

AGREEMENT
BETWEEN SANTA FE COUNTY AND
SUB-RECIPIENT OF THE REGION III HIGH INTENSITY DRUG TRAFFICKING
AREAS ("HIDTA") FUNDING

THIS AGREEMENT is made and entered into this 19th day of July, 2019, by and between SANTA FE COUNTY, hereinafter referred to as the "County" and the STATE OF NEW MEXICO DEPARTMENT OF PUBLIC SAFETY, hereinafter referred to as "NMDPS" or "Sub-recipient."

WHEREAS, the County, the Santa Fe County Sheriff, City of Santa Fe Police Department, City of Taos Police Department, Taos County Sheriff's Office, New Mexico Department of Public Safety (State Police), the NM Probation/Parole Division and the Rio Arriba County Sheriff's Office, are parties to a certain Memorandum of Understanding Region III Drug Task Force (the MOU) dated May 22, 2018, that provides for how the parties will jointly cooperate and assist with the prevention, investigation, control and prosecution of unlawful drugs, narcotics and controlled substances and related crimes within the Southwest Border HIDTA - New Mexico, Region III; and

WHEREAS, according to the MOU, the County is designated as the fiscal agent for purposes of the MOU and activities conducted by the parties to the MOU; and

WHEREAS, the law enforcement activities and strategy of the HIDTA Region III area are funded annually by a federal HIDTA grant, which provides assistance to law enforcement entities to reduce drug trafficking and production in the HIDTA Region III; and

WHEREAS, the County as fiscal agent under the MOU is the recipient of HIDTA Grant #G18SN0011A in the amount of \$320,013.00 for FY 2019; and

WHEREAS, NMDPS, a signatory on the MOU, is an entity that is active and participating in HIDTA-related activities and initiatives and is eligible for reimbursement from the HIDTA Grant. NMDPS participation involves overtime hours spent by NMDPS law enforcement officers engaging in undercover narcotics investigations and other activities to support the HIDTA strategy; and

WHEREAS, the County and NMDPS also wish to provide for the process by which the Sub-recipient (NMDPS) who engages and participates in HIDTA related activities to support the strategy of the HIDTA program, submit invoices to the County and the County as fiscal agent reimburses the Sub-recipient for overtime and other expenses associated with its HIDTA-related activities; and

WHEREAS, federal regulations governing the award and administration of federal grants awarded to non-federal agencies require that grant recipients and sub-recipients agree to be subject to certain federal requirements and regulations pertaining to HIDTA grants; and

NOW THEREFORE, it is agreed between the parties:

1. SUB-RECIPIENT; SCOPE OF PARTICIPATION

A. The Sub-recipient for purposes of this Agreement is the non-federal entity listed on Attachment A, attached hereto and incorporated by reference.

B. The Sub-recipient's participation in HIDTA Region III activities to support the HIDTA strategy consists, without limitation, of overtime hours spent by Sub-recipient's law enforcement officers, agents, deputies, and police officers engaging in undercover narcotics investigations and other activities to support the HIDTA strategy. Other HIDTA-related activities are those program activities described on the budget submitted by the HIDTA Region III in its annual HIDTA grant application.

2. ADDITIONAL HIDTA ACTIVITIES OR TASKS

The County and Sub-recipient agree that all HIDTA activities set forth in Section 1 (Sub-recipients' Scope of Participation) of this Agreement shall be completed in full to the satisfaction of County as fiscal agent and in accordance with all federal requirements of the HIDTA grant funding, and for amounts not-to-exceed the sum of the annual HIDTA grant, and for no other cost, amount, fee or expense.

3. INVOICING AND REIMBURSEMENT

A. In consideration of its obligations under this Agreement, the Sub-recipient shall be reimbursed as follows:

- 1) Depending on the frequency of HIDTA activities and initiatives during the HIDTA grant period, the Sub-recipient's law enforcement agents will prepare an invoice with supporting documentation evidencing the Sub-recipient's overtime hours and other HIDTA-related expenses associated with HIDTA programs and activities. Sub-recipient will submit the invoice and supporting documentation to Region III HIDTA. The invoice and supporting documentation will be verified by the Sub-recipient and then submitted to the County. The County as fiscal agent under the MOU shall review the invoice and supporting documentation and submit reimbursement directly to the Sub-recipient.

- 2) The total amount payable to all Sub-recipients under this Agreement shall not exceed the total amount of the annual HIDTA grant funding, inclusive of any applicable tax, for that fiscal year.
- 3) The amount of the annual HIDTA grant is a maximum and not a guarantee that the HIDTA activities performed or engaged in by a Sub-recipient under this Agreement shall equal the amount of the HIDTA grant. The parties do not intend for a Sub-recipient to continue to engage in HIDTA activities without reimbursement when the HIDTA grant funding has been exhausted. The County will notify Sub-recipient when reimbursement to the Sub-recipients have reached the total available HIDTA grant funding for that year. Reimbursement is based on the availability of the HIDTA grant funding for that grant period.
- 4) The County's representative for receipt of the invoice and supporting documentation is Mary Armijo y Clifford, Administrative Assistant to Region III, mlarmijo@santafecountynm.gov, or such other individual as may be designated in the absence of the County representative.

B. Sub-recipient's budgeted amounts to be paid are as stated on Attachment B (pending approval of the Office of National Drug Control Policy via the Southwest Border HIDTA-New Mexico).

C. In the event the Sub-recipient materially breaches this Agreement, the County may, without penalty, withhold reimbursement to the Sub-recipient.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date of last signature by the parties hereto. The term of this Agreement is from the date of last signature by the parties through June 30, 2020, and is subject to earlier termination if Santa Fe County ceases to be designated as the fiscal agent under the MOU, if the MOU is dissolved by the parties to the MOU, or termination pursuant to Section 5 (Termination) below occurs.

5. TERMINATION

Termination for Convenience. Either party may terminate this Agreement for any reason by providing 30 days written notice. If notice is given, the Agreement will terminate at the end of 30 days thereafter, and the liabilities of the parties hereunder for further performance of the terms of the Agreement shall cease, but the parties shall not be released from duty to perform up-to-the date of termination.

6. CONTINUED HIDTA GRANT FUNDING

This Agreement is contingent upon the County's annual award of HIDTA grant funding. If sufficient HIDTA grant funding is not received this Agreement shall terminate upon written notice by the County to the Sub-recipient, or the parties to this Agreement may agree to suspend performance under this Agreement until such time as HIDTA grant funds are available. A termination shall be without penalty to the County, and the County shall have no duty to reimburse Sub-recipient for overtime or expenditures made in the performance of this Agreement. The County's decision as to whether sufficient HIDTA grant funding is available to fulfill the purposes of this Agreement shall be final and not subject to challenge by the Sub-recipient in any way or forum, including a lawsuit.

7. PERSONNEL

All HIDTA-related tasks and activities performed by the Sub-recipients under this Agreement shall be performed by the Sub-recipient or under the Sub-recipient's supervision.

8. RELEASE

Upon its receipt of all reimbursements or payments due under this Agreement, the Sub-recipient releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

9. CONFIDENTIALITY

Any confidential information provided to or developed by the Sub-recipient in the performance of this Agreement shall be kept confidential and shall only be made available to any individual or organization in accordance with applicable federal or state law.

10. CONFLICT OF INTEREST

Sub-recipient agrees to maintain written standards of conduct covering conflict of interest (conflict of interest policies for Federal awards). Sub-recipient warrants that none of its employees will participate in the selection, award, or administration of this Agreement if he or she has a real or apparent conflict of interest.

