

RESOLUTION NO. 12082-10

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN PENINSULA NARCOTICS ENFORCEMENT TASK FORCE MEMORANDUM OF UNDERSTANDING BY AND AMONG THE COMMONWEALTH OF VIRGINIA, DEPARTMENT OF STATE POLICE; THE CITY OF HAMPTON, VIRGINIA; THE CITY OF NEWPORT NEWS, VIRGINIA; AND THE PENINSULA ASSOCIATION OF COMMONWEALTH ATTORNEYS.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Peninsula Narcotics Enforcement Task Force Memorandum of Understanding by and among the Commonwealth of Virginia, Department of State Police; the City of Hampton, Virginia; the City of Newport News, Virginia; and the Peninsula Association of Commonwealth Attorneys.

2. That the City Manager is hereby authorized and directed to execute any and all documents, including amendments to this Memorandum of Understanding, after such documents have been reviewed and approved by the City Attorney, and take such further actions as shall be necessary to finalize this Memorandum of Understanding.

3. That a copy of the said Memorandum of Understanding is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON NOVEMBER 23, 2010

Mabel Washington Jenkins, MMC  
City Clerk

McKinley L. Price, DDS  
Mayor

A true copy, teste:

City Clerk

*PENINSULA*

*NARCOTICS*

*ENFORCEMENT*

*TASK*

*FORCE*

MEMORANDUM OF UNDERSTANDING

# AGREEMENT

- I. This agreement for furnishing police services is made and entered into annually July 1<sup>st</sup> of each fiscal year, by and among signatories hereto.
- II. Whereas: All the parties agree that it is to their mutual benefit to cooperate in the enforcement of the Drug Control Act - Title 21, Chapter 13 of the United States Code, and Title 18.2, Chapter 7 of the Virginia Code.
- III. Now, therefore, the parties jointly resolve and agree to the establishment of a Peninsula Narcotics Enforcement Task Force, hereinafter referred to as "TASK FORCE," the purpose of which is to enhance the enforcement of the Drug Control Act - Title 21, Chapter 13 of the United States Code, and Title 18.2 Chapter 7 of the Virginia Code, and the parties further agree to the following:

## **TASK FORCE COMMAND GROUP**

- IV. The TASK FORCE will be governed by a COMMAND GROUP, the membership of which will be comprised of the chief law enforcement officials of the local participating agencies and the Division Commander of the Chesapeake Field office for the Virginia Department of State Police – Bureau of Criminal Investigation. The purpose of the COMMAND GROUP is to establish goals and objectives, set priorities, provide leadership and guidance to the TASK FORCE, and approve the annual operating budget.
  - A. Each COMMAND GROUP member will have one vote in any TASK FORCE matter and all decisions must be unanimous before any action will be taken.
  - B. Any violations of this agreement shall be brought before the full membership of the COMMAND GROUP at the first opportunity. It shall be up to the discretion of the

COMMAND GROUP members presiding to determine the appropriate response to any violation.

**TASK FORCE ADVISORY COMMITTEE**

V. The TASK FORCE will be supervised by an ADVISORY COMMITTEE, the membership of which will be comprised of a representative from each participating agency, appointed by the COMMAND GROUP member of each participating agency. The purpose of the ADVISORY COMMITTEE is to establish operational policies, prioritize targets, and ensure that the goals and objectives of the TASK FORCE are met.

**TASK FORCE COORDINATOR**

VI. The TASK FORCE COORDINATOR will be responsible for the day-to-day operation of the TASK FORCE and supervision of the TASK FORCE INVESTIGATORS. The TASK FORCE COORDINATOR will prepare and distribute a report of the activities of the TASK FORCE to each member of the ADVISORY COMMITTEE on a monthly basis and will conduct a quarterly meeting with the COMMAND GROUP.

A. Conduct, which requires disciplinary action against a TASK FORCE INVESTIGATOR, will be reported to the appropriate official of the TASK FORCE INVESTIGATOR'S agency for action.

B. The TASK FORCE COORDINATOR will also provide feedback to the supervisors of the participating agencies regarding preparation of performance evaluations for each TASK FORCE INVESTIGATOR.

**TASK FORCE INVESTIGATORS**

VII. A minimum of one (1) experienced INVESTIGATOR from each participating agency will be detailed full-time to the TASK FORCE for a minimum of one year. An effort will be

made to have replacement TASK FORCE INVESTIGATORS in place two (2) weeks prior to the date of change to help ensure continuity on the TASK FORCE.

- A. Each party agrees and understands that they will be responsible for any liability arising as a result of any action taken by their TASK FORCE representative. Except as expressly provided elsewhere in this agreement, no party shall be liable to the other party(s) for any costs associated with, or arising out of, the activities or services performed under this agreement. Notwithstanding the foregoing, nothing within the provisions of this agreement shall constitute or be deemed to be a waiver of the sovereign immunity of the signatory jurisdiction.
- B. Each party to this agreement will make every effort to fully staff the TASK FORCE; however, it is understood emergencies exist and each party will make every effort to minimize disruption to the operation of the TASK FORCE.

#### **TASK FORCE PROSECUTORS**

VIII. The TASK FORCE INVESTIGATORS will work with an Assistant Commonwealth Attorney assigned from the Peninsula Association of Commonwealth Attorney's, hereinafter referred to as "TASK FORCE PROSECUTOR" or an Assistant United States Attorney assigned from the Newport News Division of the United States Attorney's Office. The TASK FORCE PROSECUTOR or any assigned Assistant United States Attorney will have the final decision in all matters concerning the prosecution of TASK FORCE cases. All TASK FORCE PROSECUTORS will seek cross-designation as a Special Assistant United States Attorney to facilitate the prosecution of cases, which meet federal guidelines.

## **CASE SELECTION CRITERIA**

- IX. The ADVISORY COMMITTEE and/or COMMAND GROUP shall approve targets for investigation by the TASK FORCE. To that end, targets of TASK FORCE investigations should be individuals or organizations possessing the following characteristics:
- A. Be involved in a multi-jurisdictional operation;
  - B. Have documented narcotics trafficking over a significant period of time;
  - C. Have been previously investigated and/or prosecuted;
  - D. The organization or individuals, as well as their illicit activities, have continued to operate after prior investigations and/or prosecutions;
  - E. Be individuals who are themselves or who are likely to lead investigators to those who are involved in a higher level of organized criminal activity.
  - F. Or any other investigations the COMMAND GROUP approves.

## **OPERATING BUDGET**

- X. The City of Hampton Finance Department shall have fiscal responsibility for the TASK FORCE operating budget. The City of Hampton will account, audit, and monitor the TASK FORCE as an agency. Should the TASK FORCE be discontinued, the City of Hampton will retain access to the TASK FORCE funds for a period of twelve (12) months to ensure that all bills and obligations are met. After that time, the remaining funds will be returned to the participating TASK FORCE agencies according to the same formula they were contributed. The TASK FORCE shall be responsible and pay for any special audit or financial statements requested.
- XI. The TASK FORCE COORDINATOR is authorized to expend TASK FORCE funds to support the routine operation of the TASK FORCE. Expenditures outside of the scope of

this agreement will not be made without the approval of the COMMAND GROUP. Approval, via telephone, is authorized in the case of investigative necessity.

XII. Each participating agency in the TASK FORCE shall provide specific contributions to fund the annual expenses of the TASK FORCE. The contribution will be payable on July 1<sup>st</sup> of each fiscal year. The Virginia State Police agree to pay only for the approved annual TASK FORCE operating budget. The City of Hampton and the City of Newport News agree to pay salary, taxes, and benefits for a secretary and salary and taxes for a Financial Investigator, subject to annual appropriations by the Hampton City Council and the Newport News City Council. A detailed annual TASK FORCE operating budget and revenue summary will be prepared by the TASK FORCE COORDINATOR approved annually by the COMMAND GROUP each fiscal year. The annual TASK FORCE operating budget will include the purchase and/or rental of the following:

- A. *Personnel Expenses:* Salary, taxes, and benefits for a secretary and salary and taxes for a Financial Investigator/Analyst. (Hampton & NN)
- B. *Office Facilities:* office space rental, utilities, janitorial services, building maintenance, and office security alarm system. (VSP)
- C. *Telecommunications:* Office telephone local and long distance service, cellular telephone service, Lincoln unit, and internet access. (VSP)
- D. *Office Equipment and Supplies:* Copy machine, typewriters, tape recorders, transcriber, telephones, intercom system, desks, chairs, tables, file cabinets, air conditioners and heaters, facsimile machine, answering machine, and miscellaneous supplies to support TASK FORCE investigations. (VSP)

