

INTERGOVERNMENTAL AGREEMENT BETWEEN
JEFFERSON COUNTY EMERGENCY COMMUNICATIONS AUTHORITY,
THE CITY AND COUNTY OF DENVER,
AND ADAMS COUNTY COMMUNICATION CENTER, INC.
FOR THE INSTALLATION, OPERATION, AND USE OF A FIBER OPTICS
COMMUNICATION PLANT AND THE INTERCONNECTION OF NETWORKS

This Intergovernmental Agreement ("*Agreement*") is entered into by and between Jefferson County Emergency Communications Authority ("*JCECA*"), the City and County of Denver ("*City*"), and Adams County Communication Center, Inc. ("*ADCOM911*") for the installation, operation, and use of a fiber optics communications plant along the RTD West Corridor, and for the interconnection of the City and ADCOM911 fiber optic cable networks. JCECA, the City, and ADCOM911 are referred to collectively as the "*Parties*" and individually as a "*Party*".

RECITALS

WHEREAS, ADCOM911 is a Colorado non-profit public corporation that provides communication, dispatch, and data services to public safety entities located within and outside of Adams County, Colorado; and

WHEREAS, JCECA is a legal entity organized pursuant to C.R.S. § 29-11-100.5, *et seq.*, and C.R.S. § 29-1-201 *et seq.*, which provides funding to the Broomfield and Jefferson Counties' public safety answering points for emergency dispatching services to the residents within such counties' jurisdictions; and

WHEREAS, the City's Department of Public Works ("*DPW*") is supportive of regional initiatives to provide communication connectivity for public purposes; and

WHEREAS, ADCOM911 requested a waiver from the Federal Communications Commission to utilize the 700 MHz public safety broadband spectrum currently licensed to the Public Safety Spectrum Trust Corporation, and on May 12, 2010, the Federal Communications Commission granted conditional approval of the waiver. ADCOM911 subsequently entered into a Long Term De Facto Spectrum Lease Agreement with the Public Safety Spectrum Trust Corporation to operate on the 700 MHz public safety broadband spectrum, using Call Sign WQHW226; and

WHEREAS, on May 13, 2010, the NTIA announced the limited reopening of the Comprehensive Community Infrastructure grant funding application period for the Broadband Technology Opportunities Program established pursuant to the ARRA. In response, ADCOM911 submitted its Grant Application to construct and operate a Long Term Evolution wireless broadband network for use by public safety entities within and outside of Adams County. ADCOM911 received notification of the Grant award on September 27, 2010. ADCOM911 is the prime Grant recipient and JCECA is a Grant subrecipient for the limited purpose of installation of the West Corridor Plant; and

WHEREAS, as part of the LTE Project, JCECA will contract with RTD to provide that RTD will install the West Corridor Plant as an integrated part of ongoing RTD light-rail construction that is occurring along Colorado Highway 6 between the Jefferson County Government Center and the Auraria West light-rail station in Denver, Colorado. The West Corridor Plant is a component of the larger LTE Project as it provides ADCOM911 the ability to link its wireless network to an existing node in the Federal Network; and

WHEREAS, as part of the LTE Project, the City and ADCOM911 will connect their fiber optic cable networks at the intersection of 56th Avenue and Quebec Street, and the City will provide ADCOM911 with further connection from 56th Avenue and Quebec Street to the fiber optic cable to be installed as the West Corridor Plant. The interconnection of the City and ADCOM911 fiber optic networks is a component of the larger LTE Project as it gives the City the option to utilize existing infrastructure to further develop LTE throughout Denver; and

WHEREAS, ADCOM911 has appropriated Grant funds for use by JCECA on the installation of the West Corridor Plant and JCECA has agreed to provide a certain amount of its own funds for use on the West Corridor Plant; and

WHEREAS, ADCOM911, as the prime Grant recipient, is obligated to comply with the requirements imposed by the Controlling Documents and all other Controlling Terms and Conditions. JCECA and the City understand that the Controlling Terms and Conditions impose numerous duties and obligations on ADCOM911 and wish to support ADCOM911 in compliance with the Controlling Terms and Conditions; and

WHEREAS, the Parties desire to enter into an agreement that sets forth the general terms, conditions, and obligations of the Parties with respect to the installation, operation, and use of the West Corridor Plant, and for the interconnection of the City and ADCOM911 fiber optic cable networks.

ARTICLE I

Definitions

1. "**ARRA**" means the American Recovery and Reinvestment Act of 2009.
2. "**Connection Point**" means the location of connection of the City and ADCOM911 fiber optic cable networks at the intersection of 56th Avenue and Quebec Street in Denver, Colorado. The Connection Point will be a hand hole located on the northeast corner of 56th Avenue and Quebec Street, and the interconnection shall be established by splicing ADCOM911's fiber into the existing splice box at such location. There will not be provisions for any electronic equipment at the Connection Point.
3. "**Connection Route**" means the path of connection provided by the City from the Connection Point to the West Corridor Plant to allow ADCOM911 throughput through the City's fiber optic cable network and the West Corridor Plant.

4. "**Controlling Documents**" means the FCC Waiver Order, PSST Lease, Grant Application, notification of the Grant award, ARRA Award Terms, and Special Award Conditions.

5. "**Controlling Terms and Conditions**" means the Controlling Documents, the Uniform Administrative Requirements at 15 CFR part 14 or 24, as applicable to each Party, and all Federal or state laws or regulations, or agency rules, standards, or conditions, or any other law, rule, regulation, standard, or condition that is incorporated into or made applicable to the Parties, the West Corridor Plant, or the interconnection of the City and ADCOM911 fiber optic cable networks by the Controlling Documents, as well as any other law, rule, regulation, standard, or condition that applies to or governs the Grant, the West Corridor Plant, or the interconnection of the City and ADCOM911 fiber optic cable networks.

6. "**FCC Waiver Order**" means the Order issued by the Federal Communications Commission on May 12, 2010 in PS Docket Number 06-229, granting conditional approval of ADCOM911's request for a waiver to utilize the 700 MHz public safety broadband spectrum.

7. "**Grant Application**" means the application submitted by ADCOM911 under the Broadband Technology Opportunities Program for the construction and operation of the LTE Project.

8. "**Grant**" means the grant of Federal funding awarded to ADCOM911 by the Federal Communications Commission to construct and operate the LTE Project.

9. "**LTE Project**" means the construction and operation of the a Long Term Evolution wireless broadband network for use by public safety entities within and outside of Adams County.

10. "**NTIA**" means the National Telecommunications and Information Administration.

11. "**PSST Lease**" means the Long Term De Facto Transfer Spectrum Lease Agreement entered into by and between ADCOM911 and the Public Safety Spectrum Trust Corporation, dated 7/29/2010 and 8/1/2010, respectively, for ADCOM911's operation on the 700 MHz public safety broadband spectrum.

12. "**RTD**" means the Regional Transportation District, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. § 32-9-101, *et seq.*

13. "**WCP East Portion**" means that portion of the West Corridor Plant running between the RTD light rail station located at Sheridan Boulevard and the RTD Auraria West light rail station.

14. "*WCP West Portion*" means that portion of the West Corridor Plant running between the RTD light rail station located near the Jefferson County Government Center and the RTD light rail station located at Sheridan Boulevard.

ARTICLE II
General Provisions
JCECA/City/ADCOM911

1. Purposes. The general purposes of this Agreement are:

a. To facilitate efficient public safety communications through the installation and operation of the West Corridor Plant and the interconnection of the City and ADCOM911 fiber optic cable networks, as components of the larger LTE Project that will provide secure, reliable wireless broadband service to public safety agencies operating within and outside of the greater Denver area;

b. To interconnect multiple Public Safety Answering Points in Adams County, Jefferson County, and the greater Denver area, along with local school districts and multiple local governments;

c. To establish the general terms, conditions, and procedures by which the Parties will manage the installation, operation, and use of the West Corridor Plant, and the interconnection of the City and ADCOM911 fiber optic cable networks; and

d. To ensure compliance with the Controlling Terms and Conditions.

2. Controlling Terms and Conditions. Each Party acknowledges and agrees that it is solely responsible for identifying, obtaining, and reviewing the Controlling Terms and Conditions applicable to it. The Parties shall comply at all times with the applicable Controlling Terms and Conditions. In the event that any provision of this Agreement is inconsistent or in conflict with any provision of the applicable Controlling Terms and Conditions, the applicable Controlling Terms and Conditions shall control. The following Controlling Documents are attached hereto and incorporated herein by this reference:

a. The FCC Waiver Order is attached as Appendix 1;

b. The PSST Lease is attached as Appendix 2;

c. The Grant Application is attached as Appendix 3;

d. The notification of the Grant award is attached as Appendix 4;

e. The ARRA Award Terms are attached as Appendix 5;

f. The Special Award Conditions are attached as Appendix 6.

3. Grant Compliance Disputes. In the event that ADCOM911 and JCECA or the City are unable to reach an agreement within a reasonable time regarding any issue arising under this Agreement that affects ADCOM911's compliance with the Controlling Terms and Conditions, JCECA and the City agree that during the useful life of the LTE Project, ADCOM911 shall have final decision-making authority on such issue(s), except that in no case shall the City be compelled to incur any costs or take any action to further the final decision by ADCOM911. Notwithstanding the foregoing, if at any time JCECA or the City disagrees with ADCOM911's interpretation of the Controlling Terms and Conditions or final decision related thereto, the Parties to the dispute shall submit such interpretation or final decision, and JCECA's or the City's basis for challenging the same, to the appropriate Federal agency or person having jurisdiction over resolution of such dispute. Each Party to the dispute shall be permitted to present its position to the decisionmaker as provided by the policies and practices of such decisionmaker, or if none, then in such a manner as is designed to ensure a fair and prompt resolution. The determination of the decisionmaker shall be final, binding, and controlling on the Parties, and no Party shall seek to challenge or appeal the determination with any other agency, person, tribunal, or court. JCECA and/or the City, as applicable, shall assist ADCOM911 and cooperate fully in all respects to undertake and pursue to completion any decision made by ADCOM911, or the appropriate decisionmaker, as applicable, pursuant to this section, except that in no case shall the City be compelled to incur any costs or take any action to further the final decision by ADCOM911.

ARTICLE III Installation of the West Corridor Plant JCECA/ADCOM911

1. West Corridor Plant Description.

a. Location. The West Corridor Plant is to be located within the RTD right-of-way beginning at the RTD light rail station located near the Jefferson County Government Center and ending at the RTD Auraria West light rail station pursuant to approved construction plans and shall be approximately twelve (12) miles in length, generally following 6th Avenue and running between Interstate Highway I-70 on the west and the Auraria campus on the east.

b. Specifications. The West Corridor Plant is a ninety-six (96) strand single mode fiber optic cable that will be housed within the RTD conduit that contains seven (7) cylindrical chambers. One (1) of the RTD conduit chambers will be assigned to JCECA by RTD to house the West Corridor Plant.

c. Scope. The West Corridor Plant also will include fifteen access points ("**Hand Holes**") near RTD stations and major intersections, but outside of the RTD right-of-way. The Hand Holes located outside of the RTD right-of-way will be connected to the mainline duct bank via lateral conduits. Eleven Hand Holes will be located along the WCP West Portion, and four Hand Holes will be located along the WCP East Portion.

2. JCECA Responsible for Installation.

a. JCECA Responsible for Supervision of Installation. JCECA shall be responsible for supervision of the installation of the West Corridor Plant and ADCOM911 shall have no continuing obligation to supervise the installation, except as otherwise required by or necessary for ADCOM911's compliance with the Controlling Terms and Conditions. All West Corridor Plant equipment shall be installed, constructed, operated, modified, maintained, removed, and relocated in accordance with this Agreement and the Controlling Terms and Conditions. JCECA shall in good faith coordinate, or ensure RTD's good faith coordination, of the installation, construction, maintenance, modification, removal, and relocation of the West Corridor Plant equipment. The City shall have the right to inspect and approve all such installations within Denver.

b. JCECA Responsible for Supervision of RTD. JCECA shall be responsible for all supervision and interaction with RTD regarding the West Corridor Plant. ADCOM911 shall not supervise or communicate directly with RTD regarding the West Corridor Plant unless such supervision or direct communication is otherwise required by or necessary for ADCOM911's compliance with the Controlling Terms and Conditions.

c. Obtaining Permits and Approvals. JCECA is solely responsible for obtaining, or ensuring that RTD obtains, all approvals, permits, and licenses necessary for the placement of all portions of the West Corridor Plant, including without limitation, Hand Holes, fiber, and conduit located within or outside of RTD right-of-way.

d. Proof of Title. If requested by any appropriate Federal agency or agent, JCECA shall furnish evidence, satisfactory in form and substance to the Federal agency or agent, that ownership of the West Corridor Plant is vested in JCECA and that JCECA has obtained any rights-of-way, easements, state and local government permits, long-term leases, or other property interests necessary to ensure the installation, intended use, operation, and maintenance of the West Corridor Plant during the estimated useful life of the LTE Project. When furnishing such evidence, JCECA shall contemporaneously provide a copy of such evidence to ADCOM911.

e. Sustainability. JCECA shall apply, where feasible, sustainable and energy efficient design principles for the purpose of reducing pollution and energy costs and optimizing the lifecycle costs associated with the fiber.

3. Costs and Funding for Installation.

Grant Funds.

i. Job Creation. JCECA shall use Grant funds in a manner that maximizes job creation and economic benefit, and shall give preference to West Corridor Plant installation activities that can be started and completed expeditiously.

ii. Administration and Distribution. As the prime Grant recipient, ADCOM911 shall be solely responsible for administration and disbursement of the Grant funds in

accordance with the Controlling Terms and Conditions. Any Grant funds intended for use by JCECA shall be held by ADCOM911 and disbursed to JCECA pursuant to such protocol or procedure as shall be mutually agreed upon by ADCOM911 and JCECA consistent with the Controlling Terms and Conditions.

iii. Allowable Costs. JCECA shall request disbursement of Grant funds only for allowable costs, as defined by the Controlling Terms and Conditions, and for the purposes that are proposed in the Grant Application. JCECA's sole disbursement shall be to RTD as the sole source contractor.

iv. Advance Funds. Advances may be made only when permitted by the Controlling Terms and Conditions and shall be limited to the minimum amounts necessary to meet immediate disbursement needs. All advanced funds shall be maintained in insured, interest-bearing accounts. JCECA shall promptly return to ADCOM911 any interest earned on advanced funds in excess of the annual amount allowed by the Uniform Administrative Requirements applicable to JCECA.

v. Unused Funds. Any funds disbursed by ADCOM911 to JCECA that remain unused at the end of 30 calendar days following such disbursement must be returned to ADCOM911 by JCECA. Such funds shall be credited to the amount of Grant funds intended for use by JCECA and may be disbursed by ADCOM911 to JCECA again.

vi. Signature Authority for Expenditures. ADCOM911 and JCECA shall each designate those specific individuals who have signature authority to authorize the expenditure of Grant funds.

b. Budget.

i. Budget Preparation. JCECA shall prepare and submit to ADCOM911 an adequate budget on which award commitments will be based. JCECA and ADCOM911 expect that the total budget shall not exceed \$790,000.00, with JCECA contributing a 30% cash match of \$237,000.00. ADCOM911 shall apply to the NTIA for application of \$553,000.00 of Grant funds to pay for the remaining 70% of the cost of the West Corridor Plant, and shall disburse such Grant funds to JCECA in accordance with section 3(a)(ii) above. ADCOM911 shall not be required to apply to the NTIA for application of any amount of Grant funds over \$553,000.00 or otherwise to contribute any additional amount, except as may be provided by section 3(b)(ii) below. In the event that the total project cost for the West Corridor Plant exceeds \$790,000.00, JCECA shall be solely responsible for such additional amount.

ii. Budget Changes. JCECA and ADCOM911 may make changes to their respective budgets to meet unanticipated requirements in accordance with the provisions of the Controlling Terms and Conditions. JCECA shall submit a written request to ADCOM911 for prior approval of any budget increase. ADCOM911 shall promptly review such request and approve or deny the request in writing. If the revision increase would result in a revision to ADCOM911's budget which requires Federal approval, ADCOM911 shall request such approval before approving JCECA's request. Notwithstanding anything in this paragraph to the contrary,

budget increases by JCECA that will be paid for entirely by JCECA's separate funds and that do not implicate the Grant Funds or JCECA's cash match pursuant to sections 3(b)(i) and 3(b)(iii) shall not be subject to approval by ADCOM911.

iii. Matching Funds. Pursuant to the Controlling Terms and Conditions, JCECA shall supply at least 30% of the total project budget, including any revision increase provided by section 3(b)(ii) above, in matching funds. Matching funds shall satisfy the criteria and valuation principals for such funds as established by the Controlling Terms and Conditions.

iv. Income. JCECA and ADCOM911 must account for any income directly generated by the West Corridor Plant. Any income generated for JCECA or ADCOM911 by the West Corridor Plant during the Grant period shall be retained by such Party and shall either: (a) be added to the funds committed to the West Corridor Plant to conduct additional activities that will further eligible LTE Project objectives, including reinvestment in West Corridor Plant facilities, funding Grant compliance costs, and paying operating expenses of the West Corridor Plant or (b) be used to finance the non-Grant share of the LTE Project. Project income means gross income earned by the Party that is either directly generated by a Grant-supported activity or earned as a result of the Grant award during the funding period.

c. Recording Requirements. JCECA and ADCOM911 shall maintain comprehensive and accessible records and documentation that adequately identify the source and application of all Grant funds. These records must contain information pertaining to Grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, interest, and income.

i. Verification of Financial Management System. JCECA shall submit to ADCOM911 a signed statement from an authorized official, verifying the ability of JCECA's financial management system to appropriately track and account for Grant funds and expenditures associated with the West Corridor Plant.

ii. Financial Books and Records. At any time, upon request by ADCOM911, JCECA shall provide or make available to ADCOM911 all financial books and records related to the Grant funding, including, without limitation, all financial books and records related to accounting for receipts and expenditures of Grant funds, and Grant cash advances, cash management, income, budgetary control, matching funds and refunding obligations. The application of matching funds must be accounted for and recorded in the same manner as Grant funds. Upon request by ADCOM911, JCECA shall provide a statement by a certified public account that Grant funds distributed by ADCOM911 to JCECA were used solely for the West Corridor Plant. The Parties' accounting records shall include cost accounting records that are supported by source documentation.

iii. Reporting Grant Expenditures. JCECA and ADCOM911 shall separately identify the expenditures for the Grant on the Schedule of Expenditures of Federal Awards ("*SEFA*") and the Data Collection Form ("*SF-SAC*") required by OMB Circular A-133, in such form and detail as is required by the ARRA Award Terms. At any time upon request by

ADCOM911, JCECA shall provide or make available to ADCOM911 copies of JCECA's SEFA and SF-SAC forms.

iv. Grant Expiration. JCECA and ADCOM911 shall comply with all requirements related to incurring costs obligating Grant funds beyond the expiration date stipulated in the Grant Award. ADCOM911 shall not be liable to pay or request disbursement of Grant funds for payment of any costs or expenses incurred beyond such date.

d. False Claims. JCECA and ADCOM911 shall promptly refer to the Department of Commerce Office of Inspector General any credible evidence that a principal, agent, employee, contractor, subrecipient, subcontractor, or any other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of the laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Grant funds.

e. Whistleblower Protection. JCECA and ADCOM911 shall comply with the ARRA Whistleblower Protection requirements, which provide protection for certain persons who make specified disclosures related to possible fraud, waste, or abuse of ARRA funds. JCECA shall prominently post notice of the rights and remedies for whistleblower protections at the West Corridor Plant installation site, and shall include this notice requirement in all contracts with subrecipients, contractors, and subcontractors. The Department of Commerce Office of Inspector General will verify the appropriate place for this notice posting as part of any fieldwork conducted.

4. Reporting.

a. Records and Documentation. JCECA and ADCOM911 shall maintain comprehensive and accessible records and documentation on all aspects of Grant funding and the West Corridor Plant installation, including, without limitation, West Corridor Plant goals, objectives, milestones, performance, timeliness, expenditure of Grant funds and the amount of remaining Grant funds, the amount of non-Federal investment being added to complete the West Corridor Plant, and such other record maintenance requirements as may be established by the Controlling Terms and Conditions.

b. Reporting by ADCOM911. ADCOM911 shall prepare and submit all reports that are required by the Controlling Terms and Conditions to be submitted by ADCOM911 or jointly by JCECA and ADCOM911, unless otherwise provided by the Controlling Terms and Conditions. JCECA shall timely provide ADCOM911 with all information and documentation required by ADCOM911 to prepare and submit such reports. Such reports shall include, without limitation:

- i. Revised 6-month expenditure plan that presents any proposed management and administration ("M&A") and limited, preliminary procurement activities and costs;
- ii. Initial Narrative Performance Progress Report;

- iii. Baseline Report, including key outputs and outcomes from the West Corridor Plant following close of the first quarter and updating previously submitted timelines and milestones;
- iv. Quarterly ARRA reports pertaining to the progress of the West Corridor Plant and job creation and retention;
- v. Quarterly Financial Status Reports detailing financial information concerning the West Corridor Plant, including budget and cost information on each quarter's expenses;
- vi. Quarterly and annual Broadband Technology Opportunities Program Performance Progress Report pertaining to the programmatic performance of the West Corridor Plant, including West Corridor Plant data, budget information, and milestones and West Corridor Plant indicator information; and
- vii. LTE Project closeout reports, including information related to the West Corridor Plant.

c. Reporting by JCECA. JCECA shall prepare and submit any reports that are required to be submitted by JCECA pursuant to the Controlling Terms and Conditions and that are not otherwise required to be prepared and submitted jointly with ADCOM911. JCECA shall provide an advance copy of any such reports to ADCOM911 at least 2 business days prior to their submission. ADCOM911 shall notify JCECA of the need for such a report a minimum of 14 calendar days prior to such report being due; provided, however, that ADCOM911's failure to so notify JCECA shall not affect JCECA's obligation under the Controlling Terms and Conditions to prepare and submit the report.

d. Record Retention Related to West Corridor Plant Installation. JCECA and ADCOM911 shall retain all records related to the Grant and the installation of the West Corridor Plant for a minimum of three years following the later of the LTE Project's completion or the resolution of audit, litigation, or other claim related thereto, and shall comply with such other record retention requirements as may be established by the Controlling Terms and Conditions.

5. Audit.

a. Single Audit Requirement. JCECA and ADCOM911 acknowledge that the Grant is subject to audit under the single audit requirements outlined in OMB Circular A-133. JCECA and ADCOM911 hereby agree to adhere to the applicable OMB Circular A-133 audit requirements, and such other audit requirements as are applicable to the Grant or the West Corridor Plant; however, JCECA is not expected to require an audit pursuant to the single audit requirements, as JCECA is not expected to expend more than \$500,000 in Federal awards in a fiscal year.

b. Cooperation with Audit. JCECA and ADCOM911 each shall timely provide the other Party with all information and documentation required by the other to comply with any audit arising under this section or under the Controlling Terms and Conditions.

c. Reporting Audit Findings. If required, JCECA shall submit to ADCOM911 one copy of the reporting package described in OMB Circular A-133 section 320(c) when the schedule of findings and questioned costs disclose audit findings related to the Grant, or the summary schedule of prior audit findings reports the status of any audit findings related the Grant. If the schedule of findings and questioned costs do not disclose audit findings related to the Grant, or the summary schedule of prior audit findings does not report the status of any audit findings related the Grant, JCECA may submit to ADCOM911 one copy of the reporting package described in OMB Circular A-133 section 320(c), or may submit written notification to ADCOM911 that: (a) an audit of JCECA was conducted; (b) the schedule of findings and questioned costs disclose no audit findings related to the Grant; and (c) the summary schedule of prior audit findings do not report on the status of any audit findings related to the Grant.

6. Environmental Assessment.

a. Environmental Assessment. RTD has conducted and completed an environmental assessment in connection with the ongoing light rail construction that is occurring along Colorado Highway 6 between the Jefferson County Government Center and the Auraria West light rail station in Denver, Colorado, in connection with which construction the West Corridor Plant will be installed. ADCOM911 represents that it has received Federal assurance that the environmental assessment conducted by RTD satisfies the Grant requirements for environmental assessments pursuant to the Controlling Terms and Conditions, and that no additional environmental assessment of the West Corridor Plant is required under the Grant. In accordance with the Controlling Terms and Conditions, neither JCECA nor ADCOM911 shall conduct site preparation, demolition, construction, or any other ground disturbing activities using Federal funds in any location that was not reviewed and addressed as part of a Grant-sufficient environmental assessment.

b. Ongoing Compliance. JCECA and ADCOM911 shall provide any ongoing environmental compliance information requested by NTIA, both to NTIA and contemporaneously to the other Party. JCECA and ADCOM911 must notify NTIA and each other within 24 hours upon receipt of any notices of foreclosure, notices for continuing consultation received from the State Historic Preservation Office, U.S. Fish and Wildlife Services or other consulting party, or notices of noncompliance received from consulting authorities or regulatory agencies.

7. Procurement.

a. Code of Conduct.

i. Conflict of Interest. JCECA and ADCOM911 shall each maintain written standards of conduct to establish safeguards to prohibit directors, officers, and employees

from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain in the administration of the Grant.

ii. Conduct in Procurements. JCECA and ADCOM911 shall each maintain written standards of conduct governing the performance of its directors, officers, and employees engaged in the award and administration of subawards and/or contracts relating to the West Corridor Plant. No director, officer, employee or agent of JCECA or ADCOM911 shall participate in the selection, award or administration of a subaward supported by the Grant if a real or apparent conflict of interest would be involved. The directors, officers, employees, or agents of JCECA and ADCOM911 shall neither solicit nor accept anything of monetary value from subrecipients, contractors, or subcontractors. Further, JCECA and ADCOM911 shall each maintain written standards of conduct regarding its procurement procedures, which shall include, without limitation, cost or price analysis determining reasonableness, allocability, allowability, and conflict of interest procedures. JCECA and ADCOM911 each must maintain a sufficient contract administration system to ensure adherence to such standards of conduct. All procurement standards of conduct maintained by a Party shall comply with the Uniform Administrative Requirements applicable to such Party.

b. Cost Principals. JCECA and ADCOM911 acknowledge that the Grant funding for each of them is subject to the Federal cost principals outlined in OMB Circular A-87 or A-122, as applicable to each Party. JCECA and ADCOM911 hereby agree to adhere to the applicable OMB Circular cost principals, and such other cost principal requirements as are applicable to the Grant or the installation of the West Corridor Plant.

c. Minimum Procurement Standards.

i. RTD as Sole-Source Contractor. Because the West Corridor Plant is being installed in the RTD right-of-way by RTD during ongoing construction of its light rail system, competition in the selection of RTD as the contractor for such installation is not possible and RTD is necessarily the sole source for contractor selection. ADCOM911 represents that it has received Federal assurance that RTD as a sole source contractor satisfies the Grant requirements for procurement purposes pursuant to this Article III, section 7 and pursuant to the Controlling Terms and Conditions.

ii. No New Procurements. JCECA and ADCOM911 each represents that it will not be required to, and will not, engage in any new procurements in the performance of this Agreement or related to the West Corridor Plant. Additionally, because the West Corridor Plant is being installed in the RTD right-of-way by RTD during ongoing construction of its light rail system, JCECA and ADCOM911 understand that RTD will not be required to, and will not, engage in any new procurements related to the West Corridor Plant. If either JCECA or ADCOM911 were to engage in any new procurements in the performance of this Agreement or related to the West Corridor Plant, such Party would be required to adhere to the minimum procurement standards identified in the Controlling Terms and Conditions. Likewise, if RTD were to engage in any new procurements related to the West Corridor Plant, JCECA would be required to ensure RTD's adherence to the minimum procurement standards identified in the Controlling Terms and Conditions.

d. Minimum Contractor Standards. JCECA and ADCOM911 shall require its contractors to adhere to the following minimum contractor standards:

- i. Perform under the ARRA and Department of Commerce standard terms and conditions;
- ii. Perform with integrity;
- iii. Comply with all applicable Federal, state, and local laws and regulations;
- iv. Present a satisfactory record of past performance;
- v. Present proof of necessary financial and technical resources;
- vi. Not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities; and
- vii. Comply with such other contractor standards as are required by the Controlling Terms and Conditions.

e. Davis-Bacon Act. JCECA and ADCOM911 shall each comply, and shall require that any contractors or subcontractors hired by it to perform work on the West Corridor Plant comply, with the Davis-Bacon and related Acts, as applicable, including payment of the applicable prevailing wage rates, inclusion of contract terms, and posting and reporting requirements.

i. Wage Determinations. Because the West Corridor Plant is being installed in the RTD right-of-way by RTD during ongoing construction of its light rail system, JCECA and ADCOM911 understand that RTD will not issue any new bids requiring determination of the applicable Davis-Bacon wage rates. If any such new bids were to be issued, JCECA would be responsible for verifying whether there have been any updates to the applicable Davis-Bacon wage determinations 10 calendar days prior to RTD's bid opening.

ii. Wage Recording. ADCOM911 shall obtain and maintain in its official records documentation of weekly certified payroll reports and the Statements of Compliance from itself, JCECA, and RTD, as applicable. JCECA shall timely provide ADCOM911 with its weekly certified payroll reports and Statements of Compliance as required by ADCOM911 to maintain such records.

f. Procurement RFP and Contract Terms. In all procurement RFPs, contracts, and subcontracts related to the West Corridor Plant entered into after the Effective Date, JCECA and ADCOM911 shall include, and shall require their contractors to include, such terms and provisions as are required by the Controlling Terms and Conditions to be included in procurement RFPs, contracts, and subcontracts. If requested by the Grant officer, JCECA and/or

ADCOM911 shall make pre-award review and procurement documents, such as RFPs or invitations to bid, available to the Grant officer.

g. Procurement Disputes. ADCOM911 and JCECA shall each maintain a procurement dispute procedure in compliance with 15 CFR 24.36(b)(12) or 15 CFR 14.41, if applicable.

8. Grant Compliance in Installation.

a. DUNS Number and CCR Registration. JCECA and ADCOM911 shall each obtain and maintain its own Dun and Bradstreet Data Universal Numbering System ("**DUNS**") Number and registration in the Central Contractor Registration within the timeframe required by the Controlling Terms and Conditions, which Number and registration shall be kept current at all times during which the Grant is funded with ARRA funds. Upon request by ADCOM911, JCECA shall provide to ADCOM911 proof of its current DUNS Number and Central Contractor Registration.

b. Buy American Requirement. JCECA and ADCOM911 shall comply with such terms of the ARRA Buy American requirement as are applicable to the Grant, unless a waiver of such terms is appropriately applied for and granted. JCECA and ADCOM911 shall not be required to comply with the ARRA Buy American requirements with respect to those components of broadband infrastructure for which the Secretary of Commerce granted a limited waiver in 74 FR 31410 (July 1, 2009).

c. Signage. JCECA shall ensure that the ARRA Primary Emblem is displayed at the West Corridor Plant installation site. The ARRA Primary Emblem shall be displayed throughout the construction phase and in accordance with the terms of the ARRA.

d. Drug-Free Workplace. JCECA and ADCOM911 shall each comply with the provisions of the Drug-Free Workplace Act of 1988 and Department of Commerce implementing regulations published at 15 CFR Part 29.

e. New Restrictions on Lobbying. Neither JCECA nor ADCOM911 shall use Grant funds to pay any person for influencing or attempting to influence an officer or employee of any agency (as defined in 15 C.F.R. § 28.105(a)), a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal grant, the making of a Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. JCECA and ADCOM911 shall each comply with the provisions of 31 U.S.C. § 1352 and Department of Commerce implementing regulations published at 15 C.F.R. part 28, including but not limited to completing and filing the Certification required by 15 C.F.R. § 28.100(b).

As necessary, JCECA and ADCOM911 shall each complete a Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. ADCOM911 shall submit the Forms SF-LLL within 30 calendar days following the end of the calendar quarter in

which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. JCECA shall submit its Form(s) SF-LLL to ADCOM911 at such time(s) as ADCOM911 shall require in order for ADCOM911 to comply with the foregoing reporting obligation.

ARTICLE IV
Ownership, Operation, and Use of the West Corridor Plant
JCECA/City/ADCOM911

1. JCECA Shall Retain Ownership. Upon completion of the West Corridor Plant, JCECA will maintain full ownership and control of the West Corridor Plant and have all rights to access and service the West Corridor Plant consistent with this Agreement and with JCECA's agreement with RTD. During the useful life of the LTE Project, JCECA's rights of ownership shall be subject to such limitations as are established by the Controlling Terms and Conditions, including without limitation, the NTIA's security interest, the limitations on transfer and use of the West Corridor Plant, and ADCOM911's continuing obligation to ensure that the West Corridor Plant is properly and efficiently administered, operated, and maintained as part of the LTE Project. If, at a future date, the Parties agree that it would be in the Parties' mutual best interest for ownership of the WCP East Portion to be transferred to the City, the Parties, through ADCOM911, shall petition the NTIA to permit JCECA to sell the WCP East Portion to the City. Pursuant to the Grant Special Award Conditions, such petition must demonstrate that the transaction is for adequate consideration, the transaction is in the best interests of those served by the West Corridor Plant, and the City agrees to fulfill the Controlling Terms and Conditions related to the West Corridor Plant after the transaction, as well as any other terms and conditions established by the NTIA.

2. City's Exclusive Use. The City shall have the exclusive right to use no fewer than thirty-six (36) strands of the West Corridor Plant fiber located within the WCP East Portion ("*City's Exclusive Use Strands*"), and to allocate those strands to others as the City, in its sole discretion, may select, consistent with the Controlling Terms and Conditions.

3. ADCOM911's Exclusive Use. ADCOM911 shall have the exclusive right to use twelve (12) strands of the West Corridor Plant fiber located within the entire West Corridor Plant ("*ADCOM911's Exclusive Use Strands*"), and to allocate those strands to others as ADCOM911, in its sole discretion, may select, consistent with the Controlling Terms and Conditions.

4. Maintenance and Repair of the West Corridor Plant.

a. Upgrades to the West Corridor Plant. All costs associated with upgrades to the West Corridor Plant shall be paid by the entity making the upgrades, except that the Parties, or any of them, may mutually agree in writing to share or otherwise allocate the cost of making the upgrades. ADCOM911 shall have no obligation to pay for any upgrades to the West Corridor Plant that are not directly made by ADCOM911 or for which ADCOM911 has not agreed to pay.

b. Maintenance and Repair of the WCP West Portion. JCECA is responsible, at its own cost, for providing ongoing maintenance of the WCP West Portion and for repairing damage to the WCP West Portion. JCECA shall, in its sole discretion, determine whether maintenance or repair is needed, whether the cost of such maintenance or repair is reasonable in light of all the circumstances, and whether the maintenance or repair is in the public interest; provided, that during the useful life of the LTE Project, JCECA shall make any and all maintenance and/or repairs that are necessary to ensure the proper and efficient administration, operation, and maintenance of the WCP West Portion as part of the LTE Project. ADCOM911 shall not be responsible for making or paying for any repairs to the WCP West Portion, except that JCECA shall at all times permit ADCOM911 to have access to and the right to maintain and repair that portion of ADCOM911's Exclusive Use Strands that lie within the WCP West Portion should ADCOM911, in its sole discretion, elect to do so.

c. Maintenance and Repair of the WCP East Portion. The City is responsible, at its own cost, for providing ongoing maintenance of the WCP East Portion and for repairing damage to the WCP East Portion, for a plant of up to 96 strands, terminating in front of the Auraria Higher Education Center Administration Building on 5th Street ("**AHEC Building**"). The City shall, in its sole discretion, determine whether maintenance or repair is needed, whether the cost of such maintenance or repair is reasonable in light of all the circumstances, and whether the maintenance or repair is in the public interest; provided, that during the useful life of the LTE Project, the City shall make any and all maintenance and/or repairs that are necessary to ensure the proper and efficient administration, operation, and maintenance of the WCP East Portion as part of the LTE Project, to the extent that funds for such maintenance and/or repairs are appropriated for that purpose by the Denver City Council and to the extent that such maintenance and/or repairs are in the best interests of the citizens of the City. ADCOM911 shall not be responsible for making or paying for any repairs to the WCP East Portion, except that the City shall at all times permit ADCOM911 to have access to and the right to maintain and repair that portion of ADCOM911's Exclusive Use Strands that lie within the WCP East Portion should ADCOM911, in its sole discretion, elect to do so.

5. Grant Compliance in Ownership, Operation, and Use.

a. Restricted Use. The Parties shall restrict use of the West Corridor Plant to public safety entities and such other public entities as are permitted by the Controlling Terms and Conditions, as well as any other public entities approved by the NTIA or the Grant officer or authorized by Federal law or other Federal agency having jurisdiction. Neither JCECA nor the City shall sell, lease, or otherwise exchange access, transport, or capacity (including backhaul) on the West Corridor Plant for any consideration without obtaining ADCOM911's prior written consent. If required, as determined by ADCOM911 in ADCOM911's sole discretion, ADCOM911 shall consult with the NTIA, Grant officer, or other Federal agency having jurisdiction to determine whether such sale, lease, or other exchange is permitted. If approved by the NTIA, Grant officer, or other Federal agency, ADCOM911 shall provide written consent pursuant to this section. If not approved by the NTIA, Grant officer, or other Federal agency, provision of written consent shall be at ADCOM911's sole discretion. In such event, if necessary, ADCOM911 shall provide prior written notice to the NTIA that the Parties are waiving their law enforcement exception from otherwise applicable interconnection obligations

and will fully comply with such obligations. Nothing in this section shall prohibit the Parties from complying with any state or Federal law that requires parties other than those identified to have access to and/or use of the West Corridor Plant.

b. Sale or Lease of Broadband Facilities or Equipment. The Parties shall not sell or lease any portion of the Grant-funded broadband facilities or equipment during their useful life, unless approved by the NTIA. Further, the NTIA shall retain a security interest in real property, including broadband facilities and equipment, acquired or improved with Grant funds. The Parties shall not sell, transfer, convey, mortgage, or encumber any real property during its estimated useful life, or use such real property as collateral or security on any loan, bond, or other borrowing, or use such real property for any purposes other than the purposes for which the Grant was made, without the prior written approval of the Grant officer.

c. User Fees. At this time, the Parties do not anticipate charging user fees for public safety or other public entities to use the West Corridor Plant. If at a future time any Party(ies) determines that imposing user fees is in the best interest of the public, such Party may impose such user fees as are permitted by the Controlling Terms and Conditions; provided, that neither JCECA nor the City shall impose user fees for the West Corridor Plant if notified by ADCOM911 that such user fees will interfere with ADCOM911's compliance with the Controlling Terms and Conditions. During the useful life of the LTE Project, user fees shall not be charged at a rate that is less than private companies charge for equivalent services.

d. City to Cooperate with Reporting and Audit. If requested, the City shall cooperate with and timely provide information and documentation to JCECA and/or ADCOM911 as required by JCECA and/or ADCOM911 to comply with its/their reporting and/or audit requirements arising under Article III, sections 4 and 5 above, or otherwise under the Controlling Terms and Conditions.

e. Record Retention Related to Ownership, Operation, and Use of the West Corridor Plant. The Parties shall retain all records related to the ownership, operation, and use of the West Corridor Plant for a minimum of three years following the later of the LTE Project's completion or the resolution of audit, litigation, or other claim related thereto, and shall comply with such other record retention requirements as may be established by the Controlling Terms and Conditions.

f. FCC Waiver Order and PSST Lease. ADCOM911 shall comply with the requirements and conditions established in the FCC Waiver Order and PSST Lease, and all subsequent rules, orders, regulations, and public notices governing its use of the 700 MHz public safety broadband spectrum. JCECA and the City shall assist ADCOM911 and cooperate fully in all respects as required by ADCOM911 to comply with such requirements and conditions.

6. Nonexclusivity as to West Corridor Plant Site. The Parties agree that this Agreement, insofar as it relates to use of the West Corridor Plant site, is non-exclusive and the Parties reserve the right to enter into agreements with third parties for use of the West Corridor Plant site, as permitted by the terms of section 5(a) above and the Controlling Terms and Conditions. However, no Party shall enter into any such agreement if the result of such agreement would require

the modification, removal, or relocation of any West Corridor Plant equipment without the prior written consent of the other affected Parties. For purposes of this section, "affected Parties" with respect to the WCP West Portion are JCECA and ADCOM911, and "affected Parties" with respect to the WCP East Portion are JCECA, the City, and ADCOM911.

7. Public Right-of-Way Permits. JCECA shall obtain from the City, and the City shall reasonably assist JCECA in obtaining, all public right-of-way permits and licenses, if any, necessary for performance of its obligations under this Agreement.

ARTICLE V
Interconnection of the City and ADCOM911 Networks
City/ADCOM911

1. Interconnection of Networks at the Connection Point.

a. Interconnection at Connection Point. The City shall connect ADCOM911's fiber optic cable network to the City's fiber optic cable network at the Connection Point for the purpose of allowing ADCOM911 throughput through the City's fiber optic cable network and the West Corridor Plant.

b. Access to Connection Point. The City shall permit ADCOM911 reasonable access to the Connection Point for the purpose of maintaining, repairing, upgrading, and expanding its equipment and/or its network interconnectivity. For purposes of this section, "reasonable access" means access by ADCOM911 upon (i) ADCOM911's notification to the City of its need to access the Connection Point; (ii) the City's approval of such access, which approval shall not be unreasonably withheld; and (iii) coordination with the City as to the time and manner of access.

c. Maintenance and Repair of ADCOM911's Equipment. ADCOM911 is responsible, at its own cost, for providing ongoing maintenance of its equipment at the Connection Point and for repairing any damage to its equipment at the Connection Point. The City shall at all times permit ADCOM911 to have access to and the right to maintain and repair its equipment at the Connection Point.

d. Maintenance and Repair of the City's Equipment. The City is responsible, at its own cost, for providing ongoing maintenance of its equipment at the Connection Point, and for repairing damage to its equipment at the Connection Point. The City shall, in its sole discretion, determine whether maintenance or repair is needed, whether the cost of such maintenance or repair is reasonable in light of all the circumstances, and whether the maintenance or repair is in the public interest; provided, that during the useful life of the LTE Project, the City shall make any and all maintenance and/or repairs that are necessary to ensure the proper and efficient administration, operation, and maintenance of the Connection Point as part of the LTE Project, to the extent that funds for such maintenance and/or repairs are appropriated for that purpose by the Denver City Council and to the extent that such maintenance and/or repairs are in the best interests of the citizens of the City.

2. City's Obligation to Provide Connection Route.

a. Connection Route. The City shall provide ADCOM911 with the Connection Route for the purpose of allowing ADCOM911 throughput through the City's fiber optic cable network and the West Corridor Plant. The Connection Route shall be comprised of two (2) strands of single mode fiber optic cable, or equivalent throughput on other fiber infrastructure, from the Connection Point to the WCP East Portion located at the RTD Auraria West light rail station. The Connection Route shall not be provided in whole or in part by microwave signal. The City shall provide ADCOM911 with reports that document the characteristics of the Connection Route fiber. The City makes no warranty of the suitability of this fiber path for any specific use. The City shall be solely responsible for all costs associated with providing the Connection Route, and ADCOM911 shall have no obligation to pay for any costs associated with the same.

b. Interconnection at Termination Point. The City shall connect the Connection Route fiber to two (2) of ADCOM911's Exclusive Use Strands located at the RTD Auraria West light rail station ("**Termination Point**"). Such connection shall be made by splicing the Connection Route fiber and the Exclusive Use Strands into the existing pull box in front of, or into the network facilities located inside of, the AHEC Building, as determined by the City in the City's sole discretion.

c. Access to Termination Point. The City shall permit ADCOM911 reasonable access to the Termination Point for the purpose of maintaining, repairing, upgrading, and expanding its equipment and/or its network interconnectivity. For purposes of this section, "reasonable access" means access by ADCOM911 upon (i) ADCOM911's notification to the City of its need to access the Termination Point; (ii) the City's approval of such access, which approval shall not be unreasonably withheld; and (iii) coordination with the City as to the time and manner of access.

d. Maintenance and Repair of the Connection Route and Termination Point. The City is responsible, at its own cost, for providing ongoing maintenance of the Connection Route and Termination Point, and for repairing damage to the Connection Route and Termination Point. The City shall, in its sole discretion, determine whether maintenance or repair is needed, whether the cost of such maintenance or repair is reasonable in light of all the circumstances, and whether the maintenance or repair is in the public interest; provided, that during the useful life of the LTE Project, the City shall make any and all maintenance and/or repairs that are necessary to ensure the proper and efficient administration, operation, and maintenance of the Connection Route and Termination Point as part of the LTE Project to the extent that funds for such maintenance and/or repairs are appropriated for that purpose by the Denver City Council and to the extent that such maintenance and/or repairs are in the best interests of the citizens of the City.

3. Condition Precedent. The Parties' obligations to perform pursuant to sections 1 and 2 above shall not commence until 14 calendar days after ADCOM911's written certification to the City that the installation of the West Corridor Plant, as provided by Article III above, is

substantially complete. Such written certification shall be signed by the authorized representatives of ADCOM911 and JCECA, as provided by Article VI, section 3(e) below.

ARTICLE VI
Additional Provisions
JCECA/City/ADCOM911

1. Assumption of Risk.

a. Assumption of Risk. The Parties understand and agree that the tasks and activities contemplated by this Agreement to occur at the West Corridor Plant site, Connection Point, Termination Point, and Connection Route ("**Project Site(s)**"), associated tasks and activities, and other tasks and activities occurring at the Project Sites involve activities that may result in property damage and/or injury to or death of a person. No Party warrants the condition of any Project Site or the premises surrounding any Project Site.

b. Failure to Comply with Controlling Terms and Conditions. JCECA and/or the City, as applicable, shall promptly correct any act or condition of which it has actual knowledge may constitute a failure by such Party to comply with the Controlling Terms and Conditions, or that may cause ADCOM911 or JCECA to fail to comply with the same; with respect to the City, such obligation shall be to the extent that funds for such correction are appropriated for that purpose by the Denver City Council and to the extent that such correction is in the best interests of the citizens of the City. Actual knowledge includes, but is not limited to, notification by ADCOM911 or JCECA, whether written or verbal, that an act or condition may constitute a failure to comply with the Controlling Terms and Conditions or may cause ADCOM911 or JCECA to fail to comply with the same.

c. Governmental Immunity. This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties and their directors, officers, and employees under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

2. Term and Termination.

a. Term and Survival.

i. Term of Article III. Notwithstanding section 2(a)(ii) below, and unless sooner terminated in accordance with the provisions of this Agreement, the initial term of Article III shall be 5 years, or until the installation of the West Corridor Plant is complete, whichever first occurs; provided, that any provision of this Agreement and/or the Controlling Terms and Conditions that governs Article III, or any part thereof, for the useful life of the LTE Project shall survive for the entire useful life of the LTE Project.

ii. Term of Agreement. Except as provided by section 2(a)(i) above, and unless sooner terminated in accordance with the provisions of this Agreement, the term of

this Agreement shall commence on the Effective Date and shall continue until the end of the useful life of the LTE Project.

b. Termination Due to Lack of Funding. The Parties expressly recognize that each of their rights, demands, and claims to compensation arising under Article III are contingent upon JCECA's and ADCOM911's receipt of anticipated Grant funds. In the event that the Grant funds or any part thereof are not available to either JCECA or ADCOM911, JCECA and ADCOM911 may immediately terminate this Agreement. Notwithstanding the foregoing, JCECA and ADCOM911, without being under any obligation to do so, may elect to amend Article III instead of terminating this Agreement; provided that any such amendment shall not affect any provision of this Agreement that is not a part of Article III.

c. Termination for Convenience.

i. Termination for Convenience by ADCOM911. This Agreement may be terminated for convenience by ADCOM911 at any time by written notice of such termination to JCECA and the City. Termination by ADCOM911 pursuant to this section shall become effective 90 days after such notice is deemed effective pursuant to section 3(b) below.

ii. Termination for Convenience by JCECA. This Agreement may be terminated for convenience by JCECA upon the written consent of ADCOM911 to such termination. Termination by JCECA pursuant to this section shall become effective 90 days after written consent to such termination is given by ADCOM911.

iii. Termination for Convenience by the City. This Agreement may be terminated for convenience by the City upon the written consent of ADCOM911 and JCECA to such termination. Termination by the City pursuant to this section shall become effective 90 days after written consent to such termination is given by ADCOM911 and JCECA.

d. Termination on Default.

i. Default by ADCOM911. If ADCOM911 defaults in its performance of any obligation under this Agreement or as required by the applicable Controlling Terms and Conditions, the affected Party shall provide written notice of the cause of such default to ADCOM911 and contemporaneously to the other Party. ADCOM911 shall have 30 calendar days following the date such notice is deemed effective pursuant to section 3(b) below to cure, or make substantial effort to cure, the default. If the default continues uncured, and without substantial effort to cure such default, for more than 30 calendar days following the date such notice is deemed effective pursuant to section 3(b) below, the affected Party may immediately terminate this Agreement. For purposes of this section "affected Party" with respect to a default under Article III is JCECA, "affected Party" with respect to a default under Article V is the City, and "affected Party" with respect to a default under all other portion of this Agreement may be JCECA or the City.

ii. Default by JCECA. If JCECA defaults in its performance of any obligation under this Agreement or as required by the applicable Controlling Terms and

Conditions, the affected Party shall provide written notice of the cause of such default to JCECA and contemporaneously to the other Party. JCECA shall have 30 calendar days following the date such notice is deemed effective pursuant to section 3(b) below to cure, or make substantial effort to cure, the default. If the default continues uncured, and without substantial effort to cure such default, for 30 calendar days following the date such notice is deemed effective pursuant to section 3(b) below, ADCOM911, without being under any obligation to do so and without thereby waiving such default, may elect to cure the default. ADCOM911 shall have 5 business days to provide written notice of its intent to cure the default to JCECA and the City. JCECA shall be obligated to, and hereby agrees, to pay ADCOM911 upon demand all costs, expenses, and disbursements (including reasonable attorneys' fees, costs, and expenses) incurred by ADCOM911 in curing JCECA's default. JCECA's obligation to pay ADCOM911 pursuant to this section shall be limited to the amount of Grant funds received by JCECA up to and including the date of default, plus the reasonable attorneys' fees, costs, and expenses incurred by ADCOM911 as a result of or in connection with curing JCECA's default pursuant to this section. If ADCOM911 does not provide written notice of its intent to cure the default within 5 business days as provided herein, the affected Party may immediately terminate this Agreement. For purposes of this section, "affected Party" with respect to a default under Article III is ADCOM911, and "affected Party" with respect to a default under all other portions of this Agreement may be ADCOM911 or the City.

