and Federal Rules of Criminal Procedure 41 – Search and Seizure.

MISSION: The primary mission of this temporary, short term joint operation is to investigate and/or arrest persons who have active federal, state, local, tribal, and/or territorial arrest warrants adopted by the USMS and/or investigate those in potential violation of any federal law within the purview of the USMS. The intent of this joint effort is to improve public safety through the targeting of violent fugitives, criminal gang members, and/or non-compliant sex offenders, as well as gather and share street level intelligence to support larger scale criminal investigations.

Federal fugitive cases referred through this joint operation for investigation by any participating agency must be entered into the National Crime Information Center (NCIC) by the USMS or originating agency, as appropriate. All state, local, tribal, or territorial cases shall be entered into NCIC (and other applicable state or local lookout systems) as appropriate by the originating agency or the originating agencies designee. Entry of warrants, gang members and registered sex offenders into NCIC is critical to enhance officer safety and to facilitate proactive enforcement and intelligence gathering.

PERSONNEL: Administrative matters, which are internal to the participating agencies, remain the responsibility of each respective agency. Furthermore, each agency retains responsibility for the supervision and conduct of its personnel in this joint endeavor.

Non-USMS law enforcement officers assigned for purposes of this joint operation may be deputized as Special Deputy U.S. Marshals when needed for Investigative or Geographic Jurisdiction.

REIMBURSEMENT: If the Marshals Service receives Asset Forfeiture funding or other funding designated for these purposes 1) overtime incurred by state, local, tribal, or territorial investigators who provide to USMS joint law enforcement operations; or 2) travel or training for state, local, tribal, or territorial investigators in direct support of joint law enforcement operations, the USMS shall, pending availability of funds, reimburse your organization for expenses incurred, depending on which category of funding is provided.

Reimbursement of overtime work shall be consistent with the Fair Labor Standards Act. Annual overtime for each state, local, tribal, or territorial law enforcement officer is capped the equivalent 25% of a GS-1811-12 Step 1, of the general pay scale for the Rest of United States. Reimbursement for all types of qualified expenses, to include overtime for other personnel, including administrative personnel, where approved as part of the joint operation, shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted at the conclusion of the joint operation, and which provides the names of the investigators or administrative personnel who incurred overtime for the joint operation; the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator or administrative personnel, and the total cost. If the joint operation lasts longer than 90 days, requests should be submitted quarterly. Any request for reimbursement of overtime must be submitted to the respective USMS Chief Inspector, Chief Deputy, or their designee, for approval. Supporting documentation must accompany requests for reimbursement.

Reimbursement for other types of qualified expenses (i.e., investigative or travel) shall be contingent upon availability of funds and the submission of a proper request for reimbursement. Joint operation personnel may be required to travel outside of the jurisdiction to which they are normally assigned in furtherance of the joint operation. State, local, tribal, or territorial task force officers (TFOs) traveling on official business at the direction of the USMS shall be reimbursed directly by the USMS for their authorized travel expenses in accordance with applicable USMS policy, federal laws, rules, and regulations. Any request for reimbursement of a qualified expense must be submitted to the respective USMS Chief Inspector, Chief Deputy, or their designee, for approval. Supporting documentation must accompany requests for reimbursement.

Reimbursable Funds for all USMS approved expenditures are capped at no more than \$10,000.00

BODY-WORN CAMERAS AND TASK FORCE OFFICERS: As per DOJ Policy, dated October 29, 2020, Body Worn Cameras (BWC) may be worn by TFOs operating on a Federal Task Force when their parent agency mandates their use by personnel assigned to the task force. A partner agency must formally request to participate in the TFO BWC program and, upon approval, comply with all DOJ and USMS policies, procedures, documentation, and reporting during their participation. Moreover, pursuant to the DOJ BWC Policy, the USMS will inform all partner agencies of which other partner agencies, if any, have been authorized to have their TFOs wear BWCs on the Task Force, and provide all partner agencies with a copy of the DOJ BWC Policy. That information will be provided separately. Accordingly, all partner agencies should be aware that TFOs may be participating in the TFO BWC program and may be operating with BWCs on USMS task force operations in their agency's jurisdiction. Further, pursuant to the Deputy Attorney General's Memorandum issued June 7, 2021 ("Body-Worn Camera Policy"), DOJ law enforcement components have been directed to initiate a body-worn camera program for their respective agencies. Accordingly, all partner agencies should be aware that USMS and other DOJ law enforcement personnel may be operating with BWCs on USMS task force operations.

Any partner agency not covered by an existing executed USMS TFO BWC MOU Addendum or any non-partner state, local, federal, or tribal agency are authorized to utilize their BWC during a USMS short term

operation, or USMS led national initiative, after agreeing to share any BWC footage obtained during the operation with the USMS upon request. Any BWC footage of a critical incident such as an Officer Involved Shooting or other use of force leading to death will be shared as soon as possible after the incident. Other footage will only be requested if the USMS has a mission-related requirement that can only be supported by receipt of the BWC recording from the partner agency. The partner or non-partner agency engaging in the initiative or operation acknowledges that any footage shared with the USMS is subject to federal disclosure laws and regulations, including the Freedom of Information Act (FOIA). Short term operations are defined for this purpose as USMS Enforcement related operations where a Special Deputization is issued or group Special Deputizations are performed. These include, but are not limited to, Operation Washout, Operation Triple Beam, USMS National Initiatives for Enforcement, or any other DOJ directed initiative that is enforcement oriented and led by the USMS.

TFOs whose parent agency is not participating in the TFO BWC program are not authorized to deploy with BWCs on USMS missions.

RECORDS, REPORTS, AND TESTIMONY: After the RFTF/VOTF has adopted a warrant, all investigative reports, evidence, and other materials generated, seized or collected by the RFTF/VOTF, relating to the fugitive investigation, shall be material within the custody and control of the RFTF/VOTF. Physical evidence, such as drugs, firearms, counterfeit credit cards, and related items may be released to the appropriate prosecuting agency. Records and information obtained during the RFTF/VOTF fugitive investigation are ordinarily not evidence and may not be released unless authorized by the Office of General Counsel (OGC). A participating agency may retain copies of RFTF/VOTF investigative reports, and other documents or materials, but they may be released only upon approval of the USMS (OGC), in consultation with the local U.S. Attorney's Office, if and as applicable. If an applicable state law mandates the release of records or reports pertaining to RFTF/VOTF activities, those documents may only be released after coordination with USMS OGC.

RFTF/VOTF records and documents will be maintained in USMS electronic records and/or paper case files. All investigative reporting will be prepared in compliance with existing USMS policy and procedures utilizing USMS case management systems. Every effort should be made to document investigative activities on USMS forms, such as USM-11s and USM- 210s. Reports should never contain information related to sensitive USMS programs that are deemed privileged and not subject to reporting. Task force statistics will be maintained in the USMS case management systems. Statistics will be made available to any participating agency upon request. In accordance with Department of Justice guidance, all firearms and fired cartridge casings seized as part of a Department-funded criminal investigation shall be promptly entered into the ATF's National Integrated Ballistic Information Network (NIBIN). If a partner agency seizes the firearm or fired cartridge casings, they shall process the seized items per their NIBIN agreement with the ATF. Partner agencies that do not have a NIBIN agreement with the ATF should request assistance from the ATF to accomplish NIBIN processing at an ATF Field Division or NIBIN lab site.

To the greatest extent possible, all communications regarding USMS task force operations should be conducted on USMS email accounts and USMS cellular devices (if issued to the TFO). If required as per policy, a TFO may complete parent agency investigatory forms pertaining to task force operations. However, copies of such investigatory forms will be provided to the task force's USMS supervisory personnel for inclusion in the relevant USMS case file. The USMS has an interest in reports documenting task force related investigations or activities prepared by a TFO on their parent agency form, and any task force related email or text exchanges done on a parent agency issued account or device. Accordingly, if a state open records request for task force records held on parent agency electronic systems or devices or in paper files is received by a TFO, and an applicable state records law mandates the disclosure of task force records, the parent agency agrees to notify USMS of the request and coordinate with the USMS prior to any proposed disclosure.

