

# EXHIBIT 1.3

RUS Project Designation:

UT 1404-C23  
Orangeville, UT

COMMUNITY-ORIENTED CONNECTIVITY BROADBAND  
GRANT AGREEMENT

dated as of December 20, 2018

between

EMERY TELECOMMUNICATIONS & VIDEO, INC.,  
as Grantee

and

THE UNITED STATES OF AMERICA  
as Grantor

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE

**COMMUNITY-ORIENTED CONNECTIVITY BROADBAND  
GRANT AGREEMENT**

THIS COMMUNITY-ORIENTED CONNECTIVITY BROADBAND GRANT AGREEMENT (the "Agreement,") dated as of December 20, 2018, is between **EMERY TELECOMMUNICATIONS & VIDEO, INC.** (hereinafter "Grantee,") a corporation, existing under the laws of Utah, and the **UNITED STATES OF AMERICA**, acting through the Administrator of the Rural Utilities Service ("RUS"). The Catalog of Federal Domestic Assistance Number for RUS's Community-Oriented Connectivity Broadband Grant Program is 10.863.

WHEREAS, the Grantee has applied for financial assistance ("Application") to RUS to finance a project providing service at the Broadband Grant Speed in rural areas as described in the Application (the Application, and any revisions thereto, all as approved in writing by RUS, hereinafter the "Scope of Work Plan");

WHEREAS, RUS is willing to extend financial assistance in the form of a grant (the "Grant") to the Grantee, pursuant to the Community Oriented Connectivity Broadband Grant Program (7 C.F.R. § 1739) and all applicable federal regulations, on the terms and conditions stated herein; and

WHEREAS, The Grantee is willing to secure the grant and its other obligations to RUS on the terms stated herein;

THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties agree and bind themselves as follows:

**ARTICLE I - DEFINITIONS**

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

"Accounting Requirements" shall mean compliance with U.S. Generally Accepted Accounting Principles (GAAP) acceptable to RUS as well as compliance with the requirements of 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (and by adoption, 48 C.F.R. § 31.2 of the Federal Acquisition Regulations).

"Advance" or "Advances" shall mean an advance or advances made by RUS pursuant to this Agreement.

"Application" shall have the meaning as defined in the first recital hereof.

"Broadband Grant Speed" means the minimum bandwidth described in the NOFA under which the Grantee applied, and which the Grantee must deliver to every customer in the RUS Funded Service Area.

"Community Connect Regulations" shall mean the regulations promulgated under 7 C.F.R. § 1739.

"Critical Community Facility" shall have the meaning as defined in 7 C.F.R. § 1739.3.

"Department" shall mean the United States Department of Agriculture.

"Expiration Date" shall have the meaning as defined in Section 3.1(b) hereof.

"Laws" shall have the meaning as defined in paragraph (e) of Article II.

"Matching Contribution" shall have the meaning as defined in Section 4.2(d) hereof.

"NOFA" shall mean the Notice of Funds Availability under which the Grantee applied, and was awarded the Grant.

"Project" shall have the meaning as defined in Section 3.2(a) hereof.

"RUS Funded Service Area" shall mean the proposed funded service area as proposed by the Grantee in its Application and awarded under the Grant, or, as applicable, the service area of any other current RUS grantee or borrower which is receiving RUS financing.

"RUS Regulations" shall mean the rules, regulations and bulletins of general applicability published by RUS from time to time, as such rules, regulations and bulletins exist at the date of applicability thereof, and shall also include any rule and regulations of any Federal entity which RUS is required by law to implement. Any reference to specific RUS Regulations shall mean the version of and cite to such regulation effective at the date of applicability thereof.

"Scope of Work Plan" shall have the meaning as defined in the first recital hereof.

## ARTICLE II - REPRESENTATIONS AND WARRANTIES OF THE GRANTEE

Recognizing that RUS is relying hereon, the Grantee represents and warrants, as of the date of this Agreement, as follows:

- (a) *Organization; Power, Etc.* The Grantee: (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has all requisite and legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under this Agreement; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals which are necessary to the conduct of its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from RUS contemplated by this Agreement.
- (b) *Authority.* The execution, delivery and performance by the Grantee of this Agreement and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary action and do not violate any provision of law or any charter, articles of incorporation, organizational documents or bylaws of the Grantee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Grantee is a party or by which it may be bound. The Grantee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of this Agreement, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* This Agreement is, or when executed and delivered will be, the legal, valid, and binding obligation of the Grantee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- (e) *Compliance with Laws.* The Grantee is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws.")
- (f) *Information Submitted with Application.* All information, reports, and other documents and data

submitted to RUS in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to RUS in connection with the Application present fairly, in all material respects, the financial position of the Grantee and the results of its operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Grantee.