11. COMPLIANCE WITH APPLICABLE LAW AND REGULATION; CHOICE OF LAW; WARRANTY

A. In performing HIDTA-related tasks and activities hereunder for which Sub-recipient will receive reimbursement from a federal HIDTA grant, the Sub-recipient shall comply with all applicable Federal statutes, regulations and HIDTA award terms and conditions including:

- a) 28 CFR Part 69 (New Restrictions on Lobbying),
- b) 2 CFR Part 25 (Universal Identifier and System of Award Management (SAM)),
- c) 2 CFR Part 180 (Suspension and Debarment),
- d) 28 CFR Part 23 (Criminal Intelligence Systems),
- e) Section 6 of the HIDTA Program Policy and Budget Guidance,
- f) Achieving performance goals established in the HIDTA Performance Management Process (PMP) and approved by the HIDTA's Executive Board and the Office of National Drug Control Policy (ONDCP).
- g) Sub-recipient Monitoring stated in 2CFRS200.331
- h) Sub-recipients that receive \$25,000 or more must be registered with the Federal Accountability and Transparency Act Sub-award Reporting System (FSRS), located at <https://www.fsr.gov>

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. County and the Sub-recipient agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico located in Santa Fe County.

C. Sub-recipient warrants and represents that it is not listed as an excluded party under the federal System for Award Management (SAM) as a debarred or suspended or otherwise excluded from participation in a HIDTA grant funded program.

12. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto.

13. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

14. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

15. NOTICES

Any notice required to be given to the parties hereto shall be in writing and shall be delivered in person or by U.S. mail, either first class or certified, return receipt requested, postage prepaid to the following:

The County: Santa Fe County
Attn: Santa Fe County Manager
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276

Sub-recipient: See Attachment A.

16. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

17. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

18. INSURANCE

General Conditions. The Sub-recipients shall maintain sufficient personal and property insurance consistent with the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended.

19. NEW MEXICO TORT CLAIMS ACT; LIABILITY

Each party to this Agreement shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this Agreement. Each party shall be liable for its own actions in accordance with this Agreement. Any liability incurred by the County or the Sub-recipient in connection with this Agreement is subject to the Immunities and limitations of the New Mexico Tort Claims Act NMSA 1978, Section 41-4-1, et seq., as amended. The County and Sub-recipient and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity; do not waive any defense; and do not waive any limitation of liability pursuant to the Tort Claims Act. No provision in this Agreement shall be construed to modify or waive any provision of the New Mexico Tort Claims Act.

20. SUB-RECIPIENT'S RECORDS

To the extent its books and records relate to (i) performance of this Agreement, or (ii) costs or expenses set forth in this Agreement, the Sub-Recipient agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of reimbursement under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

21. SURVIVAL

The provisions of following paragraphs shall survive termination of this Agreement: RELEASE, CONFIDENTIALITY, COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; TORT CLAIMS ACT; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above:

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

7.19.19
Date

Approved as to form:


R. Bruce Frederick
County Attorney

7-10-19
Date

Finance Division


Gary L.J. Giron, Director

07/16/19
Date

SUB-RECIPIENT'S SIGNATURE PAGE

State of New Mexico Department of Public Safety:



Tim Johnson, Chief of Police
New Mexico State Police Division

06/13/19
Date

Approved as to form:



Elizabeth Trickey, General Counsel or designee
New Mexico Department of Public Safety

6-13-19
Date

Attachment A
Sub-recipient

New Mexico Department of Public Safety
P.O. Box 1628
Santa Fe, NM 87504-1628

New Mexico State Police
New Mexico Department of Public Safety
4491 Cerrillos Road
Santa Fe, New Mexico 87507-9721

Attachment B
Sub-recipient's Budget Grant #G19SN0011A

Resource Recipient — New Mexico State Police

Overtime

Investigative – Law Enforcement Officer, in an amount not to exceed 25% of a Federal Officer with a step one GS ranking of 12 or the amount of \$18,649.00.