



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives
5825 N Sam Houston Pkwy W, Suite 300
Houston, TX 77086

www.atf.gov

**MEMORANDUM OF UNDERSTANDING
BETWEEN
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
AND FT. BEND COUNTY FIRE MARSHAL'S OFFICE**

This Memorandum of Understanding (MOU) delineates a cooperative law enforcement effort between the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Fort Bend County, by and through the Fort Bend County Fire Marshal's Office (FBCFMO), known collectively as the Agencies for the purpose of establishing a task force known as ATF HOUSTON ARSON/EXPLOSIVES TASK FORCE. This MOU is not intended as a formal contract between the Agencies but rather as an expression of understanding to facilitate cooperation on investigations as detailed below.

I. AUTHORITY

This MOU is established pursuant to the participating Agencies' authority to investigate criminal activities. ATF's authority includes Chapters 40, 44, and 114, Title 18, United States Code, and Chapter 53, Title 26, United States Code.

II. DURATION OF THIS MOU

This MOU will become effective on the date it is completely executed by the participating Agencies. The participating Agencies will review the mission objectives and the need for continued operation under this MOU every year thereafter. Any participating Agency may withdraw from this MOU at any time, however, a written notice of intent to withdraw must be provided to the other participating Agency at least thirty (30) days prior to the date of the intended withdrawal.

III. PURPOSE OF THIS MOU

This MOU serves to formalize the relationship between the participating Agencies with regard to policy, guidance, planning, training, public relations, and media in order to foster an efficient and cohesive unit capable of addressing violent crime and to maximize interagency cooperation associated with the task force known as ATF HOUSTON ARSON/EXPLOSIVES TASK FORCE.

The goal of this MOU is to develop a cooperative effort among the participating Agencies charged with the investigation and prosecution of arson and explosives related criminal offenses.

The criminal offenses investigated under this MOU will be referred to the courts of the United States and/or the courts of the State of Texas for prosecution.

The mission of the participating Agencies is to conduct in-depth investigations of arson and explosives related crimes; to identify and target for prosecution the perpetrators of such crimes; and to achieve maximum coordination and cooperation in bringing to bear the combined resources of the participating Agencies.

IV. CONDITIONS AND PROCEDURES

A. Administration

Because this MOU outlines a cooperative endeavor on the part of the participating Agencies, the supervisors of the participating Agencies shall be jointly responsible for the policy, program involvement, and direction of each participating Agency. Therefore, cases will be jointly investigated and no particular Agency will prevail over another or act unilaterally. Participating Agency supervisors shall meet to discuss, review and prioritize investigations undertaken as a result of this agreement on a regular basis.

B. Operational Guidelines

The following guidelines will guide the participating Agencies regarding the policy, planning, training, supervision and public relations. The participating Agencies agree that these guidelines will serve as a basis to mediate any disputes that arise during the operation of this agreement.

1. Chain of Command: ATF agrees to designate the Group Supervisor, Houston Group III (Arson/Explosives), as ATF's coordinator of this agreement. The FBCFMO Fire Marshal and/or designee will serve as the department's coordinator. The coordinators have overall responsibility for the policies and guidelines affecting this MOU. Operational problems encountered between ATF and FBCFMO will be mutually addressed and resolved by the coordinators.

2. Operations: The coordinators shall be primarily responsible for opening, assigning, directing, monitoring, and closing investigations subject to guidance from the participating Agencies. Each participating Agency agrees that it will take no unilateral action with respect to any operation under this MOU, as this would not be in the best interests of this cooperative effort.

ATF, as the sponsoring Federal law enforcement Agency, may request that FBCFMO Investigators be deputized by the United States Marshals Service (USMS) for the purpose of extending their jurisdiction to include applying for and executing Federal search and arrest warrants, and requesting and executing Federal Grand Jury subpoenas for records and evidence involving violations of Federal laws. Such requests will be made on an individual basis as determined by ATF as necessary.

The participating Agencies agree that any Federal authority that may be conferred by the above request will terminate when this MOU is terminated or when the deputized personnel leaves the task force.

3. Resources: ATF agrees to supply a supervisor and Special Agents as needed to fulfill the obligations committed as a result of this MOU. FBCFMO agrees to supply investigators/officers on a full-time or part-time basis, dependent on its manpower constraints, to fulfill its obligations under this MOU. Additional personnel will be covered by this MOU on an as-needed basis. Additions, deletions, and temporary reassignments of personnel under this MOU will be at the discretion of the respective participating Agencies, with notice to the other participating Agencies.

Continued assignment of specific personnel will be based upon performance and will be at the discretion of the respective participating Agency. Each participating Agency, upon request, will be provided with an update as to the program, duration and accomplishments occurring as a result of this agreement.

During the period of this MOU, each participating Agency will provide for the salary and employment benefits of its own respective employees. All participating Agencies will retain control over the personnel's work hours, including the approval of overtime.

ATF may have funds available for the payment of overtime to state and local Task Force members subject to the guidelines of the Department of Justice Asset Forfeiture Fund. This funding would be available under the terms of the current MOUs established pursuant to the provisions of 28 USC § 524. The participating Agencies agree to abide by the terms of the applicable Federal statutes and Department of Justice guidelines and policy relative to the payment of overtime from the Department of Justice Asset Forfeiture Fund. The FBCFMO is recognized under Texas law as a law enforcement Agency and their investigators as sworn law enforcement officers. If required or requested, the FBCFMO shall be responsible for demonstrating to the Department of Justice that its personnel are law enforcement officers for purposes of overtime payment from the Department of Justice Asset Forfeiture Fund.