- (g) *Principal Place of Business.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower specified in Schedule 1 hereto.
- (h) *Ratification.* By executing this Agreement, the Grantee affirms and ratifies all statements, representations and written documents that it has submitted to RUS in connection with this Grant.
- (i) *Recipient and Subrecipient Reporting.* The Grantee has the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006, unless Grantee is exempt from such reporting requirements pursuant to 2 C.F.R. Part 170.

### ARTICLE III – THE GRANT

#### SECTION 3.1 Grant Amount and Expiration Date

- (a) *Grant Amount.* RUS agrees to make and the Grantee agrees to accept, on the terms and conditions stated in this Agreement, a Grant, in the maximum amount specified in Schedule 1 hereto.
- (b) *Expiration Date.* The Grant, and the obligation of RUS to advance the Grant, or any portion thereof, shall expire on a date three (3) years from the date hereof (“Expiration Date.”) No portion of the Grant will be advanced by RUS to the Grantee after the Expiration Date. RUS, in its sole discretion, may approve extensions of the Expiration Date, provided that the Grantee notify RUS, in writing at least ten days prior to the Expiration Date, of the reasons and need for an extension, together with a suggested, revised Expiration Date.
- (c) *No Research and Development.* The Grant is not for Research and Development purposes, as defined in 2 C.F.R. § 200.87.

#### SECTION 3.2 Project

- (a) *Grant Purpose.* The Grant has been made solely to finance the project specifically described in the Scope of Work Plan (hereinafter also the “Project”) in order to furnish or improve service at the Broadband Grant Speed to rural areas.
- (b) *Changes to the Scope of Work.* The Grantee shall obtain the prior written approval of RUS for any material change to the scope, design, activities, construction, or objectives of the Project, including, but not limited to, the technologies to be used, the communities to be served, the community-oriented connectivity plan as set forth by the Grantee in its Application for this Grant, or to any changes to discrete budget line items, or the amount of Grant funds allocated thereto, within the overall Project.

### ARTICLE IV – CONDITIONS OF FUNDING

#### **SECTION 4.1 General Conditions**

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS;
- (b) *Executed Grant Agreement.* RUS shall receive duly executed originals of this Agreement;
- (c) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative grantees, RUS shall have received copies of the Grantee's articles of incorporation or charter and bylaws. With respect to limited liability companies or similar grantees, RUS shall have received copies of the Grantee's organization documents;
- (d) *Authorizations.* RUS shall have received evidence satisfactory to it that all documents and proceedings of the Grantee necessary for duly authorizing the execution, delivery and performance of this Agreement have been obtained and are in full force and effect;
- (e) *Approvals.* RUS shall have received evidence satisfactory to it that the Grantee has duly registered when and where required by law with all state, federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, permits, licenses, franchises and approvals necessary for, or required as a condition of, the validity and enforceability of this Agreement and for the construction and operation of the Project;
- (f) *Opinion of Counsel.* RUS shall receive an opinion of counsel for the Grantee (who shall be acceptable to RUS) in form and content acceptable to RUS;
- (g) *ACH.* That Grantee agrees to use of the Automated Clearing House (ACH) Payment System that deposits funds directly into the bank account Grantee designates; and
- (h) *Fidelity Bond Coverage.* RUS has received from the Grantee for Grants in the amount of \$100,000 or more, except Grantees which are units of government, evidence, satisfactory to RUS, that the Grantee has obtained fidelity bond coverage, from a surety doing business with the United States listed in 31 C.F.R. § 223, in an amount at least fifteen percent (15%) of the Grant, covering all officers, employees, or agents of the Grantee authorized to receive, disburse, or receive and disburse the Grant funds. Notwithstanding, for existing RUS Borrowers, RUS may waive this fidelity bond coverage requirement, if after evaluation, RUS has determined that adequate fidelity bond coverage is already maintained by the Grantee as an RUS Borrower under an existing loan or guarantee agreement between the Grantee and RUS.

