

**RESOLUTION**  
**CITY OF SAINT PAUL, MINNESOTA**

Presented by \_\_\_\_\_

- 1 RESOLVED, that the City of Saint Paul, Police Department is authorized to enter into the attached  
2 agreement with the Federal Bureau of Investigation and the law enforcement agencies of Crow-Wing  
3 County, the City of Minneapolis and the City of Bloomington for the purposes of formalizing procedures  
4 and duties for a multi-jurisdictional response to improvised explosive devices creating a Minnesota-  
5 Bomb Work Group. A copy of said agreement is to be kept on file on record in the Office of Financial  
6 Services.  
7

	Yeas	Nays	Absent
Bostrom			
Brendmoen			
Carter			
Lantry			
Stark			
Thune			
Tolbert			

Adopted by Council:      Date \_\_\_\_\_

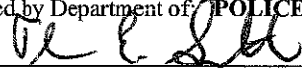
Adoption Certified by Council Secretary

By: \_\_\_\_\_

Approved by Mayor:      Date \_\_\_\_\_

By: \_\_\_\_\_

Requested by Department of **POLICE**

By:  \_\_\_\_\_  
**Thomas E. Smith, Chief of Police**

Approved by the Office of Financial Services

By: \_\_\_\_\_

Approved by City Attorney

By: \_\_\_\_\_

Approved by Mayor for Submission to Council

By: \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE FEDERAL BUREAU OF INVESTIGATION  
AND  
ST. PAUL POLICE DEPARTMENT BOMB SQUAD,  
CROW-WING COUNTY SHERIFF'S DEPARTMENT REGIONAL BOMB SQUAD,  
MINNEAPOLIS POLICE DEPARTMENT BOMB SQUAD,  
BLOOMINGTON POLICE DEPARTMENT BOMB SQUAD

Minnesota-Bomb Working Group  
MULTI-JURISDICTIONAL RESPONSE TO IMPROVISED EXPLOSIVE DEVICES

This Memorandum of Understanding (MOU) is being executed between the Federal Bureau of Investigation (FBI), the St. Paul Police Bomb Squad, the Crow-Wing County Sheriff's Department Regional Bomb Squad, Minneapolis Police Bomb Squad and the Bloomington Police Bomb Squad.

AUTHORITY

Authority for the FBI to enter into this agreement can be found at 28 U.S.C. § 533; 42 U.S.C. § 3771; and 28 C.F.R. § 0.85.

PURPOSE AND MISSION

The purpose of this MOU is to formalize duties, responsibilities, and procedures to be addressed when a public safety risk from explosive materials, suspected Improvised Explosive Device(s) (IED) or other Weapon(s) of Mass Destruction (WMD) is discovered on a terrorist related event or other matter that the FBI has primary jurisdiction, and the threat(s) from such devices requires assistance from certified bomb squads from outside their normal statutory jurisdiction(s). This MOU formalizes the manner in which non-Federal officers certified as bomb technicians through the FBI Hazardous Devices School (HDS), assigned to one of the four bomb squads within the state of Minnesota, within the area or responsibility of the Minneapolis Division of the FBI, will have deputized authority while acting under direction and authority of the FBI.

The mission of the collective participating agencies will be to share available personnel, equipment, resources, and expertise with the FBI, to conduct "Render Safe Procedures" (RSP) on suspected IEDs and explosive disposal, and in some instances, investigation of explosive related incidents as part of the counterterrorism initiative of the FBI.

In the event of a major terrorism attack outside of the

Minneapolis Division, by request of another FBI division, under direction of the Minneapolis Division, this MOU also formalizes the guidelines under which the federally deputized members of the Minneapolis Division, state of Minnesota, bomb squads may be called upon to assist outside of the state of Minnesota on bomb/explosive related matters in which the FBI has primary jurisdiction.

#### **COMPOSITION**

The Minneapolis Division of the FBI will designate Special Agent Bomb Technician(s) (SABT(s)) within the division to act in support of this MOU with the participating agencies.

