

**MEMORANDUM OF UNDERSTANDING REGARDING THE
NIBIN ENFORCEMENT SUPPORT SYSTEM (NESS)**

**Memorandum of Understanding
between
Yakima Police Department
and the
Bureau of Alcohol, Tobacco, Firearms and Explosives**

Article I. Purpose and Authority

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is extending their on-going commitment to the law enforcement community by providing participating agencies with access to National Integrated Ballistic Information Network (NIBIN) data. The agency will be able to access NIBIN data through the NIBIN Enforcement Support System (NESS) via an Internet connection. The NESS application allows ATF to collect, analyze, refer, and track NIBIN and other crime gun data. Access will facilitate information sharing and provide near real-time intelligence to participating agencies. The mission of the program is to reduce firearms violence through aggressive identification, investigation, and prosecution of shooters and their sources of crime guns.

ATF has made a concerted effort to leverage existing information technology to better assist law enforcement agencies in the investigation of shooters and other armed violent offenders, prohibited persons possessing firearms and sources of crime guns. This Memorandum of Understanding (MOU) establishes and defines a partnership between the parties that will result in ATF NESS installation, operation, and administration for the dissemination of crime gun data to enhance the efforts of law enforcement to integrate resources to reduce firearms violence, identify shooters and sources of crime guns, and refer them for prosecution.

This MOU is entered into by the U.S. Department of Justice (DOJ), ATF, and Yakima Police Department, hereinafter collectively referred to as "the parties," and with Yakima Police Department referred to as the "NESS Partner Agency." This MOU will refer to individuals employed and authorized for NESS access by the NESS Partner Agency as "Users".

This MOU is established pursuant to the authority of the participants to engage in activities related to the investigation and suppression of violent crimes involving firearms. ATF's authority is derived from, among other things, 28 U.S.C. § 599A, 18 U.S.C. § 3051, 27 CFR § 0.130, and, specifically, the Gun Control Act of 1968, 18 U.S.C. Chapter 44 and the National Firearms Act, 26 U.S.C. Chapter 53. The parties enter into this MOU pursuant to 31 U.S.C. § 6305.

Article II. Background

ATF is a law enforcement organization within DOJ with unique responsibilities dedicated to reducing violent crime and protecting the public. ATF recognizes the role that firearms play in violent crimes and pursues an integrated enforcement and regulatory strategy. Investigative priorities focus on armed violent offenders and career criminals, armed narcotics traffickers, violent gangs, and domestic and international arms traffickers.

Article III. Scope

The purpose of this MOU is to establish an interagency agreement governing the access and utilization of NESS. In addition, the MOU will designate a primary and alternate point of contact (POC) for the NESS Partner Agency. The agency POC will ensure adherence to the MOU between ATF and NESS Partner Agency Users. These POCs shall also identify individuals from their respective agencies who will require system access, periodically validate the list of Users, and to notify an ATF POC immediately if it becomes necessary to revoke or suspend a User's account.

Article IV. Interagency Communications

The Parties agree that a principal POC within each organization shall coordinate all communications and tasks under this MOU. To ensure access is permitted to all NESS Partner Agency data, an Originating Agency Identifier (ORI Code) must be provided for each ORI code used by the NESS Partner Agency. The ATF POC can assist the NESS Partner Agency in determining what ORI Codes are appropriate. The designated POCs shall be as follows:

ATF Field Division		
Name	Seattle Field Division, Yakima Field Office	
Address	1209 Ahtanum Ridge Drive Suite C Union Gap, WA 98903	
	Designated ATF Primary POC	Designated ATF Alternate POC
Name:	Nicholas Kingston	James Butler
Title:	A/RAC	S/A
Email Address:	nicholas.kingston@atf.gov	james.butler@atf.gov
Phone #:	281-906-1922	509-496-7116

NESS Partner Agency		
Name	Yakima Police Department	
Address	200 South Third Street Yakima, WA 98901	
	Designated NESS Partner Agency Primary POC	Designated NESS Partner Agency Alternate POC
Name:	Dustin Soptich	Thomas Garza
Title:	Sergeant	Detective
Phone #:	509-424-2252	509-424-1968
Email Address:	dustin.soptich@yakimawa.gov	thomas.garza@yakimawa.gov
Date of Birth:	30/	02/
Signature:	Dustin Soptich	Thomas Garza
Date:	12/20/21	12/20/21
NESS Partner Agency ORIs		
WA0390500		

Article V. Responsibilities and Procedures

In becoming an approved NESS Partner Agency of the NESS application, the involved parties hereby acknowledge and accept the following responsibilities and procedures:

1. **Responsibilities of the NESS Partner Agency.** The NESS Partner Agency shall:
 - a. Appoint primary and alternate POCs within your agency (see table above). The appointed individuals will be responsible for creating, coordinating, and maintaining a list of all personnel, and determining the access levels for Users within the Partner Agency who will require access to NESS.
 - b. The designated POC(s) will immediately notify ATF in the event that a User's account needs to be suspended or revoked for any number of reasons, including (but not limited to) employee transfer, retirement, or release from employment.
 - c. Complete a Request for Change of Agency Point of Contact (POC) Form if the POC changes.
 - d. Agree to make every effort to provide complete and accurate information including investigative reports and data related to NIBIN linked shootings and gun recoveries, to the fullest extent allowed by law. This includes general event data including case numbers, dates,

locations, associated persons, etc. Partner Agencies that make a commitment to comprehensive data sharing with ATF will be provided an information platform for developing the best local investigative strategies for their community in the reduction of firearm related crime and violence.

- e. Share the results of NIBIN leads/hits including arrest and prosecution data with ATF via the NESS application.
- f. Provide a list of ORI numbers for the NESS Partner Agency (see table above), which will allow NESS to associate Users to the correct NESS Partner Agency NIBIN data. If the NESS Partner Agency needs to add or remove ORI numbers, it shall submit a completed Amendment of Originating Agency Identifier (ORI) Form.

2. Responsibilities of the Bureau of Alcohol, Tobacco, Firearms and Explosives:

a. The ATF Field Division shall:

- 1) Appoint primary and alternate ATF POCs.
- 2) Coordinate all communications and tasks listed under this MOU and serve as a liaison between the NESS Partner Agency POC and ATF's Firearms Operations Division (FOD).
- 3) Ensure data sharing processes between ATF and the NESS Partner Agency.

b. FOD shall:

- 1) Maintain the NESS application and share NIBIN Leads with the NESS Partner Agency.
- 2) Upon receipt of this signed MOU, provide detailed instructions to the field division POCs on the process of requesting and receiving NESS User access for the NESS Partner Agency.
- 3) Maintain a copy of this MOU along with any associated User agreements.
- 4) Review all applications for NESS User access in a timely manner and facilitate the provisioning of accounts.
- 5) Upon receipt of a request for account revocation, FOD will immediately deactivate said User account.

Article VI. Conditions

Both ATF and the NESS Partner Agency acknowledge their understanding that the NESS application is "LAW ENFORCEMENT SENSITIVE" and intended "FOR OFFICIAL LAW ENFORCEMENT USE ONLY." Failure to protect and safeguard such data from loss, misuse, or unauthorized access could adversely affect law enforcement operations, including those areas related to officer safety, as well as, the fair and equitable administration of justice, and the privacy of individuals.

The Federal government may monitor and audit usage of this system, and all persons are hereby notified that use of this system constitutes consent to such monitoring and auditing. Unauthorized attempts to upload information and/or change information on NESS are strictly prohibited and are subject to prosecution under the Computer Fraud and Abuse Act of 1986 and Title 18 U.S.C. §§ 1001 and 1030.

The parties agree that premature disclosure of NESS data can reasonably be expected to interfere with pending or prospective law enforcement proceedings. It is agreed that the law enforcement sensitive firearms information generated pursuant to this agreement shall not be disclosed to a third party without the consent of both parties of this agreement, subject to State and Federal law. The parties agree to notify all other parties to the MOU prior to the release of any sensitive firearms information to a third party under State or Federal law. The parties acknowledge that NESS shall only be used for law enforcement purposes.

The parties agree to define a "crime gun" as "any firearm illegally possessed, used in a crime, or suspected by law enforcement officials of having been used in a crime."

The parties agree that it is the public interest to enhance cooperation among Federal, State, Tribal, and local enforcement and public safety agencies with regard to reducing firearms violence, identify shooters, and their sources of crime guns. The NESS Partner Agency acknowledges that ATF and the NESS program will assist Federal, State, Tribal, and local law enforcement and public safety agencies in combatting firearms violence.

Article VII. Applicable Laws

The applicable statutes, regulations, directives, and procedures of the United States, DOJ, and ATF shall govern this MOU and all documents and actions pursuant to it. Nothing in this MOU will prevail over any Federal law, regulation, or other Federal rule recognized by ATF. This MOU is not a funding document. All specific actions agreed to herein shall be subject to funding and administrative or legislative approvals.

Article VIII. Modifications and Terminations

This MOU shall not affect any pre-existing or independent relationships or obligations between the parties. If any provision of this MOU is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

Amendments to this MOU are effective upon the date of the last signature on the Amendment, by the authorized representative(s) of the Parties. This MOU may be amended or modified only by written agreement. Parties to this MOU may terminate their participation at any time upon written notification of their intent to withdraw to the other Party. Termination of the MOU by either Party will result in the revocation of all NESS accounts established under this agreement.

If either Party terminates this MOU, ATF will retain its interest in the electronically stored information contained in the NESS database. After termination ATF agrees to provide to the NESS Partner Agency continued access to the NIBIN data associated with cases originating from the NESS Partner Agency, subject to Federal law and regulations.

Article IX. Liability

The NESS Partner hereby agrees to assume full and sole liability for any damage, injury, or harm of any sort caused by operation and use of NESS or related to the use and interpretation of the information contained in, processed by, or extracted from any database subject to this agreement and the protocols and procedures of the NESS program to the fullest extent allowed by law.

No third party is intended to benefit or otherwise claim any rights whatsoever under this MOU. The rights and obligations set out in the MOU run between the signatories to this MOU only.

Article X. User Access

Prior to gaining NESS access, each User shall execute a User Agreement and Rules of Behavior, acknowledging that the operations described in this agreement are subject to audit by the ATF; the U.S. Department of Justice; Office of the Inspector General; the General Accounting Office; and other auditors designated by the U.S. Government.

Article XI. Costs

The use of the NESS system is provided without charge to the NESS Partner Agency. ATF is not responsible for costs associated with the NESS Partner Agency's computer hardware, computer software (other than the NESS application), Internet connection(s), or other communications requirements associated with their use of the NESS application. ATF will maintain access to the NESS application furnished to the NESS Partner Agency and shall facilitate repairs to the NESS application in an expeditious manner, subject to availability and funding. However, ATF will not assume maintenance or repairs required as the result of improper use of the NESS application or enhancements to the NESS application, as well as repairs to local computer hardware, computer software, or communications problems. ATF will not fund the costs associated with a NESS Partner Agency who chooses to manipulate their internal data structure for data communication and transfer reasons.

Article XII. Conclusion

It is the intent of the signatories that this MOU ensures coordination, cooperation and the mutual conduct of enforcement and research activities relative to the NESS application. The result of this cooperation and coordination will be the successful prosecution of illegal firearm crimes in State

and Federal jurisdictions as well as the development of an accurate picture of violent crime and the inception of new strategies to effectively disrupt the cycle of violence.

This MOU is effective upon the date of the last signature by the authorized representative of the parties and shall remain in effect for an unspecified time, wherein the authorized POC maintains that position within the participating agency, unless terminated earlier in writing by either Party. Amendments to this MOU are effective upon the date of the last signature on the Amendment, by the authorized representative of the Parties. This MOU may be amended or modified only by written agreement. Parties to this MOU may terminate their participation at any time upon written notification of their intent to withdraw to all other Parties in the MOU. Termination of the MOU by either Party will result in the revocation of all NESS accounts established under this agreement.

ATF and the NESS Partner hereby agree to abide by the terms and conditions of this MOU, including any appendices, and all policies of the NESS Program. In witness whereof, the parties have hereby executed this MOU.

<small>Digitally signed by Matt Murray DN: cn=Matt Murray, o=City of Yakima, ou=Yakima Police Department, email=matt.murray@yakima.gov, c=US Date: 2021.12.07 12:03:23 -08'00'</small>	<u>12/7/21</u>	<small>Digitally signed by JONATHAN MCPHERSON Date: 2021.12.21 12:39:21 -08'00'</small>	<u>12/21/21</u>
<u>Matt Murray</u>	Signature	<u>JONATHAN MCPHERSON</u>	Signature
	Date		Date
(Chief Law Enforcement or Public Safety Official)		(ATF – Special Agent in Charge)	

<u>Matt Murray</u>	<u>Jonathan McPherson</u>
Name	Name

<u>Police Chief</u>	<u>Special Agent in Charge</u>
Title	Title

<u>Yakima Police Department</u>	<u>Seattle Field Division</u>
NESS Partner Agency	ATF Field Division

<small>Digitally signed by Bob Harrison Date: 2021.12.20 09:00:14 -08'00'</small>	<small>Digitally signed by JONATHAN MCPHERSON Date: 2021.12.21 12:40:09 -08'00'</small>
<u>Bob Harrison</u>	<u>JONATHAN MCPHERSON</u>
Signature	Signature
(City Manager)	
	Date

<u>Robert Harrison</u>	<u>Katherine Eberhardt</u>
Name	Name

<u>Yakima City Manager</u>	<u>Chief, Firearms Operations Division</u>
Title	Title

CITY CONTRACT NO: 2021-183
RESOLUTION NO: R-2021-154