- E. *Vehicle Services:* Maintenance and repair of TASK FORCE surveillance van and leasing of rental cars. (Hampton & NN)
- F. *Training:* TASK FORCE related training and annual periodical and books. (VSP)
- G. *Travel:* Out-of-area investigations. (VSP)
- H. *Technical Equipment:* electronic surveillance equipment, radios, binoculars, camera equipment, cellular/PCS telephones, PDAs, and computer hardware and software. (VSP)

**OPERATIONAL SUPPORT**

- XIII. All participating agencies will provide the following to support the activities of the TASK FORCE INVESTIGATORS assigned to the TASK FORCE:
  - A. All salaries, pensions, relief, disability, workers' compensation and other benefits enjoyed by TASK FORCE INVESTIGATORS in their respective agencies shall extend to the services they may perform under this agreement, and each TASK FORCE INVESTIGATOR will be paid by his/her agency.
  - B. Standard police equipment to include firearm, bulletproof vest, flashlight, pager, and other support items when available.
  - C. An undercover-type vehicle, cost of repair, maintenance, and fuel.
- XIV. Participating TASK FORCE INVESTIGATORS serving under this agreement shall not become involved with matters other than those pertaining to possible violations of the narcotics, money laundering, and firearm laws except as required by state and federal law. To that end, the primary responsibility of TASK FORCE INVESTIGATORS while assigned to the TASK FORCE will be TASK FORCE investigations.

XV. In addition to the minimum of one assigned TASK FORCE INVESTIGATOR, the City of Hampton agrees to provide the following to support TASK FORCE activities:

- A. One (1) supervisor (Sergeant) to the TASK FORCE, who shall be designated as the TASK FORCE COORDINATOR. As needs dictate, the TASK FORCE COORDINATOR may be provided by the member agencies, as agreed by the Command Group.
- B. One (1) Secretary for administrative support to the TASK FORCE and the position will be funded by The City of Hampton and the City of Newport News in the annual TASK FORCE operating budget.
- C. One (1) Financial Investigator/Analyst for conducting complex narcotics trafficking and money laundering investigations/prosecutions. The Financial Investigator/Analyst position will be funded by The City of Hampton and the City of Newport News in the annual TASK FORCE operating budget.
- D. Office space and building maintenance for the TASK FORCE.

XVI. In addition to the minimum of one assigned TASK FORCE INVESTIGATOR, the Virginia Department of State Police/Bureau of Criminal Investigation agrees to provide the following to support TASK FORCE activities:

- A. Installation of Virginia State Police radio and communications equipment in each TASK FORCE INVESTIGATOR vehicle to support TASK FORCE investigations, when available.
- B. Authority for participating local law enforcement TASK FORCE INVESTIGATORS to be sworn as special state police officers for the purpose of conducting narcotics investigations by the TASK FORCE.

- (a) Once authority is granted, these specially sworn officers serving under this agreement, shall not conduct general investigations or make arrests outside their respective jurisdictions except in conjunction with a TASK FORCE investigation or as required by State law.
  - (b) This special state police investigative authority shall remain in effect during the time a sworn TASK FORCE INVESTIGATOR is assigned to the TASK FORCE.
  - (c) Such authority shall expire upon a TASK FORCE INVESTIGATOR'S transfer from the TASK FORCE or his/her agency's withdrawal from the TASK FORCE.
  - (d) All authority shall expire upon termination of said TASK FORCE.
- C. Monies from the Drug Trust Account and Criminal Investigation Funds for expenses incurred for narcotics investigations. These funds are authorized for:
- (a) Assistance for payments to informants for information and expenses in TASK FORCE narcotics investigations.
  - (b) Assistance for the purchase of narcotics as evidence in TASK FORCE investigations.
  - (c) Flash rolls for furtherance of TASK FORCE narcotics investigations.
    - (i) The justification for the TASK FORCE disbursement, the amount of the disbursement and accounting of funds will be in accordance with Virginia Department of State Police/Bureau of Criminal Investigation policy and reported in the same method and on Virginia Department of State Police/Bureau of Criminal Investigation forms.