#### **SECTION 4.2 Conditions to Advances**

The obligations of RUS to approve any Advance of the Grant is subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Grantee contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date.
- (b) *Requisitions and Supporting Documentation.* That RUS shall have received, not more frequently

than once a month, a completed Standard Form 270, *Request for Advance or Reimbursement* (hereinafter "Request for Advance,") bearing the original signature of the officer, employee, or agent of the Grantee authorized to receive, disburse, or receive and disburse the Grant, and supporting documentation from the Grantee in accordance with this Agreement and RUS Regulations. All Advances shall be limited to the minimum amounts required for the Grantee's immediate disbursement needs and shall be requested by the Grantee only for actual immediate cash requirements of the Grantee. All Advances shall either be provided on a reimbursement basis, supported by documentation, including, but not limited to, paid third-party invoices, employee timesheets or lease agreements, or based on unpaid third-party invoices for eligible grant purposes.

- (c) *Certification of Authority.* That RUS has received from the Grantee a duly authorized and executed certification of authority designating an officer, employee, or agent of the Grantee as the person or persons authorized to execute and submit, on behalf of the Grantee, the Request for Advance.
- (d) *Matching Contribution.* Evidence that the Grantee has complied with the Matching Contribution requirement as defined and set forth in 7 C.F.R. § 1739.14 and 2 C.F.R. § 200.306 ("Matching Contribution,").
- (e) *Compliance with Agreement.* That Grantee is in material compliance with this Agreement.
- (f) *Additional Documents.* The Grantee agrees to provide RUS with such additional documents as RUS may request.
- (g) *Additional Conditions.* That Grantee has met all additional conditions specified in Schedule 1 hereto.

## **ARTICLE V – AFFIRMATIVE COVENANTS**

### **SECTION 5.1 Generally**

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Grantee shall duly observe each of the affirmative covenants contained in this Article V.

### **SECTION 5.2 Use of Advances**

- (a) The Grantee shall expend the Grant funds only for approved purposes as set forth in the Scope of Work Plan in accordance with 2 C.F.R. § 200.305, the Community Connect Regulations, the Accounting Requirements, and the Request(s) for Advance. The Grant shall not be expended to cover any costs incurred in connection with the Project prior to the date of receipt by RUS of the Application. The Grantee acknowledges that RUS approval for any Request for Advance shall not be a waiver of any provision or requirement contained or cited herein, but shall be subject to a subsequent compliance review.
- (b) Additionally, consistent with the Community Connect Regulations, Grant funds may only be used to finance: (1) the construction, acquisition, or leasing of facilities, including spectrum, land or buildings, used to deploy service at the Broadband Grant Speed to all residential and business customers located within the RUS Funded Service Area and all participating Critical Community Facilities, including funding for up to ten Computer Access Points to be used in the Community Center. Leasing costs will only be covered through the advance of funds period included in the award documents; (2) the improvement, expansion, construction, or acquisition of a Community Center and provision of Computer Access Points. Grant funds for the Community Center will be limited to ten percent of the requested grant amount; (3) the cost of providing the necessary bandwidth for service free of charge to the Critical Community Facilities for 2 years; and (4) shall not be used for operating expenses unless specifically permitted in subparagraphs (1)-(3) above.

### **SECTION 5.3 Unused and Disallowed Advances**

- (a) The Grantee shall return to RUS forthwith all or any advanced portion of the Grant not disbursed by the Grantee for the Project or not needed to complete the Project at the completion of the Project.
- (b) The Grantee shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by a RUS compliance review. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against requests for Advances or repaying the disallowed amount directly to the United States Treasury.

### **SECTION 5.4 Financial Books**

- (a) In accordance with 2 C.F.R. § 200.333, the Grantee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, third-party invoices, receipts, timesheets, and bills of sale, adequate to identify the purposes for which and the manner in which Grant and other funds were expended on the Project. The Grantee shall maintain all such records and copies of forms or financial reports, submitted to RUS in connection with the Grant, for the longest of: (i) three years from the date the Grantee submits its final annual Project performance activity report; (ii) three years from resolution of disputed items with RUS; or (iii) three years from disposition of property acquired with Grant funds during the term of the Grant.
- (b) In accordance with 2 C.F.R. § 200.333, the Grantee shall maintain complete, accurate, and current disclosure of the financial results of each Project in accordance with the Community Connect Regulations and Accounting Requirements. The source and application of funds shall be readily identified by the continuous maintenance of updated records, with all accounting records being supported by source documentation. Established procedures shall be used for determining the reasonableness, allowability, and allocation of costs in accordance with the Community Connect Regulations and the Accounting Requirements.