Information that identifies, or tends to identify, a USMS confidential source, a USMS sensitive program, or the use of sensitive equipment/techniques will not be recorded on parent agency forms or parent agency issued devices and

will not be released outside of the USMS unless approved by the Office of General Counsel (OGC). Absent exceptions noted below for discovery related purposes, information related to RFTF/VOTF activities will not be disseminated at any time to any third party (including a non-task force law enforcement officer or other law enforcement agency) by any task force member without notification to the RFTF/VOTF Chief Inspector/Chief Deputy or his/her designee, in consultation with USMS OGC where appropriate. This guidance applies to requests to share reports, memoranda, or other records (both formal and informal) compiled during the course of RFTF/VOTF operations. Nothing in this paragraph supersedes requirements pursuant to federal discovery obligations and/or the DOJ Touhy regulations, 28 C.F.R. § 16.21, et seq.

All requests for task force-related information, testimony (including any preparation in support) and documents (whether maintained in USMS systems and/or parent agency systems) in connection with state or federal litigation require compliance with the DOJ Touhy Regulations. Any disclosure of records pertaining to task force operations in state and federal litigation will only be done by or with the permission of the U.S. Attorney's Office (Civil Division) and the Office of General Counsel. The partner agency agrees TFOs receiving requests to testify in federal or state litigation regarding task force matters, or for the disclosure of records pertaining to task force matters in federal or state court, will notify the Office of General Counsel. The TFO will await authorization for such testimony or record disclosure prior to testifying, engaging in trial preparation with a prosecutor, and/or providing records, consistent with the DOJ Touhy regulations.

TFOs whose parent agency are properly onboarded to the USMS Body Worn Camera Program (BWCP) may wear parent agency issued BWC during certain USMS task force operations. TFOs are governed by the provisions set forth in the USMS TFO BWC Standard Operating Procedures and USMS Policy Directive 2.11, Body Worn Cameras. Any copy of TFO BWC recording shared with the USMS upon culmination of an enforcement action is deemed a federal record, subject to federal disclosure laws and DOJ policies. If a partner agency receives a request for TFO BWC footage pursuant to state records laws, that agency agrees to provide USMS with advance written notification of the request and proposed disclosure. Requests to the USMS for footage in connection with state or federal criminal prosecutions or civil litigation will be handled pursuant to the DOJ Touhy Regulations and/or applicable federal discovery rules and routed to the USMS Office of the General Counsel.

CONFIDENTIAL SOURCES / CONFIDENTIAL INFORMANTS: Pending the availability of funds, the USMS may provide funding for payment of Confidential Sources (CS) or Confidential Informants (CI). The use of CS/CIs, registration of CS/CIs, and all payments to CS/CIs shall comply with USMS policy. USMS payment to an individual providing information or "tips" related to a USMS offered reward on an active fugitive case shall be accomplished by registering the individual or "tipster" through the established USMS CS payment process.

USE OF FORCE: All members of the RFTF/VOTF will comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-than lethal devices, to include completing all necessary training and certification requirements. All members of the RFTF/VOTF when operating on task force missions will adhere to the DOJ Policy Statement on the Use of Force, dated May 20, 2022, and the DOJ Policy Statement on the Use of Less-Than-Lethal Devices, dated May 16, 2011, and their parent agencies will review the Policy Statements to assure that they approve. Additionally, all members of the RFTF/VOTF when operating on task force missions will adhere to the DOJ Deputy Attorney General memorandum, dated September 13, 2021, prohibiting the use of chokeholds or carotid restraint techniques unless deadly force is authorized. Copies of all applicable firearms, deadly force, and less-than-lethal policies shall be provided to the District Chief Deputy or IOD Chief Inspector and each concerned TFO. In the event of a shooting involving task force personnel, the incident will be investigated by the appropriate agency(ies).

Additionally, in the event of a shooting, the required reporting for the FBI National Use of Force Data Collection (NUOFDC) should be accomplished by the involved joint operation personnel's employing agency when the TFO is inside their primary/physical jurisdiction and by the USMS when the TFO is outside their employing

agency's primary/physical jurisdiction. If the employing agency wishes to submit such NUOFDC entries regardless of the physical location of the event that is allowed under this MOU with prior written notice to the USMS.

NO KNOCK ENTRIES: It is the policy of both the Department of Justice (DOJ) and the USMS to limit the use of "no knock" entries into residences in connection with the execution of arrest and search warrants. This includes those warrants adopted by the USMS regardless of the issuing court or tribunal.

A per policy, "No knock" entries are limited to circumstances where there is an imminent threat of physical harm. This threshold is narrower than that permitted by law - for example, USMS personnel must "knock and announce" even when they have reason to believe that doing so could result in the destruction of evidence. In the absence of a judicially-authorized "no knock" warrant, task force personnel operating on a task force mission may conduct a "no knock" entry only when there arises at the scene exigent circumstances such that knocking and announcing would create an imminent threat of physical violence which could result in serious injury or death to anyone present (i.e., law enforcement, the subject, the public, etc.).

NEWS MEDIA: Media inquiries will be referred to the USMS Chief Inspector, Chief Deputy, or their designee. A press release may be issued, and press conference held, upon agreement and through coordination with participant agencies' representatives. All press releases will exclusively make reference to the joint operation and participant agencies.

RELEASE OF LIABILITY: 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 RFTF/VOTF.

Each participating agency shall immediately notify the USMS Office of General Counsel of any civil, administrative, or criminal claim, complaint, discovery request, or other request for information of which the agency receives notice, concerning or arising from the conduct of personnel assigned to the RFTF/VOTF or otherwise relating to the RFTF/VOTF. Each participating agency acknowledges that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of each employee detailed to the RFTF/VOTF remains vested with his or her employing agency. If a civil claim or complaint is brought against a state or local officer assigned to the RFTF/VOTF, the officer may request legal representation and/or defense by DOJ, under the circumstances and pursuant to the statutes and regulations identified below.

For the limited purpose of defending against a civil claim arising from alleged negligent or wrongful conduct under common law under the FTCA, 28 U.S.C. § 1346(b) and §§ 2671-2680: an individual assigned to the RFTF/VOTF 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 to be certified by the U.S. Attorney General or his designee as having acted within the scope of federal employment at the time of the incident giving rise to the suit. 28 U.S.C. § 2679(d)(2). Upon such certification, the individual will be considered an "employee" of the United States government for the limited purpose of defending the civil claim under the FTCA, and the claim will proceed against the United States as sole defendant. 28 U.S.C. § 2679(d)(2). Once an individual is certified as an employee of the United States for purposes of the FTCA, the United States is substituted for the employee as the sole defendant with respect to any tort claims. Decisions regarding certification of employment under the FTCA are made on a case-by-case basis, and the USMS cannot guarantee such certification to any RFTF/VOTF personnel.

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 RFTF/VOTF 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 through the USMS Office of 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 USMS cannot guarantee the United States will provide legal representation or indemnification to any RFTF/VOTF personnel.

Liability for any conduct by RFTF/VOTF personnel undertaken outside of the scope of their assigned duties and responsibilities under this MOU shall not be the responsibility of the USMS or the United States and shall be the sole responsibility of the respective employee and/or agency involved.

PERIOD OF PERFORMANCE/EFFECTIVE DATE/TERMINATION: Once signed by all parties, this MOU will become effective upon the commencement of the operation and terminate upon the operation's conclusion, or when in agreement of both parties.

Operation:

Operation Name: North Shore

Operation Location: Duluth and St. Louis County

Start Date: 2 / 1 / 2 0 2 5

End Date: 3 / 3 1 / 2 0 2 5

District/Task Force: MN-D VOTF

U.S. Marshal, Chief Deputy or Commander:

Print Name/Title:

Signature:

Participating Agency:

Name: Duluth Police Department

Location (City and State): Duluth, MN

Participating Agency Approval Authority:

CITY OF DULUTH a Minnesota municipal corporation

By: _____

Its Mayor (City Administrator by delegated authority)

Date: _____

Attest: _____

City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney