



City of Grand Island

Tuesday, November 23, 2010

Council Session

Item G18

**#2010-335 - Approving MOU with the Federal Bureau of
Investigations for Safe Streets Task Force**

Staff Contact: Steve Lamken

Council Agenda Memo

From: Steven Lamken, Police Chief

Meeting: November 23, 1010

Subject: Federal Safe Streets Task Force

Item #'s: G-18

Presenter(s): Steven Lamken, Police Chief

Background

The Tri City Federal Drug Task Force has received U.S. Department of Justice approval for designation as a Safe Streets Task Force. The Safe Streets designation expands the scope of the Task Force to include violent crime and gang activity in addition to drug enforcement. The Grand Island Police Department becomes eligible for equipment and overtime funding for officers that we would designate as working with the Safe Streets Task Force.

Discussion

The U.S. Department of Justice has approved a Safe Streets Task Force designation for the Tri City Drug Task Force. The Safe Streets designation expands the scope of task force investigations to include violent crimes, criminal gangs, and dangerous fugitives in conjunction with drug enforcement. The Safe Streets designation provides the task force with additional Federal resources. Agencies with officers assigned to work with the Safe Streets Task Force are eligible to receive equipment and overtime reimbursements.

The Police Department is designating at least one officer as a member of the Safe Streets Task Force. This investigator will work closely with the other Task Force members, the Police Department Criminal Investigations Division, and the Department's Gang Operations Unit in conducting investigation into violent crimes and gang related crimes.

The Department had realigned our staffing under Program Prioritization to direct more resources towards gang investigations prior to the Safe Streets designation. We assigned an investigator who would be responsible for coordinating all gang related investigations in the Department. It is a natural fit that this investigator will be designated as a Task Force Officer, TFO.

A TFO is provided a vehicle that includes fuel and services, and a cell phone as part of being a member of the Task Force. TFOs are also eligible for overtime reimbursement for time spent on Safe Street cases. The City is required to agree to and sign a memorandum with the Federal Bureau of Investigation to be eligible to receive Federal support funding.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Postpone the issue to future date
3. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Safe Streets Task Force Memorandum of Understanding with the Federal Bureau of Investigations.

Sample Motion

Move to approve the Safe Streets Task Force Memorandum of Understanding with the Federal Bureau of Investigations and authorize the Mayor to sign all related documents.

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**FEDERAL BUREAU OF INVESTIGATION
CENTRAL NEBRASKA DRUG AND SAFE STREETS TASK FORCE
MEMORANDUM OF UNDERSTANDING**

PARTIES

This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation (FBI) and the GRAND ISLAND POLICE DEPARTMENT (**GIPD**). Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation which exists between these agencies.

AUTHORITIES

1. Authority for the FBI to enter into this agreement can be found at Title 28, United States Code (U.S.C.), Section (§) 533; 42 U.S.C. § 3771; Title 28, Code of Federal Regulations (C.F.R.), § 0.85; and applicable United States Attorney General's Guidelines.

PURPOSE

2. The purpose of this MOU is to delineate the responsibilities of Central Nebraska Drug and Safe Streets Task Force (**CNDSSTF**) participants, maximize inter-agency cooperation, and formalize relationships between the participating agencies for policy guidance, planning, training, public and 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.

MISSION

3. The mission of the SSTF is to identify and target for prosecution criminal enterprise groups responsible for drug trafficking, money laundering, alien smuggling, crimes of violence (murder), robbery (aggravated assault), violent street gangs, as well as to intensely focus on the apprehension of dangerous fugitives. The SSTF will enhance the effectiveness of federal/state/local law enforcement resources through a well-coordinated initiative seeking the most effective investigative/prosecutive avenues by which to convict and incarcerate dangerous offenders.

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SUPERVISION AND CONTROL

A. Supervision

4. Overall management of the SSTF shall be the shared responsibility of the participating agency heads and/or their designees.

5. The Special Agent in Charge (SAC) of the Omaha Division shall designate one Supervisory Special Agent (SSA) to supervise day-to-day operational and investigative matters pertaining to the SSTF.

6. Responsibility for conduct, not under the direction of the SAC or SSA, of each SSTF member, both personally and professionally, shall remain with the respective agency head and each agency shall be responsible for the actions of its respective employees.

7. Each SSTF member will be subject to the laws, regulations, policies, and personnel rules applicable to those of his or her respective agency. FBI participants will continue to adhere to the Bureau's ethical standards, including Department of Justice (DOJ)/FBI regulations relating to outside employment and prepublication review matters, and will remain subject to the Supplemental Standards of Ethical Conduct for employees of the DOJ.

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

9. Continued assignment to the SSTF will be based on performance and at the discretion of each SSTF member's respective supervisor. The FBI SAC/SSA will also retain discretion to remove any member from the SSTF.

B. Case Assignments

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

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

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

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

C. Resource Control

14. The head of each participating agency shall retain control of resources dedicated by that agency to the SSTF, including personnel, as well as the continued dedication of those resources. The participating agency head or designee shall be kept fully apprised of all investigative developments by his or her subordinates.

OPERATIONS

A. Investigative Exclusivity

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

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

17. SSTF investigative leads outside of the geographic areas of responsibility for FBI Omaha Division will be communicated to other FBI offices for appropriate investigation.

B. Informants

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

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

20. 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 compliance with necessary administrative procedures regarding operation and payment as set forth by the FBI.

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

22. Operation, documentation, and payment of solely state, county, or local informants and CWs opened and operated by non-FBI SSTF members in furtherance of SSTF investigations must be in accordance with the United States Attorney General's Guidelines. Documentation of state, county, or local informants and CWs opened and operated in furtherance of SSTF investigations shall be maintained at an agreed to location.

C. Reports and Records

23. All investigative reporting will be prepared in compliance with existing FBI policy. Subject to pertinent legal and/or policy restrictions, copies of pertinent documents created by each member of the SSTF will be made available for inclusion in the respective investigative agencies' files as appropriate.

24. SSTF reports prepared in cases assigned to state, county, or local participants will be maintained at an FBI approved location; original documents will be maintained by the FBI.

25. Records and reports generated in SSTF cases which are opened and assigned by the FBI SSA with designated oversight for investigative and personnel matters will be maintained in the FBI investigative file for SSTF.

26. SSTF investigative records maintained at the Omaha Field Office of the FBI will be available to all SSTF members, as well as their supervisory and command staff subject to pertinent legal, administrative and /or policy restrictions.

27. All evidence and original tape recordings (audio and video) acquired by the FBI during the course of the SSTF investigations will be maintained by the FBI. The FBI's rules and policies governing the submission, retrieval and chain of custody will be adhered to by SSTF personnel.

28. All SSTF investigative records will be maintained at an approved FBI location. Placement of all or part of said information into participating agency files rests with the discretion of supervisory personnel of the concerned agencies, subject to SSA approval.

29. 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.

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INFORMATION SHARING

30. No information possessed by the FBI, to include information derived from informal communications by the SSTF member with personnel of the FBI, may be disseminated by the SSTF member to non-SSTF personnel without the permission of the SSTF member's designated FBI SSTF 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 SSTF member will not provide any participating agency information to the FBI that is not otherwise available to it unless authorized by appropriate participating agency officials.

PROSECUTIONS

31. SSTF investigative procedures, whenever practicable, are to conform to the requirements which would allow for either federal or state prosecution.

32. A determination will be made on a case-by-case basis whether the prosecution of SSTF 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 SSTF.

33. 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 SSTF case at the state or local level, the FBI agrees to provide all relevant information to state and local authorities.

A. Investigative Methods/Evidence

34. For cases assigned to an FBI Special Agent or in which FBI informants or CWs are utilized, the parties agree to conform to federal standards concerning evidence collection, processing, storage, and electronic surveillance. However, in situations where the investigation will be prosecuted in the State Court where statutory or common law of the state is more restrictive than the comparable federal law, the investigative methods employed by FBI case agents shall conform to the requirements of such statutory or common law pending a decision as to venue for prosecution.

35. 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.

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36. The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policies and procedures of the FBI.

B. Undercover Operations

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

DEADLY FORCE AND SHOOTING INCIDENT POLICIES

38. Members of the SSTF will follow their own agency's policy concerning firearms discharge and use of deadly force.

DEPUTATIONS

39. Local and state law enforcement personnel designated to the SSTF, 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 SSTF or until the termination of the SSTF, whichever comes first.

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

VEHICLES

41. In furtherance of this MOU, employees of LEA may be permitted to drive FBI owned or leased vehicles for official SSTF business and only in accordance with applicable FBI rules and regulations, including those outlined in the FBI Manual of Administrative Operations and Procedures (MAOP), Part I, Section 3.1. The assignment of an FBI owned or leased vehicle to a LEA SSTF member will require the execution of a separate Vehicle Use Agreement.

42. The participating agencies agree that FBI vehicles will not be used to transport passengers unrelated to SSTF business.

43. The FBI and the United States will not be responsible for any tortious act or omission on the part of LEA and/or its employees or for any liability resulting from the use of an FBI owned or leased vehicle utilized by an LEA SSTF member, except where liability may fall

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under the provisions of the Federal Tort Claims Act (FTCA), as discussed in the Liability Section herein below.

44. The FBI and the United States shall not be responsible for any civil liability arising from the use of an FBI owned or leased vehicle by an LEA task force member while engaged in any conduct other than his or her official duties and assignments under this MOU.

45. To the extent permitted by applicable law, LEA agrees to hold harmless the FBI and the United States, for any claim for property damage or personal injury arising from any use of an FBI owned or leased vehicle by an LEA SSTF member which is outside the scope of his or her official duties and assignments under this MOU.

SALARY/OVERTIME COMPENSATION

46. The FBI and LEA agree to assume all personnel costs for their SSTF representatives, including salaries, overtime payments and fringe benefits consistent with their respective agency.

47. Subject to funding availability and legislative authorization, the FBI will reimburse to LEA the cost of overtime worked by non-federal SSTF members assigned full-time to SSTF, provided overtime expenses were incurred as a result of SSTF-related duties. A separate Cost Reimbursement Agreement (CRA) must be executed between the FBI and LEA for full-time employee(s) assigned to SSTF, consistent with regulations and policy. Otherwise, overtime shall be compensated in accordance with applicable LEA overtime provisions and shall be subject to the prior approval of appropriate personnel.

PROPERTY AND EQUIPMENT

48. Property utilized by the SSTF in connection with authorized investigations and/or operations and in the custody and control and used at the direction of the SSTF, will be maintained in accordance with the policies and procedures of the agency supplying the equipment. Property damaged or destroyed which was utilized by SSTF in connection with authorized investigations and/or operations and is in the custody and control and used at the direction of SSTF, will be the financial responsibility of the agency supplying said property.

FUNDING

49. 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

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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.

FORFEITURES

50. The FBI shall be responsible for processing assets seized for federal forfeiture in conjunction with SSTF operations.

51. Asset forfeitures will be conducted in accordance with federal law, and the rules and regulations set forth by the FBI and DOJ. Forfeitures attributable to SSTF investigations may be equitably shared with the agencies participating in the SSTF.

DISPUTE RESOLUTION

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

53. The participating agencies 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.

MEDIA RELEASES

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

55. Press releases will conform to DOJ Guidelines regarding press releases. No release will be issued without FBI final approval.

SECURITY CLEARANCES

56. Thirty days prior to being assigned to the SSTF, each candidate will be required to furnish pages 1, 2, 3, 9 (certification only), and 10 of the Questionnaire for Sensitive Positions (SF-86). Sometime thereafter, a representative from the FBI will conduct an interview of each candidate.

57. If, for any reason, a candidate is not selected, the participating agency will be so advised and a request will be made for another candidate.

58. Upon being selected, each candidate will receive a comprehensive briefing on FBI field office security policies and procedures. During the briefing, each candidate will execute non-disclosure agreements (SF-312 and FD-868), as may be necessary or required by the FBI.

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59. When FBI space becomes available, before receiving access, SSTF members will be required to undergo a full background investigation and receive and maintain a "Top Secret" security clearance. In addition, SSTF members will also be required to fully complete the SF-86 and the required fingerprint cards. In the interim, SSTF members will not be allowed unescorted access to FBI space.

60. Upon departure from the SSTF, each candidate will be given a security debriefing and reminded of the provisions contained in the non-disclosure agreement previously agreed to by the SSTF member.

LIABILITY

61. The participating agencies acknowledge that this MOU does not alter the applicable law governing civil liability, if any, arising from the conduct of personnel assigned to the SSTF.

62. The participating agency shall immediately notify the FBI of any civil, administrative, or criminal claim, complaint, discovery request, or other request for information of which the agency receives notice, concerning or arising from the conduct of personnel assigned to the SSTF or otherwise relating to the SSTF.

63. In the event that a civil claim or complaint is brought against a state or local officer assigned to the SSTF, the officer may request legal representation and/or defense by DOJ, under the circumstances and pursuant to the statutes and regulations identified below.

64. For the limited purpose of defending against a civil claim arising from alleged negligent or wrongful conduct under common law under the FTCA, 28 U.S.C. § 1346(b), and §§ 2671-2680: An officer who has been specially deputized and who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request to be certified by the Attorney General or his designee as having acted within the scope of federal employment at the time of the incident giving rise to the suit. 28 U.S.C. § 2679(d)(2). Upon such certification, the officer will be considered an "employee" of the United States government for the limited purpose of defending the civil claim under the FTCA, and the claim will proceed against the United States as sole defendant. 28 U.S.C. § 2679(d)(2). Once an individual is certified as an employee of the United States for purposes of the FTCA, the United States is substituted for the employee as the sole defendant with respect to any tort claims. Decisions regarding certification of employment under the FTCA are made on a case-by-case basis, and the FBI cannot guarantee such certification to any SSTF member.

65. For the limited purpose of defending against a civil claim arising from an alleged violation of the U.S. Constitution pursuant to 42 U.S.C. § 1983 or Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971): An officer who has been

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specially deputized and who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request individual-capacity representation by DOJ to defend against the claims. 28 C.F.R. §§ 50.15, 50.16. Any such request for individual-capacity representation must be made in the form of a letter from the individual defendant to the U.S. Attorney General. The letter should be provided to Chief Division Counsel (CDC) for the FBI Omaha Division, who will then coordinate the request with the FBI Office of the General Counsel. In the event of an adverse judgment against the individual officer, he or she may request indemnification from DOJ. 28 C.F.R. § 50.15(c)(4). Requests for DOJ representation and indemnification are determined by DOJ on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation or indemnification to any federal, state or local law enforcement officer.

66. Liability for any conduct by an SSTF member undertaken outside of the scope of his or her assigned duties and responsibilities under this MOU shall not be the responsibility of the FBI or the United States and shall be the sole responsibility of the respective employee and/or agency involved.

DURATION

67. The term of this MOU is for the duration of the SSTF's operations, contingent upon approval of necessary funding, but may be terminated at any time upon written mutual consent of the agency involved.

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

69. Upon termination of this MOU, all equipment provided to the SSTF 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 SSTF participation.

MODIFICATIONS

70. This agreement may be modified at any time by written consent of all involved agencies.

71. 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.

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SIGNATORIES

Special Agent in Charge
Federal Bureau of Investigation

Date

Chief
Grand Island Police Department

Date

Chief Division Counsel
Federal Bureau of Investigation

Date

Mayor
City of Grand Island

Date

Attested by City Clerk
City of Grand Island

Date

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RESOLUTION 2010-335

WHEREAS, The Grand Island Police Department is a member of the Federal Tri City Drug Task Force, and

WHEREAS, The Tri City Drug Task Force has been designated as a U.S. Department of Justice Safe Streets Task Force, and

WHEREAS, The Safe Streets Task Force provides additional resources to combat violent crimes and criminal gangs which will benefit the City of Grand Island, and

WHEREAS, The Grand Island Police Department desires to be a participating agency in the Safe Streets Task Force

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor be, and hereby is, authorized and directed to execute the U.S. Department of Justice Memorandum of Understanding with the Federal Bureau of Investigation to designate the Grand Island Police Department as a participating agency in the Safe Streets Task Force.

Adopted by the City Council of the City of Grand Island, Nebraska, November 23, 2010.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk