MEMORANDUM OF UNDERSTANDING
NORTH TEXAS HIDTA
NORTHERN DRUG INITIATIVE

PARTIES

1. This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation and the below listed agencies:

Texas Department of Public Safety	(DPS)
Dallas Police Department	(DPD)
Denton County Sheriff's Office	(DCSO)
Denton Police Department	(DEPD)
Plano Police Department	(PPD)
Collin County District Attorney's Office	(CCDAO)
Texas National Guard	(TNG)
Drug Enforcement Administration	(DEA)
Internal Revenue Service	(IRS)
Bureau of Alcohol, Tobacco, Firearms, and Explosives	(ATF)
Bureau of Immigration & Customs Enforcement	(ICE)

AUTHORITIES

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

PURPOSE

3. The purpose of this MOU is to delineate the responsibilities of the Northern Drug Initiative, North Texas High Intensity Drug Trafficking Area (NTHIDTA) participants, maximize interagency 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

4. The mission of the NDI is to identify and target for prosecution criminal enterprise groups responsible for drug trafficking and money laundering. The NDI will disrupt and dismantle the most significant drug trafficking organizations in the communities served by the participating law enforcement agencies. This will be accomplished in a task force environment through the utilization of an intelligence base, sophisticated investigative techniques and asset forfeiture. The NDI 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.

COMPOSTITION

5. The NDI will consist of the following agencies who will provide full-time assigned personnel, as set forth below:

Agency	# of Full-Time Resources Committed
Federal Bureau of Investigation	11
Dallas Police Department	1
Denton County Sheriff's Office	2
Denton Police Department	1
Plano Police Department	1
Collin County District Attorney's Office	1
Drug Enforcement Administration	1
Internal Revenue Service	1
Texas National Guard	1
Bureau of Alcohol, Tobacco, Firearms, and Explosives	1
Bureau of Immigration and Customs Enforcement	1
Texas Department of Public Safety	1
Total	23

DIRECTION

6. All participants acknowledge that the NDI is a joint operation in which all agencies act as full partners in the operation of the task force. The NDI will operate as part of the Texas Enforcement Initiative, under the authority of the NTHIDTA Executive Board. The NTHIDTA Executive Board, made up of the heads of the participating entities, will meet monthly in order to collectively provide policy oversight and strategic direction to the NDI.

SUPERVISION

7. The day-to-day operation and administrative control of the NDI will be the responsibility of the Supervisory Special Agent (SSA) of the FBI designated by the FBI Special Agent In Charge (SAC), Dallas Division. The SSA will have direct and daily responsibility for all personnel and investigative matters pertaining to the NDI.

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

9. Each agency member who is a NDI member will be subject to the personnel rules, regulations, laws, and policies applicable to those of their respective agencies. FBI participants will continue to adhere to the Bureau's ethical standards and will remain subject to the Supplemental Standards of Ethical Conduct for employees of the Department of Justice.

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

11. Subject to other provisions in this document, continued membership on the NDI will be based on performance and will be at the discretion of each member's respective supervisor. The FBI SSA/SAC will also retain discretion to remove any member from the NDI.

CASE ASSIGNMENTS

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

13. Assignment 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 investigative and personnel matters.

14. For FBI administrative purposes, NDI cases will be entered into the relevant FBI computer system.

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

RESOUCE CONTROL

16. Specific control of NDI resources, including personnel and the continual dedication of NDI resources, shall be retained by the participating agency heads, who will be kept fully apprised of all investigative developments by their respective subordinates.

OPERATIONS

A. Investigative Exclusivity

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

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

B. Informants

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

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

21. In those instances where a participating agency provides an informant, the FBI may, at the discretion of the FBI SAC, become solely responsible for the informant's continued development, operation, and for compliance with necessary administrative procedures regarding operation and payment as set forth by the FBI.

22. 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 NDI investigations. Documentation of, and any payments made to, FBI informants and CWs shall be in accordance with FBI policy and procedure.

23. Operation, documentation, and payment of solely state, county, or local informants and CWs opened and operated by Non-FBI NDI members in furtherance of NDI 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 NDI investigations shall be maintained at an agreed to location.

C. Reports and Records

24. 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 NDI will be made available for inclusion in the respective investigative agencies' files as appropriate.

25. NDI reports prepared in cases assigned to state, county and local participants will be maintained at a FBI approved location; original documents will be maintained by the FBI.

26. Records and reports generated in NDI 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 the NDI.

27. NDI investigative records maintained at the Frisco Resident Agency of the FBI will be available to all NDI members, as well as their supervisory and command staff subject to pertinent legal, administrative and /or policy restrictions.

28. All evidence and original tape recordings (audio and video) acquired during the course of the NDI 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 NDI personnel.

29. All NDI investigative records will be maintained at an approved FBI location.

30. Placement of all or part of said information into participating agency files rests with the discretion of supervisory personnel of the concerned agencies.

31. 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.

INFORMATION SHARING

32. No information possessed by the FBI, to include information derived from informal communications by the Assignee with personnel of the FBI, may be disseminated by the Assignee to non-NDI personnel without the permission of the Assignee's designated FBI NDI 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 Assignee 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

33. NDI investigative procedures are to conform to the requirements for Federal Prosecution.

34. A determination will be made on a case-by-case basis whether the prosecution of NDI cases will be at the State or Federal level. This determination will be based on evidence obtained and a consideration of which level of prosecution would be of the greatest benefit to the overall objectives of the NDI.

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

36. Whether to continue and/or conduct additional investigation of the state or local crimes involved will be at the sole discretion of the respective state and local authorities.

