



**TEXAS MILITARY FORCES**  
Joint Force Headquarters  
Joint Counterdrug Task Force  
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MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE TEXAS JOINT COUNTERDRUG TASK FORCE  
AND  
THE HIDALGO COUNTY HIDTA TASK FORCE

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

**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 2016
- 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) establishes the framework for management and use of the Texas Military Forces (TXMF) Joint Counterdrug Task Force (JCDF) for operational support of Law Enforcement Agency (LEA) or Community Based Organization (CBO) counterdrug (CD) missions. In general, the Texas Military Forces will provide CD support to Federal, State, and local law enforcement agencies when requested in writing, subject to funding, and when a drug nexus is apparent. The State CD Coordinator (CDC) agrees to provide support to LEA CD operations and to work collaboratively to ensure continued support of law enforcement operations that are integral to the Governor's State CD Plan. This MOU defines the responsibilities of the CDC and the LEAs or CBOs and the lines of communication between the CDC in areas that include personnel, funding, training, operations, and logistics. It recognizes the roles and responsibilities of all respective and related parties or agencies. It is understood among the parties to this agreement that any Agency requests for National Guard (NG) assistance may include multi agency, Federal, State, and/or local cooperative law enforcement efforts. 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. Furthermore, this MOU is not intended to nor may it be used to supersede existing

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

Federal or State laws, Department of Defense, Department of the Army or National Guard Bureau (NGB) Regulations.

3. **BACKGROUND AND AUTHORITY:** 32 USC § 112 provides the statutory authority for the NG CD Program and the approved plans for the State of Texas. Consistent with the direction and guidance of the Office of the Secretary of Defense (OSD) and the Office of National Drug Control Policy (ONDCP), the Texas JCDF develops the Governor's State Plan for JCDF support. It is signed by the Governor and Attorney General, reviewed by the NGB, coordinated with U.S. Army North Command, and approved by the Office of the Secretary of Defense. The approval of the plan constitutes authority to utilize appropriated CD funds and requires accountability for the use of those funds. Various actions take place following the OSD approval of the Governor's State CD Plan resulting in the allocation of funds for the NGB to the Texas NG for personnel, operational tempo, and training to support LEA CD operational missions. This MOU is entered into by the Texas JCDF pursuant to the authority contained in NGR 500-2/ANGI 10-801, Title 32, United States Code §112, Title 32 United States Code §502(f), and the Texas Governor's CD State Plan.

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

Start Date: 1 October 2015 End Date: 30 September 2016

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

6. **TERMINOLOGY:**

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

b. CBO is the supported organization entering into this MOU with the JCDF.

c. Drug Nexus means a connection, link or tie of illegal drugs or narcotics with actual or suspected criminal activity.

d. Exigent Circumstances are circumstances in which immediate action is necessary to protect police officers, NG personnel or other persons from injury, to prevent loss or destruction of evidence, or to prevent the escape of a suspect already in custody. Under exigent circumstances, JCDF personnel may use an appropriate level of force as defined in the JCDF Rules for the Use of Force (RUF).

e. LEA or Agency is defined as the supported agency entering into this MOU with the JCDF.

f. Task Force Member refers to a Soldier or Airman assigned to JCDF.

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

g. JCDTF refers to Texas NG Soldiers and Airmen on Full Time NG Duty CD orders in support of the CD Support Program.

h. TXMF includes the Texas Army NG and Texas Air NG, 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 NG is not a LEA any involvement of the NG 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 NG personnel are not sworn police officers and those personnel who are assigned to work with the LEA are assigned in a support role.

b. Equipment:

(1) The loan of NG equipment to the LEA will be in accordance with NGR 500-2/ANGI 10-801, paragraph 7-10, 32 USC § 112 and any other applicable NG 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) Each party 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. CD personnel will ensure statistical results are input into Full Time Support Management Control System for inclusion in required reports/records.

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

b. The NG 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 NG by the LEA will not be released to non-Department of Defense sources unless in accordance with supported duties in the task force and approved by the custodian of the information.

**9. COMMAND AND CONTROL AND LINES OF COMMUNICATION:**

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

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

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

d. This MOU is not intended to circumvent existing lines of communication between the principal staff and the chain of command as established by The Adjutant General. However, matters of routine nature that can be addressed within the context of this MOU may be communicated directly between the CDC and the LEA. Issues requiring policy, regulatory change, or resource allocation shall be addressed to The Adjutant General through the normal staffing process.