### **SECTION 5.5 Rights of Inspection and Compliance Reviews**

- (a) In accordance with 2 C.F.R. § 200.336, the Grantee shall afford RUS, the Office of Inspector General of the Department and the General Accounting Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to access and inspect the Project, and any and all books, records, accounts, including electronic books, records, accounts, and electronic mail messages, regardless of the physical form or characteristics, invoices, timesheets, contracts, leases, payrolls, canceled checks, statements, other documents, and papers of every kind belonging to or in any way pertinent to the Grant, and to make copies, audits, examinations, excerpts or extracts therefrom.
- (b) The Grantee shall afford RUS, reasonable opportunity, at all times during business hours and upon prior notice, to conduct a compliance review to determine compliance with this Agreement and to determine whether expenditures and disbursements of the Grant were for approved purposes, and/or in accordance with the Grantee's Request(s) for Advance and the supporting documentation thereto.

### **SECTION 5.6 Financial Audits**

- (a) The Grantee shall provide RUS with an audit for each year in which a portion of the Grant is expended, in accordance with the following provisions:
  - (i) *For-Profit Entities.* The Grantee shall provide an independent audit report to RUS within 120 days after the as of audit date in accordance with 7 C.F.R. § 1773, *Policy on Audits of RUS Borrowers.*
  - (ii) *State, Local Government, or Non-Profit Organization.* The Grantee shall provide RUS with an audit for each year in which it expends \$750,000 or more in Grant funds for such year. Such audit shall

be conducted in accordance with Subpart F (Audit Requirements) of 2 C.F.R. part 200, and must be submitted to RUS within the earlier of (i) 30 calendar days after receipt of the auditor's report or (ii) nine months after the end of the Grantee's audit period.

(b) If the Grantee expends less than \$750,000 of Grant funds during a fiscal year of the Grantee, the Grantee shall be exempt from the auditing requirements specified in (a) above for such fiscal year of the Grantee.

#### **SECTION 5.7 Annual Project Performance Activity Report**

In accordance with 2 C.F.R. § 200.328, the Grantee shall provide RUS with a Project performance report which will be due annually on or before January 31<sup>st</sup> of the following year in which all or any portion of the Grant is first advanced and continuing in subsequent years until completion of the Project. The Project performance reports shall include, but are not limited to: (i) a comparison of actual accomplishments to the objectives established for the period; (ii) a description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall Project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular Project work elements during established time periods, accompanied by a statement of action taken or planned to resolve the situation; and (iii) objectives and timetables established for the next reporting period. The final annual Project performance report shall be due ninety (90) days after the Expiration Date, termination of the Grant, the Project completion, or the final disbursement of the Grant by the Grantee, whichever event occurs last, and must provide an evaluation of the success of the Project in meeting the objectives of the program. The final report may serve as the last annual report.

#### **SECTION 5.8 Miscellaneous Information to be Provided to RUS**

The Grantee shall furnish to RUS such information regarding the condition, financial or otherwise, or operations of the Grantee as RUS may, from time to time, reasonably request.

#### **SECTION 5.9 Obligations with Respect to the Construction, Operation and Maintenance of the Project**

- (a) *Project Management and Operation.* The Grantee shall be responsible for managing the day-to-day operations of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair. The Grantee shall provide the service described in the Application and, if the Project is owned, leased or operated by participants other than the Grantee, the Grantee shall monitor such participants and ensure the Project is operated in accordance with representations in the Application.
- (b) *Construction in Accordance with Scope of Work Plan.* The Grantee shall cause the Project to be constructed and completed in accordance with the discrete budget line items within the overall Scope of Work Plan.
- (c) *Procurement Requirements.* The Grantee shall conduct all procurement transactions, regardless of whether by sealed bids or by negotiation, in a manner that provides maximum open and free competition.
- (d) *General Insurance Requirements.* The Grantee shall take out and maintain insurance on the Project and any other property acquired with the Grant in accordance with 2 C.F.R. § 200.310, and shall take out and maintain the fidelity bond coverage required in Subsection 4.1(h) hereof.