- D. A VCIN terminal for assistance in conducting TASK FORCE investigations.
- E. TASK FORCE INVESTIGATORS will utilize the Virginia Department of State Police methods to investigate and report narcotics violations to the TASK FORCE PROSECUTORS. Appropriate forms, documents, and paperwork will be provided to the TASK FORCE along with the responsibility of filing monthly reports and drug case reports with the Virginia Department of State Police/Bureau of Criminal Investigation.
- F. The Asset/Forfeiture Coordinator for the Virginia Department of State Police will prepare and submit TASK FORCE asset/forfeiture paperwork and Department of Criminal Justice Services will handle disbursement of funds to the participating agencies operating under this agreement. To that end, the following procedures will be utilized:
  - (a) Upon seizure of a forfeitable asset, the TASK FORCE COORDINATOR will prepare a summary statement of the probable cause for seizure and obtain all other required information (seizure number, date of seizure, etc.) to complete the necessary state and/or federal forfeiture forms.
  - (b) The TASK FORCE COORDINATOR will submit the forfeiture documentation described above to the Asset/Forfeiture Coordinator for the Virginia Department of State Police for completion of the appropriate state and/or federal forms and submit them for the signatures of the Superintendent of the Virginia Department of State Police.
  - (c) Once the appropriate signatures have been obtained, the Asset/Forfeiture Coordinator for the Virginia Department of State Police will submit the state

and/or federal forfeiture forms to the appropriate federal law enforcement agency and/or the Department of Criminal Justice Services and provide copies to the TASK FORCE COORDINATOR.

- (d) TASK FORCE COORDINATOR will ascertain the amount of expenses (flash money, buy money, CI payments) incurred by each TASK FORCE AGENCY. Each agency will be reimbursed from monies received from TASK FORCE forfeiture matters before determining the exact sharing percentages.
- (e) Upon receipt of monies from any TASK FORCE forfeiture matter, the Asset/Forfeiture Coordinator for the Virginia Department of State Police shall contact the TASK FORCE COORDINATOR to determine the exact sharing percentages due to the clause of this agreement as described in paragraph C of the Asset Forfeiture Addendum.
- (f) Once the sharing percentages have been determined, the Asset/Forfeiture Coordinator for the Virginia Department of State Police will notify the Department of Criminal Justice Services to disperse the funds to the TASK FORCE member agencies. DCJS will notify the TASK FORCE COORDINATOR of the disbursements who will notify the COMMAND GROUP.
- (g) Each agency operating under this agreement shall adhere to all state and/or federal procedures concerning maintaining of forfeiture documentation and the disbursement of forfeited funds for audit purposes.

XVII. All participating agencies agree to provide on an as needed and as available basis the following to support the activities of the TASK FORCE:

- A. Technical equipment: dialed number recorders (DNR), electronic tracking devices, night vision equipment, surveillance radios, and audio and video equipment.
- B. Personnel for extended surveillance or wiretap monitoring.

#### **MEDIA RELEASES**

XVIII. The TASK FORCE will cooperate with the media to assist them in obtaining information on matters of public interest. However, certain information must remain confidential in order to avoid interfering with a TASK FORCE investigation or because it is legally privileged. To that end, all information released to the media regarding TASK FORCE investigations and/or prosecutions will be coordinated with all of the participating agencies under this agreement and with any other agency that is participating in TASK FORCE investigations and/or prosecutions. In the case of press releases and news conferences relating to TASK FORCE arrests and/or prosecutions, all contacts with the media will be made in accordance with the participating agencies' guidelines and the rules of the court and the prosecutor's office in which jurisdiction the case will be prosecuted.

#### **TERMINATION CLAUSE**

XIX. This agreement shall remain in effect until terminated by the parties hereto, upon written notice, setting forth the date of such termination. Withdrawal from this agreement by one party hereto shall be made by written notice to the other parties 45 days prior to said withdrawal. However, withdrawal by one party shall not terminate the agreement among the remaining parties.

