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**Memorandum of Understanding (MOU)**  
**Between**  
  
**The**  
**Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)**  
  
**And**  
  
*The Minot Police Department*

This Memorandum of Understanding (MOU) is entered into by and between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Minot Police Department (“MPD”) as it relates to the ATF North Border Violent Crime Task Force, with respect to a joint powers/cooperative law enforcement effort.

**Background**

The name of this joint cooperative operation is the ATF North Border Violent Crime Task Force. The agencies participating in this ATF North Border Violent Crime Task Force MOU Agreement shall be referred to as the “Participants”.

**Authorities**

Offenses investigated and enforced pursuant to this MOU are those falling within ATF’s primary jurisdiction involving Firearms, illegal drugs, and other violent offenses, including 28 USC sec 599A; 27 CFR Part 0, Subpart W; 18 USC §§ 921 et.seq; 26 USC §§ 5861 et. seq.; 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 North Dakota.

### **Measurement of Success**

The success of this initiative will be measured by the participating agencies willingness to share certain information, (i.e. crime statistics) for the purpose of measuring the success of the task force as well as its performance.

### **Physical Location**

The officers assigned to this Task Force by their employer shall be referred to as task force officers (TFO). TFO will be assigned to the ATF Fargo Field Office and will be located at the Minot, North Dakota.

### **Supervision and Control**

The day-to-day supervision and administrative control of the TFO will be the mutual responsibility of the participants, to include the MPD TFO, MPD Command Staff, and MPD Chief, with the ATF Special Agent in Charge or his/her designee having operational control over all operations related to the ATF North Border Violent Crime Task Force.

The TFO shall remain subject to the MPD's policies, and shall report to their MPD regarding matters unrelated to this agreement/task force. With regard to matters related to the Task Force, the TFO will be subject to Federal law and Department of Justice (DOJ) and ATF orders, regulations and policy, including those related to standards of conduct, sexual harassment, equal opportunity issues and Federal disclosure laws.

Members of the ATF North Border Violent Crime Task Force will continue to operate within their normal chain of command, and be responsible to their own agency or department, other than as detailed herein while assigned to the ATF North Border Violent Crime Task Force.

### **Personnel, Resources and Supervision**

To accomplish the objectives of the ATF North Border Violent Crime Task Force, ATF will assign Special Agents to the Task Force. ATF will also, subject to the availability of funds, provide necessary funds and equipment to support the activities of the ATF Special Agents and officers assigned to the Task Force. This support may include: office space, office supplies, travel funds, funds for purchase of evidence and information, investigative equipment, training, and other support items.

The MPD agrees to make available to their TFO any equipment ordinarily assigned for use by MPD. In the event ATF supplies equipment (which may include vehicles, weapons or radios),

TFO must abide by any applicable ATF property orders or policy, and may be required to enter into a separate agreement for their use.

To accomplish the objectives of the Task Force, the MPD agrees to detail one ~~fulltime~~ TFO to the Task Force for a period of not less than two (2) years.

The TFO shall qualify with their respective firearms by complying with ATF's Firearms and Weapons Policy. The TFO, with ATF approval, will be able to use MPD qualifications to comply with this requirement.

### **Security Clearances**

The TFO 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 the TFO for inclusion on the Task Force.

### **Deputations**

ATF, as the sponsoring Federal law enforcement agency, may request at its sole discretion that MPD's TFO be deputized by the U.S. Marshal 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. Such requests will be made on an individual basis as determined by ATF. MPD will be notified of these requests.

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

### **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) 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 MPD. This section does not preclude the necessity of the TFO to complete forms required by MPD.

Information will be freely shared among the TFO 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 TFO 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 statutes, regulations, and policies pursuant to the Freedom of Information Act and Privacy Act and other applicable federal and/or state statutes and regulations.

### **Investigative Methods**

The parties agree to utilize Federal standards pertaining to evidence handling and electronic surveillance activities to the greatest extent possible. However, in situations where state or local laws are more restrictive than comparable Federal law, investigative methods employed by state and local law enforcement agencies shall conform to those requirements, pending a decision as to a venue for prosecution.

The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policy and procedures of ATF. All Task Force operations will be conducted and reviewed in accordance with applicable ATF and Department of Justice policy and guidelines.

None of the parties to this MOU will knowingly seek investigations under this MOU that would cause 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 Participants to this MOU.

### **Informants**

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

Informants developed by the TFO may be registered as informants of MPD for administrative purposes and handling. The policies and procedures of the Participant with regard to handling informants will apply to all ATF informants that each Participant registers. In addition, it will be incumbent upon the registering Participant 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.

### **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. All operations will be deconflicted using the deconfliction system predominant in the area (RISSafe or SAFETNet). As a result of this concern, each Participant agrees to adopt security measures set forth herein:

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

The points of contact for this Task Force are:

ATF: Resident Agent in Charge Liane Sellner

MPD: Captain Justin Sundheim

### **Evidence**

Evidence 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 procedures found in ATF Orders.

All firearms seized by a TFO must be submitted for fingerprint analysis and for a National Integrated Ballistics 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.

### **Jurisdiction/Prosecutions**

Cases will be reviewed by the ATF Special Agent in Charge or his/her designee in consultation with MPD 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 questions 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 investigation of state and local crimes is at the sole discretion of the state or local participating agency.

### **Use of Force**

The fulltime TFO will comply with ATF and the Department of Justice's (DOJ's) use of force policies, unless a TFO agency's Use of Force policy is more restrictive, in which case the TFO may use their respective agency's use of force policy. The TFO 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.

### **Media**

Media relations will be handled by ATF and the U.S. Attorney's Office's public information officers in coordination with MPD. Information for press releases will be reviewed and mutually agreed upon by all Participants, 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, USC, §§ 6103. Disclosure of tax return information and tax information acquired during the course of investigation(s) involving National Firearms Act (NFA) firearms as defined in 26 USC, Chapter §§ Chapter 53, shall not be made except as provided by law.

### **Salary/Overtime Compensation**

During the period of the MOU, the Participants will provide for the salary and employment benefits of their respective employees. All Participants 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 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. section 524. MPD 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. MPD must be recognized under State law as a law enforcement agency and their officers and detectives as sworn law enforcement officers. If required or requested, the MPD 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.

### **Forfeitures/Seizures**

All assets seized for administrative forfeiture will be seized and forfeited in compliance with the rules and regulations set forth by the U.S. Department of Justice Asset Forfeiture guidelines. When the size or composition of the item(s) seized make it impossible for ATF to store it, 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.

The MOU provides that proceeds from forfeitures will be shared, with sharing percentages based upon the U.S. Department of Justice Asset Forfeiture policies on equitable sharing of assets, such as determining the level of involvement by each participating agency. Task Force assets seized through administrative forfeiture will be distributed in equitable amounts based upon the number of full-time persons committed by each participating agency. Should it become impossible to separate the assets into equal shares, it will be the responsibility of all the participating agencies to come to an equitable decision. If this process fails and an impasse results, ATF will become the final arbitrator of the distributive shares for the participating agencies

### **Dispute Resolution**

In cases of overlapping jurisdiction, the Participants 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 generally liable for the wrongful or negligent acts or omissions of its officers and employees, while on duty and acting within the scope of their federal employment, to the extent permitted by the Federal Tort Claims Act.

Claims against the United States for injury, death, or loss of property, arising or resulting from the negligent or wrongful act or omission of any Federal employee while acting within the scope

of their office or employment are governed by the Federal Tort Claims Act, 28 USC sections §§ 1346(b), 2671-2680 (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).

Except as otherwise provided, the parties agree to be solely responsible for the negligent or wrongful acts or omissions of their respective employee's and will not seek financial contributions from the other parties for such acts or omissions. Legal representation by the United States 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 sole responsibility of the respective agent or officers and agency involved.

**Duration**

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

The MOU shall be deemed terminated at the time all Participants withdraw and ATF elects not to replace such members, or in the event ATF unilaterally terminates the MOU upon 90 days written notice to MPD.

**Modifications**

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

**SIGNATURES**

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Jason Olson                      Date  
Chief of Police  
Minot Police Department

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Kurt H. Thielhorn                      Date  
Special Agent in Charge, ATF  
St. Paul Field Division