

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES,

And

FORT BEND COUNTY

ON BEHALF OF THE FORT BEND COUNTY FIRE MARSHAL'S OFFICE

This Memorandum of Understanding ("MOU") is entered into by and between the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and Fort Bend County, on behalf of the Fort Bend County Fire Marshal's Office ("participating agency") as it relates to the Houston Group III Arson Task Force (herein referred to as the "Task Force").

- *The MOU is specific to the Task Force being referenced and applies only to the above-named participating agency, although other agencies may also be on the same Task Force.*

AUTHORITIES

The authority to investigate and enforce offenses under provisions of this MOU are found at 28 U.S.C. § 599A, 28 C.F.R. §§ 0.130, 0.131, and 18 U.S.C. § 3051.

PURPOSE

The Task Force will perform the activities and duties described below:

- a. Investigate firearms trafficking
- b. Investigate firearms related violent crime
- c. Gather and report intelligence data relating to trafficking in firearms
- d. Conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of Texas.

MEASUREMENT OF SUCCESS

The ability to measure the success of this initiative will depend on the participating agencies' willingness to share certain information, (i.e., crime statistics).

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- **Mission Activities**

- Deter misuse of explosives, bombs and bombings
- Research and investigate arson

- **Measurement Index**

- *Deter Misuse of Explosives, Bombs and Bombings*

- Impact the threat to public safety caused by bombs and explosives
 - Continually address and mitigate emerging explosives and bombings threats by developing and implementing proactive regulatory, investigative and intelligence sharing tactics
 - Percent of cases referred for prosecution ultimately indicted
 - Percent of explosives cases referred for prosecution ultimately convicted
 - Percent of explosives thefts investigated
 - Number of canine teams (ATF and Federal, State and Local Law Enforcement) trained to meet the national odor recognition standard.

- Research Fire and Investigate Arson

- Impact the threat to public safety caused by criminal use of fire
 - Provide expert fire and arson investigative response, technical assistance, research, training and reporting to public safety partners
 - Percent of arson cases referred for prosecution ultimately indicted
 - Percent of arson cases referred for prosecution ultimately convicted

PHYSICAL LOCATION

Officers/troopers/agents assigned to this Task Force by their employer shall be referred to as Task Force Officers (TFOs). TFOs will be assigned to the ATF Houston Field Office and will be located at either Group III offices or his/her agencies office depending on current mission task.

SUPERVISION AND CONTROL

The day-to-day supervision and administrative control of TFOs will be the mutual responsibility of the participants, with the ATF Special Agent in Charge or his/her designee having operational control over all operations related to this Task Force.

TFOs shall remain subject to their respective agencies' policies and shall report to their respective agencies regarding matters unrelated to this agreement/Task Force. With regard to matters related to the Task Force, TFOs will be subject to federal law and Department of Justice and ATF orders, regulations and policies, including those related to standards of conduct, sexual harassment, equal opportunity issues, and federal disclosure laws.

Failure to comply with this section could result in a TFO's dismissal from the Task Force.

- *This language does not dictate any particular command structure for Task Forces. As long as ATF retains supervisory authority, the internal organization of the Task Force is based on the discretion of ATF management. Therefore, this paragraph can be modified to incorporate state or local supervisory personnel into the command structure of the Task Force with the approval of FMS and Chief Counsel's Office.*

PERSONNEL, RESOURCES AND SUPERVISION

Each participating agency agrees to make available to its assigned task members any equipment ordinarily assigned for use by that agency. In the event ATF supplies equipment (which may include vehicles, weapons, or radios), TFOs must abide by any applicable ATF property orders and policy, and may be required to enter into a separate agreement for their use.

To accomplish the objectives of the Task Force, the Fort Bend County Fire Marshal's Office agrees to detail 0 full-time TFOs and/or 4 part-time TFOs to the Task Force for a period of not less than two (2) years.

All full-time TFOs shall qualify with their respective firearms by complying with ATF's Firearms and Weapons Policy.

SECURITY CLEARANCES

All TFOs will undergo a security clearance and background investigation, and ATF shall bear the costs associated with those investigations. TFOs must not be the subject of any ongoing investigation by their department or any other law enforcement agency, and past behavior or punishment, disciplinary, punitive, or otherwise, may disqualify one from eligibility to join the Task Force. ATF has final authority as to the suitability of TFOs for inclusion on the Task Force.

DEPUTATIONS

ATF, as the sponsoring federal law enforcement agency, will require that the participating agency's TFOs be deputized by the U.S. Marshals Service to extend 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.

A TFO will not be considered for Department of Justice legal representation if named as a defendant in an individual-capacity lawsuit alleging constitutional violations unless all deputation paperwork has been completed and approved prior to the event(s) at issue in the lawsuit.

The participating agencies agree that any federal authority that may be conferred by a deputation is limited only to activities supervised by ATF and will terminate when this MOU is terminated or when the deputized TFOs leave the Task Force, or at the discretion of ATF.

INVESTIGATIVE METHODS AND ELECTRONIC SURVEILLANCE

The parties agree that all investigative methods (including search warrants), evidence handling, and electronic surveillance (including wiretaps or consensual electronic monitoring) conducted by the Task Force will be consistent with and reviewed in accordance with applicable federal laws and regulations, as well as ATF and Department of Justice policy and guidelines. However, in situations where state or local consensual electronic monitoring laws are more restrictive than comparable federal law, consensual electronic monitoring methods and procedures employed by state and local law enforcement agencies may conform to those requirements, pending a decision as to a venue for prosecution.

None of the parties to this MOU will knowingly seek investigations under this MOU that would cause a conflict with any ongoing investigation of an agency not party to this MOU. It is incumbent upon each participating agency to notify its personnel regarding the Task Force's areas of concern and jurisdiction. All law enforcement actions will be coordinated and cooperatively carried out by all parties to this MOU.

EVIDENCE

Evidence will be maintained by the lead agency having jurisdiction in the court system intended for prosecution. Evidence generated from investigations initiated by a TFO or ATF special agent intended for federal prosecution will be placed in the ATF designated vault, using the procedures set forth in ATF orders.

All firearms seized by a TFO must be submitted for fingerprint analysis and for a National Integrated Ballistic Information Network (NIBIN) examination. Once all analyses are completed, all firearms seized under federal law shall be placed into the ATF designated vault for proper storage. All firearms information/descriptions taken into ATF custody must be submitted to ATF's National Tracing Center.

INFORMANTS

ATF guidelines and policy regarding the operation of informants and cooperating witnesses will apply to all informants and cooperating witnesses directed by TFOs.

Informants developed by TFOs may be registered as informants of their respective agencies for administrative purposes and handling. The policies and procedures of the participating agency for handling informants will apply to all informants that the participating agency registers. In addition, it will be incumbent upon the registering participating agency to maintain a file with respect to the performance of all informants or witnesses it registers. All information obtained from an informant and relevant to matters within the jurisdiction of this MOU will be shared with all parties to this MOU. The registering agency will pay all reasonable and necessary informant expenses for each informant that a participating agency registers.

ASSIGNMENTS, REPORTS, AND INFORMATION SHARING

An ATF supervisor or designee will be empowered with designated oversight for investigative and personnel matters related to the Task Force and will be responsible for opening, monitoring, directing, and closing Task Force investigations in accordance with ATF policy and the applicable United States Attorney General's Guidelines.

Assignments will be based on, but not limited to, experience, training, and performance, in addition to the discretion of the ATF supervisor.

All investigative reports will be prepared utilizing ATF's investigative case management system, (N-Force or Spartan, as appropriate) utilizing ATF case report numbers. The participating agency will share investigative reports, findings, intelligence, etc., in furtherance of the mission of this agreement, to the fullest extent allowed by law. For the purposes of uniformity, there will be no duplication of reports, but rather a single report prepared by a designated individual which can be duplicated as necessary. Every effort should be made to document investigative activity on ATF Reports of Investigation (ROI), unless otherwise agreed to by ATF and the participating agency(ies). This section does not preclude the necessity of individual TFOs to complete forms required by their employing agency.

Information will be freely shared among the TFOs and ATF personnel with the understanding that all investigative information will be kept strictly confidential and will only be used in furtherance of criminal investigations. No information gathered during the course of the Task Force, to include informal communications between TFOs and ATF personnel, may be disseminated to any third party, non-Task Force member by any Task Force member without the express permission of the ATF Special Agent in Charge or his/her designee.

Any public requests for access to the records or any disclosures of information obtained by Task Force members during Task Force investigations will be handled in accordance with applicable federal statutes, regulations, and policies pursuant to the Freedom of Information Act and the Privacy Act, and other applicable federal and/or state statutes and regulations.

BODY WORN CAMERAS AND TASK FORCE OFFICERS

In accordance with ATF Order 3020.4, dated June 2, 2022, and incorporated herein, Body Worn Cameras (BWCs) 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. In such cases, the TFO and parent agency shall comply with all DOJ and ATF policies, and the required procedures, documentation, and reporting while participating on the Task Force.

USE OF FORCE

All TFOs will comply with ATF and the Department of Justice's (DOJ's) Use of Force orders and policies. TFOs must be briefed on ATF's and DOJ's Use of Force policy by an ATF official and will be provided with a copy of such policy.

DECONFLICTION

Each participating agency agrees that the deconfliction process requires the sharing of certain operational information with the Task Force, which, if disclosed to unauthorized persons, could endanger law enforcement personnel and the public. As a result of this concern, each participating agency agrees to adopt security measures set forth herein:

- a. Each participating agency will assign primary and secondary points of contact.
- b. Each participating agency agrees to keep its points of contact list updated.

The points of contact for this Task Force are:

ATF:

Alfred Parker II
ATF Houston Field Division, Group III
5825 N. Sam Houston Parkway West, Suite 300
Houston, Texas 77086
281-716-8200 – office
281-299-5544 – mobile

Participating Agency:

Justin Jurek
Fort Bend County Fire Marshal's Office
1521 Eugene Heimann Circle, Suite 114
Richmond, Texas 77469
281-238-1503 - office
832-361-9978 - mobile

JURISDICTION/PROSECUTIONS

Cases will be reviewed by the ATF Special Agent in Charge or his/her designee in consultation with the participating agency and the United States Attorney's Office and appropriate state's attorney offices, to determine whether cases will be referred for prosecution to the U.S. Attorney's Office or to the relevant state's attorney's office. This determination will be based upon which level of prosecution will best serve the interests of justice and the greatest overall benefit to the public. Any question that arises pertaining to prosecution will be resolved through discussion among the investigative agencies and prosecuting entities having an interest in the matter.

In the event that a state or local matter is developed that is outside the jurisdiction of ATF or it is decided that a case will be prosecuted on the state or local level, ATF will provide all relevant information to state and local authorities, subject to federal law. Whether to continue the investigation of state and local crimes is at the sole discretion of the state or local participating agency.

MEDIA

Media relations will be handled by ATF and the U.S. Attorney's Office's public information officers in coordination with each participating agency. Information for press releases will be reviewed and mutually agreed upon by all participating agencies, who will take part in press conferences. Assigned personnel will be informed not to give statements to the media concerning any ongoing investigation or prosecution under this MOU without the concurrence of the other participants and, when appropriate, the relevant prosecutor's office.

All personnel from the participating agencies shall strictly adhere to the requirements of Title 26, United States Code, § 6103. Disclosure of tax return information and tax information acquired during the course of investigations involving National Firearms Act (NFA) firearms as defined in 26 U.S.C., Chapter 53 shall not be made except as provided by law.

SALARY/OVERTIME COMPENSATION

During the period of the MOU, participating agencies will provide for the salary and employment benefits of their respective employees. All participating agencies will retain control over their employees' work hours, including the approval of overtime.