# ASSET FORFEITURE ADDENDUM

## ASSET/FORFEITURE

- I. As a matter of course, TASK FORCE investigations should result in the seizure of forfeitable assets. To that end; TASK FORCE seizures will be processed by the most effective means available through State court and/or Federal administrative and/or court proceedings. It is the philosophy of the COMMAND GROUP that the parties to this agreement will distribute forfeiture funds and assets derived from seized assets in a fair and equitable manner as set forth in the following section.
  - A. The City of Hampton and the City of Newport News will each receive a 34.32% share and the Virginia State Police will receive a 19.36% share of the total cash proceeds disbursed to the TASK FORCE from any State or Federal forfeiture matter, notwithstanding the provision the Asset Forfeiture Addendum, paragraph C.
  - B. The Peninsula Association of Commonwealth Attorney's Association will receive 12% of the total cash proceeds disbursed to the TASK FORCE from any State or Federal forfeiture matter.
  - C. It is understood that the percentage of the total proceeds to be shared with the TASK FORCE in any investigation will vary depending upon the level of participation by the TASK FORCE with any federal and/or other local law enforcement agencies. It is also understood that there may be expenses incurred by federal agencies and/or the Department of Criminal Justice Services in the processing and handling of assets and those expenses will be deducted from the total amount of proceeds available to be shared with the TASK FORCE and any other agency participating in a TASK FORCE investigation.

- D. In the event that in-kind property is seized that may be of use to the TASK FORCE, such as vehicles, pagers, cellular telephones, computer equipment, etc., the property must be forfeited to the participating agency having jurisdiction to file the seizure. The property could then be assigned to the TASK FORCE INVESTIGATOR representing that agency for use by the TASK FORCE.
- E. In the event a vehicle is forfeited that is of law enforcement use to a participating agency, the agency may request the vehicle be forfeited to that agency using the following guidelines:
- (a) Vehicles will be forfeited in the following rotational sequence: Virginia Department of State Police, followed by the City of Hampton, followed by the City of Newport News. (Sequence is determined by the relative monetary contribution to the operation of the TASK FORCE.)<sup>1</sup>
  - (b) When a participating agency accepts a forfeited vehicle, that agency shall then be moved to the last position on the rotational list and the next forfeited vehicle shall be offered to the agency occupying the first position in the rotational sequence.
  - (c) If none of the participating agencies is willing to accept the forfeited vehicle, that vehicle shall be sold according to federal guidelines or disposition regulations of the seizing agency and the proceeds shall be distributed according to the Asset Forfeiture Addendum.

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<sup>1</sup> As of July 1, 2009, the Hampton Police Division is the next agency in the rotation to receive a vehicle. The Newport News Police Department was the last agency to put a vehicle into service as a result of a TASK FORCE forfeiture matter.

- (d) Any deviation from this sequence must be approved by the COMMAND GROUP.
- (e) It shall be the responsibility of the participating agency accepting a forfeited vehicle to title, maintain, and insure the vehicle.
- F. The care and maintenance of any other in-kind property utilized by a participating agency pursuant to the agreement shall be the sole responsibility of that participating agency.
- G. When it becomes necessary to dispose of any in-kind property including vehicles, utilized by a participating agency, it shall be disposed of according to the property disposition regulations of that agency and any proceeds from said disposal shall not be distributed to other participating agencies but be retained by the agency disposing of the property.
- H. The TASK FORCE COORDINATOR shall be responsible for tracking seizures made by the TASK FORCE and disbursements made to the TASK FORCE and will report the current status in the quarterly COMMOND GROUP meetings.

IN WITNESS HEREOF, the parties hereto have executed this agreement, consisting of 17 pages, including the cover page and signature page.

ATTEST:

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF STATE POLICE

BY: \_\_\_\_\_  
Colonel W. Steven Flaherty - Superintendent

Date: \_\_\_\_\_

CITY OF HAMPTON, VIRGINIA

BY: *Mary B. Bunting*  
Mary B. Bunting, Hampton City Manager

Date: \_\_\_\_\_

BY: *Charles R. Jordan, Jr.*  
Charles R. Jordan, Jr. Chief of Police

Date: \_\_\_\_\_

**CITY OF HAMPTON  
OFFICE OF THE CITY ATTORNEY**

Approved as to legal form and sufficiency

Date: 9-1-10

*St. D. B.*  
Attorney

BY: *Neil S. Dwyer*  
Finance Department

Date: 9-2-10

BY: *St. D. B.*  
City Attorney Office

Date: 9-1-10

CITY OF NEWPORT NEWS, VIRGINIA

BY: \_\_\_\_\_  
Neil A. Morgan, Newport News City Manager

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
James D. Fox - Chief of Police

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Newport News City Clerk

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Newport News City Attorney

Date: \_\_\_\_\_

PENINSULA ASSOCIATION OF  
COMMONWEALTH ATTORNEYS

BY: \_\_\_\_\_  
Linda D. Curtis - Commonwealth Attorney  
Hampton, Virginia

Date: \_\_\_\_\_