



**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:** July 7, 2020

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 \$827,628, retroactive from January 1, 2020 through December 31, 2021. 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, 2020, and that it was in the County's best interest to enter into the MOU on that date; and
3. Authorize the Sheriff or his designee to sign 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

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

**DATE:** July 7, 2020

previous year. The Tulare County Sheriff's Office (TCSO) has been a partner of HIDTA for many years and requests the Board approve continued partnership.

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 TCSO and 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 2020 funds through the FCSO. Once 2019 funds are expended, the FCSO will continue to act as fiduciary for 2020 HIDTA funds.

The substantive deviations from the standard County boilerplate identified are: 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.

**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, investigations and suppression.

The total amount of HIDTA funds available for use during the period of January 1, 2020 through December 31, 2021 is \$827,628. 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:

- \$19,180 is projected for FY 20/21 (July 1, 2020 to June 30, 2021); and
- \$9,590 is projected for FY 21/22 (July 1, 2021 to December 31, 2021).

The projected amounts fall within the Federal overtime limit of \$19,180 per deputy, which is based per calendar year and not by fiscal year. Funds will be included in

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

**DATE:** July 7, 2020

the Sheriff's Office FY 2020/21 budget and, if not fully expended during the fiscal year, the remaining amount will be rolled over to the FY 2021/22 budget. 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 A – MOU

Attachment B – MOU Supporting Documents

Attachment C – Fresno Sheriff's Office Grant Agreement for HIDTA

**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 SHERIFFS ) 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 \$827,628, retroactive from January 1, 2020 through December 31, 2021. 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, 2020, and that it was in the County's best interest to enter into the MOU on that date; and
3. Authorized the Sheriff or his designee to sign the Memorandum of Understanding.



February 24, 2020

Sheriff Margaret Mims  
County of Fresno  
2200 Fresno Street  
Fresno, CA 93721-1703

Dear Sheriff Mims:

We are pleased to inform you that your request for funding from the High Intensity Drug Trafficking Areas (HIDTA) Program has been approved, and a grant (Grant Number G20CV0004A) has been awarded in the amount of \$827,628.00. This grant will support initiatives designed to implement the Strategy proposed by the Executive Board of the Central Valley - California HIDTA and approved by the Office of National Drug Control Policy (ONDCP).

The original Grant Agreement, including certain Special Conditions, is enclosed. By accepting this grant, you assume the administrative and financial responsibilities outlined in the enclosed Grant Conditions, including the timely submission of all financial and programmatic reports, the resolution of audit findings, and the maintenance of a minimum level of cash-on-hand. Should your organization not adhere to these terms and conditions, ONDCP may terminate the grant for cause or take other administrative action.

If you accept this award, please sign both the Grant Agreement and the Grant Conditions and return a copy to:

Finance Unit  
National HIDTA Assistance Center  
11200 NW 20th Street, Suite 100  
Miami, FL 33172  
(305) 715-7600  
Or via email to your respective NHAC accountant.

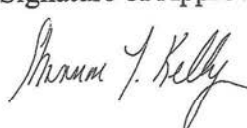
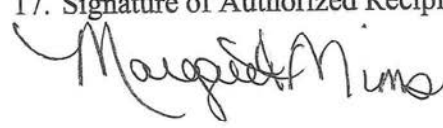
Please keep the original copy of the Grant Agreement and Grant Conditions for your file. If you have any questions pertaining to this grant award, please contact Sherri Lucas at (202) 395 - 5506.

Sincerely,

A handwritten signature in cursive script that reads "Shannon J. Kelly".

Shannon Kelly  
National HIDTA Director



Executive Office of the President Office of National Drug Control Policy	Grant Agreement	
1. Recipient Name and Address Margaret Mims County of Fresno 2200 Fresno Street Fresno, CA 93721-1703	4. Award Number (FAIN): G20CV0004A	
2. Total Amount of the Federal Funds Obligated: \$827,628	5. Period of Performance: From 01/01/2020 to 12/31/2021	7. Action: Initial
2A. Budget Approved by the Federal Awarding Agency \$827,628	8. Supplement Number	
3. CFDA Name and Number: <i>High Intensity Drug Trafficking Areas Program - 95.001</i>	9. Previous Award Amount:	
3A. Project Description  <i>High Intensity Drug Trafficking Areas (HIDTA) Program</i>	10. Amount of Federal Funds Obligated by this Action: \$827,628.00	
12. This Grant is non-R&D and approved subject to such conditions or limitations as are set forth on the attached pages.	11. Total Amount of Federal Award: \$827,628.00	
13. Statutory Authority for Grant: <i>Public Law 116-93</i>		
AGENCY APPROVAL	RECIPIENT ACCEPTANCE	
14. Typed Name and Title of Approving Official Shannon Kelly National HIDTA Director Office of National Drug Control Policy	15. Typed Name and Title of Authorized Official Ms. Margaret Mims  County of Fresno	
16. Signature of Approving ONDCP Official 	17. Signature of Authorized Recipient/Date  3/14/2020	
AGENCY USE ONLY		
18. Accounting Classification Code DUNS: EIN:	19. HIDTA AWARD <i>OND1070DB2021XX OND6113</i> <i>OND2000000000 OC 410001</i>	

## GRANT CONDITIONS

### A. General Terms and Conditions

1. This award is subject to The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 (the “Part 200 Uniform Requirements”), as adopted and implemented by the Office of National Drug Control Policy (ONDCP) in 2 C.F.R. Part 3603. For this award, the Part 200 Uniform Requirements supersede, among other things, the provisions of 28 C.F.R. Parts 66 and 70, as well as those of 2 C.F.R. Parts 215, 220, 225, and 230.

For more information on the Part 200 Uniform Requirements, see <https://cfo.gov/cofar/>. For specific, award-related questions, recipients should contact ONDCP promptly for clarification.

2. This award is subject to the following additional regulations and requirements:
  - 28 CFR Part 69 – “New Restrictions on Lobbying”
  - Conflict of Interest and Mandatory Disclosure Requirements, set out in paragraph 7 of these terms and conditions
  - Non-profit Certifications (when applicable)
3. Audits conducted pursuant to 2 CFR Part 200, Subpart F, “Audit Requirements” must be submitted no later than nine months after the close of the grantee’s audited fiscal year to the Federal Audit Clearinghouse at <https://harvester.census.gov/facweb/>.
4. Grantees are required to submit Federal Financial Reports (FFR) to the Department of Health and Human Services, Division of Payment Management (HHS/DPM). Federal Financial Report is required to be submitted quarterly and within 90 days after the grant is closed out.
5. The recipient gives the awarding agency or the Government Accountability Office, through any authorized representative, access to, and the right to examine, all paper or electronic records related to the grant.
6. Recipients of HIDTA funds are not agents of ONDCP. Accordingly, the grantee, its fiscal agent (s), employees, contractors, as well as state, local, and Federal participants, either on a collective basis or on a personal level, shall not hold themselves out as being part of, or representing, the Executive Office of the President or ONDCP.

These general terms and conditions, as well as archives of previous versions of the general terms and conditions, are available online at [www.whitehouse.gov/ondcp/grants-programs](http://www.whitehouse.gov/ondcp/grants-programs).

7. Conflict of Interest and Mandatory Disclosures

#### A. Conflict of Interest Requirements



As a non-Federal entity, you must follow ONDCP's conflict of interest policies for Federal awards. Recipients must 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. 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:

- i. 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.
- ii. 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 sub-award 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.
- iii. 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.

#### **B. Mandatory Disclosure Requirement**

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".

8. Federal Funding Accountability and Transparency (FFATA) / Digital Accountability and Transparency Act (DATA Act). Each applicant is required to (i) Be registered in SAM before submitting its application; (ii) provide a valid DUNS number in its application; (iii) continue to maintain an active System for Award Management registration with current information at all times during which it has an active Federal award; and (iv) provide all relevant grantee information required for ONDCP to collect for reporting related to FFATA and DATA Act requirements.
9. Subawards are authorized under this grant award. Subawards must be monitored by the award recipient as outlined in 2 CFR 200.331.



10. Recipients must comply with the Government-wide Suspension and Debarment provision set forth at 2 CFR Part 180, dealing with all sub-awards and contracts issued under the grant.
11. As specified in the HIDTA Program Policy and Budget Guidance, recipient must:
  - a) Establish and maintain effective internal controls over the Federal award that provides reasonable assurance that Federal award funds are managed in compliance with Federal statutes, regulations and award terms and conditions. These internal controls should be in compliance with the guidance in “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
  - b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
  - c) Evaluate and monitor compliance with applicable statute and regulations, and the terms and conditions of the Federal award.
  - d) Take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
  - e) Take reasonable measures to safeguard protected PII and other information ONDCP or the recipient designates consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality.

## B. Recipient Integrity and Performance Matters

### Reporting of Matters Related to Recipient Integrity and Performance

#### 1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain and report current information to the SAM that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition (below). This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

#### 2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent 5 year period; and
- c. Is one of the following:

- (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition (below);
- (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (3) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (4) Any other criminal, civil, or administrative proceeding if:
  - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
  - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
  - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent 5 year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### 5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and state level, but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

- (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and



(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

## C. Program Specific Terms and Conditions

The following special conditions are incorporated into each award document.

1. This grant is awarded for above program. Variation from the description of activities approved by ONDCP and/or from the budget attached to this letter must comply with the reprogramming requirements as set forth in ONDCP's HIDTA Program Policy and Budget Guidance (PPBG).
2. This award is subject to the requirements in ONDCP's HIDTA PPBG.
3. No HIDTA funds shall be used to supplant state or local funds that would otherwise be made available for the same purposes.
4. The requirements of 28 CFR Part 23, which pertain to information collection and management of criminal intelligence systems, shall apply to any such systems supported by this award.
5. Special accounting and control procedures must govern the use and handling of HIDTA Program funds for confidential expenditures; i.e., the purchase of information, evidence, and services for undercover operations. Those procedures are described in Section 7 of the HIDTA Program Policy and Budget Guidance.
6. Property acquired with these HIDTA grant funds is to be used for activities of the Central Valley - California HIDTA. If your agency acquires property with these funds and then ceases to participate in the HIDTA, this equipment must be made available to the HIDTA's Executive Board for use by other HIDTA participants.
7. All law enforcement entities that receive funds from this grant must report all methamphetamine laboratory seizure data to the National Clandestine Laboratory Database/National Seizure System at the El Paso Intelligence Center.

## D. Federal Award Performance Goals

1. All entities that receive funds from this award are responsible for achieving performance goals established in the HIDTA Performance Management Process (PMP) and approved by the HIDTA's Executive Board and ONDCP.
2. All entities that receive funds from this award must report progress in achieving performance goals at least quarterly using the PMP.

See also Section A. 4 regarding Federal Financial Reports.

## E. Payment Basis

1. A request for Advance or Reimbursement shall be made using the HHS/DPM system (<https://pms.psc.gov/>).
2. The grantee, must utilize the object classes specified within the initial grant application each time they submit a disbursement request to ONDCP. Requests for payment in the DPM system will not be approved unless the required disbursements have been entered using the corresponding object class designations. Payments will be made via Electronic Fund Transfer to the award recipient's bank account. The bank must be Federal Deposit Insurance Corporation (FDIC) insured. The account must be interest bearing.



3. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450), awardees and sub-awardees shall promptly, but at least annually, remit interest earned on advances to HHS/DPM using the remittance instructions provided below.

*Remittance Instructions* - Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as “addenda records” by Financial Institutions) as that will assist in the timely posting of interest earned on Federal funds. Pertinent details include the Payee Account Number (PAN), reason for check (remittance of interest earned on advance payments), check number (if applicable), awardee name, award number, interest period covered, and contact name and number. The remittance must be submitted as follows:

Through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

- (i) For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

- (ii) For Fedwire Returns\*:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer  
Division New York, NY

(\* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

For recipients that do not have electronic remittance capability, please make check\*\* payable to: “The Department of Health and Human Services.”

Mail Check to Treasury approved lockbox:

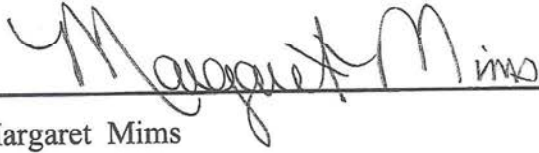
HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

(\*\* Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

Any additional information/instructions may be found on the PMS Web site at <http://pms.psc.gov/>.

4. The grantee or subgrantee may keep interest amounts up to \$500 per year for administrative purposes.

**RECIPIENT ACCEPTANCE OF GRANT CONDITIONS**

  
\_\_\_\_\_

Margaret Mims

County of Fresno

Date: 3/11/2020



the public online, and encourages Federal agencies to take a more cooperative approach to audit resolution in order to more conclusively resolve underlying weaknesses in internal controls.

- Section 200.501 Audit Requirements raises the Single Audit threshold from \$500,000 in Federal awards per year to \$750,000 in Federal awards per year. This reduces the audit burden for approximately 5,000 non-Federal entities while maintaining Single Audit coverage over 99% of the Federal dollars currently covered.

- Section 200.512 Report Submission requires publication of Single Audit Reports online with safeguards for protected personally identifiable information and an exception for Indian tribes in order to reduce the administrative burden on non-Federal entities associated with transmitting these reports to all interested parties.

- Section 200.513 Responsibilities requires Federal awarding agencies to designate a Senior Accountable Official who will be responsible for overseeing effective use of the Single Audit tool and implementing metrics to evaluate audit follow-up. This section also encourages Federal awarding agencies to make effective use of cooperative audit resolution practices in order to reduce repeated audit findings.

- Section 200.518 Major Program Determination focuses audits on the areas with internal control deficiencies that have been identified as material weaknesses. Future updates to the Compliance Supplement will reflect this focus as well.

The specific reform ideas and the responses to public comments received are outlined below in three main categories:

Section A: Subparts A–E: Reforms to Administrative Requirements (the governmentwide Common Rule implementing Circular A–102; Circular A–110; and Circular A–89)

Section B: Subpart F: Reforms to Cost Principles (Circulars A–21, A–87, and A–122)

Section C: Subpart G: Reforms to Audit Requirements (Circulars A–133 and A–50)

In addition, conforming changes and those for linguistic clarity are shown in supporting materials provided on the OMB Web site with this proposal (available at [http://www.whitehouse.gov/omb/grants\\_docs#final](http://www.whitehouse.gov/omb/grants_docs#final)).

Section A: Subparts A–E Reforms to Administrative Requirements (The Common Rule Implementing Circular A–102); Circular A–110; and Circular A–89

This section discusses changes to the governmentwide common rule implementing Circular A–102 on Grants and Cooperative Agreements with State and Local Governments; Circular A–110 on Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (2 CFR part 215); and Circular A–89 on Catalog of Federal Domestic Assistance. The following are major policy changes included in the final guidance.

#### *Subpart A—Acronyms and Definitions*

Subpart A lists definitions and acronyms for key terms found throughout the document. Because these terms, like the rest of the guidance, originated in eight different sets of guidance, there are many conforming changes made to harmonize the definitions with the terms that are used throughout the guidance. Some definitions reflect policy decisions as follows:

200.18 Cognizant Agency for Audit and 200.73 Oversight Agency for Audit

Commenters suggested that instead of defining the cognizant or oversight agency for audit as the Federal awarding agency that provides the most direct funding, it should be defined as the one that provides the most total funding. The suggestion that this would eliminate a potentially burdensome process of changing cognizance to allow for situations where a non-Federal entity receives most of its funding indirectly from one Federal agency, and only a small portion from another agency directly.

The COFAR considered this, but noted that even where significant portions of Federal funds are passed-through to subrecipients, the Federal agency retains a direct relationship only with a direct recipient, and relies on the pass-through entity to oversee the subaward. Further, the COFAR understands these instances to be relatively few, and in those cases where they have preferred to have a cognizant or oversight relationship, they have not found the process of negotiating a change to be burdensome. Contrary to comments reflecting a belief that the current OMB policy requires any change to be made within 30 days, changes have always been permissible at any time with notification to the Federal

Audit Clearinghouse within 30 days of the change. As such, the COFAR did not recommend a change to this definition.

#### 200.23 Contractor

Some commenters suggested that the term “vendor” is more appropriate and, in line with the Federal Acquisition Regulation, should be used throughout the final guidance in place of the proposed “contractor”. The COFAR considered this but determined that contractor is more accurate in the context of guidance on how to distinguish between a contract and a grant. The COFAR believes that framing the distinction this way will better encourage Federal agencies to appropriately apply the guidance to awards for financial assistance regardless of the term they currently use to describe those awards. The COFAR recommended continued use of the term “contractor” throughout. As used in this guidance, the term “contractor” includes entities that, in other contexts, may be referred to as “vendors”.

200.54 Indian Tribe (or “Federally Recognized Indian Tribe”)

Existing guidance, including NPG, included Indian Tribes in the definition of a state. With the streamlined merging of the circulars and the inclusion of some guidance that is clearly intended only for either states or Indian Tribes, and in response to comments received, the COFAR found that this inclusion is no longer appropriate. As a result, the COFAR recommended that Indian Tribes, including Alaskan Natives, be separately defined as they are under existing statute.

#### 200.94 Supplies

The definition of supplies in existing guidance includes all tangible personal property that fall below the prescribed threshold for equipment. Since, as technology improves, computing devices (inclusive of accessories) increasingly fall below this threshold, the proposed guidance made explicit that when they do, they shall be treated consistently with all other items below this level. Many commenters were highly supportive of this clarification in the proposal and indicated that it would greatly help in minimizing administrative burden. Other commenters recommended that because of the high value of the information on computing devices and because of their attractiveness to potential thieves, they should be subject to the more prescriptive oversight requirements of equipment that falls above the threshold.



to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(d) Significant developments. Events may occur between the scheduled performance reporting dates that have

significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The Federal awarding agency may make site visits as warranted by program needs.

(f) The Federal awarding agency may waive any performance report required by this Part if not needed.

#### § 200.329 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

#### Subrecipient Monitoring and Management

##### § 200.330 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such

guidance does not conflict with this section.

(a) **Subrecipients.** A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) **Contractors.** A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See § 200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

##### § 200.331 Requirements for pass-through entities.

All pass-through entities must:



(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal Award Identification.
  - (i) Subrecipient name (which must match registered name in DUNS);
  - (ii) Subrecipient's DUNS number (see § 200.32 Data Universal Numbering System (DUNS) number);
  - (iii) Federal Award Identification Number (FAIN);
  - (iv) Federal Award Date (see § 200.39 Federal award date);
  - (v) Subaward Period of Performance Start and End Date;
  - (vi) Amount of Federal Funds Obligated by this action;
  - (vii) Total Amount of Federal Funds Obligated to the subrecipient;
  - (viii) Total Amount of the Federal Award;
  - (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
  - (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official;
  - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
  - (xii) Identification of whether the award is R&D; and
  - (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient

(in compliance with this Part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (b) of this Part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section, §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance, and Subpart F—Audit Requirements of this Part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraph (e) of this section, which may include consideration of such factors as:

- (1) The subrecipient's prior experience with the same or similar subawards;
- (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this Part, and the extent to which the same or similar subaward has been audited as a major program;
- (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
- (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and programmatic reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

- (1) Providing subrecipients with training and technical assistance on program-related matters; and
- (2) Performing on-site reviews of the subrecipient's program operations;
- (3) Arranging for agreed-upon-procedures engagements as described in § 200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this Part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.338 Remedies for noncompliance of this Part and in program regulations.

#### § 200.332 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

#### Record Retention and Access

##### § 200.333 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a



the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this Part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**§ 200.324 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this Part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this Part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

**§ 200.325 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**§ 200.326 Contract provisions.**

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.

**Performance and Financial Monitoring and Reporting**

**§ 200.327 Financial reporting.**

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

**200.328 Monitoring and reporting program performance.**

(a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.331 Requirements for pass-through entities.

(b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity



recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

**3. Anticipated Announcement and Federal Award Dates—Optional.** This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a "rolling" basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

#### F. Federal Award Administration Information

**1. Federal Award Notices—Required.** This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 200.210 Information contained in a Federal award.

**2. Administrative and National Policy Requirements—Required.** This section must identify the usual administrative and national policy requirements the Federal awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal

award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

**3. Reporting—Required.** This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require.

#### G. Federal Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

- i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).
- ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

#### H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

- i. Indicate whether this is a new program or a one-time initiative.
- ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.
- iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.
- iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.

v. Include certain routine notices to applicants (e.g., that the Federal government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal government to the expenditure of funds).

#### 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, all contracts made by the non-Federal entity under the Federal award must contain provisions 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) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) 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 governmentwide 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.

(J) Byrd Anti-Lobbying Amendment (31 U.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.

(K) See § 200.322 Procurement of recovered materials.

### Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

#### A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

#### 1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-

credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable"



CVC HIDTA Fresno Fiduciary - Subrecipient vs. Contractor Determination and Reasoning

Resource Agency: Tulare County Sheriff's Office

G20CV0004A

**Uniform Guidance**

**§ 200.330 Subrecipient and contractor determinations.**

The non-Federal entity may concurrently receive Federal awards as a recipient, a **subrecipient**, and a **contractor**, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) **Subrecipients.** A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance
- (2) Has its performance measured in relation to whether objectives of a Federal program were met
- (3) Has responsibility for programmatic decision making
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity

(b) **Contractors.** A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See § 200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- (1) Provides the goods and services within normal business operations
- (2) Provides similar goods or services to many different purchasers
- (3) Normally operates in a competitive environment
- (4) Provides goods or services that are ancillary to the operation of the Federal program
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons

(c) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a **subrecipient** or a **contractor**, the substance of the relationship is more important than the form of the agreement. **All of the characteristics listed above may not be present in all cases**, and the passthrough entity must use judgment in classifying each agreement as a **subaward** or a **procurement contract**.



<b>Subrecipient</b>	<b>Yes</b>	<b>No</b>	<b>Both</b>	<b>Reason</b>
Determines who is eligible to receive what Federal assistance		X		ONDCP and the CV HIDTA Executive Board determine who is eligible to receive Federal Assistance, not the resource agency.
Has its performance measured in relation to whether objectives of a Federal program were met		X		The initiatives have their performance reviewed by the CV HIDTA Executive Board, not the resource agency.
Has responsibility for programmatic decision making		X		ONDCP and the CV HIDTA Executive Board are responsible for programmatic decision making.
Is responsible for adherence to applicable Federal program requirements specified in the Federal award	X			Each resource agency must follow the policies and procedures with each reimbursement request.
In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity			X	The funds are used for the CV HIDTA program for the public purpose of dismantling drug trafficking organizations and the resource agency is providing law enforcement services for the benefit of the HIDTA program, in which the Fiduciary is a part of, but not directly to benefit the Fiduciary agency itself.
<b>Contractor</b>	<b>Yes</b>	<b>No</b>	<b>Both</b>	<b>Reason</b>
Provides the goods and services within normal business operations	X			The resource agency provides services to the CV HIDTA Executive Board, and also within its own jurisdiction, by participating in the HIDTA program.
Provides similar goods or services to many different purchasers	X			The resource agency involved in the CV HIDTA program provides similar services for the purpose of the HIDTA program, and also within its own jurisdiction.
Normally operates in a competitive environment		X		The Resource Agency does not operate competitively.
Provides goods or services that are ancillary to the operation of the Federal program	X			The CV HIDTA program is focused entirely on the HIDTA program purpose, making their goods or services ancillary to the operation of the HIDTA program.
Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons			X	The Fiduciary is responsible, by the CV HIDTA Executive Board and local HIDTA Policies and Procedures, to be compliant with the HIDTA program and ONDCP requirements, as such is the Resource Agency with every reimbursement the Fiduciary reviews

Therefore, as you can see above, as it pertains to the Fresno Fiduciary, it has been determined that the Resource Agency is better suited as a Contractor, rather than a Subrecipient. In the **Uniform Guidance, section 200.23**, it states “*As used in this guidance, the term ‘contractor’ includes entities that, in other contexts, may be referred to as ‘vendors’.*” This was also a factor in our determination to proceed with the Resource Agency as a Contractor. The CV HIDTA Executive Board supports our decision.



Margaret Mims  
Sheriff  
Fresno County Sheriff's Office

---

**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 G20CV0004A, as may be modified from time to time (hereinafter referred to as the "Agreement"). The Fresno County Sheriff's Office 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's 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  
Fresno County Sheriff's Office

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

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

Date: 6-23-20

Approve As To Form:  
County Counsel

By: Allison K. Pierce 6/23/2020  
Deputy

Matter No: 2020662

**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 (31 U.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.