



TEXAS MILITARY DEPARTMENT

Joint Counterdrug Task Force
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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TEXAS JOINT COUNTERDRUG TASK FORCE
AND
SEGUIN POLICE DEPARTMENT

SUBJECT: Memorandum of Understanding for Operational Support from the Texas Joint Counterdrug Task Force for Fiscal Year 2019

1. REFERENCES:

- a. NGR 500-2/ANGI 10-801, National Guard Counterdrug Support, 29 Aug 08
- b. The Texas Governor's Counterdrug State Plan, Fiscal Year 2019
- 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

2. PURPOSE: This Memorandum of Understanding (MOU) sets forth the agreed terms and conditions of support to a Law Enforcement Agency (LEA) or Community Based Organization (COB) by the Texas Military Department Joint Counterdrug Task Force (JCDTF). In general, the Texas Military Department will provide Counterdrug 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 Agency requests for National Guard assistance 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 NGR 500-2/ANGI 10-801, Title 32, United States Code §112 and Title 32 United States Code §502(f).

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

Start Date: 1 October 2018 End Date: 30 September 2019

SUBJECT: Memorandum of Understanding for Operational Support from the Texas Joint Counterdrug Task Force

5. DRUG NEXUS: By executing this MOU, the supported LEA certifies that JCETF personnel will be engaging only on projects or operations that have a counterdrug nexus.

6. TERMINOLOGY.

a. Commander means the senior responsible officer appointed by the Adjutant General of Texas to command the JCETF.

b. Community Based Organization (CBO) is the supported organization entering into this MOU with the JCETF.

c. Drug Nexus means the involvement of illegal drugs or narcotics with actual or suspected criminal activity.

d. Exigent Circumstances are situations, in which the utilization of any step Rules for Use of Force (RUF) is necessary to protect police officers, military personnel, or other persons from death or serious injury. Personnel may use an appropriate level of force to prevent the loss or destruction of evidence; or to prevent the escape of a suspect already in custody.

e. Law Enforcement Agency (LEA) is defined as the supported agency entering into this MOU with the JCETF.

f. Task Force Member refers to the soldier or airmen assigned to JCETF.

g. Texas Joint Counterdrug Task Force (JCETF) consists of Texas National Guard soldiers and airmen on Full Time National Guard Duty Counterdrug orders in support of the Counterdrug Support Program.

h. Texas Military Department (TMD) includes the Texas Army National Guard and Texas Air National Guard, operating pursuant to Title 32 of the United States Code and under the Command and Control of the Adjutant General of Texas.

7. PLANNED DEPLOYMENT OF PERSONNEL AND EQUIPMENT:

a. Personnel:

(1) Request for Support: As the National Guard is not a law enforcement agency; any involvement of the National Guard in support of drug law enforcement must be in response to a law enforcement agency request for support.

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

SUBJECT: Memorandum of Understanding for Operational Support from the Texas Joint Counterdrug Task Force

b. Equipment:

(1) The loan of National Guard equipment to the Agency will be in accordance with NGR 500-2/ANGI 10-801, paragraph 7-10, 32 USC § 112; and other applicable National Guard regulations to include 10 USC § 2667, Leases: non-excess property of military departments and Defense Agencies, 15 Jan 13; AR 700-131, Loan, Lease, and Donation of Army Material, 23 Aug 04; AFMAN 23-110, CD Basic USAF Supply Manual, 1 Apr 02; and DoDI 1225.6, Equipping the Reserve Forces, 16 May 12.

(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, whether through negligent conduct or willful misconduct.

8. REPORTING PROCEDURES:

a. Counterdrug personnel will ensure statistical results are input into FTSMCS for inclusion in required reports/records.

b. The National Guard 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 National Guard by the Agency 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.

9. COMMAND AND CONTROL:

a. JCDTF personnel will be under the command and control of the JCDTF Commander at all times. The supported LEA will notify the JCDTF Commander immediately in the event that any JCDTF personnel are injured or suspected of misconduct. Personnel may be recalled at any time due to emergencies or other operational necessities. The JCDTF Commander has the sole discretion to approve or deny modifications to an approved LEA supported request. Personnel may be recalled for a mission of higher priority, necessary military training or deployments.

b. National Guard personnel will be under the direct supervision of the supported agency for all assigned duties. National Guard members will also maintain a military chain of command through JCDTF. The military chain of command will take precedence at all times.

SUBJECT: Memorandum of Understanding for Operational Support from the Texas Joint Counterdrug Task Force

c. The National Guard chain of command will handle all personnel management processes.

