

FOR OFFICIAL USE ONLY

MEMORANDUM OF UNDERSTANDING
BETWEEN
TEXAS JOINT COUNTERDRUG TASK FORCE
AND
PFLUGERVILLE POLICE DEPARTMENT

SUBJECT: Memorandum of Understanding for Operational Support from Texas Joint Counterdrug Task Force for Fiscal Year 2020

1. REFERENCES:

- a. NGR 500-2/ANGI 10-801, National Guard Counterdrug Support, 29 Aug 08
- b. CNGBI 3100.01A, National Guard Counterdrug Support, 22 June
- c. Title 32, United States Code §112, National Guard Drug Interdiction and Counter-Drug Activities, 3 Jan 12
- d. Title 32, United States Code §502(f), National Guard Training or Other Duty in Addition to Drill and Annual Training
- e. Memorandum, National Guard Bureau, 2 August 2017, subject: FY 2018 Counterdrug Criminal Analyst Guidance

2. PURPOSE: This Memorandum of Understanding (MOU) sets forth the agreed terms and conditions of support to a Law Enforcement Agency (LEA) by the Joint Counterdrug Task Force (JCDF) at the direction of the Counterdrug Coordinator (CDC). In general, the JCDF will provide counter-drug support to federal, state, and local law enforcement agencies when requested in writing, subject to funding, and when a drug nexus is apparent. 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. It is understood among the parties to this agreement that LEA requests for Counterdrug support may include multi-agency, federal, state, and local cooperative law enforcement efforts.

3. AUTHORITY: This MOU is entered into by the Texas Joint Counterdrug Task Force pursuant to the authority contained in Title 32, United States Code §112 and Title 32 United States Code §502(f) and using guidance contained in NGR 500-2/ANGI 10-801.

4. PERIOD OF MOU: This MOU is effective for the following period:

Start Date: 1 January 2020 End Date: 30 September 2020

FOR OFFICIAL USE ONLY

5. DRUG NEXUS: By executing this MOU, the supported LEA certifies that JCDF personnel will only engage on projects or operations that have a drug nexus.

6. PLANNED DEPLOYMENT OF PERSONNEL AND EQUIPMENT:

a. Personnel: The Joint Counterdrug Task Force is not a LEA and JCDF personnel are not law enforcement officers.

(1) Request for Support: As the JCDF is not a LEA; any involvement of the JCDF in support of a LEA must be in response to a request for support.

(2) Support Role: It is clearly understood by both parties to this agreement that JCDF personnel are not sworn police officers and those personnel who are assigned to work with the LEA are assigned in a support role.

(3) Transfers of JCDF Personnel: While the JCDF will attempt to provide continuity by leaving JCDF personnel in place, movement of JCDF personnel is at the sole discretion of the CDC.

b. Equipment:

(1) The loaning of JCDF equipment to the LEA will be in accordance with applicable laws and regulations and is at the discretion of the CDC. Likewise, the loaning LEA equipment to the JCDF is at the discretion of the LEA.

(2) All loans of equipment will be documented in writing with at least the following information: full description of the item(s); condition at the time of the loan; length of time of the loan; location to which the item is to be returned

(3) Both parties to this agreement will contact the other party as soon as possible to report any damage caused to loaned equipment.

(4) Unless contrary to law or regulation, each party agrees to be financially responsible for any damage to the equipment of the other party, caused by the borrowing party's personnel through negligent conduct or willful misconduct.

7. REPORTING PROCEDURES:

a. Joint Counterdrug Task Force personnel will input statistical results into Full Time Support Management Control System (FTSMCS) for inclusion in required reports/records.

FOR OFFICIAL USE ONLY

b. The JCDF will maintain compliance with Intelligence Oversight and Operational Security on all reporting in accordance with NGR 500-2/ANGI 10-801.

c. Information provided to the JCDF by the LEA will not be released to non DOD sources unless in accordance with supported duties in the taskforce and approved by the custodian of the information.

8. COMMAND AND CONTROL:

a. Joint Counterdrug Task Force personnel will be under the command and control of the CDC at all times. The supported LEA will notify the CDC immediately in the event that any JCDF personnel are injured or suspected of misconduct. Personnel may be recalled at any time due to emergencies or other operational necessities. The CDC has the sole discretion to approve or deny modifications to a LEA support request.

b. Joint Counterdrug Task Force personnel will be under the direct supervision of the supported agency for all assigned duties. Joint Counterdrug Task Force personnel will also maintain a military chain of command. The military chain of command will take precedence at all times.

c. The JCDF will handle all personnel management processes.

9. SCOPE OF OPERATIONS:

a. Joint Counterdrug Task Force personnel will operate in accordance with a LEA support request as approved by the CDC.

b. Requests for information (RFI) received from external entities.

(1) Joint Counterdrug Task Force personnel may be asked to review RFIs from Geographic Combatant Commands and subordinate commands. We request that your agency support these requests as necessary. Your agency's rules for dissemination will be implemented at all times. This supports a whole of government approach to counter threats to U.S. national security posed by drug smuggling and other illicit activities while balancing limited DoD resources.

(2) Joint Counterdrug Task Force personnel assigned to PFLUGERVILLE POLICE DEPARTMENT under the authority of this MOU may be asked to support an RFI formally submitted by an authorized component of a Combatant Command or subordinate entity. Information maintained, entrusted to, stored, collated, or collected by PFLUGERVILLE POLICE DEPARTMENT and/or its law enforcement partners shall at-all-times be controlled and protected from improper disclosure or dissemination.

FOR OFFICIAL USE ONLY

(3) When a RFI is received by the National Guard or its members and before any information is gathered, reviewed, aggregated and/or disclosed, the National Guard will receive approval from a AGENCY ASAC or FIM (or his/her designee) that the information can be collected or provided. The PFLUGERVILLE POLICE DEPARTMENT ASAC or FIM (or his/her designee) may also require that any final product prepared by National Guard personnel be submitted for review by PFLUGERVILLE POLICE DEPARTMENT before it is disclosed or disseminated.

(4) Information provided in response to an RFI shall be limited to statistical or numeric data collection or general compilations or generic aggregations of information. Any information provided shall be devoid of personally identifiable data, case-sensitive or classified information, investigative techniques or methods, and/or any identifiable information concerning or arising from an open case or pending prosecution (including matters which may be on appeal).

10. FORCE PROTECTION AND USE OF FORCE:

a. Prior to beginning the mission, the supported LEA will provide the JCDF with all known information regarding potential or actual threats and hazards to personnel and equipment. Joint Counterdrug Task Force personnel will operate under and comply with the RUF orders established by the The Adjutant General for the State of Texas. Only specifically authorized JCDF personnel shall carry issued weapons. Each LEA will follow their own policy concerning firearms discharge and use of deadly force. Joint Counterdrug Task Force personnel should not be placed into situations that could be life threatening since they have not received the appropriate law enforcement training for this type of situation.

b. Joint Counterdrug Task Force personnel have the right to use force only, if necessary, to defend themselves or in the defense of others. The member can only use the amount of force necessary to achieve self-protection or preservation. Members are only to use deadly force if all lesser means of force have been exhausted or are unavailable, will only use the minimum force immediately necessary to defend against the unlawful use of deadly force and only if the risk of injury to innocent persons or bystanders is not increased by the use of deadly force.

11. PUBLIC AFFAIRS:

a. Information released to the media concerning JCDF assistance to a LEA or JCDF participation in drug law enforcement missions will be coordinated between the LEA and JCDF public affairs/information officers. Participating JCDF personnel or specific units will not be identified by name, address or photograph unless cleared through the CDC who will be responsible for obtaining a release through applicable National Guard channels.

SUBJECT: Memorandum of Understanding for Operational Support from Texas Joint Counterdrug Task Force for Fiscal Year 2020

b. The lead party for the dissemination of information will be the LEA and therefore members of the JCDF will refer all questions from the media to the LEA for reply. The JCDF public affairs office may provide guidance on issues specific to the National Guard as appropriate.

12. SAFETY: The safety of JCDF personnel is the primary concern of the CDC and will be emphasized in planning and during all operations. The successful accomplishment of all JCDF support missions with minimum risk will be the main goal. Joint Counterdrug Task Force personnel will adhere to CDC's safety policy at all times. Joint Counterdrug Task Force personnel should not knowingly be sent to or directed to enter a hostile environment where there is a high probability of encountering life threatening situations or direct contact with suspects.

13. WARRANTS/LEGAL REQUIREMENTS: The supported LEA shall ensure that all legal requirements, including obtaining warrants, are fulfilled. The supported LEA recognizes that JCDF personnel may not engage in any activity that law enforcement officers are prohibited from conducting. Joint Counterdrug Task Force personnel will not be utilized for or participate in unauthorized surveillance activities. Information or data obtained by the JCDF, as a result of work done in support of the LEA, will be passed on immediately, as obtained, to the LEA and will not be stored or maintained by JCDF personnel or in National Guard facilities. Procedures to be utilized for reporting such information will be established by the LEA in accordance with internal practices and procedures. The LEA will be responsible for follow-up on any such information. Information gathered by members of the JCDF will be given adequate classification consideration.