INVESTIGATIONS

A. Evidence/Techniques

37. 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 conduct of electronic surveillance.

38. In all cases assigned to state, county, or local law enforcement NDI Task Force Officers, 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.

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

B. Undercover Operations

40. All NDI undercover operations will be conducted and reviewed in accordance with FBI guidelines and the Attorney General's Guidelines on FBI Undercover Operations. All participating agencies may be requested to enter into an additional MOU 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

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

DEPUTATIONS

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

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

VEHICLES

44. The FBI may authorize members of the NDI to use vehicles owned or leased by the FBI when necessary in connection with NDI surveillance, case management and investigations, and if available.

45. When authorized, participating agency personnel using FBI vehicles agree to operate the vehicles in accordance with all applicable FBI rules and regulations as outlined in the FBI Manual of Administrative Operations and Procedures (MAOP), Part I Section 3.1.

46. FBI vehicles, including Government-owned, rented, and leased vehicles, are to be used for official business only.

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

48. The responsibility for all other liability attributed to the participating agencies resulting from the use of NDI vehicles by their employees, confidential informants, or by cooperating witnesses rests with the individual participating agency.

49. The participating agencies agree to be responsible for any damage incurred to NDI vehicles caused by any act or omission on the part of their respective employees and participating agencies agree to assume financial responsibility for property damage to said vehicles.

50. The FBI and the United States will not be responsible for any tortious act or omission on the part of task force agency and/or its employees or for any liability resulting from the use of an FBI owned or leased vehicle utilized by a task force NDI member, except where liability may fall under the provisions of the Federal Tort Claims Act (FTCA), as discussed in the Liability Section herein below.

51. 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 a task force member while engaged in any conduct other than his or her official duties and assignments under this MOU.

52. To the extent permitted by applicable law, task force agencies agree 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 a task force NDI member which is outside the scope of his or her official duties and assignments under this MOU.

SALARY/OVERTIME COMPENSATION

53. The FBI and participating task force agencies agree to assume all personnel costs for their NDI representatives, including salaries, overtime payments and fringe benefits consistent with their respective agency.

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

PROPERTY AND EQUIPMENT

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

FUNDING

56. 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 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

57. The FBI shall be responsible for the processing of assets seized for federal forfeiture in conjunctions with NDI operations.

58. Asset forfeitures will be conducted in accordance with Federal law, and the rules and regulations set for forth by the FBI and Department of Justice (DOJ). Forfeitures attributable to NDI investigations may be distributed among the agencies participating in the NDI.

DISPUTE RESOLUTION

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

60. The parties 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

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

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

SECURITY CLEARANCES

63. Thirty days prior to being assigned to the NDI, 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.

64. 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.

65. Upon being selected, each candidate will receive a comprehensive briefing on FBI field office security policy and procedures.

66. During the briefing, each candidate will execute a non-disclosure agreement (SF-312) and FD-868, as may be necessary or required by the FBI.

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

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

LIABILITY

69. 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 NDI.

70. Unless specifically addressed by the terms of this MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees.

71. 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 NDI or otherwise relating to the NDI.

72. Legal representation by the United States is determined by DOJ on a case by case basis. The FBI cannot guarantee the United States will provide legal representation to any Federal, state or local law enforcement officer.

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

74. Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the United States government, acting within the scope of his employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), § 2671-2680.

75. For the limited purpose of defending claims arising out of NDI activity, state or local law enforcement officers who have been specially deputized and who are acting within the course and scope of their official duties and assignments pursuant to this MOU, may be considered an Aemployee@ of the United States government as defined in 28 U.S.C. § 2671. See 5 U.S.C. § 3374(c)(2).

76. Under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (commonly known as the Westfall Act), 28 U.S.C. § 2679(b)(1) the Attorney

General or her designee may certify that an individual defendant acted within the scope of his employment at the time of the incident-giving rise to the suit. Id., 28 U.S.C. § 2679(d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. 28 U.S.C. § 2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suits in his official capacity.

77. If the Attorney General declines to certify that an employee was acting within the scope of employment, Athe employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of this office or employment. 28 U.S.C. § 2679(d)(3).

78. Liability for negligent or willful acts of NDI employees, undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved.

79. Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. § 1983 for state and local officers or cross-deputized federal officers.

80. Both state and federal officers enjoy qualified immunity from suit for constitutional torts Ainsofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800 (1982).

81. NDI officers may request representation by the U.S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment. 28 C.F.R § 50.15, 50.16.

82. An employee may be provided representation "when the actions for which representation requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or [her] designee determines that providing representation would otherwise be in the interest of the United States." 28 C.F.R. § 50.15(a).

83. A NDI officer's written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI, Dallas Field Office. The CDC will then forward the representation request to the FBI's Office of the General Counsel (OGC) together with a Letterhead memorandum concerning the factual basis for the lawsuit. FBI/OGC will then forward the request to the Civil Division of DOJ together with an agency recommendation concerning scope of employment and Department representation. 28 C.F.R. § 50.15(a)(3).

84. If a NDI officer is found to be liable for a constitutional tort, he/she may request indemnification from DOJ to satisfy an adverse judgment rendered against the employee

in his/her individual capacity. 28 C.F.R. § 50.15(c)(4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to DOJ representation under 28 C.F.R. § 50.15(a).

DURATION

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

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

87. Upon termination of this MOU, all equipment provided to the NDI 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 NDI participation.

MODIFICATIONS

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

89. 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.

Greg Willis
Criminal District Attorney
Collin County, Texas

3-17-11
Date