

PUBLIC SAFETY COMMITTEE

11-0621R

RESOLUTION AUTHORIZING AGREEMENT WITH CITY OF SUPERIOR TO PARTICIPATE IN THE COPS 2011 CHILD SEXUAL PREDATOR PROGRAM AND ACCEPT GRANT MONIES IN THE AMOUNT OF \$103,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. _____, with the city of Superior to participate in the 2011 child sexual predator program and to accept grant monies in the amount of \$103,000 to be used to support the work of the Lake Superior Forensic Technology & Internet Crimes Against Children Task Force, funds to be deposited in Fund 215-200-2203-4210-02 (Duluth Police Grant Programs, Police, Sexual Predator Program Grant).

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

DPD/ATTY TLL:dma 11/17/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute an agreement with the City of Superior whereby the Duluth Police Department will hire one full-time entry-level investigator to work with the Lake Superior Forensic Technology & Internet Crimes Against Children Task Force for a period of two years. The investigator will support strategies to locate, arrest, and prosecute child sexual predators and exploiters and to enforce state sex offender registration laws. The salary and benefits of this investigator will be reimbursed by the City of Superior with grant monies awarded to Superior under the 2011 Child Sexual Predator Grant Program from the Community Oriented

Policing Services ("COPS") of the U.S. Department of Justice. Superior is the recipient of the federal grant and will act as the fiscal agent for the funds.

**SERVICE AGREEMENT REGARDING
2011 CHILD SEXUAL PREDATOR PROGRAM GRANT
BETWEEN THE CITY OF SUPERIOR
AND THE CITY OF DULUTH**

THIS AGREEMENT, entered into this ___ day of _____, 2011, by and between the CITY OF SUPERIOR, a municipal corporation under the laws of the State of Wisconsin, hereinafter referred to as "Superior", and the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "Duluth".

WHEREAS, Superior and Duluth entered into a Joint Powers Agreement under which the parties created the Lake Superior Forensic Technology & Internet Crimes Against Children Task Force ("Task Force") to coordinate efforts to apprehend and prosecute offenders who utilize digital technology; and

WHEREAS, under the terms of the Joint Powers Agreement Superior serves as the Coordinating Agency; and

WHEREAS, Superior is the recipient of a 2011 Child Sexual Predator Program Grant ("CSPP Grant" or "Grant") from the Community Oriented Policing Services ("COPS") of the U.S. Department of Justice attached hereto as Exhibit A, pursuant to which Superior is to act as fiscal agent for funds to be used between August 1, 2011 and July 31, 2013 to enhance local criminal justice and law enforcement efforts as are further described herein; and

WHEREAS, pursuant to the terms of said Grant, Superior is to use said funds to establish and/or enhance strategies to locate, arrest, and prosecute child sexual predators and exploiters, and to enforce state sex offender registration laws, for which it will be entitled to reimbursement under the terms of the Grant. The funds will specifically be used to provide technical assistance, training, personnel, equipment, supplies, to the Task Force; and

WHEREAS, the parties hereto have deemed it desirable to enter into an agreement memorializing Duluth's rights and responsibilities in the implementation of said Grant.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE I

Scope of Professional Services

Duluth agrees that it will hire one full-time, entry level investigator to the Task Force in support of strategies (the "Strategies") to locate, arrest, and prosecute child sexual predators and exploiters, and to enforce state sex offender registration laws, and will be reimbursed as follows:

- \$50,000 for salary and benefits during the first year of the grant (August 1, 2011- July 31, 2012).
- \$53,000 for salary and benefits during the second year of the grant (August 1, 2012 – July 31, 2013).

Duluth further agrees that it will comply with the Grant requirement that Grants funds may not be used to replace state or local funds that would, in the absence of federal aid, be made available for the Grant purposes. Duluth further agrees that it will be reimbursed for an entry-level officer hired on or after the Grant award start date, and that this hire will bring their force to a number over and above the number of funded positions that Duluth had as of the date of the CSPP Grant application (June 10, 2011). Duluth further agrees that it will take active and timely steps to fill any vacancies that were created on or after the date of Grant application by retirement, resignation, or other reasons with new officers in addition to the CSPP Grant-funded position.

ARTICLE II

Reimbursement for Expenses

Duluth shall be entitled to be reimbursed for the cost of salary and benefits of a full time entry level officer as described in Article I in an amount not to exceed Fifty Thousand Dollars and 00/100 (\$50,000.00) during the first Grant year, and an amount not to exceed Fifty-Three Thousand Dollars and 00/100 (\$53,000.00) during the second Grant year. Upon hire of the entry-level officer, and expenditure of funds in support of the Strategies as provided for in Article I, and presentation to Superior of documentation establishing the cost to Duluth thereof, Superior shall promptly reimburse Duluth for said costs. Requests for reimbursement shall be made no more frequently than quarterly within the grant year (August 1 – July 31) and shall be accompanied by such documentation as Superior shall reasonably request. The reimbursement funds will be deposited in Fund 215-200-2203-4210-02 (Duluth Police Grant Programs, Police, Sexual Predator Program Grant).

ARTICLE III

Assignability

Duluth shall not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever.

ARTICLE IV

Term

The Term of this Agreement shall run concurrently with the Grant Term and shall run through July 31, 2013.

ARTICLE V

Termination of Services

Either party may, by giving written notice at least Thirty (30) days prior to the effective date thereof, terminate this Agreement in whole or in part without cause. Duluth shall be entitled to compensation for services properly performed by it to and including the date of written notice of termination of this Agreement, including reimbursable expenses. Provided, however, that Superior may terminate this Agreement upon notification from the U.S. Department of Justice that grant funding to fund Superior's obligations hereunder has been terminated; such termination shall be effective upon Duluth receiving notice thereof.

ARTICLE VI

Standard of Performance

Duluth agrees that all services to be provided to the Task Force pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for provision of services of this type.

ARTICLE VII

Records and Inspections

- A. Establishment and Maintenance of Records
Records shall be maintained by Duluth in accordance with requirements prescribed by Superior, the Grant and in compliance with applicable law.
- B. Documentation of Costs
Duluth will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- C. Reports and Information
Duluth shall be responsible for furnishing to Superior records, data and information as Superior may require pertaining to matters covered by this Agreement.
- D. Audits and Inspections
Duluth shall ensure that at any time during normal business hours, there shall be made available to Superior, for examination, all of its records with respect to all

matters covered by this Agreement. . Duluth will also permit Superior, as well as State and Federal agencies to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

E. Information

All reports, data, information, documentation and material given or prepared by Duluth pursuant to this Agreement will be public except as provided for in applicable Federal or state laws, rules, regulations or orders.

ARTICLE VIII

Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting either party as an agent, representative or employee of the other for any purpose or in any manner whatsoever. Neither party nor any officers or employees thereof shall be considered an employee of the other party, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota or the State of Wisconsin on behalf of either party and their employees while so engaged and any and all claims whatsoever on behalf of either party arising out of employment or alleged employment, including without limitation, claims of discrimination against either party, its officers, agents, contractors or employees shall in no way be the responsibility of the other party. Neither the parties nor their officers, agents, contractors and employees shall be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from the other party.

ARTICLE IX

Liability

A. As Between the Parties

Each party hereto agrees that it will be solely liable for any liability arising out of any acts or omissions of itself or its officers, agents, servants, employees or subcontractors in the performance of its respective obligations under this Agreement.

B. Limitation of Liability

Nothing herein shall be deemed to create any liability on behalf of either party not otherwise existing as to such party under the applicable Minnesota or Wisconsin statute provisions to extend the amount of liability of either party to amounts in excess of that specified in said Chapters.

C. Third Party Liability

Nothing herein shall be deemed to create any liability to any third party not otherwise existing under applicable law.

ARTICLE X

Civil Rights Assurances

Duluth and its officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), the State of Wisconsin Equal Rights Laws, Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

ARTICLE XI

Rules and Regulations

Both parties agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Wisconsin, the State of Minnesota and Duluth and Superior and their respective agencies which are applicable to their activities under this Agreement.

ARTICLE XII

Notices

Notice to Duluth or Superior provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

Duluth: Chief of Police
City of Duluth
Room 104 City Hall
411 West First Street
Duluth, MN 55802

City: Chief of Police
City of Superior
1316 N. 14th Street

Suite 150
Superior, WI 54880

ARTICLE XIII

Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

ARTICLE XIV

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XV

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH, a Minnesota
municipal corporation

CITY OF SUPERIOR, a Wisconsin
municipal corporation

By: _____
Its Mayor

By: _____
Its Mayor

Attest:

By: _____
Its Chief of Police

By: _____
City Clerk

Countersigned:

Countersigned:

Its City Clerk

City Auditor

Approved as to form:

Approved as to form and execution:

City Attorney

City Attorney



**U.S. Department of Justice
Community Oriented Policing Services
Grants Administration Division
Child Sexual Predator Program
Treasury Account Symbol (TAS) 15X0406**

Grant #: 2011CSWX0020

ORI #: WI01601

Applicant Organization's Legal Name: Superior, City of

CJP Vendor #: 396005631

DUNS #: 0557311110000

Law Enforcement Executive: Chief of Police Floyd Peters

Address: 1316 North 14th Street

Suite 150

City, State, Zip Code: Superior, WI 54880

Telephone: (715) 395-7450

Fax: (715) 395-7574

Government Executive: Mayor Bruce C. Hagen

Address: 1316 North 14th Street

Suite 300

City, State, Zip Code: Superior, WI 54880

Telephone: (715) 395-7212

Fax: (715) 395-7590

Award Start Date: 8/1/2011

Award End Date: 7/31/2013

Award Amount: \$499,852.00

Bernard Melekian

SEP 02 2011

Bernard Melekian
Director

Date

By signing this Award Document, the grantee agrees to abide by all 21 Grant Terms and Conditions on the reverse side of this document and the attached pages:

Floyd Peters

9/20/11
Date

Floyd Peters
Chief of Police

Bruce C. Hagen

9/20/11
Date

Bruce C. Hagen
Mayor

False statements or claims made in connection with COPS grants may result in fines, imprisonment, debarment from participating in federal grants or contracts, and/or any remedy available by law to the Federal Government.

Award ID:
102912

U.S. Department of Justice
Office of Community Oriented Policing Services
2011 Child Sexual Predator Program (CSPP) Grant Terms and Special Conditions

By signing the Award Document to accept this CSPP grant, your agency agrees to abide by the following grant conditions:

1. Grant Owner's Manual. The grantee agrees to comply with the terms and conditions in the 2011 COPS Child Sexual Predator Program Grant Owner's Manual; COPS statute (42 U.S.C. § 3796dd, et seq.); 28 C.F.R. Part 66 or 28 C.F.R. Part 70 as applicable (governing administrative requirements for grants and cooperative agreements); 28 C.F.R. Part 225 (OMB Circular A-87); 2 C.F.R. Part 220 (OMB Circular A-21); 2 C.F.R. Part 230 (OMB Circular A-122) and 48 C.F.R. Part 31.000, et seq. (FAR 31.2) as applicable (governing cost principles); OMB Circular A-133 (governing audits); representations made in the grant application for the COPS Child Sexual Predator Program; and all other applicable program requirements, laws, orders, regulations, or circulars.

2. Assurances and Certifications. The grantee acknowledges its agreement to comply with the Assurances and Certifications forms that were signed as part of its Child Sexual Predator Program application.

3. Allowable Costs. The funding under this project is for the payment of approved costs for activities related to the establishment and enhancement of a variety of problem-solving strategies to reduce child endangerment. The allowable costs for which your agency's grant has been approved are limited to those listed on the Financial Clearance Memorandum (FCM) and Final Funding Memorandum (FFM), which are included in your agency's award package. This grant was awarded to your agency to address its law enforcement needs that are not funded with other funds, including federal, state, local, tribal, or BIA funds. Consequently, your agency may not use this funding for items or services that you already have funding for from other sources.

