



ARIZONA NATIONAL GUARD
JOINT COUNTER NARCO-TERRORISM TASK FORCE

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25 August 2010

Administrator Paul Bertley, omBR

MEMORANDUM FOR ~~Commander Kim Hale~~, Special Investigations Bureau, Tempe Police Department

SUBJECT: Memorandum of Understanding (MOU) Review

1. Per Counterdrug Regulation, NGR 500-2/ANGI 10-801, titled: National Guard Counterdrug Support, we are required to annually review MOUs with organizations and states who assist us in supporting Law Enforcement Agencies with counterdrug operations and missions.
2. Our current joint MOU was last signed by all parties on 8 December 09.
3. Upon review of the MOU, I have not found any reason to change or modify the document. If you concur, please endorse the signature block below and return this letter to my office.
4. If you have any changes or modifications, please contact my Operations Office at 602-267-2491, or craft your proposed changes on the attached MOU and return it. The Operations Office will review your suggested changes and initiate a revised MOU for your signature. Thank you and I look forward to a continued partnership in the counterdrug arena.


WILL J. NELSON
Col, AZ ANG
ICNTF Commander

Concur, no review is necessary


Signature

12/14/10
Date

8/10/09

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ARIZONA NATIONAL GUARD
JOINT COUNTER NARCO-TERRORISM TASK FORCE
AND
TEMPE POLICE DEPARTMENT**

1. PURPOSE: This memorandum sets forth policies, procedures and guidelines agreed to by the Arizona National Guard, Joint Counter Narco-Terrorism Task Force (hereinafter "National Guard") and Tempe Police Department (hereinafter "Agency") governing National Guard cooperation and support of the Agency's drug law enforcement operations in the State of Arizona pursuant to 32 U.S.C. 112 and other applicable federal and state statutes. 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.

2. AUTHORITY:

- A. National Guard Regulation 500-2/ANGI 10-801
- B. Arizona National Guard Counterdrug State Plan
- C. Respective Legal Reviews

3. 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.

(3) Individual Memoranda of Understanding (IMOU): This document governs the use of specific National Guard personnel, will be maintained at the JCNTF Operations office and is available upon request. The supported agency, the JCNTF Commander and the JCNTF member must sign the IMOU to validate this agreement.

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B. Equipment:

(1) The loan of National Guard equipment to the Agency will be in accordance with NGR 500-2/ANGI 10-801 (7-10) and other applicable National Guard regulations to include 10 USC 2667, 32 USC 112, AR 700-131, AFMAN 23-110 and DoD1225.6.

(2) All loans of equipment will be documented in writing with at least the following information:

- a. Full description of the item(s)
- b. Condition at the time of the loan
- c. Length of time of the loan
- d. Location to which the item is to be returned

(3) Both parties to this agreement agree to 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.

4. REPORTING:

A. JCNTF personnel will provide their headquarters statistical results for inclusion in required reports/records; results include quantity and value of seized drugs and or real property.

B. National Guard personnel will provide a weekly report to the JCNTF Operations office summarizing their work production for inclusion in required reports/records/databases. This report will not include any case specific information.

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

D. Information provided to the National Guard by the Agency will not be released to non DOD sources.

5. COMMAND AND CONTROL:

A. National Guard personnel will be under the command and control of appropriate military authority. 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 JCNTF. The military chain of command will take precedence at all times.

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

6. SCOPE OF OPERATION:

A. The National Guard will provide counterdrug support to local, state and federal LEAs (law enforcement agencies) operating in a variety of approved mission areas.

(1) Personnel engaged in counterdrug support activities for which federal funding is provided by (Title 32) 32 USC Sec 502(F) and 32 USC 112 must be acting in support of LEAs or CBOs where a valid conterdrug nexus exists.

(2) Approved missions that may be provided to the Agency will be IAW NGR 500-2 / ANGI 10-801 (2-7) and the Arizona National Guard state plan.

B. Arrest, Seizures and Evidence:

(1) As a matter of National Guard Bureau policy, National Guard personnel will not make arrests. National Guard members have only the arrest powers of ordinary citizens; they may make arrests or conduct searches to the extent authorized by state law when exigent circumstances arise.

a. The utilization of any step in the rules for use of force is authorized in extreme circumstances to protect law enforcement, military personnel or other persons from death or serious injury.

b. JCNTF personnel may use an appropriate level of force to prevent the loss of destruction of evidence or to prevent the escape of a suspect already in custody.

(2) The supported Agency and JCNTF supervisors will ensure all supported operations are not designed or conducted in such a manner as to involve a significant likelihood of requiring arrests or searches.

(3) National Guard personnel will not become involved in the chain of custody of evidence.

