

RESOLUTION No. 2009-85-1030

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN MEMORANDUM OF UNDERSTANDING WITH THE UNITED STATES BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES FOR PARTICIPATION IN A JOINT TASK FORCE, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in a continuing effort to impact crime and increase the level of security for the City's residents, the Police Department is engaging in partnerships with other law enforcement agencies, and

WHEREAS, the City has been asked by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") to partner with it in a task force known as "The Firearms Interdiction, Reduction and Enforcement Strike Force" ("FIRE") to target individuals using and possessing illegal firearms in Miami-Dade County, and

WHEREAS, the Task Force will focus on criminals engaged in violation of federal firearms laws and/or violent crimes in the South Florida area, and

WHEREAS, the City of Miami Gardens will assign two officers on a part-time basis for an indefinite period of time to assist with the Task Force, and

WHEREAS, all overtime expenses for the officers will be reimbursed by the federal government for the duration of the Program, and

WHEREAS, the Miami Gardens officers will be stationed at the Miami Gardens Police Department Headquarters and will spend approximately ninety-five percent (95%) of their time within the City of Miami Gardens, and

WHEREAS, there is no budget impact for this item,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

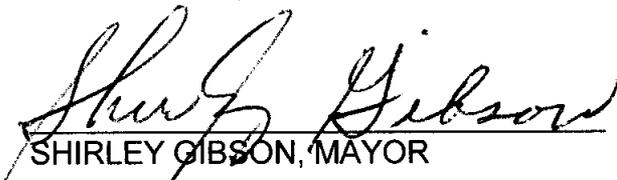
Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorize the City Manager and City Clerk to execute and attest, respectively, that certain Memorandum of Understanding with the United States Bureau of Alcohol, Tobacco, Firearms and Explosives for participation in a Joint Task Force, a copy of which is attached hereto as Exhibit A.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to the United States Bureau of Alcohol, Tobacco, Firearms and Explosives; and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MAY 13, 2009.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
\_\_\_\_\_  
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Gilbert  
SECOND BY: Councilwoman Pritchett

**VOTE: 7-0**

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	___ (No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___ (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___ (No)
Councilman Oliver Gilbert, III	<u>X</u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	<u>X</u> (Yes)	___ (No)
Councilman André Williams	<u>X</u> (Yes)	___ (No)

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1515 NW 167 Street, Building 5 Suite 200  
Miami Gardens, Florida 33169

## City of Miami Gardens Agenda Cover Memo

<b>Council Meeting Date:</b>	<i>May 13, 2009</i>		<b>Item Type:</b>	<b>Resolution</b>	<b>Ordinance</b>	<b>Other</b>	
			<i>(Enter X in box)</i>	<b>X</b>			
<b>Fiscal Impact:</b> <i>(Enter X in box)</i>	Yes	No	<b>Ordinance Reading:</b> <i>(Enter X in box)</i>	<b>1<sup>st</sup> Reading</b>		<b>2<sup>nd</sup> Reading</b>	
		<b>X</b>		<b>Public Hearing:</b> <i>(Enter X in box)</i>	Yes	No	Yes
<b>Funding Source:</b>	N/A		<b>Advertising Requirement:</b> <i>(Enter X in box)</i>		<b>Yes</b>		<b>No</b>
<b>Contract/P.O. Required:</b> <i>(Enter X in box)</i>	Yes	No	<b>RFP/RFQ/Bid #:</b>				
		<b>X</b>					
<b>Sponsor Name</b>	<b>Dr. Danny O. Crew</b>		<b>Department:</b>	<i>Police Department</i>			

**Short Title:**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN MEMORANDUM OF UNDERSTANDING WITH THE UNITED STATES BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES FOR PARTICIPATION IN A JOINT TASK FORCE, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING AN EFFECTIVE DATE.

**Staff Summary:**

As a continuing effort to impact crime and increase the level of security for our residents, the Miami Gardens Police Department is engaging in partnerships with other law enforcement agencies to reduce crime in our community. The Department has been approached by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and asked to partner with them in a task force entitled the Firearms Interdiction, Reduction and Enforcement Strike Force (FIRE) which targets individuals using and possessing illegal firearms in Miami-Dade County. This group will focus on criminals who engage in the violation of federal firearms laws, and/or other armed violent crimes in South Florida. It is the desire of the participating agencies to achieve the maximum inter-agency cooperation, in a combined law enforcement effort that targets reducing violent criminal activity within all South Florida communities including the City of Miami Gardens (CMG).

**ITEM K-1) CONSENT AGENDA  
RESOLUTION  
MOU w/ U.S. Bureaus of Alcohol,  
Tobacco, Firearms and Explosives**

The Department will assign two officers on a part time basis for an indefinite period to coordinate firearm cases developed in the CMG with the ATF and the United States Attorneys Office. All overtime expenses for the officers will be reimbursed by the Federal Government for the duration of the program. The MGPD officers will be stationed at the MGPD Headquarters and will function approximately 95% of their time in the CMG. With some minor exceptions the majority of the work performed by these officers will occur in the City in furtherance of filing illegal firearms cases occurring in our jurisdiction. Occasionally the officers may be requested to participate in tactical operations involving other agencies providing sufficient notice is given to Command level personnel.

**Proposed Action:**

That the City Council authorizes the City Manager to sign the Memorandum of Understanding with the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purposes of participation in a joint task force.

**Attachment:**

Attachment A: MOU- United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

# F.I.R.E.

FIREARMS INTERDICTION,  
REDUCTION & ENFORCEMENT  
STRIKE FORCE

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## MEMORANDUM OF UNDERSTANDING (MOU)

This Memorandum of Understanding (MOU) is being executed by the below listed agencies:

<b>United States Attorney's Office</b>	<b>(USAO)</b>
<b>Bureau of Alcohol, Tobacco, Firearms and Explosives</b>	<b>(ATF)</b>
<b>Miami-Dade Police Department</b>	<b>(MDPD)</b>
<b>Florida Department of Law Enforcement</b>	<b>(FDLE)</b>
<b>U.S. Marshal's Service</b>	<b>(USMS)</b>
<b>Miami Gardens Police Department</b>	<b>(MGPD)</b>

Nothing in this MOU should be construed as limiting, or impeding, the basic spirit of cooperation which exists between the participating agencies listed above.

### **I. PURPOSE**

This MOU establishes and delineates the mission of the ATF sponsored **Firearms Interdiction, Reduction and Enforcement Strike Force**, hereinafter referred to as **FIRE**, as a joint cooperative effort. Additionally, the MOU formalizes relationships between and among the participating agencies in order to foster an efficient and cohesive unit. This unit is capable of addressing the most complex cases, focusing on armed violent groups or gangs, firearms traffickers, armed career criminals, convicted felons and armed fugitives. The focus is on the aforementioned criminals who engage in the violation of federal firearms violations, and/or other armed violent crimes which are encountered by local, state and federal law enforcement in South Florida. It is the desire of the participating agencies to achieve the maximum inter-agency cooperation, in a combined law enforcement effort, that targets reducing violent criminal activity within all South Florida communities. The intent of this MOU is not to create any right or benefit, nor should it be construed as creating any right or benefit, substantive or procedural, enforceable by law or otherwise by any third party, against parties, the United States Government, officers, employees, agents, or any other associated personnel thereof.

### **II. AUTHORITY**

This MOU is established pursuant to the participating agencies' authority to investigate violent crimes. ATF's authority derives from Chapters 40, and 44, Title 18, United States Code, and Chapter 53, Title 26, United States Code.

### **III. ORGANIZATIONAL STRUCTURE**

#### **A. Composition**

The Strike Force is comprised of ATF, as the lead federal agency, U.S. Attorney's Office, Florida Department of Law Enforcement (FDLE), Miami-Dade County Police

Department (MDPD), U.S. Marshal's Service (USMS), Miami Gardens Police Department, and Municipal Police Departments. The Strike Force will also provide investigative support to traditional investigative units e.g., homicide, robbery, or narcotics in identifying and arresting offenders of mutual interest engaged in armed or violent criminal activity.

Subject to availability, all parties agree to dedicate an appropriate amount of personnel to ensure the success of the Strike Force.

#### **B. Direction**

All participants acknowledge that FIRE is a joint operation in which all agencies act as partners in the operation of the Strike Force. An Executive Board, made up of the heads of the participating agencies, will be responsible for the policy and direction of the ATF sponsored FIRE Strike Force. The Executive Board will meet quarterly in order to collectively provide policy oversight. Membership on the Executive Board can be delegated by the law enforcement agency head to a designee.

#### **C. Supervision**

The day to day operation and administrative control of the F.I.R.E. Strike Force will be the responsibility of a Supervisory Special Agent (SSA) of the ATF or his /her designee with support of a Lieutenant from MDPD. The management of the FIRE Strike Force will be closely coordinated with the Executive Board. Responsibility for the conduct of the FIRE Strike Force members, both personally and professionally, shall remain with the respective agency heads. Responsibility for the conduct of each individual, who does not report to the ATF Group Supervisor or MDPD Lieutenant, and is assigned to the FIRE Strike Force, shall remain with the respective agency head. Each agency shall be responsible for the actions of their employees. The Strike Force members will be subjected to the personnel rules, regulations, laws and policies that are applicable to their individual agencies, respectively. ATF participants will continue to adhere to the Bureau's ethical standards and will remain subject to the Supplement Standards of Ethical Conduct for Employees of the U.S. Department of Justice.

#### **IV. GUIDELINES**

The FIRE Strike Force was formulated under Federal guidelines pursuant to contracts (See Attachment - A) granting financial support administered by United States Attorney's Office Project Safe Neighborhoods (PSN) to state and local law enforcement agencies. This program, demanded flexibility within participating agencies, in order to accommodate the trust of the federal resources in an effort to impact on the crime problem affecting defined areas within the United States.

The obligations imposed on all participating agencies are for the purpose of attaining predestinated, mutually agreed upon objectives and goals. Use of the Strike Force

concept is intended to ensure well coordinated enforcement of all of the participating agencies.

While assigned to the FIRE Strike Force, a clearly defined strategy will be adopted. The Task Force will not permit independent law enforcement operations or efforts, which violate the purpose, design or intent of the Strike Force mission.

State and local law enforcement agencies under FIRE contracts will adhere to guidelines, policies and procedures and regulations encumbering the lead Federal Agency, while at the same time will conform to their individual agency policies and guidelines.

Strike Force operations must meet Federal Task Force guidelines:

- Department of Justice Policy (Attachment B)
- U.S. Attorney's Office (PSN) funding regulations (Attachment A)

No law enforcement mission from the ATF FIRE Strike Force will be permitted without a unified sense of mission and purpose. Only with the approval of all participating agencies, through their designated site representative, and regulated within the program guidelines of the U.S. Government.

Tactical operations, proactive and reactive, which affect or obligate the U.S. Government, or conflict with any existing governmental policies or restrictions on the part of the lead Federal agency or participating agencies, will not be permitted without the full concurrence of all participants. This is after appropriate protocol and required time concessions have been obtained and allocated. In the event of a procedural conflict or management disagreement with any two agencies assigned to the ATF FIRE Strike Force, the operation will cease immediately. No further effort in furtherance of the activity will occur until a resolution of the conflict has been reached, unanimously and without reservation.

Jurisdictional conflicts will be resolved by the concerned agencies, whenever possible, at the lowest level. If resolution is not possible within the agencies the United States Attorney, Southern District of Florida, or designee, along with the State's Attorney, or designee, shall make a determination.

The criteria for determining whether to prosecute a particular violation in state or federal court will focus upon achieving the greatest overall benefit to law enforcement and the public. Any question that arises pertaining to prosecutorial jurisdiction will be resolved through discussion among all investigative agencies and prosecutorial entities which have an interest in the matter.

#### **A. Assignment of Personnel**

The assignment of federal, state and local personnel shall be approved by their respective department head and coordinated with ATF. Assignment of Strike Force Officers is based on the officer's training, past performance, or other factors relative to suitability.

- a. Assignment of personnel must adhere to the U.S. Department of Justice Federal guidelines, including a Top Secret security clearance.(Attachment - B)
- b. Federal, state and local officers assigned to ATF FIRE Strike Force will work full time and will be co-located at the ATF Group II Office.
- c. Officers assigned will be under direct daily supervision of the ATF Group Supervisor and/or Miami Dade County Police Department Lieutenant and they should adhere to policy and procedures established by the ATF FIRE Strike Force. If any of the aforementioned policies or procedures conflict with their own department rules and regulations then the individual will immediately bring the conflict to the attention of his/her supervisor. That supervisor will bring the matter to the attention of the next chain of command, who will take the necessary action to rectify the situation.
- d. In the event a member of the ATF FIRE Strike Force requires disciplinary action or is unable to perform his/her duties, it will be brought to the attention of that member's supervisor with their respective agency.

**B. Nondiscrimination Clause**

All participating agencies will comply with Title VII of the Civil Rights Act of 1964 and all requirements imposed pursuant to the regulations of the U.S. Department of Justice (CFR Part 42, subparts C and D) issued pursuant to Title VI relating to discrimination on the grounds of race, color, creed, sex, age or national origin and equal employment opportunities.

**C. Respective Responsibilities**

Each participating agency of the ATF FIRE Strike Force shall be responsible for the acts of it's participating officers and shall incur any liabilities arising out of the services and activities of those officers while participating in the ATF FIRE Strike Force. Personnel must be mindful of the liability they and ATF may incur as a result of their actions. This liability is established under the Federal Tort Claims Act, Title 28 USC §§ Section 2671 – Section 2680.

See ATF Policy and Directives (below is not all inclusive):

- ATF Order 3020.1 -- ATF Use of Force and Weapons Policy (Attachment – F)
- ATF Order 3000.1E – Criminal Enforcement General Information (Attachment - G)
  - Chapter C. -- Emergency Driving
  - Chapter C. – Special Agent Use of Government Property

**D. Special Deputation Appointments**

All state and local law enforcement officers assigned to the ATF FIRE Strike Force who are working jointly with Special Agents of the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), under the lead agency's federal

authority, may be sponsored for U.S. Department of Justice, United States Marshals Service (USMS) Special Deputation Appointments. Such official actions will be made under the authority delegated by the Attorney General of the United States, to perform the duties of the Office of Special Deputy United States Marshal and will be authorized and directed by an appropriate official of the sponsoring Federal Agency.

Any such deputation of state and or local law enforcement officers working jointly with Special Agents of the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will remain in force at the direction of the sponsoring agency or until their expiration date.

#### **E. Scope of Assignment**

Scope of assignment to the ATF FIRE Strike Force will be to enhance criminal prosecution at the highest level of impact, through the application of federal and state statutes. To further this effort the task force will be federally led for jurisdictional purposes, resources and sentencing enhancements. To achieve this mission Federal authority will be empowered to State and Local law enforcement officers through the sponsoring Federal agency.

- a. Investigative actions will be coordinated at the onset and will be federally directed and prepared jointly for defendant prosecution in Federal court.
- b. Computerized hardware/software will be provided to each Strike Force Officer (TFO) assigned to the ATF FIRE Strike Force.
- c. Investigative reports, operational plans and other relative ATF administrative documentation will be prepared by TFO'S and submitted for approval through the appropriate ATF chain of command.
- d. Investigations will be complex in nature, long term and oriented towards accomplishing the ATF FIRE Strike Force specific mission.
- e. Operations will be conducted safely and steered towards the greatest impact on reducing violent crime and bringing safety to the community.

#### **V. OPERATIONS: TEAM CONCEPT**

All investigations will be conducted utilizing a TEAM concept with teams comprised of multi-agency investigators.

Each investigation will have the option of two lead investigators, one each from ATF and a State/Local TFO.

The ATF investigative file will be initiated by the lead investigator and/or TFO with the assistance from other Strike Force members. Cases will be initiated in ATF'S N-FORCE Investigative Database, in compliance with the ATF guidelines. Each Strike Force member will be provided additional N-FORCE Investigative Database training to

facilitate this task. A roll call training will be conducted periodically to provide additional guidance and support. Strike Force members will assist the lead investigators with generating Reports of Interview (ROI), operational plans, interviews, arrests, prisoner processing, evidence processing, Federal Grand Jury presentation and all judicial activity including trial preparation, if necessary, will be conducted in accordance with ATF policy and procedures and Federal Rules and Regulations.

Strike Force members will adhere to ATF guidelines when conducting federal investigations and preparing for federal prosecution with the United States Attorney's Office.

**A. Informants and Cooperating Witnesses**

The United States Attorney General's guidelines and the ATF guidelines regarding the operation of informants and cooperating witnesses will apply to all informants and cooperating witnesses directed by members of ATF FIRE Strike Force (Attachment C). ATF agrees, subject to funding availability, to pay confidential informants/cooperating witnesses' expenses in accordance with ATF policies and procedures when determined by ATF to be reasonable and necessary. An appropriate ATF confidential informant file will be opened wherein all information furnished by the confidential informant will be maintained. In addition, any payments to the confidential informant will also be documented according to ATF policy and procedures. The disclosure of ATF confidential informants to non-ATF FIRE Strike Force will be limited to those situations where it is essential to the investigative mission of the ATF FIRE Strike Force. Non-ATF FIRE Strike Force members may not make any further disclosure of the identity of an ATF informant, including to other members of the Strike Force. No documents are to be prepared or disseminated outside of ATF which identify or tend to identify an ATF confidential informant.

**B. Staff Briefings**

Periodic briefings on ATF FIRE Strike Force investigations will be provided to the heads of the participating agencies or their designees.

**VI. INVESTIGATIVE FOCUS:**

Investigations conducted by the ATF FIRE Strike Force will primarily focus on the specific mission statement, to target firearms trafficking organizations, armed career criminals and convicted felons and gangs who use firearms in furtherance of their criminal enterprises. Priority will be given to targets that meet the Armed Career Criminal Offender profile - Title 18, USC 924(e), three (3) prior violent felony convictions, qualifying for enhanced sentencing of 15 years minimum mandatory Federal

prison. Strike Force members will adhere to the ATF Standard Operating Procedure manual when initiating investigations.

Investigative information which does not meet the ATF FIRE Strike Force criteria should be referred to the appropriate agency or departmental entity with assistance provided by ATF FIRE Strike Force members.

**A. Target Identification**

Investigative targets will be selected based on intelligence information provided by informants, law enforcement agencies and cooperating witnesses. A complete background investigation will be conducted for each potential target.

**B. Investigative Procedure**

Investigations will be conducted in accordance with the ATF Manual Orders as set forth by required guidelines.

**C. Tactical Planning**

An ATF Operational Plan, ATF Form 3210.7 (Attachment - D), will be prepared while planning search warrants, arrest warrants, undercover purchases, buy-busts, and/or special undercover operations (i.e. flash rolls, reverse stings, etc.) by the Strike Force members and reviewed by the ATF Group Supervisor, the ATF Division Tactical Advisor (DTA). ATF Form 3210.7 is designated to identify critical elements and set parameters of enforcement operations in an effort to increase the level of preparation and safety of all special agents and Strike Force Officers. A briefing must be conducted for any operation as described above for which an operational plan is approved. Operational plans must adhere to ATF Miami Field Division Policy as well as ATF Orders.

The operational plan will take into account the safety of citizens, safety of officers, and operational success. According to ATF Order 3210.1A (Attachment - E), dated February 18, 2005, each operational plan must be submitted to the Division Tactical Advisor (DTA) for review. All operational plans will be submitted 24 hours prior to the time of the planned operation. A briefing will be conducted for all Strike Force members and any other law enforcement personnel involved in the operation. Those who are not present for the operational briefing will not participate in the operation.

