

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is executed by the United States Attorney's Office for the District of Columbia, the Metropolitan Police Department of Washington, D.C. (MPD) and the City of Milwaukee acting by its police department as a participating agency under this MOU (Milwaukee Police Department).

### I. PURPOSE

The purpose of the MOU is to outline the mission of the Presidential Inauguration Task Force (PITF) in the Washington, D.C. area from Sunday, January 17, 2021, to Thursday, January 21, 2021. Additionally, this MOU defines relationships between the U.S. Marshals Service, MPD and the Milwaukee Police Department, as well as other participating agencies with regard to policy, guidance, utilization of resources, planning, training, public relations and media in order to maximize interagency cooperation.

### II. MISSION

The mission of the PITF is to achieve maximum coordination and cooperation in bringing to bear combined resources to effectively implement measures to promote the safety of the President of the United States, inaugural participants, the public, visitors and residents while allowing individuals and groups to exercise their legal rights.

Additionally, all units that are participating agencies will coordinate their activities and be considered a member of the PITF, sharing information and coordinating investigative and law enforcement efforts which may result from any apprehensions originating from the PITF.

### III. ORGANIZATIONAL STRUCTURE

#### A. Direction

The Milwaukee Police Department acknowledges that the PITF is a joint operation in which all agencies, including the MPD, the United States Attorney's Office for the District of Columbia, United States Marshals Service, United States Secret Service, United States Federal Bureau of Investigation, National Park Service, the Milwaukee Police Department and other agencies, act as partners in the operation of the PITF. The Command Center for the operations will be located at the MPD Headquarters and will be staffed by officers from the United States Marshals Service, MPD, U.S. Park Police, and the Federal Bureau of Investigation. These officers will serve as the Executive Council for this operation.

## B. Supervision

The day-to-day operation and administrative control of the PITF will be the responsibility of MPD's Inaugural Planning Committee Commanding Officer. The Inaugural Planning Committee Commanding Officer will coordinate with supervisory personnel of the United States Secret Service as the sponsoring agency for Special Deputation (federal) and with MPD as the lead agency for the operation. The daily management of the PITF will be closely monitored by the MPD.

Responsibility for the conduct of the PITF members, both personally and professionally, shall remain with the respective agency directors subject to the provisions in Section IX (Liability).

## C. Unilateral Law Enforcement Action

There shall be no unilateral action taken on the part of the Milwaukee Police Department or any participating non-federal or non-MPD law enforcement agency relating to PITF activities. All law enforcement action by the Milwaukee Police Department and other participating non-federal and non-MPD law enforcement agencies must be coordinated and conducted in a cooperative manner under the direction of the Executive Council and the MPD.

## IV. PROCEDURES

This MOU shall be supplemented by the provisions of the PITF Administrative Handbook attached as Exhibit A and incorporated herein ("Handbook"). All parties to this MOU agree that any deadlines that Milwaukee Police Department is required to meet under the terms of the Handbook that are prior to the date of this MOU have either been met by Milwaukee Police Department or are waived by the parties. Milwaukee Police Department is one of the Out of Town Agencies as that term is defined in the Handbook. Milwaukee Police Department shall be notified if any amendments are made to the Handbook after the execution of this MOU.

### A. Personnel

Continued assignment of Milwaukee Police Department personnel to the PITF will be based upon performance and will be at the discretion of the Milwaukee Police Department. Each participating agency including the Milwaukee Police Department will be provided with reports as necessary regarding the program, direction, and accomplishment of the PITF.

### B. Deputation

All local and state law enforcement personnel designated to the PITF including personnel from Milwaukee Police Department will be subject to background inquiry and will be federally deputized, with the United States Marshals Service securing the required deputation authorization. These deputations will remain in effect throughout the tenure of each officer's

assignment to the PITF or until termination of the PITF, whichever occurs first. Each individual deputized as a Special Deputy U.S. Marshal will have all necessary law enforcement authority as provided by 28 U.S.C. § 566(c) and (d); 28 U.S.C. § 564; 18 U.S.C. § 3053; 28 C.F.R. § 0.112, and the deputation authority of the Deputy Attorney General. The Special Deputy U.S. Marshals will be responsible for: 1) performing necessary law enforcement steps to keep the peace of the United States; 2) enforcing federal law (e.g., 18 U.S.C. §§ 112, 1116, and 878, as well as other provisions of that title); 3) protecting visiting foreign officials, official guests, and internationally protected persons; 4) taking necessary law enforcement steps to prevent violations of federal law, and; 5) enforcing District of Columbia law as a result of the deputation (see D.C. Official Code § 23-581 and 28 U.S.C. § 564).

Personnel of the Milwaukee Police Department deputized as Special Deputy U.S. Marshals pursuant to this MOU who suffer a disability or die as a result of personal injury sustained while acting within the course and scope of their official duties and assignments pursuant to this MOU shall be treated as a federal employee as defined by Title 5 U.S.C. § 8101. Any such individuals who apply to the U.S. Department of Labor for federal workers' compensation under Section 3374 must submit a copy of this MOU with his or her application. All applicants will be processed by the U.S. Department of Labor on a case-by-case basis in accordance with applicable law and regulation.

#### C. Law Enforcement Activities

Since it is anticipated that almost all cases originating from any PITF arrests will be prosecuted at the state or local level, the law enforcement methods employed by all participating law enforcement agencies shall conform to the requirements of the relevant state or local statutory or common law pending a decision as to a change of venue for prosecution. Should the need arise for employees of the Milwaukee Police Department to travel in order to testify, provide assistance with prosecuting any offense that occurred during the Presidential Inauguration or in response to a subpoena related to the services provided by Milwaukee Police Department under the terms of this MOU, the time and travel expenses of that employee(s) shall be reimbursed by MPD.

#### D. Prosecution

The criteria for determining whether to prosecute a particular violation in federal or state court will focus upon achieving the greatest overall benefit to law enforcement and the community. Any question which arises pertaining to prosecutorial jurisdiction will be resolved through the Executive Council. The U.S. Attorney's Office for the District of Columbia has agreed to formally participate in the PITF and will adopt policies and seek sentences that meet the needs of justice.

### V. ADMINISTRATIVE

#### A. Records and Reports

All records and reports generated by PITF members shall be routed through MPD's Inaugural Planning Committee Commanding Officer who shall be responsible for maintaining custody and proper dissemination of said records and reports as he or she deems appropriate. Any records or reports generated by personnel of the Milwaukee Police Department under the terms of this MOU are subject to the Wisconsin Public Records Law, sec. 19.21 *et. seq.* of the Wisconsin Statutes. MPD and the United States Attorney's Office for the District of Columbia acknowledge that they will assist the Milwaukee Police Department in retaining and producing records that are subject to the Wisconsin Public Records Law, or in the alternative will provide Milwaukee Police Department with copies of any records or reports generated by Milwaukee Police Department personnel pursuant to this MOU.

#### B. Staff Briefings

Periodic briefings on PITF law enforcement actions will be provided to the directors of the participating agencies, including the Milwaukee Police Department, or their designees. Statistics regarding accomplishments will also be provided to the Milwaukee Police Department and other participating agencies as available.

### VI. MEDIA

All media releases pertaining to PITF law enforcement activity and/or arrests will be coordinated by the Executive Council. No unilateral press releases will be made by the Milwaukee Police Department without the prior approval of the Executive Council. No information pertaining to the PITF itself will be released to the media without Executive Council approval, unless otherwise required by law.

### VII. EQUIPMENT

#### A. PITF Vehicles

Each participating agency, subject to availability and individual agency policy, agrees and authorizes PITF members to use vehicles, when available, owned or leased by those participating agencies, in connection with PITF law enforcement operations. Each participating agency agrees to be responsible for any negligent act or omission on the part of its agency or its employees, and for any liability resulting from the misuse of said vehicles, as well as any damage incurred to those vehicles as a result of any such negligent act or omission on the part of the participating agency or its employees, subject to the provisions of Section IX (Liability).

Participating agency vehicles assigned to the PITF are subject to funding availability, are provided at the discretion of the supervisor of the providing agency, and will be used only by PITF members. Vehicles provided by participating agencies will be used only during working hours and will not be used for transportation to and from work by task force members or used for any other purpose. Participating agencies will provide maintenance and upkeep of their vehicles

consistent with each agency's policy. Vehicles provided as pool vehicles for PITF use will be parked at the end of each shift at a location determined by MPD's Inaugural Planning Committee Commanding Officer or his/her designee.

