

RESOLUTION NO. 13-72

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE FEDERAL BUREAU OF INVESTIGATION MIAMI AREA CORRUPTION TASK FORCE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, a Memorandum of Understanding with the Federal Bureau of Investigation (FBI) Miami Area Corruption Task Force (MACTF) delineates the responsibilities of its participants, maximizes inter-agency cooperation and formalizes relationships between the participating agencies for police guidance, planning, training, public and media relations; and

WHEREAS, the mission of the MACTF is to identify significant Public Corruption investigations throughout the Southern District of Florida (SDFL). The MACTF will be a specialized group of investigators and prosecutors responsible for the identification, investigation, prosecution, and forfeiture of all assets involved in such cases; and

WHEREAS, Staff respectfully requests that the City Council authorize the City Manager to negotiate and enter into a Memorandum of Understanding (Exhibit "A") with the FBI MACTF for the purposes stated in the above "whereas" clauses.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:

Section 1. The City Council hereby authorizes the City Manager to negotiate and enter into a Memorandum of Understanding (Exhibit "A") with the FBI MACTF for the purposes stated in the above "whereas" clauses.

Section 2. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Councilwoman Ruiz who moved its adoption. The motion was seconded by Councilwoman Rodriguez and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Bettina Rodriguez-Aguilera	Yes
Councilwoman Christi Fraga	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	Yes

PASSED AND ADOPTED this 25 day of JUNE, 2013.



LUIGI BORIA, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE SOLE USE OF THE CITY OF DORAL.



JOHN HERIN, CITY ATTORNEY

EXHIBIT “A”

MIAMI AREA CORRUPTION TASK FORCE MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding between the Federal Bureau of Investigation; City of Miami Police Department; United States Attorney's Office - Southern District of Florida; United States Department of Housing and Urban Development - Office of Inspector General; United States Department of Transportation - Office of Inspector General; Internal Revenue Service - Criminal Investigation Division; City of Hialeah Police Department; United States Environmental Protection Agency Office of Inspector General; Miami Beach Police Department; Miami-Dade Police Department; Florida Department of Corrections; City of Doral Police Department; to establish the Miami Area Corruption Task Force (MACTF).

1) PARTIES

This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation (FBI) and the aforementioned agencies.

2) AUTHORITIES

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

3) PURPOSE

The purpose of this MOU is to delineate the responsibilities of the MACTF participants, maximize inter-agency cooperation, and formalize relationships between the participating agencies for policy guidance, planning, training, and public / media relations. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law, or otherwise, by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof. Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation which exists between the participating agencies.

4) MISSION

The mission of the MACTF is to identify significant Public Corruption investigations throughout the Southern District of Florida (SDFL). The MACTF will be a specialized group of investigators and prosecutors responsible for the

identification, investigation, prosecution, and forfeiture of all assets involved in such cases. The MACTF will seek to identify and develop new cases of corruption by both Public Officials and Law Enforcement Officers on the Federal, State, and Local levels of government.

The MACTF will enhance the effectiveness of Federal/State/Local law enforcement resources through a well-coordinated initiative seeking the most effective investigative and prosecutive avenues by which to convict and incarcerate those involved in the aforementioned crimes. Participation in the MACTF will allow the participating agencies to utilize the task force as a force multiplier.

5) SUPERVISION AND CONTROL

A. Supervision

Overall supervision of the personnel on the MACTF shall be the shared responsibility of the participating agencies.

The Special Agent in Charge (SAC) of the Miami Division shall designate one FBI Supervisory Special Agent (SSA) to have direct and daily responsibility for all FBI personnel and FBI investigative matters pertaining to the MACTF.

Each participating agency will provide at least one agent/officer to act as Task Force Coordinator (TFC). The day-to-day operation and administrative control of the MACTF will be the responsibility of the TFC from each agency. Responsibility for the conduct of the MACTF participants, both personally and professionally, shall remain with the respective agency heads.

Each MACTF member will be subject to the personnel rules, regulations, laws, and policies applicable to those of their respective agencies. FBI participants will continue to adhere to the Bureau's ethical standards and will remain subject to the Supplemental Standards of Ethical Conduct for employees of the Department of Justice.

Each MACTF member will continue to report to his or her respective agency supervisor for non-investigative administrative matters not detailed in this MOU.

Continued assignment of personnel to the MACTF will be based upon performance and will be at the discretion of the respective agency heads/supervisors. Each participating agency will, upon request, be provided with an update as to the accomplishments of the MACTF.