#### **SECTION 5.10 Compliance with Laws**

The Grantee will comply with all applicable federal statutes, regulations, and requirements that govern the Application, the Project, and use of federal grant funds for this Grant, including but not limited to 2 C.F.R. part 200, and (i) the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), (ii) the Clean Air Act (42 U.S.C. §§ 7401-7671q), and (iii) the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387).

**SECTION 5.11 Nondiscrimination**

- (a) *Equal Opportunity Provisions in Construction Contracts.* The Grantee shall incorporate or cause to be incorporated into any “federally assisted construction contract” (as defined in Executive Order 11246 (30 Fed. Reg. 12,319 (1965)), thereafter amended by Executive Order 11375 (32 Fed. Reg. 14,330 (1967)), and supplemented at 41 C.F.R. § Part 60, the equal opportunity clause provided under 41 C.F.R. § 60-1.3, in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 Fed. Reg. 12,319, 12,935), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee. The Grantee shall include the equal opportunity provisions set forth in Attachment 1 hereto, entitled Equal Opportunity Contract Provisions, into every federally assisted construction contract.
- (b) *Equal Opportunity Contract Provisions Also Bind the Grantee.* The Grantee further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.
- (c) *Codes of Conduct.* The Grantee shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts in accordance with 2 C.F.R. part 200.
- (d) *Sanctions and Penalties.* The Grantee agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS’ primary responsibility for securing compliance. The Grantee further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Grantee agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Grantee, or may refer the case to the Department of Justice for appropriate legal proceedings.

**SECTION 5.12 Additional Project Funding**

The Grantee shall ensure that adequate funding is in place to complete the Project and will, after obtaining the prior written approval of RUS, obtain loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

**SECTION 5.13 Community Center**

Prior to the Expiration Date the Grantee shall provide a Community Center within the RUS Funded Service Area that affords the public free access as well as instruction in the use of broadband Internet service. The Community

Center must be open and accessible to area residents before, during, and after normal working hours and on Saturdays or Sundays.

**SECTION 5.14 Broadband Service**

Prior to the Expiration Date, and consistent with the Community Connect Regulations, the Grantee shall:

- (a) Offer service at the Broadband Grant Speed to all residential and business customers within the RUS Funded Service Area;
- (b) Offer free service at the Broadband Grant Speed to all Critical Community Facilities within the RUS Funded Service Area for at least 2 years starting from the time service becomes available to each Critical Community Facility; and
- (c) Provide a Community Center with at least two (2) Computer Access Points and wireless access at the Broadband Grant Speed free of all charges to all users for at least 2 years.

**SECTION 5.15 Matching Contribution**

Grantee has contributed or demonstrated, to the satisfaction of RUS, available cash reserves in an account(s) of the Grantee equal to at least 15% of the Grant to satisfy its Matching Contribution requirement. Grantee may only use the Matching Contribution solely for the Project and shall not include as its Matching Contribution any financial assistance from federal sources unless there is a federal statutory exception specifically authorizing the federal financial assistance to be considered as such. At the end of every calendar quarter, the Grantee must submit a schedule to RUS that identifies how the Matching Contribution was used to support the Project until the total contribution is expended.

**SECTION 5.16 Project Construction Start**

The Grantee shall start construction (physical placement of facilities) of the Project within 180 days from the date hereof.

**SECTION 5.17 SAM Registration and DUNS Number**

The Grantee shall comply with the additional requirements set forth in Attachment 2 regarding System for Award Management (SAM) formerly the Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Numbers. For the purposes of this Agreement the term "you" in Attachment 2 shall mean "Grantee" as defined hereunder. The Grantee's DUNS Number is specified in Schedule I hereto.

**SECTION 5.18 Subawards and Executive Compensation**

The Grantee shall comply with the additional requirements set forth in Attachment 3 regarding Subawards and Executive Compensation. For the purposes of this Agreement the term "you" in Attachment 3 shall mean "Grantee" as defined hereunder.

**SECTION 5.19 Additional Affirmative Covenants**

The Grantee shall comply with the additional affirmative covenants set forth in Schedule 1 hereto.

**ARTICLE VI – NEGATIVE COVENANTS**

**SECTION 6.1 General**

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Grantee shall duly observe each of the negative covenants set forth in this Article VI.

**SECTION 6.2 Contracts**

The Grantee shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation or maintenance of the Project and shall not enter into any contract for the use by others of the Project.

**SECTION 6.3 Historic Preservation**

The Grantee shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

**SECTION 6.4 Additional Negative Covenants**

The Grantee shall comply with the additional negative covenants set forth in Schedule I hereto.

**ARTICLE VII – TERMINATION, SUSPENSION AND OTHER REMEDIES**

**SECTION 7.1 Termination of the Grant by RUS**

- (a) *Termination of the Grant by RUS.* RUS, in its sole discretion, may terminate the Grant, in whole or in part:
- (i) if RUS does not receive this Agreement, duly executed on behalf of the Grantee, within one hundred twenty (120) days from the date hereof;
  - (ii) if all conditions to the Grant, and all conditions to advance stated herein are not satisfied within one hundred twenty (120) days from the date hereof;
  - (iii) if construction of the Project has not commenced within 180 days from the date hereof;
  - (iv) if RUS has determined that the Grantee has failed to materially comply with the terms and conditions of this Agreement, including but not limited to meeting the milestones set forth in the Build-Out Plan in the Application, or that the Grantee has failed to strictly comply with any federal regulation cited herein;
  - (v) if any representation or warranty made by the Grantee in the Application, request for Advance, this Agreement, any certification, or other supporting documentation thereunder shall prove to be incorrect in any material respect at the time made;
  - (vi) if the Grantee fails to expend, or fails to provide RUS with evidence satisfactory to RUS that it has spent, Grant funds in accordance with the Accounting Requirements, the Scope of Work Plan, and the Request(s) for Advance submitted to RUS prior to the advance of funds;
  - (vii) if the Grantee shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents, or licenses required to carry on any material portion of its business, or an event occurs which can reasonably be expected to result in its dissolution or termination;
  - (viii) if a court having proper jurisdiction shall enter a decree or order for relief with respect to

the Grantee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (A) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official or (B) ordering the winding up or liquidation of its affairs; or the Grantee shall commence a voluntary case under any applicable bankruptcy insolvency or other similar law now or hereafter in effect, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; or

- (ix) upon the dissolution or liquidation of the Grantee, or upon the filing for dissolution or liquidation by the Grantee.
- (b) *Notice of Termination.* RUS shall provide the Grantee with written notice of termination of the Grant as provided in Section 8.1 hereof, setting forth the reason(s) for termination. The termination of the Grant shall be effective as of the date of receipt of such notice of termination by the Grantee.

#### **SECTION 7.2 Termination of the Grant by the Grantee**

In accordance with 2 C.F.R. § 200.339(a)(4) and 2 C.F.R. § 200.339(b), the Grantee may terminate the Grant by providing written notification to RUS, setting forth the reasons for such termination, the effective date, and, in the case of a partial termination, the portion of Grant funds to be terminated. In the case of a partial termination, if RUS determines that the remaining portion of the Grant will not accomplish the Project, then RUS may terminate the Grant in its entirety, and request reimbursement of all advanced Grant funds.

#### **SECTION 7.3 Mutual Termination of the Grant by RUS and the Grantee**

In accordance with 2 C.F.R. § 200.339(a)(3) and 2 C.F.R. § 200.339(b), RUS and the Grantee may mutually agree, in writing, to terminate the Grant upon certain conditions, specifying the effective date of the termination, and in the case of a partial termination of the Grant, any unadvanced portion of the Grant to be terminated and any advanced portion of the Grant to be returned to RUS.

#### **SECTION 7.4 Effect of Termination of the Grant**

Upon termination of the Grant pursuant to Sections 7.1, 7.2 or 7.3 hereof and in accordance with 2 C.F.R. § 200.339(b): (1) the Grantee shall not incur any new obligations after the effective date of the termination with respect to the Grant, (2) the Grantee shall cancel as many outstanding obligations as possible, and seek to mitigate the costs of any outstanding obligations, and (3) any unadvanced portion of the Grant not required for the Project shall not be available for advance by RUS and any advanced portion of the Grant not required by the Grantee for completion of the Project shall be immediately returned to RUS.

#### **SECTION 7.5 Suspension of Advances**

RUS may suspend the Grant, in whole or in part, in accordance with 2 C.F.R. § 200.338, for the reasons specified in Section 7.1 hereof as a basis for Grant termination.

