



**Sheriff's Office  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

KUYLER CROCKER  
District One  
PETE VANDER POEL  
District Two  
AMY SHUKLIAN  
District Three  
EDDIE VALERO  
District Four  
DENNIS TOWNSEND  
District Five

**AGENDA DATE:** September 10, 2019 **REVISED**

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>

CONTACT PERSON: Ed Lardner, Grant Specialist    PHONE: (559) 802-9462

**SUBJECT:** Approve a Memorandum of Understanding with the Fresno County Sheriff's Office

**REQUEST(S):**

That the Board of Supervisors:

1. Approve a Memorandum of Understanding between the Tulare County Sheriff's Office and Fresno County Sheriff's Office for the County to receive Central Valley High Intensity Drug Trafficking Area reimbursement funds in an amount not to exceed \$394,685, retroactive from January 1, 2019 through December 31, 2020. The MOU is retroactive due to delays in receiving the MOU to process and submit before the effective date;
2. Find that the Board had authority to enter into the proposed MOU as of January 1, 2019, and that it was in the County's best interest to enter into the MOU on that date; and
3. Authorize the Chairman to sign four copies of the Memorandum of Understanding.

**SUMMARY:**

The High Intensity Drug Trafficking Areas (HIDTA) program provides assistance through grant funding to federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug-trafficking regions of the United States. Each HIDTA participating agency assesses the drug trafficking threat in its defined area for the upcoming year, develops a strategy to address the threat, designs initiatives to implement the strategy, proposes funding needed to carry out the initiatives, and prepares an annual report describing its performance from the

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previous year.

HIDTA activities include gathering and reporting intelligence data related to drug trafficking threats, conducting investigations, and reporting instances involving the trafficking of controlled substances located within Tulare County. This grant program is administered by the Office of National Drug Control Policy (ONDCP). Requests for reimbursements shall be in accordance with ONDCP rules and regulations.

A central feature of the HIDTA program is the discretion granted to the Executive Boards to design and implement initiatives that confront drug trafficking threats in each HIDTA. Fresno County Sheriff's Office (FCSO) is the Fiduciary Facilitator for the Central Valley HIDTA grant. This Memorandum of Understanding (MOU) is between the Tulare County Sheriff's Office (TCSO) and the FCSO, to facilitate the transfer of funds for the HIDTA program.

HIDTA grants allow a two-year spending period, however FCSO receives a new grant every year and grant spending periods always overlap each other. Task Force activities will first be reimbursed with remaining 2018 funds through the Fresno County Sheriff's Office. Once 2018 funds are expended, the Fresno County Sheriff's Office will continue to act as fiduciary for 2019 HIDTA funds.

On July 17, 2018, your Board approved the prior HIDTA MOU, Agreement No. 28750, Resolution No. 2018-0607, for the 2018 award year. Approval of this MOU will allow TCSO to continue to partner with other members of law enforcement involved in HIDTA and will allow TCSO to receive funds for the new 2019 grant period.

The original MOU was approved as to form by County Counsel on July 3, 2018 and was approved by the Board of Supervisors on July 17, 2018. The substantive deviations from the standard County boilerplate identified in the original agenda item were: 1) FCSO may terminate for cause or due to loss of funds with 30 days' advance written notice; 2) Either party may terminate without cause with 30 days' advance written notice; 3) MOU includes a mutual indemnification clause; 4) County must allow FCSO, as well as the federal agency awarding the underlying grant for the HIDTA program, access to records relating to this MOU for as long as the records are retained; and 5) the County signs first.

The proposed amendment to the MOU does not include any additional deviations from the standard County boilerplate. The only changes to the original MOU, as amended to date, is the change in time period of the MOU. The price for services has not changed.

**FISCAL IMPACT/FINANCING:**

HIDTA will provide funding for expenditures and overtime for TCSO staff participating in the HIDTA Task Force related to drug trafficking threats,

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investigations and suppression.

The total amount of HIDTA funds available for use during the period of January 1, 2019 to December 31, 2020 is \$394,685. This budget allocation is available on a first come first serve basis for use by multiple agencies until the funds are fully expended. Of the funds available, the following are projected amounts by Fiscal Year (FY) for the Sheriff's Office:

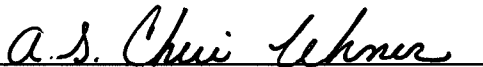
- \$18,344 is projected for FY 19/20 (July 2019 to June 2020); and
- \$9,172 is projected for FY 20/21 (July 2020 to December 2020).

The projected amounts fall within the Federal overtime limit of \$18,344 per deputy, which is based per calendar year and not by fiscal year. Funds are included in the Sheriff's Office FY 19/20 budget and, if not fully expended during the fiscal year, the remaining amount will be rolled over to the FY 20/21 budgets. There is no additional net County cost to the general fund.

**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

The County's strategic plan includes the Safety and Security Initiative to effectively and fairly investigate, arrest, prosecute and punish individuals who engage in criminal behaviors. The MOU will support this initiative through grants for investigation and prosecution of cases that will contribute to TCSO's ability to locate and prevent drug-trafficking incidents.

**ADMINISTRATIVE SIGN-OFF:**

  
Mike Boudreaux  
Sheriff-Coroner

cc: County Administrative Office

Attachment(s) MOU

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVE A )  
MEMORANDUM OF UNDERSTANDING ) Resolution No. \_\_\_\_\_  
WITH THE FRESNO COUNTY SHERIFF'S ) Agreement No. \_\_\_\_\_  
OFFICE )

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
\_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

1. Approved a Memorandum of Understanding between the Tulare County Sheriff's Office and Fresno County Sheriff's Office for the County to receive Central Valley High Intensity Drug Trafficking Area reimbursement funds in an amount not to exceed \$394,685, retroactive from January 1, 2019 through December 31, 2020. The MOU is retroactive due to delays in receiving the MOU to process and submit before the effective date;
2. Found that the Board had authority to enter into the proposed MOU as of January 1, 2019, and that it was in the County's best interest to enter into the MOU on that date; and
3. Authorized the Chairman to sign four copies of the Memorandum of Understanding.



Margaret Mims  
Sheriff  
Fresno County Sheriff's Office

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE FRESNO COUNTY SHERIFF'S OFFICE AND THE TULARE COUNTY  
SHERIFF'S OFFICE**

The purpose of this memorandum of understanding (MOU) shall be to facilitate the transfer of funds between the Fresno County Sheriff Office, Central Valley (CV), California High Intensity Drug Trafficking Area (HIDTA) Fiduciary Facilitator and the Tulare County Sheriff's Office HIDTA Operational Unit, hereinafter referred to as RESOURCE AGENCY.

The CV HIDTA program provides specified funding to the Fresno County Sheriff's Office pursuant to Grant Agreement G19CV0004A, as may be modified from time to time (hereinafter referred to as the "Agreement"). The Fresno County Sheriff shall disperse grant funds to CV HIDTA Operational Units participating in a Task Force, pursuant to the terms of the Agreement, the program description and budget, as well as applicable laws, regulations and policies.

Any such transfer of funds between the Fresno County Sheriff Office and the RESOURCE AGENCY shall be in furtherance of the Agreement and the CV HIDTA program. The RESOURCE AGENCY shall submit requests for reimbursement for expenditures and overtime of its law enforcement personnel participating in a Task Force to the Task Force Commander. The request for reimbursement will be in accordance with the Agreement and the Office of National Drug Control Policy (ONDCP) rules and regulations. Once the request has been approved by the Task Force Commander and any other applicable persons, the reimbursement request will be forwarded to the Fresno County Sheriff's Office with proper documentation through the Task Force reimbursement requests. If a request for reimbursement does not follow ONDCP's rules and regulations or there are not sufficient remaining grant funds to make the reimbursement, the Fresno County Sheriff's Office will not make reimbursement and the burden of the cost will be at the expense of the RESOURCE AGENCY. If overtime is reached at the federal maximum per officer/agent, the burden of the cost will be at the expense of the RESOURCE AGENCY. The HIDTA Program Policy Section 6.8.2.3 states that HIDTA funded overtime shall not exceed 25 percent of the federal G-12, Step 1 level pay scale for Federal Law Enforcement Officers, in effect at the beginning of a calendar year. The Fresno County Sheriff's Office shall have the right to demand of RESOURCE AGENCY the repayment of any funds disbursed, under this MOU, which in the judgement of Fresno County Sheriff's Office were not expended in accordance with the terms of the Agreement. The RESOURCE AGENCY shall promptly refund any such funds upon demand or, at the Fresno County Sheriff's Office option, such repayment shall be deducted from future payments owing to RESOURCE AGENCY under this MOU.

*Dedicated to Protect & Serve*

Law Enforcement Administration Building / 2200 Fresno Street / P.O. Box 1788 / Fresno, California 93717 / (559) 600-8800

Equal Employment Opportunity \* Affirmative Action \* Disabled Employer

The RESOURCE AGENCY that regularly incurs reimbursable overtime/expenses should submit reimbursement request packages to the Fresno County Sheriff's Office at least every 90 days. Requests to reimburse authorized overtime expenses must be submitted no later than 90 days following the final day of the pay period in which the overtime was performed. Requests to reimburse authorized expenses must be submitted no later than 90 days following the day that the RESOURCE AGENCY paid for the authorized expense for which reimbursement is being sought. Requests for reimbursement submitted after 90 days will not be processed for payment.

All financial, statistical, personal, technical, and law enforcement sensitive data and information related to the work performed by RESOURCE AGENCY, or which becomes available to RESOURCE AGENCY in carrying out this MOU, shall be protected for and on behalf of the CV HIDTA by RESOURCE AGENCY from unauthorized use or unauthorized disclosure.

The RESOURCE AGENCY shall at any time during business hours, and as often as the Fresno County Sheriff's Office may deem necessary, make available for examination all of its records and data with respect to the matters covered by this MOU. The RESOURCE AGENCY shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under the Agreement. The RESOURCE AGENCY shall, upon request, permit the Fresno County Sheriff's Office to audit and inspect all of such records and data necessary to ensure RESOURCE AGENCY'S compliance with the terms of this MOU. The RESOURCE AGENCY shall maintain all such reports and records for a period of three (3) years after the close of the agreement.

The terms of the MOU, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the service provided may be modified, or this MOU terminated at any time by giving the Resource AGENCY thirty (30) days advance written notice. The Fresno County Sheriff's Office may immediately suspend or terminate this Agreement in whole or in part, by giving thirty (30) days advance written notice to the RESOURCE AGENCY, where in the determination of the Fresno County Sheriff's Office there is:

- 1) An illegal or improper use of funds;
- 2) A failure to comply with any terms of this Agreement;
- 3) A material breach of the terms of this MOU, including, but not limited to, Exhibits A through H;
- 4) A substantially incorrect or incomplete report submitted to Fresno County Sheriff's Office;
- 5) Improperly performed service;
- 6) If the Fresno County Sheriff-Coroner-Public Administrator, or her designee, determines that the RESOURCE AGENCY failed to comply with the law, rules, regulations or requirements imposed as a result of, or relating to, this MOU, as applicable or in any way relating to the MOU or in any way relating to the CV HIDTA program;
- 7) The Resource Agency fails to timely or properly comply with any requests by Fresno County Sheriff's Office that in any way relates to this MOU or the CV HIDTA program.

The Fresno County Sheriff-Coroner-Public Administrator or the Resource Agency may terminate this MOU for cause, as delineated above, or for convenience, by giving thirty (30) days advance written notice to the other party. In the event such termination occurs the Fresno County Sheriff Office and the RESOURCE AGENCY agree to consider settlement, and any basis therefore, regarding any outstanding obligations or debts.

The RESOURCE AGENCY promises and covenants that it is aware of all the laws, rules, codes, regulations, and requirements, whether based upon Federal Law, California State Law or as a part of the underlying Grant Agreement, that are applicable or relate to this MOU and all activities under the CV HIDTA program, and agrees, promises and covenants, that said RESOURCE AGENCY will comply with any and all such laws, rules, codes, regulations, and requirements, and to assist the Fresno County Sheriff Coroner Public Administrator in complying with the same. Likewise, should the Fresno County Sheriff Coroner Public Administrator, or her designee, request in writing that RESOURCE AGENCY perform some act, provide some form of documentation or record, or otherwise assist the Fresno County Sheriff Coroner Public Administrator in any of its functions or obligations, that relate to this MOU or the CV HIDTA program, RESOURCE AGENCY shall and will promptly perform said act, or provide the requested documentation or records. In particular, but not exclusive, the RESOURCE AGENCY shall comply with all the laws, rules, codes, and regulations, as well as any requirements to file documents, keep records, make certifications or assurances, or any other requirements or obligations, including, but not limited to, those in Exhibits A through H, which are attached hereto, and outlined as follows:

- Exhibit A: Clean Air and Water Acts
- Exhibit B: State Energy Conservation Act
- Exhibit C: Debarment Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
- Exhibit D: Lobbying Activities
- Exhibit E: Conflict of Interest
- Exhibit F: Disclosure of Violations of Federal Criminal Law
- Exhibit G: Uniform Guidance § 200.322- Procurement of Recovered Materials
- Exhibit H: Uniform Guidance § 200.326- Appendix II Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Each party shall assume the responsibility and liability of the acts and omissions of its own elected representatives, officers, agents, volunteers, or employees in connection with the performance of their official duties under or relating to this MOU. For tort liability purposes, no participating agency shall be liable (if at all) only for the torts of its own personnel that occur within the scope of their official duties.

It is the intent of the parties, where negligence is determined to have been contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense, and liability attributable to that party's negligence.

This agreement shall remain in effect unless revoked by the Fresno County Sheriff's Office CV HIDTA Fiduciary Facilitator, or until expiration of funds or the grant itself.

By: \_\_\_\_\_  
MARGARET MIMS, Sheriff-Coroner-Public Administrator  
Fresno County Sheriff's Office

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

By:   
MIKE BOUDREAUX, Sheriff-Coroner  
Tulare County Sheriff's Office

Date: 8-26-19 \_\_\_\_\_

By: \_\_\_\_\_  
KUYLER CROCKER, Chairman  
Tulare County Board of Supervisors

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



**EXHIBIT A**  
**Clean Air and Water Acts**

In the event the funding under this MOU exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00), RESOURCE AGENCY shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act contained in 42 U.S. Code 7601 *et seq.*; the Clean Water Act contained in 33 U.S. Code 1368 *et seq.*; and any standards, laws, and regulations promulgated thereunder. Under these laws and regulations, RESOURCE AGENCY shall assure:

- A. No facility shall be utilized in the performance of the Agreement that has been listed on the Environmental Protection Agency (EPA) list of Violating Facilities;
- B. Fresno County Sheriff-Coroner's Office shall be notified prior to execution of this Agreement of the receipt of any communication from the Director, Office of Federal Activities, U.S. EPA indicating that a facility to be utilized in the performance of this Agreement is under consideration to be listed on the EPA list of Violating Facilities;
- C. Fresno County Sheriff-Coroner's Office and U.S. EPA shall be notified about any known violation of the above law and regulations; and
- D. This assurance shall be included in every nonexempt subgrant, contract, or subcontract.

**EXHIBIT B**  
**State Energy Conservation Act**

RESOURCE AGENCY shall recognize the mandatory standard and policies relating to energy efficiency in the State Energy Conservation Plan as required by the United States Energy Policy and Conservation Act (42 U.S.C. section 6201, *et seq*).

## **EXHIBIT C**

### **Debarment Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions**

- A. Fresno County Sheriff-Coroner's Office and RESOURCE AGENCY recognize that Federal assistance funds will be used under the terms of this MOU. For purposes of this paragraph, RESOURCE AGENCY will be referred to as the "prospective recipient".
- B. The following certification, which, by signing the MOU this Exhibit C is attached to, is certified by the RESOURCE AGENCY, is required by the regulation implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, section 98.510, Participant's responsibilities.
  - 1. The prospective recipient of Federal assistance funds certified by entering into this MOU, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - 2. The prospective recipient of funds agrees by entering into this MOU that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the Federal department or agency with which this transaction originated.
  - 3. Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this MOU.
  - 4. The prospective recipient shall provide immediate written notice to the Fresno County-Sheriff-Coroner's Office if at any time prospective recipient learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The prospective recipient further agrees that by entering into this MOU, it will include a clause identical to Paragraph B.3 of this MOU Exhibit C and titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions", in all lower tier covered transactions and in all solicitations for lower tier covered transaction.
  - 5. The certification is a material representation of fact upon which the Fresno County Sheriff-Coroner's Office relied in entering into this MOU.

**EXHIBIT D**  
**Lobbying Activity**

None of the funds provided under this MOU shall be used for publicity, lobbying or propaganda purposes designed to support or defeat legislation pending in the Congress of the United States of America or the Legislature of the State of California.

## **EXHIBIT E**

### **Conflict of Interest**

As a non-Federal entity, you must follow ONDCP's conflict of interest policies for Federal awards. Recipients must, and RESOURCE AGENCY represents and promises that it will, disclose in writing any potential conflict of interest to an ONDCP Program Officer; recipients that are pass-through entities must require disclosure from subrecipients or contractors and RESOURCE AGENCY represents and promises it will provide said disclosures. This disclosure must take place immediately whether you are an applicant or have an active ONDCP award.

The ONDCP conflict of interest policies apply to sub-awards as well as contracts, and are as follows:

- A. As a non-Federal entity, you must maintain written standards of conduct covering conflicts of interest and governing the performance of your employees engaged in the selection, award, and administration of subawards and contracts.
- B. None of your employees may participate in the selection, award, or administration of a subaward or contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an organization considered for a subaward or contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or contractors or parties to subawards or contracts.
- C. If you have a parent, affiliate, or subsidiary organization that is not a state, local government, or Native American tribe, you must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, you are unable or appear to be unable to be impartial in conducting a sub-award or procurement action involving a related organization.

**EXHIBIT F**  
**Disclosure of Violations of Federal Criminal Law**

As a non-Federal entity, you must disclose, in a timely manner, in writing to ONDCP all violations of Federal criminal law involving fraud, bribery or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award that includes the term and condition outlined in 200 CFR Part 200, Appendix XII "Award Term and Condition for Recipient Integrity and Performance Matters," are required to report certain civil, criminal, or administrative proceedings to System for Award Management (SAM). Failure to make required disclosures can result in remedies such as: temporary withholding of payments pending correction of the deficiency, disallowance of all or part of the costs associated with noncompliance, suspension, termination of award, debarment, or other legally available remedies outlined in 2 CFR 200.338 "Remedies for Noncompliance".

## **EXHIBIT G**

### **Uniform Guidance § 200.322 – Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**EXHIBIT H**  
**Uniform Guidance § 200.326 – Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

Contract provisions:

- A. The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200 - Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

**Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, RESOURCE AGENCY agrees to abide by and comply with, and all contracts made by the non-Federal entity under the Federal award must contain, provisions relating to and covering the following as applicable.

- A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity. Department of Labor."
- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination



issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708, where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended- Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant

to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- H. Debarment and Suspension (Executive Orders 12549 and 12689)- A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Byrd Anti-Lobbying Amendment (31U.S.C.1352)-Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.