The FFM specifies the exact items/services that your agency is allowed to fund with your CSPP grant. The FCM specifies the overall amount approved for each budget request category. It also describes any costs which have been disallowed after review of your proposed budget. Your agency may not use CSPP grant funds for any costs that are not identified as allowable in the FCM and FFM. Additionally, you must notify the COPS Office if your agency receives, from any other source, funding for the same item or service also funded under this award. The COPS Office will work with your agency to reprogram funding for items or services that are allowable under this grant program.

4. Travel Costs. Travel costs for transportation, lodging and subsistence, and related items are allowable under the Child Sexual Predator Program with prior approval from the COPS Office. Payment for allowable travel costs will be in accordance with 2 C.F.R. Part 225 (OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments); 2 C.F.R. Part 220 (OMB Circular A-21, Cost Principles for Educational Institutions); 2 C.F.R. Part 230 (OMB Circular A-122, Cost Principles for Non-Profit Organizations); and 48 C.F.R. Part 31.000, et seq. (FAR-31.2, Cost Principles for Commercial Organizations), as applicable.

5. Supplementing, Not Supplanting. State, local, and tribal governments must use Child Sexual Predator Program grant funds to supplement, and not supplant, state, local, or Bureau of Indian Affairs (BIA) funds that are already committed or otherwise would have been committed for grant purposes (hiring, training, purchases, and/or activities) during the grant period. In other words, grantees may not use COPS funds to supplant (replace) state, local, or BIA funds that would have been dedicated to the COPS-funded item(s) in the absence of the COPS grant.

6. Extensions. Your agency may request an extension of the grant award period to receive additional time to implement your grant program. Such extensions do not provide additional funding. Only those grantees that can provide a reasonable justification for delays will be granted no-cost extensions. Extension requests must be received prior to the end date of the award.

7. Modifications. Occasionally, a change in an agency's fiscal or law enforcement situation necessitates a change in its Child Sexual Predator Program award. Grant modifications under CSPP are evaluated on a case-by-case basis. All modification requests involving the purchase of new budget items must be approved, in writing, by the COPS Office prior to their implementation. In addition, please be aware that the COPS Office will not approve any modification request that results in an increase of federal funds.

8. Evaluations. The COPS Office may conduct monitoring or sponsor national evaluations of the COPS Child Sexual Predator Program. The grantee agrees to cooperate with the monitors and evaluators.

9. Reports. To assist the COPS Office in the monitoring of your award, your agency will be responsible for submitting periodic programmatic progress reports and quarterly financial reports.

10. Federal Civil Rights Laws. As a condition of receipt of federal financial assistance, you acknowledge and agree that you will not (and will require any subgrantees, contractors, successors, transferees, and assignees not to), on the ground of race, color, religion, national origin (which includes providing limited English proficient persons meaningful access to your programs), sex, disability or age, unlawfully exclude any person from participation in, deny the benefits of or employment to any person, or subject any person to discrimination in connection with any programs or activities funded in whole or in part with federal funds. These civil rights requirements are found in the non-discrimination provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3789d); Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); the Americans with Disabilities Act (ADA) of 1990, as amended (42 U.S.C. §§ 12101-12119; 47 U.S.C. §§ 225, 611); the Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681, et seq.); and the corresponding DOJ regulations implementing those statutes at 28 C.F.R. part 42 (subparts C, D, E, G and I); regulations implementing the ADA, as revised (28 C.F.R. parts 35 and 36; 29 C.F.R. parts 1630, 1640, 1641; 47 C.F.R. §§ 64.601-606, 611, and 613; 49 C.F.R. parts 37 and 38). You also agree to comply with Executive Order 13279 (Equal Treatment for Faith-Based Organizations and its implementing regulations at 28 C.F.R. Part 38, which requires equal treatment of religious organizations in the funding process and nondiscrimination of beneficiaries by Faith-Based organizations on the basis of belief or non-belief).

11. Equal Employment Opportunity Plan (EEOP). All recipients of funding from the COPS Office must comply with the federal regulations pertaining to the development and implementation of an Equal Employment Opportunity Plan (28 C.F.R. Part 42 subpart E).