- (a) *Suspension Procedure.* RUS shall issue to the Grantee a suspension notice stating the reasons for the suspension, any corrective action which the Grantee may be required to take, and the effective date of the suspension. The suspension shall remain in effect until RUS provides written notice to the Grantee that all corrective actions which RUS may have prescribed have been taken, or until RUS provides the Grantee with written notification of the termination of the suspension.
- (b) *Effect of Suspension.* New obligations shall not be incurred by the Grantee during the suspension, following the date of notice of suspension, unless specifically authorized by RUS, in writing. RUS will allow necessary allowable costs which the Grantee could not reasonably avoid during the suspension, if the obligations were properly incurred prior to the date of the suspension and not in

anticipation of the suspension or termination. During the suspension, appropriate adjustments shall be made to the Grant by RUS in order that credit not be given to the Grantee for disbursements made in payment of unauthorized obligations incurred by the Grantee during the suspension. RUS may also make adjustments by disallowing all or part of the costs of the Project that are not in compliance with this Agreement or RUS may withhold subsequent Advances.

#### **SECTION 7.6 Failure to Document Grant Expenditures and Misappropriation**

- (a) Upon a determination by RUS that the Grantee did not document Grant expenditures for allowable costs, as required in the Accounting Requirements, or that the Grantee did not utilize the Grant in the manner and exclusively for the Project as approved by RUS, RUS may, in its sole discretion:
  - (i) Disallow all or a part of the expenditures and disbursements of the Grant and require the Grantee to deposit such funds into a separate account to be applied toward other approved Project purposes or to reimburse the Government;
  - (ii) Suspend making Advances;
  - (iii) Terminate the Grant; and/or
  - (iv) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available herein or at law.
  
- (b) If any representation or warranty made by the Grantee in the Application, Request for Advance, this Agreement, any certification, or other supporting documentation thereunder shall prove to be incorrect in any material respect at the time made, RUS may, in its sole discretion:
  - (i) Suspend making Advances;
  - (ii) Require the Grantee to reimburse the Government for all or any part of the Grant;
  - (iii) Terminate the Grant; and/or
  - (iv) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available herein or at law.

### **ARTICLE VIII - MISCELLANEOUS**

#### **SECTION 8.1 Notices**

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Receipt of all such communications shall be deemed to have occurred when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

RUS  
Rural Utilities Service

Grantee  
See Schedule 1

United States Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-1500  
Attention: Administrator  
Fax: (202) 690-4654

With a copy to:

See Schedule 1

With a copy to:

See Schedule 1

## **SECTION 8.2 Expenses**

To the extent allowed by law, the Grantee shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Agreement or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

## **SECTION 8.3 No Waiver**

No failure on the part of RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

## **SECTION 8.4 Governing Law**

This Agreement shall be governed by and construed in accordance with applicable federal law, and in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

## **SECTION 8.5 Successors and Assigns**

- (a) This Agreement shall be binding upon and inure to the benefit of the Grantee and RUS and their respective successors and assigns, except that the Grantee may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.
- (b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States; in the event of such transfer, all security interests, rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

## **SECTION 8.6 Complete Agreement; Waivers and Amendments**

Subject to RUS Regulations, this Agreement is intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement. No amendment, modification, or waiver of any provision hereof, and no consent to any departure of the Grantee herefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

## **SECTION 8.7 Headings**

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

**SECTION 8.8 Severability**

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

**SECTION 8.9 Schedules, Attachments, and Counterparts**

Each Schedule and Attachment hereto and referred to herein is each an integral part of this Agreement. Moreover, this Agreement may be executed in several counterparts, each of which shall be deemed to be an original.

**SECTION 8.10 Authority of Representatives of RUS**

In the case of any consent, approval or waiver from RUS that is required under this Agreement, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this Section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

**SECTION 8.11 Amendment of Laws and RUS Regulations**

Nothing contained herein shall restrict in any way RUS' right to amend, rescind or supplement any of the RUS Regulations or to seek such changes to existing Laws.

**SECTION 8.12 Interest on Disallowed Amounts**

Disallowed and reimbursable Advance amounts hereunder shall accrue interest payable to RUS from the date RUS delivers to the Grantee a written demand for payment. Interest shall accrue at a rate equal to the lesser of (a) twelve percent (12%) per annum or (b) the maximum interest rate permissible by law. Termination of the Grant will not affect the right of RUS to disallow expenditures and recover, in full, any amount on the basis of a subsequent audit or other review or the Grantee's obligation to return any disallowed expenditures.