Other participating agencies will designate available qualified bomb technicians as circumstances and personnel assignments permit, to support this agreement. When the FBI requests that a participating agency supply personnel to respond outside of their jurisdiction while under federal deputization as outlined in this MOU, each of the participating agencies reserves the right to refuse response of their personnel when other duties prohibit the response of said personnel outside their jurisdiction.

#### **DEPUTIZATIONS/CROSS DESIGNATIONS**

Non-federal officers participating under this MOU will be sworn in as Special Deputy United States Marshals for purposes of enforcing United States Code, Title 18. This will provide authority for the officers to fully participate in all investigations and respond to bomb or explosive related threats upon request by the Minneapolis Division of the FBI, anywhere within the United States. The Minneapolis Division of the FBI would only make a request for personnel from the participating agencies to respond outside of the state of Minnesota when deemed necessary or a request is made by another FBI field division.

These deputizations are only in effect when the deputized officers are requested to respond outside of their jurisdiction by the Minneapolis Division of the FBI, on bombing related matters in which the FBI has jurisdiction.

These deputizations shall remain in effect for two years or as long as the participants are assigned duties consistent with the purposes of this MOU or until the termination of this MOU, whichever comes first. Active participants must renew deputizations every two years.

#### **INVESTIGATIVE REPORTING PROCEDURES**

The agency(s) having primary jurisdiction is responsible for

collection, maintenance, and dissemination of reports and other documents in conjunction with activities of the participants of this MOU and in compliance with applicable federal, state and local laws. This agreement does not prohibit dissemination by individual participants of information to other federal, state or local law enforcement agencies, as allowed by law to ensure public safety.

With respect to FBI prepared documents, such must be prepared and maintained in compliance with applicable federal law and Department of Justice (DOJ) policy. Consequently, all records prepared and shared among participating agencies in accordance with this MOU may not be released or distributed to third parties, except as noted above. The express, written consent of the originating agency must be obtained prior to the dissemination of any such reports.

#### **SUPERVISION AND CONTROL**

Overall direction of the personnel acting under federal authority pursuant to this MOU shall be the responsibility of the SABB Coordinator of the Minneapolis Division, who will be directed by the SAC through the chain of command.

Responsibility for conduct, not under the direction of the FBI, of each participant, both personally and professionally, shall remain with the respective agency head and each agency shall be responsible for the actions of their respective employees.

Each participant will be subject to the personnel rules, regulations, laws, and policies applicable to those of their respective agencies.

Each participant will continue to report to his or her respective agency head for matters not detailed in this MOU.

#### **EVIDENCE**

Participants agree to conform to federal standards concerning evidence collection, processing, and storage. The FBI will maintain custody of evidence collected during investigations conducted under the authority of this MOU.

#### **PROSECUTIONS**

Joint bombing/explosives related investigations conducted under this MOU will conform to the requirements for federal prosecution and will generally be prosecuted in federal courts. A determination will be made on a case-by-case basis whether the prosecution of cases arising under this MOU will be at the State or

federal level. This determination will be based on the evidence obtained and a consideration of which level of prosecution would be of the greatest overall benefit to the objectives of criminal justice and national security.

### 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. Legal representation by the United States is determined by the Department of Justice (DOJ) on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation to any federal or state law enforcement officer or employee.

Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the United States Government, acting within the scope of his/her employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. Section 1346(b), and Sections 2671 - 2680.

For the limited purpose of defending claims arising out of activity under this MOU, state/local officers who have been specifically deputized and who are acting within the course and scope of their official duties and assignments pursuant to this MOU, may be considered an "employee" of the United States government as defined in 28 U.S.C. Section 2671. See 5 U.S.C. Section 3374(c) (2).

Under the Federal Employees Liability Reform and Tort Compensation, Act of 1998 (commonly known as the Westfall Act), 28 U.S.C., Section 2679(b) (1), the Attorney General or his/her designee may certify that an individual defendant acted within the scope of his employment at the time of the incident giving rise to the suit, 28 U.S.C. Section 2679(d) (2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. Id. If the United States is substituted as a defendant, the individual employee is thereby protected from suits in his/her official capacity.

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. Section 2679(d) (3).

Liability for any negligent or willful acts of participating

agency members, undertaken outside the terms of this MOU, will be the sole responsibility of the respective employee and agency involved.

Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. Section 1983 for state officers or cross-deputized federal officers.

Both state and federal 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).

Participating agency personnel may request representation by the U. S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment, if and when civil actions are levied against them, pursuant to 28 C.F.R. Sections 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/her designee, determines that providing representation would otherwise be in the interest of the United States." 28 C.F.R. Section 50.15(a).

Deputized personnel's written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI division coordinating the Bomb Squad Working Group. The CDC will then forward the representation request to the FBI's office of General Counsel (OGC) together with a letterhead memorandum concerning the factual basis for the lawsuit. FBI/OGC will then forward the request to the Civil Division of DOJ together with an agency recommendation concerning scope of employment and Department representation. 28 C.F.R. Section 50.15 (a)(3).

If deputized personnel are found to be liable for a constitutional tort, he/she may request indemnification from DOJ to satisfy an adverse judgment rendered against the employee in his/her individual capacity. 28 C.F.R. Section 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. Section 50.15(a).

#### TRAINING

An additional goal of this agreement will be to facilitate co-training ventures among participants to ensure continuity of responses to incidents involving threats to public safety.

Participants of this agreement will meet routinely, as mutually agreed, to discuss and establish training activities and venues, as well as other mutual concerns.

#### PROPERTY

Property damaged or destroyed which was utilized in connection with authorized investigations and/or operations under this MOU will be the financial responsibility of the agency supplying said property.

#### MEDIA

All media releases and statements related to activities under the purview of this MOU will be mutually agreed upon and jointly handled according to FBI and participating agency guidelines.

#### DURATION

The term of this MOU is for five years and is renewable upon written agreement by the participating agencies. Any participating agency may withdraw from the MOU at any time by providing written notification to the Minneapolis FBI at least 30 days prior to withdrawal.

#### MODIFICATIONS

This agreement may be modified at any time by written consent of all involved agencies. Modifications of 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.

#### SETTLEMENT OF DISPUTES

Disagreements between the participants arising under or relating to this MOU will be resolved only by consultation between the participants and will not be referred to a court of law or to any other person or entity for settlement. The final authority to resolve any disputes will be the SAC of the Minneapolis FBI.

#### CONCLUSION

Nothing in this MOU is intended to create additional liabilities on the part of any participating agency, nor does this MOU change

or modify other formal or informal agreements with any of the participating agencies.

Signed and agreed to by:

FBI / Minneapolis Division

\_\_\_\_\_  
Date  
J. Chris Warrenner  
Special Agent in Charge

St. Paul Police Bomb Squad

\_\_\_\_\_  
Date  
See Page 9  
Thomas Smith  
Chief, St. Paul Police Department

Crow-Wing County Sheriff's Department Regional Bomb Squad

\_\_\_\_\_  
Date 11-6-2012  
Todd O. Dahl  
Sheriff, Crow-Wing County

\_\_\_\_\_  
Date 11-06-12  
Corky McQuiston  
Chief, Brainerd Police Department

Minneapolis Police Bomb Squad

\_\_\_\_\_  
Date 12-3-12  
Timothy Dolan  
Chief, Minneapolis Police Department



Bloomington Police Bomb Squad

  
Jeffery Potts

Chief, Bloomington Police Department

Date

10/25/12

CITY OF BLOOMINGTON

By: 

Mark E. Bernhardson

Its: City Manager

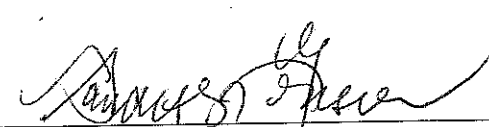
And: 

Gene Winstead

Its: Mayor

Date:

10/22/12

  
Reviewed & Approved by the Bloomington City Attorney

Saint Paul Police Bomb Squad

\_\_\_\_\_  
Date

Thomas E. Smith  
Chief of Police, City of Saint Paul

CITY OF SAINT PAUL

By: \_\_\_\_\_  
Its: City Attorney

By: \_\_\_\_\_  
Its: Director, Office of Financial Services

By: \_\_\_\_\_  
Its: Mayor