12. Grant Monitoring Activities. Federal law requires that law enforcement agencies receiving federal funding from the COPS Office must be monitored to ensure compliance with their grant conditions and other applicable statutory regulations. The COPS Office is also interested in tracking the progress of our programs and the advancement of community policing. Both aspects of grant implementation—compliance and programmatic benefits—are part of the monitoring process coordinated by the U.S. Department of Justice. Grant monitoring activities conducted by the COPS Office include site visits, office-based grant reviews, alleged noncompliance reviews, financial and programmatic reporting, and audit resolution. As a COPS CSPP grantee, you agree to cooperate with and respond to any requests for information pertaining to your grant.

13. Criminal Intelligence Systems. Grantees using Child Sexual Predator Program funds to operate an interjurisdictional criminal intelligence system must comply with operating principles of 28 C.F.R. Part 23. The grantee acknowledges that it has completed, signed and submitted with its grant application, the relevant Special Condition certifying its compliance with 28 C.F.R. Part 23.

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Office of Community Oriented Policing Services
2011 Child Sexual Predator Program (CSPP) Grant Terms and Special Conditions

14. **Sole Source Justification.** Grantees who have been awarded funding for the procurement of an item (or group of items) or service in excess of \$100,000 and who plan to seek approval for use of a noncompetitive procurement process must provide a written sole source justification to the COPS Office for approval prior to obligating, expending, or drawing down grant funds for that item.

15. **Training and Technical Assistance.** To support the development of partnerships and the sharing of information and strategies, all Child Sexual Predator Program grantees will be required to attend a COPS-sponsored technical assistance Workshop at the 24th Annual Crimes Against Children Conference in Dallas, Texas, in August 2012.

16. **Employment Eligibility.** The grantee agrees to complete and keep on file, as appropriate, a Bureau of Citizenship and Immigration Services Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

17. **Sex Offender Registration and Notification Act Compliance.** If applicable to the grantee's project, the grantee agrees to comply with the requirements and guidelines established by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the SMART Office), a component of the DOJ Office of Justice Programs. The SMART Office is authorized by law to administer the standards for sex offender registration and notification that are set forth in the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109). [Please note that SORNA applies only to projects involving sex offender registration and notification, and does not apply to projects that fund costs associated only with investigations or prosecutions.]

18. **False Statements.** False statements or claims made in connection with COPS grants may result in fines, imprisonment, or debarment from participating in federal grants or contracts, and/or any other remedy available by law.

19. **Additional High-Risk Grantee Requirements.** The recipient agrees to comply with any additional requirements that may be imposed during the grant performance period if the awarding agency determines that the recipient is a high-risk grantee (28 C.F.R. Parts 66 and 70).

20. **Central Contractor Registration and Universal Identifier Requirements.** The Office of Management and Budget requires federal agencies to include the following standard award term in all grants and cooperative agreements made on or after October 1, 2010:

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. **Central Contractor Registration (CCR)** means the federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site at www.ccr.gov.
2. **Data Universal Numbering System (DUNS) number** means the nine- or thirteen-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet at <http://fedgov.dnb.com/webform>.
3. **Entity**, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a state, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A federal agency, but only as a subrecipient under an award or subaward to a non-federal entity.
4. **Subaward:**
 - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ___210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. **Subrecipient** means an entity that:
 - a. Receives a subaward from you under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.

21. **Reporting Subaward and Executive Compensation.** The Office of Management and Budget requires Federal agencies to include the following standard award term in all grants and cooperative agreements made on or after October 1, 2010:

a. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

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2. *Where and when to report.*

- i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.
- ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

- i. the total federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1 of this award term:

- i. As part of your registration profile at www.cer.gov.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient
- ii. By the end of the month following the month during which you make the subaward.

For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. *Subawards, and*
- ii. *The total compensation of the five most highly compensated executives of any subrecipient.*

e. Definitions. For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a state, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward:*

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the federal funds provided by the subaward.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus.*
- ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

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- iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.