**SECTION 8.13 No Third Party Beneficiary**

This Agreement is exclusively between RUS and the Grantee, and does not nor is intended to create any privity of contract with any other party not a party hereto, nor to imply a contract in law or fact. Any funds advanced by RUS to the Grantee are intended to finance the Grantee's Project. Any approvals given by RUS to the Grantee are solely for the benefit of RUS. RUS is not obligated to advance grant funds on any contract, or otherwise, between the Grantee and any other party, nor intends to assume, at any time, direct obligations for payment for work, goods, or other performance under such contracts. The obligation to pay any amounts due under such contracts is solely the responsibility of the Grantee. Nothing herein, express or implied, is intended to, or shall confer upon, any other person any right, benefit, or remedy of any nature whatsoever under or by reason of the Grant Agreement between RUS and the Grantee.

**SECTION 8.14 Disposition of Grant Property**

Unless otherwise agreed to in writing by RUS, any and all dispositions of Grant property shall be made in accordance with federal regulations at 2 C.F.R. part 200, as applicable.

**SECTION 8.15 Term**

This Agreement shall remain in effect until one of the following events has occurred:

- (a) The Grantee and RUS replace this Agreement with another written agreement;
- (b) All of the Grantee's obligations under this Agreement have been discharged, including the provision of service at the Broadband Grant Speed to the Community Center and Critical Community Facilities for at least two years; or
- (c) This Agreement has been terminated pursuant to the provisions of Article VII hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**EMERY TELECOMMUNICATIONS & VIDEO, INC.**

by: \_\_\_\_\_

Name: Brook Johansen  
Title: Chief Executive Officer

(Seal)

Attested to by: \_\_\_\_\_  
Secretary

**UNITED STATES OF AMERICA**

by Bette B. Brand  
**ACTING** Administrator of the Rural Utilities Service

**SCHEDULE 1**

Article II Representations and Warranties

1. Paragraph (g) Grantee's address: **445 E SR 29  
Orangeville, UT 84537**

Article III The Grant

1. Section 3.1, Maximum Grant Amount: **\$839,520**

Article IV Conditions of Funding

1. Section 4.2(d) Matching Contribution shall be equal to at least 15% of the Grant.
2. Section 4.2(g) Additional Conditions: **N/A**

Article V Affirmative Covenants

1. Section 5.17 Grantee's Data Universal Numbering System (DUNS) Number: **100650360**
2. Section 5.19 Additional Affirmative Covenants: **N/A**

Article VI Negative Covenants

1. Section 6.4 Additional Negative Covenants: **N/A**

Article VIII Miscellaneous

1. Section 8.1 Grantee's address for purposes of notification: **Mr. Darren Woolsey  
Chief Financial Officer  
Emery Telecommunications & Video, Inc.  
P.O. Box 629  
Orangeville, UT 84537  
Tel: (435) 636-0090**

Copy to: **None**

2. Section 8.1 RUS's address for purposes of notification:

Copy to: **PETER AIMABLE, Deputy Assistant Administrator  
Portfolio Management and Risk Assessment Division  
Telecommunications Program  
Rural Utilities Service  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Stop 1595, South Building, Room 2808  
Washington, DC 20250-1595**

**ATTACHMENT 1**  
**EQUAL OPPORTUNITY CONTRACT PROVISIONS**

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- (b) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous place available to employees and applicants for employment.
- (d) The contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- (f) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or part by the Government, and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The contractor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## ATTACHMENT 2

### SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

- A. Requirement for System for Award Management (SAM) formerly Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in SAM 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. System for Award Management (SAM) 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 SAM Internet site (currently at <http://www.sam.gov>).
  2. Data Universal Numbering System (DUNS) number means the nine-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 (currently 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 C.F.R. 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 2 C.F.R. part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*).
    - 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.

## ATTACHMENT 3

### REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION.

#### 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).
2. **Where and when to report.**
  - i. You must report each obligating action described in paragraph a.1. of this award term to <http://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 <http://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 C.F.R. § 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 C.F.R. § 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 <http://www.sec.gov/answers/excomp.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 <http://www.sam.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 C.F.R. § 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 <http://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 C.F.R. 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 2 C.F.R. part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*).
  - 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 C.F.R. § 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.
  - 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.