- High profile arrests of armed offenders will be planned for predetermined sites when possible. Selected sites should afford the advantage of isolating subjects in a location that provides tactical benefits to the arrest team.
- The use of SRT, K-9 Units and Aviation support will be considered when arrests of multiple armed offenders is planned.
- Adequate time will be allowed for technical support personnel to install electronic devices to be used in the arrest scenarios.

- Notification will be made to the MDPD Communications Bureau Shift Commander and a Lieutenant or higher rank from the district/municipality where the warrant or arrests are to be executed. ATF Group Supervisor will provide notification/approval to the Miami Field Division Assistant Special Agent in Charge of all operations.

#### **D. Lethal Force**

Participants will adhere to the U.S. Department of Justice, Use of Deadly Force, ATF Orders 3220.1 (Attachment - F) policy unless the respective agency's policies are more restrictive. If an agency's deadly force policies are more restrictive, then the agency's policy should be followed by non-DOJ participants.

#### **E. Evidence**

The decision as to which agency impounds physical evidence seized during an investigation will be based on what will build the strongest case.

- Evidence should be impounded by the lead agency having jurisdiction in the court system intended for prosecution. Evidence generated from investigations initiated by the Strike Force Officer or ATF Special Agents intended for federal prosecution will be placed into the ATF Property and Evidence Vault.
- All firearms seized by Strike Force Officers or ATF Special Agents must be submitted to the ATF Lab or Miami- Dade PD laboratory for fingerprint and/or DNA analysis and request a NIBIN (ballistics) examination. Once all laboratory examination is completed the evidence shall be placed into the ATF Property and Evidence Vault for proper storage. All firearms taken into ATF custody must be submitted to the ATF's National Tracing Center for tracing.
- Consultation with the assigned Assistant United States Attorney (AUSA) or Assistant States Attorney (ASA) should be made by the Strike Force member if any doubt arises as to the appropriate impounding agency.
- Property impounded at the MDPD Property Bureau will follow procedures outlined in Miami Dade County Police Department guidelines.

#### **F. Seized Property**

The ATF shall be responsible for the processing of assets seized for federal forfeiture in conjunction with federal law and the rules and regulations set forth by the ATF and Department of Justice (DOJ). Forfeiture attributable to ATF FIRE Strike Force investigations may be distributed among the agencies participating in ATF FIRE Strike Force related operations. In the event that any property or cash is seized as a result of investigative activities governed by this MOU, the parties agree to ensure the equitable distribution of forfeited property, cash or proceeds from the sale of forfeited property. If the forfeiture occurs on the state level, the forfeiture and distribution of such property

shall be pursuant to Section 932.701-707 of the Florida Statutes. Forfeited property or proceeds shall be distributed to the appropriate law enforcement agency or agencies that participated directly and substantially in any acts which led to the seizure or forfeiture of such property or cash. It is agreed that the percentage of any proceeds from forfeited property or the value of property retained by an agency shall be commensurate with participation of that agency in the activity, which resulted in the seizure, unless otherwise agreed to by the participating agencies. Any agency that provides for court costs or costs for maintaining seized property shall be reimbursed out of any proceeds from the sale of seized property prior to the distribution of proceeds.

## **VII. MEDIA**

All media releases pertaining to ATF FIRE Strike Force investigations and/or arrests will be coordinated and made jointly by all participants of this MOU. No unilateral press releases will be made by any participating agency without the prior approval of the other participants. No information pertaining to ATF FIRE Strike Force itself will be released to the media without mutual approval of all participants.

## **VIII. EQUIPMENT**

### **A. Vehicles**

All State and Local entities will provide vehicles.

### **B. Communications**

The MDPD and ATF agree, consistent with available funding and required approvals, to provide sufficient portable radios for each ATF FIRE Strike Force member, capable of transmitting and receiving voice messages. Additional rechargeable batteries and battery charges will also be provided. Certain ATF FIRE Strike Force Board member agencies may be requested from time to time to provide radios to the ATF FIRE Strike Force during certain high-impact investigations or undercover scenarios.