14. ARREST, SEARCHES, SEIZURES AND EVIDENCE:

a. Joint Counterdrug Task Force personnel will not, except in exigent circumstance, directly participate in law enforcement activities such as arresting or conducting searches of individuals or private property. Additionally, JCDF personnel do not enter into the chain of custody of evidence, but may provide the LEA officers with technical support for digital evidence extraction, preservation, and analysis.

b. All activities performed by JCDF personnel shall be strictly limited to support of LEA counterdrug operations. Joint Counterdrug Task Force personnel shall not collect, retain, or disseminate information on United States persons or store LEA sensitive products on JCDF databases. Absent exigent circumstances, JCDF personnel shall not participate in the apprehension of suspects, or search of any property. Joint Counterdrug Task Force personnel may support digital forensic efforts after the 4th amendment search and seizure has been executed by the LEA.

FOR OFFICIAL USE ONLY

c. JCDF personnel will not be deputized or cross-designated with Title 21 investigative authority.

15. **SUBPOENAS OR OTHER ORDERS TO APPEAR:** The supported LEA will immediately notify JCDF personnel in the event that they are subpoenaed, or otherwise ordered to appear in any court. Joint Counterdrug Task Force personnel will report such order to appear in court to their respective military command and Judge Advocate. If JCDF personnel are ordered to appear in court, the supported LEA will assist the JCDF personnel to obtain pre-trial counsel and preparation from the prosecuting attorney responsible for the case.

16. **DUTY HOURS, UNIFORM WEAR & WORK SCHEDULES:** Duty hours and work schedules shall be in accordance with the LEA support request. All JCDF personnel maintain additional military duties as part of their regular National Guard unit. As such, JCDF personnel will be required to attend Inactive Duty Training (drill weekends) and Annual Training (two week periods). In addition, all JCDF personnel are authorized thirty (30) days of leave per year, as approved by the CDC. Personnel will wear appropriate military uniforms while performing counterdrug support duty unless this requirement has been explicitly waived by the CDC or his designated representative.

17. **WORK SPACE REQUIREMENTS:** The supported LEA will provide parking, appropriate work space and use of communication equipment (including phone, fax, personal computer and internet/email capabilities) for JCDF personnel.

18. **LEA FUNDING:** This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Even where one party has agreed (or later does agree) to assume a particular financial responsibility, written agreement must be obtained before incurring an expense expected to be assumed by another party. All obligations of and expenditures by the parties are subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

19. **SALARIES & BENEFITS:** All JCDF personnel serve in military status on full time National Guard duty. As such, the JCDF will pay all related salaries, allowances and benefits for JCDF personnel. The supported LEA shall not pay any monetary bonus or other monetary award to any JCDF personnel without the advanced approval of the CDC.

20. **EQUITABLE SHARING PROGRAM:** The supported LEA agrees that the JCDF may participate in asset forfeiture/ equitable sharing. The JCDF will submit an application for a respective share, based upon the level of participation, in an investigation resulting in the seizure and subsequent forfeiture of assets. All forfeiture sharing shall be in accordance with applicable laws governing the disposition of forfeited assets.

21. LIABILITIES:

a. The Agency acknowledges that the United States of America is liable for the negligent, wrongful acts or omissions of its agents and employees while acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act, 28 USC 1346.

b. No hold harmless agreements are required in agreement between JCDF and other federal agencies. The Federal Government may not hold harmless a state or other jurisdiction. The CDC will contact the NG Chief Counsel (NGB-JA), though NGB-J32, if incidents arise with the possibility of civil liability on the part of JCDF personnel, the JCDF, or volunteers or when occurrence of negative judicial ruling based wholly or in part upon the conduct of JCDF personnel, or volunteers, including the suppression of evidence.

22. RENEGOTIATION/MODIFICATION: This MOU may be altered or otherwise modified, if done in writing. Changes to the scope of work or functions of JCDF must be approved by the CDC. Agreements must be renegotiated when laws, regulations, and/or support requirements change in such a manner that the agreement cannot be executed.

23. TERMINATION: Either party may terminate this MOU at any time by written or verbal notification to the other party. If notification of termination is delivered verbally, written confirmation shall follow within five (5) business days. The supported LEA SUBJECT: Memorandum of Understanding for Operational Support from Texas Joint Counterdrug Task Force for Fiscal Year 2020 recognizes that JCDF personnel may be mobilized and called to active federal military duty as part of their normal military unit. In addition, the supported LEA understands that JCDF operations are subject to and dependent upon annual appropriated funding.

By affixing their signature to this MOU, each party affirmatively represents that they are authorized to enter into this MOU on behalf of their respective agency.

MIGUEL A. TORRES
COL, FA, TXARNG
Commanding

Jessica Robledo
Chief of Police
Pflugerville Police Department

(Date)

(Date)