The parties acknowledge and agree that Milwaukee Police Department will not provide any vehicles for use under the terms of this MOU.

#### B. Other Equipment

Other equipment furnished by any agency for use by other agencies' participating personnel shall be returned to the originating agency upon termination of the PITF or this MOU. The parties acknowledge and agree that Milwaukee Police Department will not provide any equipment for use under the terms of this MOU other than the normal uniform and equipment that Milwaukee Police Department officers carry with them on their normal duty in the City of Milwaukee.

### VIII. FUNDING

The Milwaukee Police Department agrees to provide the full-time services of its respective personnel for the duration of this operation, and to assume all personnel costs for their PITF representatives, including salaries, overtime payments, and fringe benefits consistent with their respective agency policies and procedures. Reimbursement for the cost of such personnel will be made by the MPD through the District of Columbia, with funds provided by the United States and from general revenue pursuant to the procedure and utilizing the forms described in the Handbook.

### IX. LIABILITY

Unless specifically addressed by the terms of this MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Liability for PITF employees' acts or omissions undertaken outside the terms of this MOU are the sole responsibility of the respective employee or agency involved.

For the limited purpose of defending tort claims arising out of PITF activity, state or local law enforcement officers who are specially deputized as Deputy U.S. Marshals may request that the Attorney General or his designee certify under 28 U.S.C. § 2679(d) that the officer was an employee of the U.S. government acting in the scope of office or employment at the time of the incident out of which the claim arose. Upon certification, the United States is substituted as the defendant under the Federal Tort Claims Act and the case proceeds against the United States. This procedure does not apply to claims for violations of federal constitutional or statutory rights. *See* 28 U.S.C. 2679(b)(2). Decisions regarding certification under § 2679 are made on a case-by-case basis and no guarantee is made that any PITF personnel will be certified under this provision.

PITF-deputized officers may request representation by the U.S. Department of Justice for individual-capacity civil claims arising from actions taken within the scope of deputation under this MOU. *See* 28 C.F.R. § 50.15. The Department of Justice determines whether to provide individual-capacity representation on a case-by-case basis applying the criteria in § 50.15. Legal representation by the Department of Justice is discretionary and not guaranteed.

To request certification of scope of employment under 28 U.S.C. § 2679(d) or legal representation under 28 C.F.R. § 50.15, a PITF-deputized officer should submit a written request to the Civil Division of the U.S. Attorney's Office for the District of Columbia. The United States Attorney's Office for the District of Columbia will forward the request to the Civil Division of the United States Department of Justice together with a recommendation concerning scope of employment as a deputized federal officer and Department representation. 28 C.F.R. § 50.15(a)(3).

A PITF-deputized officer may request indemnification for an adverse judgment under the circumstances set forth in 28 C.F.R. § 50.15(c). Indemnification decisions are discretionary and made on a case-by-case basis. Indemnification is not guaranteed.

PITF officers from participating agencies covered by the provisions of § 7302 of the National Intelligence Reform and Terrorism Prevention Act of 2004, PL 108-458, 118 Stat. 3538, as amended, and PL 110-250, 122 Stat. 2318 ("the Act"), also have the liability protection afforded by the Act

## X. DURATION

This MOU shall remain in effect until the conclusion of the PITF as specified in Part I (Purpose) above, unless that date is modified as set forth in Section XI, and subject to the availability of necessary funding or unless Milwaukee Police Department employees are required to assist with the prosecution of any offense as described in Section IV.C., above, in which case, this MOU shall remain in effect until the conclusion of all such prosecution and any related reimbursement of expenses. The United States Attorney's Office for the District of Columbia or the MPD may terminate this MOU at any time prior to the Milwaukee Police Department providing services or travel under the terms of this MOU. The Milwaukee Police Department may withdraw from this MOU at any time by providing a seven-day written notice of its intent to withdraw to the MPD. Upon the termination of the MOU, all equipment will be returned to the supplying agencies and all expenses already incurred by Milwaukee Police Department under the terms of this MOU shall be reimbursed as described herein and in the Handbook.

## XI. MODIFICATIONS

The terms of this MOU may be modified at any time by written consent of all parties. Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

XII. LIMITATION

Nothing in this MOU is intended to, or shall be construed to create enforceable rights in third parties.



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Exhibit A

PITF Administrative Handbook