### **C. Cellular Telephones**

Participating agencies are responsible for providing their officers assigned to the ATF FIRE Strike Force with cellular telephones per the respective departments availability. Expenses for the cellular telephones are the responsibility of the officer's agency.

### **D. Equipment**

Property damaged or destroyed (other than vehicles) which was utilized by the task force in connection with authorized investigations and/or operations, and was in the custody and control of and used at the direction of the ATF FIRE Strike Force, will be the financial responsibility of the agency supplying the said property.

## **IX. FUNDING**

See Attachment - A

## **X. 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 DOJ on a case by case basis. ATF cannot guarantee the United States will provide legal representation to any Federal, State or Local law enforcement officer.

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 employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), §§ 2671-2680.

For limited purpose of defending claims arising out of ATF FIRE Strike Force activity, state or local law enforcement 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. § 2671. See 5 U.S.C. & 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. § 2679 (b) (1), the Attorney General or his designee may certify that an individual defendant acted within the scope of this employment at the time of the incident giving rise to the suit. Id., 28 U.S.C. §2679 (d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. 28 U.S.C. § 2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suits in his 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. § 2679 (d)(3).

Liability for any negligent or willful acts of ATF FIRE Strike Force 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. § 1983 for state and local 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).

ATF FIRE Strike Force officers 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. 28 C.F.R. §§ 50.15, 50.16.

An employee may be provided representation “when the actions for which representations is requested reasonably appear to have been preformed within the scope of the employee’s employment and the Attorney General or (his) designee determines that providing representation would otherwise be in the interest of the United States” 28 C.F.R. § 50.15(a).

If an ATF FIRE Strike Force Officer is 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. § 50.15 (c) (4). The criteria for payment are substantially similar to those used to determine whether the federal employee is entitled to DOJ representation under 28 C.F.R. § 50.15 (a).

## **XI. DURATION**

This MOU shall remain in effect until terminated as specified below. Continuation of this MOU shall be subject to the availability of necessary funding. This agreement may be modified at any time by written consent of all involved agencies. This agreement may be terminated at any time by any of the participating agencies. The participating agencies may withdraw from this ATF agreement at any time by providing a 30-day written notice of its intent to withdraw to all other participating agencies. Upon the termination of the ATF FIRE Strike Force and the MOU, all equipment will be returned to the supplying agencies.

## **XII. MODIFICATIONS**

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

### **XIII. ATTACHMENTS**

- A. Project Safe Neighborhood Funding Regulations
- B. ATF Order 8620.1, Task Force Guidelines
- C. ATF Order 3550.1A, Operation of Informants and Cooperating Witnesses,
- D. ATF Form 3210.7, ATF Operational Plan,
- E. ATF Order 3210.1A, Operational Planning
- F. ATF Order 3220.1, Use of Force
- G. ATF Order 3000.1E Criminal Enforcement, General Enforcement

**SIGNATORIES**

**For the United States Attorney's Office:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**For the Bureau of Alcohol, Tobacco, Firearms, and Explosives:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**For the Miami-Dade Police Department:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**For the Florida Department of Law Enforcement:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**For the U. S. Marshals Service:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

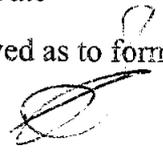
**For the Miami Gardens Police Department:**

  
\_\_\_\_\_  
Signature

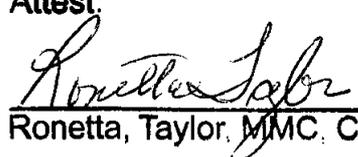
\_\_\_\_\_  
Date

*City Manager*  
\_\_\_\_\_  
Title

Approved as to form and legal sufficiency

  
\_\_\_\_\_  
Sonja K. Dickens, City Attorney

**Attest:**

  
\_\_\_\_\_  
Ronetta, Taylor, MMC, City Clerk