**10. SCOPE OF OPERATIONS:**

a. The Texas NG will support law enforcement CD operations with selected assets consistent within law, OSD directives, regulations, and the Governor's State CD Plan. Based on priorities established by ONDCP and missions approved by OSD, the Governor's State CD Plan provides the framework within which support to LEA CD missions is accomplished. Definitions of missions contained within that framework are detailed in NGR 500-2. All missions performed by Texas NG personnel must fall within one of the missions approved in the Governor's State CD Plan.

b. JCDF personnel will operate in accordance with an LEA support request approved by the JCDF Commander. Requests to perform missions that are not on the

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

OSD approved mission list must be submitted through the NGB J32 to the OSD for approval in the Texas Military Forces approved State Plan.

c. JCDF personnel may be asked to review requests for information from Geographic Combatant Commands and subordinate commands. JCDF requests that the LEA support these requests as necessary consistent with the law and in accordance with LEA policy. The LEA'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 Department of Defense resources

#### 11. 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. The JCDF personnel will operate under and comply with the RUF established by the JCDF Commander. Only JCDF personnel specifically authorized by the Commander shall be armed. Each agency will follow its own agency policy concerning firearms discharge and use of deadly force. JCDF 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. JCDF members have the right to use force only in exigent circumstances as defined above. The Task Force Member may only use the amount of force necessitated by the established RUF.

#### 12. PUBLIC AFFAIRS:

a. Information released to the media concerning NG assistance to a LEA or NG participation in drug law enforcement missions will be coordinated between the Agency and NG public affairs/information officers. Participating NG 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 NG channels.

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

c. NG members in duty status will not be interviewed by the media without NG approval and consultation with the LEA.

13. SAFETY: The safety of NG CD personnel is the primary concern of the JCDF Commander and staff and will be emphasized in the planning and during all operations

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

involving CD personnel. The successful accomplishment of all CD support missions with minimum risk will be the main goal. CD personnel will adhere to the JCDF Commander's safety policy at all times. NG members shall not knowingly be sent or directed to enter a hostile environment where there is a probability of encountering life threatening situations or direct contact with suspects.

**14. WARRANTS/PERMITS LEGAL REQUIREMENTS:** The supported LEA shall ensure that all legal requirements, including obtaining warrants or necessary permits, are fulfilled. The supported LEA recognizes that JCDF personnel may not engage in any activity that law enforcement officers are prohibited from conducting. NG personnel will not be utilized or participate in any unauthorized surveillance activities. Information or data obtained by the NG, 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 NG personnel or in NG 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 NG will be given adequate classification consideration.

**15. ARREST, SEARCHES, SEIZURES AND EVIDENCE:**

a. JCDF personnel will not directly participate in law enforcement activities such as arresting or conducting searches of individuals or private property. JCDF personnel are further prohibited from direct involvement in seizures or the chain of custody concerning any evidence seized by LEA officials.

b. All intelligence activities authorized to be performed by JCDF personnel shall be strictly limited to support of LEA CD operations. Other than intelligence support authorized in conjunction with LEA CD operations, NG personnel shall not collect, retain, or disseminate intelligence on U.S. persons, or store LEA intelligence products in NG facilities or databases. Absent exigent circumstances, JCDF personnel shall not participate in the apprehension of suspects or search of any property.

c. JCDF 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 JCDF personnel in the event that they are subpoenaed or otherwise ordered to appear in any court. JCDF personnel will report such order to appear in court to their respective JCDF Commander. 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.

**17. DUTY HOURS, UNIFORM WEAR & WORK SCHEDULES:** Duty hours and work schedules shall be in accordance with the LEA support request. All JCDF personnel are required to perform additional military duties as part of their regular NG unit.

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

Accordingly, JCDF personnel will be required to attend Inactive Duty Training (drill weekends) and Annual Training (two-week period). In addition, all JCDF personnel are authorized thirty (30) days of leave per year, as approved by the JCDF Commander. Personnel will wear appropriate military uniforms while performing CD support duty unless this requirement has been explicitly waived by the Adjutant General or his designated representative.

**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 NG 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 or wrongful acts or omissions of its agents and employees while acting within

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

the scope of their employment to the extent permitted by the Federal Tort Claims Act, as defined in Title 28 of the U.S.C.

c. No hold harmless agreements are required in agreements between JCDF and any 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), through NGB-J32-CD if incidents arise with the possibility of civil liability on the part of the NG Member, the NG, or NG volunteers or when occurrence of negative judicial ruling based wholly or in part upon the conduct of NG members, or NG volunteers, including the suppression of evidence.

23. 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 JCDF 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 oral notification to the other party. If notification of termination is delivered orally, written confirmation shall follow within five (5) business days. The supported LEA 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.*

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SUZANNE D. ADKINSON  
COL, MI, TXARNG  
Commanding

\_\_\_\_\_  
Ricardo Rodriguez,  
Hidalgo County  
Criminal District Attorney

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
10/23/15  
(Date)

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Jose V. Delgado  
Hidalgo County  
HIDTA Task Force Commander

APPROVED AS TO FORM  
Ricardo Rodriguez, Jr.  
Hidalgo County District Attorney's Office

\_\_\_\_\_  
10/21/15  
(Date)

By: Date: 10/23/15  
Victor M. Garza, Assistant District Attorney