ATF may have funds available to reimburse overtime to the state and local TFO's agency, subject to the guidelines of the Department of Justice Asset Forfeiture Fund. This funding would be available under the terms of a memorandum of agreement (MOA) established pursuant to the provisions of 28 U.S.C. § 524. The participating agency agrees to abide by the applicable federal law and policy with regard to the payment of overtime from the Department of Justice Asset Forfeiture Fund. The participating agency must be recognized under state law as a law enforcement agency and their officers/ troopers/investigators as sworn law enforcement officers. If required or requested, the participating agency shall be responsible for demonstrating to the Department of Justice that its personnel are law enforcement officers for the purpose of overtime payment from the Department of Justice Asset Forfeiture Fund. **This MOU is not a funding document.**

In accordance with these provisions and any MOA on asset forfeiture, the ATF Special Agent in Charge or designee shall be responsible for certifying reimbursement requests for overtime expenses incurred as a result of this agreement.

AUDIT INFORMATION

Operations under this MOU are subject to audit by ATF, the Department of Justice's Office of the Inspector General, the Government Accountability Office, and other Government-designated auditors. Participating agencies agree to permit such audits and to maintain all records relating to Department of Justice Asset Forfeiture Fund payments for expenses either incurred during the course of this Task Force or for a period of not less than three (3) years and, if an audit is being conducted, until such time that the audit is officially completed, whichever is greater.

SEIZURES/FORFEITURES/EQUITABLE SHARING

All assets seized for federal administrative forfeiture will be seized and forfeited in compliance with federal law and U.S. Department of Justice policy as set forth in the Asset Forfeiture Policy Manual. When the size or composition of the item(s) seized make it impossible for ATF to store the property, in coordination with the U.S. Marshals Service, any of the participating agencies having the storage facilities to handle the seized property agree to store the property at no charge and to maintain the property in the same condition as when it was first taken into custody. The agency storing said seized property agrees not to dispose of the property until authorized to do so by ATF.

Federal law authorizes the Attorney General to share federally forfeited property with participating state, local, or tribal law enforcement agencies. The Attorney General's equitable sharing authority is discretionary. Any sharing of the net proceeds from forfeitures will be shared, with sharing percentages based upon the U.S. Department of Justice equitable sharing policies as set forth in the *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies* (March 2024) (the "Guide").

For additional information on equitable sharing, participating agencies should refer to the *Guide*.

DISPUTE RESOLUTION

In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the Task Force's goals and objectives. The parties to this MOU agree to attempt to resolve any disputes regarding jurisdiction, case assignments and workload at the lowest level possible.

LIABILITY

ATF acknowledges that the United States is liable for the wrongful or negligent acts or omissions of its officers and employees, including TFOs, while on duty and acting within the scope of their federal employment, to the extent permitted by the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680.

Claims against the United States for injury or 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, (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).

Except as otherwise provided, the parties agree to be solely responsible for the negligent or wrongful acts or omissions of their respective employees and will not seek financial contributions from the other for such acts or omissions. Legal representation by the United States for individual capacity claims is determined by the United States Department of Justice on

a case-by-case basis. ATF cannot guarantee the United States will provide legal representation to any state or local law enforcement officer.

Liability for any negligent or willful acts of any agent or officer undertaken outside the terms of this MOU will be the sole responsibility of the respective agent or officer and agency involved.

DURATION

This MOU is effective for five years from the date of the final signature.

This MOU supersedes previously signed MOUs and shall remain in effect until the aforementioned expiration date or until it is terminated in writing (to include electronic mail and facsimile), whichever comes first. All participating agencies agree that no agency shall withdraw from the Task Force without providing ninety (90) days' written notice to the other participating agencies. If any participating agency withdraws from the Task Force prior to its termination, the remaining participating agencies shall determine the distributive share of assets for the withdrawing agency, in accordance with Department of Justice guidelines and directives.

This MOU shall be deemed terminated at the time all participating agencies withdraw and ATF elects not to replace such members, or in the event ATF unilaterally terminates the MOU upon 90 days' written notice to all the remaining participating agencies.

MODIFICATIONS


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

SIGNATURES

FORT BEND COUNTY

**BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES (ATF)**

_____/_____
KP George, County Judge Date


_____/_____
Michael T. Weddel Date
Special Agent in Charge
ATF Houston Field Division

ATTEST:

Laura Richard, County Clerk

APPROVED: 
_____, 01/08/2020
Justin Jurek, Fire Marshal Date
Fort Bend County