In accordance with this provision and the current MOU on Asset Forfeiture, the Group Supervisor shall be responsible for certifying requests for overtime expenses incurred as a result of this agreement. Proceeds of any legal forfeiture arising out of an operation under this MOU will be divided equally among the participants in accordance with applicable Federal law and the policies and guidelines of the Department of Justice Asset Forfeiture Fund. This MOU does not allocate or ensure that ATF has funds or will make any payments with regard to overtime to State and local Task Force Officers.

ATF Agent Cashier funds will normally be available for the purchase of evidence, informant expenses, and investigative expenses relating to criminal violations that fall within its jurisdiction. ATF will also provide access to professional training and laboratory services and may activate its Special Response Team(s) or the National Response Team, if necessary.

ATF, when appropriate, will supply intelligence officers, auditors and financial analysts.

4. General Guidelines: While all personnel assigned under this MOU will give primary considerations to the regulations and guidelines imposed by their own Agency, they will be mindful of those imposed by the other participants. When acting under USMS authority requested under this MOU, the participants agree that Federal policies and procedures are controlling. Accordingly, deputized personnel will:

- Receive training in ATF firearms, vehicle stops, and defense tactics policies, as well as legal matters and correspondence, and reporting matters.
- Comply with ATF enforcement policy regarding the use of firearms, financial and property controls, investigative techniques, and supervisory controls.
- Qualify with their respective firearms, using and complying with ATF's firearms proficiency standards. ATF certified firearms instructors shall train and administer the ATF Firearms Proficiency Course to measure firearms proficiency. All members must qualify using ATF standards in order to be deputized.
- Be made aware of and comply with the Department of Justice's Use of Force Policy, especially prior to any enforcement activity classified as high risk.
- Be made aware of and comply with ATF policies concerning the use and care of Federal Government-Owned Vehicles (GOV) and abide by ATF's Pursuit Driving Policy, in addition to the policies of their respective Agencies. Such vehicles are only for official use.
- Be made aware of and comply with the Department of Justice's Standard of Conduct, particularly as they relate to sexual harassment and Equal Employment Opportunity issues.

5. Media Relations: Media relations will be handled by a designated public information officer from each participating Agency in conjunction with the other participants. Press conferences and releases will always be mutual and will include all participating Agencies. Assigned personnel will be informed not to give statements to the media relative to any ongoing investigation or prosecution under this MOU, without the concurrence of the other participants and, where appropriate, the relevant prosecutor's office.

All participating Agencies will share investigative reports, finding, intelligence data, etc., in furtherance of the mission of this agreement. No disclosures of information will be made in violation of the Privacy Act, 5 USC § 552 (a), or the Internal Revenue Code of 1986, 28 USC § 6103. The disclosure of any ATF information, as defined in the appropriate Federal Regulations, to parties outside this MOU must be approved by ATF prior to release, unless disclosure is required by law.

6. Physical Location: ATF will provide office space for FBCFMO personnel assigned to the Task Force.

7. Equipment: Assigned personnel will utilize equipment and vehicles assigned by their respective Agencies if ATF cannot provide a GOV or rental/lease vehicle.

C. Jurisdiction

The assigned coordinators will determine whether cases will be referred for prosecution to the United States Attorney's Office for the Southern Judicial District of Texas or to the relevant District Attorney's Office. The supervisors will base their determination upon which level of prosecution will best serve the interests of justice and upon achieving the greatest overall benefit to the public. Any question which arises pertaining to prosecution will be resolved through discussion among the investigative Agencies and prosecuting entities having an interest in the matter.

V. PROGRAM AUDIT

Operations under this MOU are subject to audit by ATF; the Department of Justice, Office of Inspector General; the Government Accountability Office; and other Government designated auditors. The FBCFMO agrees to permit such audits and to maintain all records relating to Department of Justice Asset Forfeiture Fund payments for overtime expenses either incurred during the course of this task force for a period of not less than three years and, if an audit is being conducted, until such time that the audit is officially completed, whichever is greater.

These audits may include review of any and all records, documents, reports, accounts, invoices, receipts, or expenditures relating to this MOU, as well as the interview of any and all personnel involved in relevant transactions.

VI. LIABILITY

Claims against the United States for injury of loss of property, personal injury, or death, arising or resulting from the negligent or wrongful act or omission of any Federal employee while acting within the scope of his or her office or employment are governed by the Federal Tort Claims Act, 28 USC § 1346(b), 2672-2680 (unless the claim arises from a violation of the Constitution of the United States, or a violation of a statute of the United States under which other recovery is authorized).

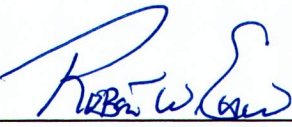
VII. REVISIONS

The terms of this MOU may be amended, modified, or reviewed in writing and such amendment, modification, or revision will become effective upon the signature of an authorized official of each participant.

VIII. NO PRIVATE RIGHT CREATED

This is an MOU between ATF and FBCFMO and is not intended to confer any right or benefit to any private person or party.

The MOU is hereby accepted as setting forth the general intentions and understandings of the undersigned authorized officials for their respective Agency.

By:  Date: 1/11/16
Robert W. Elder
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives

By: _____ Date: _____
Mark Flathouse
Fire Marshal
Ft. Bend County

By: _____ Date: _____
Robert Hebert
County Judge
Fort Bend County