10. SCOPE OF OPERATIONS:

a. JCDEF personnel will operate in accordance with an LEA support request approved by the JCDEF Commander. Requests to perform missions that are not on the SECDEF approved mission list must be submitted through the National Guard Bureau J32 to the SECDEF for approval in the Texas Military Department approved State Plan.

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

(1) JCDEF 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) National Guard members assigned to **SEGUIN 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 **SEGUIN POLICE DEPARTMENT** and/or its law enforcement partners shall at all-times be controlled and protected from improper disclosure or dissemination.

(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 SEGUIN POLICE DEPARTMENT Chief** (or his/her designee) may also require that any final product prepared by National Guard personnel be submitted for review by **the SEGUIN 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).

11. FORCE PROTECTION AND USE OF FORCE:

SUBJECT: Memorandum of Understanding for Operational Support from the Texas Joint Counterdrug Task 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. The JCDF personnel will operate under and comply with the Use of Force orders established by the JCDF Commander. Only JCDF personnel specifically authorized by the Commander shall be armed. Each agency will follow their own agency's policy concerning firearms discharge and use of deadly force. National Guard members 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. National Guard members 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.

12. PUBLIC AFFAIRS:

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

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

c. National Guard members in duty status will not be interviewed by the media without National Guard approval and consultation with the Agency.

13. SAFETY: The safety of National Guard CD personnel is the primary concern of the JCDF Commander and staff and will be emphasized in the planning and during all operations involving CD personnel. The successful accomplishment of all CD support missions with minimum risk will be the main goal. CD personnel will adhere to JCDF Commander's safety policy at all times. National Guard members should not knowingly be sent to or directed to enter a hostile environment where there is a probability of encountering life threatening situations or direct contact with suspects.

14. 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

SUBJECT: Memorandum of Understanding for Operational Support from the Texas Joint Counterdrug Task Force

officers are prohibited from conducting. National Guard personnel will not be utilized or participate in unauthorized surveillance activities. Information or data obtained by the National Guard, 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 National Guard personnel or in National Guard facilities. Procedures to be utilized for reporting such information will be established by the Agency in accordance with internal practices and procedures. The Agency will be responsible for follow-up on any such information. Information gathered by members of the National Guard will be given adequate classification consideration.

15. ARREST, SEARCHES, SEIZURES AND EVIDENCE:

a. JCDTF personnel will not directly participate in law enforcement activities such as arresting or conducting searches of individuals or private property. JCDTF 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 analyst activities authorized to be performed by JCDTF personnel shall be strictly limited to support of LEA counterdrug operations. Other than analyst support authorized in conjunction with LEA CD operations, National Guard personnel shall not collect, retain, or disseminate intelligence on United States persons or store LEA intelligence products in national Guard facilities or databases. National Guard Absent exigent circumstances, JCDTF personnel shall not participate in the apprehension of suspects, or search of any property. JCDTF members may support digital forensic efforts after the 4th amendment search and seizure has been executed by the LEA.

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

16. SUBPOENAS OR OTHER ORDERS TO APPEAR: The supported LEA will immediately notify JCDTF personnel in the event that they are subpoenaed, or otherwise ordered to appear in any court. JCDTF personnel will report such order to appear in court to their respective JCDTF Commander. If JCDTF personnel are ordered to appear in court, the supported LEA will assist the JCDTF personnel to obtain pre-trial counsel and preparation from the prosecuting attorney responsible for the case.

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

SUBJECT: Memorandum of Understanding for Operational Support from the Texas Joint Counterdrug Task Force

18. 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.

19. 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.

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

21. ASSET FORFEITURE SHARING: The supported LEA agrees that the TXMF may participate in asset forfeiture sharing. The TXMF 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.

22. LIABILITIES:

a. The participating agencies acknowledge that this MOU does not alter the applicable law governing civil liability, if any, arising from the conduct of personnel. In the event that a civil claim or complaint is brought against JCDF personnel he/she may request legal representation, and/or defense by the Law Enforcement Agency under the circumstances and pursuant to applicable statutes and regulations. The Law Enforcement Agency (LEA) cannot guarantee the United States will provide legal representation or indemnification to any federal, state, or local law enforcement officer or employee.

b. 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.

c. 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

SUBJECT: Memorandum of Understanding for Operational Support from the Texas Joint Counterdrug Task Force

J3-CD if incidents arise with the possibility of civil liability on the part of the National Guard Member, the National Guard, or volunteers or when occurrence of negative judicial ruling based wholly or in part upon the conduct of National Guard members, or volunteers, including the suppression of evidence.

d. The participating agencies acknowledge that the United States is liable for the negligent or wrongful acts or omission of its agents and employees while acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671-2680.

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

24. 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 recognizes that JCDTF 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 JCDTF 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

(Date)

FULL NAME
Title
Position

(Date)