B. Case Assignments

The FBI SSA with designated oversight for FBI investigative and personnel matters will be responsible for opening, monitoring, directing, and closing FBI investigations pertaining to the MACTF in accordance with existing FBI policy and the applicable United States Attorney General's Guidelines.

Assignments of cases to personnel will be based on, but not limited to, experience, training, and performance, in addition to the discretion of the TFC with designated oversight for investigative and personnel matters.

For FBI administrative purposes, MACTF cases will be entered into the relevant FBI computer system.

MACTF members will have equal responsibility for each case assigned. MACTF personnel will be totally responsible for the complete investigation from predication to resolution.

C. Resource Control

Specific control of MACTF resources, including personnel, and the continual dedication of MACTF resources shall be retained by the participating agency supervisors, who will be kept fully apprised of all investigative developments by their respective subordinates.

6) OPERATIONS

A. Investigative Exclusivity

It is agreed that matters designated to be handled by the MACTF will not knowingly be subject to non-MACTF law enforcement efforts by any of the participating agencies. It is incumbent on each agency to make proper internal notification regarding the MACTF's existence and areas of concern.

It is agreed that there is to be no unilateral action taken on the part of the FBI or participating agencies relating to MACTF investigations or areas of concern. All law enforcement actions will be coordinated and cooperatively carried out.

B. Informants

MACTF members may operate their confidential informants (CI's) and cooperating witnesses (CW's) pursuant to the guidelines of his/her respective agency.

The disclosure of FBI informants to non-MACTF members will be limited to those situations where it is essential to the effective performance of the MACTF. These disclosures will be consistent with applicable FBI guidelines.

Non-FBI MACTF members may not make any further disclosure of the identity of an FBI informant, including to other members of the MACTF. No documents which identify, tend to identify, or may indirectly identify an FBI informant may be released without prior FBI approval.

In those instances where a participating agency provides an informant, the FBI may, at the discretion of the SAC, become solely responsible for the informant's continued development, operation, and for compliance with necessary administrative procedures regarding operation and payment as set forth by the FBI.

The United States Attorney General's Guidelines and FBI policy and procedure for operating FBI informants and cooperating witnesses (CW's), shall apply to all FBI informants and CW's that are opened and operated by the FBI in furtherance of MACTF investigations. Documentation of, and any payments made to, FBI informants and CW's shall be in accordance with FBI policy and procedure.

Operation, documentation, and payment of solely state, county, or local informants and CW's opened and operated by Non-FBI MACTF members in furtherance of MACTF investigations must be in accordance with the respective agencies' rules and regulations. Documentation of state, county, or local informants and CW's opened and operated in furtherance of MACTF investigations shall be maintained at an agreed upon location.

C. Investigative Methods/Evidence

For cases assigned to an FBI Special Agent or in which FBI informants or cooperating witnesses are utilized, the parties agree to conform to Federal standards concerning evidence collection, processing, storage, and electronic surveillance.

In all cases assigned to state, county, or local law enforcement participants, the parties agree to utilize Federal standards pertaining to evidence handling and electronic surveillance activities to the greatest extent possible. However, in situations where the statutory or common law of the state is more restrictive than the comparable Federal law, the investigative methods employed by state and local law enforcement agencies shall conform to the requirements of such statutory or common law pending a decision as to 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 the FBI.

All physical evidence, including original tape recordings (audio and video), will be maintained pursuant to the Federal Rules of Evidence. As such, evidence acquired in a MACTF case, which is assigned to an agent representing a Federal agency, may either be maintained by that agency leading the respective investigation or the FBI. All other evidence acquired will be processed and maintained in accordance with FBI policies and procedures.

D. Undercover Operations

All MACTF undercover operations will be conducted and reviewed in accordance with FBI guidelines and the Attorney General's Guidelines on FBI Undercover Operations. All participating agencies may be requested to enter into an additional MOU if a member of the participating agency is assigned duties which require the officer to act in an undercover capacity.

E. Reports and Records

All FBI investigative reporting will be prepared in compliance with existing FBI policy. When permitted by law, copies of pertinent documents created by each member of the MACTF will be made available for inclusion in the respective investigative agencies' files as appropriate. Only one report memorializing the results of any investigative action should be created to avoid duplicated reports. The production of investigative reports should be distributed equitably among the participating investigators.

A copy of all reports prepared by task force members will be maintained at an FBI approved location; original FBI documents will be maintained by the FBI.

MACTF investigative records maintained at the Miami office of the FBI will be available to all MACTF members, as well as their supervisory and command staff subject to pertinent legal, administrative and/or policy restrictions.

Placement of all or part of said information into participating agency files rests with the discretion of supervisory personnel of the concerned agencies. No FBI generated investigative record will be converted into an electronic format or stored in a database of a non-FBI participating agency.

Classified information and/or documents containing information that identifies or tends to identify an FBI informant shall not be placed in the files of participating agencies unless appropriate FBI policy has been satisfied.

7) INFORMATION SHARING

No information possessed by the FBI, to include information derived from informal communications by the Task Force Coordinator (TFC) to personnel of the FBI, may be disseminated by the TFC to non-MACTF personnel without the permission of the TFC's designated FBI MACTF Supervisor and in accordance with the applicable laws and internal regulations, procedures or agreements between the FBI and the Participating Agencies that would permit the Participating Agencies to receive that information directly. Likewise, the TFC will not provide any Participating Agency information to the FBI that is not otherwise available to it unless authorized by appropriate Participating Agency officials.

The Parties acknowledge that the information involved in this MOU may identify U.S. persons whose information is protected by the Privacy Act of 1974 and/or Executive Order 12,333 (or any successor executive order). All such information will be handled lawfully pursuant to the provisions thereof.

The Parties agree to review and make appropriate changes, if any, to their privacy compliance documents, including applicable Privacy Act system of records notices and notices required by the Privacy Act (5 U.S.C. § 552a(e)(3), in advance of the implementation of this MOU to ensure that the scope and routine uses of such notices permit the collection, maintenance, and sharing of personal information as set forth in this MOU.

Before using personally identifiable information (PII) shared pursuant to this MOU, the recipient agency will make reasonable efforts to ensure that the information is accurate, timely, relevant and complete.

The non-Federal Parties acknowledge that the information involved in this MOU in possession of a non-Federal TFC may be subject to chapter 119 of the Florida Statutes, the Public Records Law. Absent a statutory exception, this information may be open to review and inspection by the public.

The FBI is providing access to information from its records with the understanding that in the event the recipient becomes aware of any inaccuracies in the data, the recipient will promptly notify the FBI so that corrective action can be taken. Similarly, if the FBI becomes aware that information it has received pursuant to this MOU is inaccurate, it will notify the contributing Party so that corrective action can be taken.

The IRS is responsible for tax administration and the investigation of criminal violation of the Internal Revenue Code, (Title 26, United States Code). Internal Revenue Code, Section 6103, restricts the disclosure of tax

or tax return information except as provided by Section 6103.

Section (c) of the Privacy Act, 5 U.S.C. § 552a(c), requires that an agency maintain the ability to provide an accounting for covered disclosures made outside the disclosing agency. The accounting must include the date, nature, and purpose of each disclosure and the name and address of the person or agency to which the disclosure is made. The accounting must be maintained for five years after the disclosure for which the accounting is required or for the life of the record, whichever is longer. To the extent that this provision of the Privacy Act is applicable to disclosures of PII made under the MOU, each Party will be responsible for compliance.

Each Party will immediately report to the other Party each instance in which data received from the other Party is used, disclosed, or accessed in an unauthorized manner (including any data losses or breaches).

8) PROSECUTIONS

MACTF investigative procedure is to conform to the requirements for Federal Prosecution.

A determination will be made on a case-by-case basis whether the prosecution of MACTF cases will be at the state or Federal level. This determination will be based on the evidence obtained and a consideration of which level of prosecution would be of the greatest benefit to the overall objectives of the MACTF.

In the event that a state or local matter is developed that is outside the jurisdiction of the FBI or it is decided to prosecute a MACTF case at the state or local level, the FBI agrees to provide all relevant information to state and local authorities.

Whether to continue and/or conduct additional investigation of the state or local crimes involved will be at the sole discretion of the respective state and local authorities.

9) DEADLY FORCE AND SHOOTING INCIDENT POLICIES

Members of the MACTF will follow their own agency's policy concerning firearms discharge and use of deadly force. Any incident will be investigated by the respective agency.

10) DEPUTATIONS

Local and state law enforcement personnel designated to the MACTF, subject to a limited background inquiry, may be sworn as Federally deputized Special Deputy United States Marshals, with the FBI securing the required deputation authorization. These deputations should remain in effect throughout the tenure of each investigator's assignment to the MACTF or until the termination of the MACTF, whichever comes first.

Administrative and personnel policies imposed by the participating agency will not be voided by deputation of their respective personnel.

11) PROPERTY AND EQUIPMENT

Property utilized by the MACTF in connection with authorized investigations and/or operations and in the custody and control and used at the direction of the MACTF, will be maintained in accordance with the policies and procedures of the agency supplying the equipment.

12) FUNDING

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties hereto of the tasks and methods for performing the tasks described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the above language in no way implies that Congress will appropriate funds for such expenditures.

13) FORFEITURES

The FBI shall be responsible for the processing of assets seized for Federal forfeiture in conjunction with MACTF operations.

Asset forfeitures will be conducted in accordance with Federal law, and the rules and regulations set forth by the FBI and Department of Justice (DOJ). Where permitted by law, forfeiture attributable to MACTF investigations will be equitably distributed among the agencies participating in the investigations, as determined by each agencies relative contribution to the investigation.

14) DISPUTE RESOLUTION

In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the MACTF's objectives.

The parties agree to attempt to resolve any disputes regarding jurisdiction, case assignments, workload, etc., at the field level first before referring the matter to supervisory personnel for resolution.

15) MEDIA RELEASES

All media releases and statements will be mutually agreed upon and jointly handled according to FBI and participating agency guidelines.

All Press releases will be handled by the United States Attorney's Office. No release will be issued without the participating agencies final approval.

16) SECURITY CLEARANCES

State and local members of the MACTF, as well as appropriate supervisory personnel responsible for these individuals, can apply for and receive a Secret Security Clearance granted by the FBI. MACTF members from other Federal agencies can obtain a Top Secret (TS) clearance from their agency and have this information passed to the FBI. No one will have access to sensitive or classified documents or materials or FBI space without a valid security clearance and the necessary "need-to-know". Pursuant to the provisions of Section 1.2 of Executive Order 12968, Detailees are required to have signed a nondisclosure agreement approved by the FBI's Security Division. Pursuant to the Federal law, MACTF members are strictly forbidden from disclosing any classified information to individuals who do not possess the appropriate security clearance and "need-to-know".

17) 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. The FBI 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 the limited purpose of defending claims arising out of MACTF activity, state or local law enforcement officers who have been specially 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 1988 (commonly known as the Westfall Act), 28 U.S.C. § 2679(b)(1) the Attorney General or his/her designee may certify that an individual defendant acted within the scope of his/her 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 this office or employment at 28 U.S.C. § 2679(d)(3).

Liability for negligent or willful acts of MACTF employees 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).

MACTF officers may request representation by the U.S. DOJ and their respective agencies 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 representation is requested reasonably appear to have been performed within the scope of the employee’s employment and the Attorney General

or his/her designee determines that providing representation would otherwise be in the interest of the United States at 28 C.F.R. § 50.15(a).

A MACTF officer's written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI division coordinating the MACTF. The CDC will then forward the representation request to the FBI's Office of the General Counsel (OGC) together with a Letterhead memorandum concerning the factual basis for the lawsuit. FBI/OGC will then forward the request to the Civil Division of DOJ together with an agency recommendation concerning scope of employment and Department representation. 28 C.F.R. § 50.15(a)(3).

If a MACTF 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 a Federal employee is entitled to DOJ representation under 28 C.F.R. § 50.15(a).

18) DURATION

The term of this MOU is for the duration of the MACTF's operations, but may be terminated at any time upon written mutual consent of the agencies involved.

Any participating agency may withdraw from the MACTF at any time by written notification to the SSA with designated oversight for investigative and personnel matters or program manager of the MACTF at least 30 days prior to withdrawal.

Upon termination of this MOU, all equipment provided to the MACTF will be returned to the supplying agency/agencies. In addition, when an entity withdraws from the MOU, the entity will return equipment to the supplying agency/agencies. Similarly, remaining agencies will return to a withdrawing agency any unexpended equipment supplied by the withdrawing agency during any MACTF participation.

19) 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.

**Miami Area Corruption Task Force
Memorandum of Understanding
Addendum to Include
City of Doral Police Department**

Special Agent in Charge
Federal Bureau of Investigations
Miami Division

Date

Police Chief
City of Doral Police Department

Date

City Attorney
City of Doral Police Department

Date