C. Uniforms: National Guard 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.

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D. Surveillance: National Guard personnel will not be utilized or participate in unauthorized surveillance activities.

E. Sensitive Information:

(1) Information or data obtained by the National Guard, as a result of work done in support of the Agency, will be passed on immediately as obtained to the Agency and will not be stored/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.

(2) Information gathered by members of the National Guard will be given adequate classification consideration.

F. Funding:

(1) Normally, the support and coordination provided by the National Guard, pursuant to this agreement, will be funded federally from 32 USC 112 and no reimbursement by the Agency will be required. However, any loan of equipment or missions which may require reimbursement, and therefore incur obligations from Agency funding, should be coordinated and approved between the parties prior to mission accomplishment.

(2) In no case will the National Guard expend state resources on behalf of the Agency, except in emergency operations to ensure the protection of human life, without a reasonable expectation of funding by the federal government.

(3) Any funds expended by the Agency conforming Guardmembers to the standards expected of other employees employed by Agency (whether in relation to security concerns or professional expertise) will not be reimbursed by the National Guard, nor will the National Guard expend any resources beyond those normally expended by the National Guard to conform its members in such areas for any particular Agency.

(4) All National Guard support is subject to available funding.

7. FORCE PROTECTION RULES FOR USE OF FORCE

A. 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

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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.

8. PUBLIC AFFAIRS:

A. Release of Information: Information released to the media concerning National Guard assistance to 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 JCNTF Commander who will be responsible for obtaining a release through applicable National Guard channels.

B. Dissemination of Information: 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. Media Interaction: National Guard members in duty status will not be interviewed by the media without National Guard approval and consultation with the Agency.

9. SAFETY:

A. 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.

B. Every effort must be made by the Agency to avoid placing National Guard personnel in situations where they will come into contact with suspects.

10. RESPONSIBILITIES

A. JCNTF will:

(1) Ensure that National Guard personnel are given all necessary training and tools needed prior to assignment.

(2) Support the Agency as agreed upon in the validated support request.

B. Agency:

(1) If requested, the Agency agrees to provide the JCNTF Commander with a law enforcement after action report within five days after the completion of a particular operation.

(2) Different operations and missions may carry different security classifications and these may not correspond to the standard DOD security classification system. Therefore, the

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Agency will be responsible for classifying the operation and any information obtained and for making any public information releases. The National Guard desires to keep a low profile concerning media contact and information released. Any requests for release of JCNTF information will be forwarded to the JCNTF commander for consideration.

(3) Will provide necessary training to National Guard personnel that is appropriate to the mission which is supported.

(4) Will brief and train members of the National Guard on any matters of security peculiar to the Agency to ensure that National Guard members do not inadvertently disclose information about their support roles with the Agency or any specific missions with which they are involved.

(5) The Agency will submit a request for support to the National Guard for approved counterdrug operations. These requests must be coordinated through the National Guard Task Force Commander on an annual basis.

11. LIABILITIES: 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.

12. RENEGOTIATION:

A. National Guard personnel are initially deployed to support the Agency based upon specific requests for National Guard support to perform specific job skills in specific mission areas. Any deviation from the initial support request should be coordinated and approved in writing by the JCNTF Commander.

B. This agreement constitutes the entire agreement between the Agency and the National Guard. Any modifications, additions or deletions shall be in writing and signed by both parties. In the event any provision of this agreement shall be determined to be unenforceable, that provision shall be deleted from the agreement and this agreement shall remain in force.

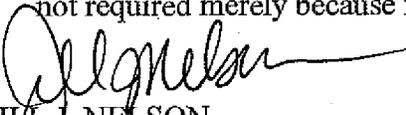
13. TERMINATION OF AGREEMENT:

A. Agreement: This memorandum is in effect upon signature of both parties and will remain in effect until rescinded, revised or suspended by either party with 30 days written notice or revised in writing by mutual consent. Upon signature, this agreement supersedes any other previously signed agreement which is inconsistent with this agreement.

B. Termination of Support: National Guard personnel will not be directed or permitted to conduct support activities that violate National Guard directives or guidance. Use of National Guard personnel contrary to this MOU or the applicable regulations is a basis for immediate termination of support.

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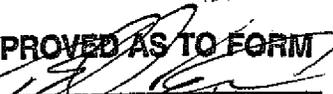
C. Agreements will terminate upon 90 days notice by either party. Inclusion of an end date is not required merely because funds are appropriated on an annual basis.


JILL J. NELSON
CdL AZ ANG
JCNTF Commander


TOM RYFF
Chief of Police
Tempe Police Department

Date: 14 Dec 09

Date: 12/8/09

APPROVED AS TO FORM
BY: 
TEMPE CITY ATTORNEY
DATE: 12/9/09