iii. Default by the City. If the City defaults in its performance of any obligation under this Agreement or as required by the applicable Controlling Terms and Conditions, the affected Party shall provide written notice of the cause of such default to the City and contemporaneously to the other Party. The City shall have 30 calendar days following the date such notice is deemed effective pursuant to section 3(b) below to cure, or make substantial effort to cure, the default. If the default continues uncured, and without substantial effort to cure such default, for 30 calendar days following the date such notice is deemed effective pursuant to section 3(b) below, ADCOM911, without being under any obligation to do so and without thereby waiving such default, may file an action against the City for any and all legal and equitable remedies available to ADCOM911 in the District Court in and for the County of Adams, State of Colorado. ADCOM911 shall have 5 business days to provide written notice of its intent to bring an action against the City to the City and JCECA. If ADCOM911 does not provide written notice of its intent to bring an action for specific performance within 5 business days as provided herein, the affected Party may immediately terminate this Agreement. For purposes of this section, "affected Party" with respect to default under Article V is ADCOM911, and "affected Party" with respect to default under all other portions of this Agreement may be ADCOM911 or the City.

e. Events of Default. The following shall constitute events of default and breach of this Agreement: (a) nonpayment of any bill, invoice, or debt related to the LTE Project that is due and payable under the terms of such bill, invoice, or debt and within the time provided by any agreement controlling the obligation to pay the bill, invoice, or debt; (b) violation of any term, condition, or covenant of this Agreement; (c) violation of any term, condition, or covenant of any additional agreement entered into by the Parties pursuant to section 3(f)(ii) below; and (d) failure to comply with the applicable Controlling Terms and Conditions and/or failure to reasonably assist ADCOM911 in its compliance with the applicable Controlling Terms and

Conditions, except that in no case shall the City be compelled to incur any costs or take any action to further the final decision by ADCOM911. No event or condition that is disputed and pending resolution pursuant to the terms of Article II, section 3 shall be deemed an event of default. The applicable Party(ies) shall have 30 days following the decisionmaker's resolution pursuant to Article II, section 3 to comply therewith, or to make substantial efforts to comply therewith, before such event or condition may be deemed an event of default.

f. Transfer of Property on Termination. If any Party shall terminate this Agreement for any reason, except for a termination by ADCOM911 for convenience pursuant to section 2(c)(i) above, then, during the applicable termination period, if any, and for 180 days thereafter, ADCOM911 shall have the exclusive right, but not the obligation, to purchase (a) all or any part of the broadband facilities and equipment acquired or improved with Grant funds or ADCOM911 matching funds that are located on JCECA owned real property and that are portable or reasonably removable, and (b) all or any part of the broadband facilities and equipment, as mutually agreed upon by the Parties, acquired or improved with JCECA matching funds that are located on JCECA owned real property and that are portable or reasonably removable. The purchase price shall be the fair market value of the broadband facilities and equipment, or portion thereof, ADCOM911 intends to purchase. Fair market value shall be determined by an independent appraiser mutually agreed upon by ADCOM911 and JCECA. The cost of hiring the appraiser shall be shared equally by ADCOM911 and JCECA. ADCOM911 shall be the sole owner of the broadband facilities and equipment, or portion thereof, after purchase.

3. Miscellaneous.

a. Effective Date. This Agreement is effective as of the date the last Party hereto signs this Agreement.

b. Notice. Whenever under this Agreement one Party is required to give notice to another Party(ies), such notice shall be given by personal delivery or certified/registered mail, postage prepaid, and addressed as follows:

JCECA: Jefferson County Emergency Communications Authority
Attn: Executive Director
JCECA, P.O. Box 16184
Golden, CO 80402

ADCOM911: Adams County Communication Center, Inc.
Attn: Executive Director
7321 Birch Street
Commerce City, Colorado 80022

City: Mayor
1437 Bannock Street
Denver, Colorado 80202

With copy to:

Manager of Public Works
201 West Colfax Avenue
Denver, Colorado 80202

City Attorney
c/o Municipal Operations
201 West Colfax Avenue, Dept. 1207
Denver, Colorado 80202

If given by certified/registered mail, the notice shall be deemed to have been given when deposited in the United States mail and shall be deemed effective 3 business days after having been given. A Party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

c. Agreement to Mediate. Except as otherwise provided pursuant to Article II, section 3 above, a dispute arising from or relating to this Agreement shall be submitted to mediation as a condition precedent to the institution of a civil action on any such dispute. Any Party to the dispute may request mediation by written notice to the other Party(ies). The Parties to the dispute shall share the mediator's fee and any filing fees equally. The mediation shall be held in the City and County of Denver and completed within 45 calendar days of a Party requesting mediation, unless the Parties to the dispute mutually agree upon another location and/or time in writing. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

d. Non-Appropriation. All direct and indirect financial obligations of a Party under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. In the event a Party's governing body fails to appropriate funds for that Party's obligations under this Agreement for a calendar year, this Agreement shall terminate immediately, and no Party shall have any further obligation under this Agreement. No provision of this Agreement shall be construed or interpreted (i) to directly or indirectly obligate a Party to make any payment in any fiscal year in excess of amounts appropriated for such fiscal year; (ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of a Party within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (iii) as a delegation of governmental powers by a Party; (iv) as a loan or pledge of the credit or faith of a Party or as creating any responsibility by a Party for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (v) as a donation or grant by a Party to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

e. Authorized Representative. ADCOM911 hereby designates its Executive Director as the duly authorized agent of ADCOM911 with the power, right, and authority to execute and deliver this Agreement, and any additional agreement entered into by ADCOM911 and any other Party(ies) that is related to and expressly references this Agreement, on behalf of

ADCOM911. If its Executive Director is incapacitated or otherwise unable to act on behalf of ADCOM911, ADCOM911 hereby designates its Deputy Executive Director as the alternate duly authorized agent of ADCOM911 for the purposes of this section.

JCECA hereby designates its Executive Director as the duly authorized agent of JCECA with the power, right, and authority to execute and deliver this Agreement, and any additional agreement entered into by JCECA any other Party(ies) that is related to and expressly references this Agreement, on behalf of JCECA. If its Executive Director is incapacitated or otherwise unable to act on behalf of JCECA, JCECA will designate an alternate as the duly authorized agent of JCECA for the purposes of this section.

The City hereby designates the City's Mayor as the duly authorized agent of the City with the power, right, and authority to execute and deliver this Agreement, and any additional agreement entered into by the City and any other Party(ies) that is related to and expressly references this Agreement, on behalf of the City. If the City's Mayor is incapacitated or otherwise unable to act on behalf of the City, the City hereby designates such individual as is designated in the Denver City Charter as the alternate duly authorized agent of the City for the purposes of this section.

f. Additional Terms.

i. Colorado law governs this Agreement. Exclusive venue of any proceeding concerning this Agreement shall be in the District Court in and for the County of Adams, State of Colorado.

ii. This Agreement constitutes the entire agreement between the Parties, and all prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof are merged herein; provided, however, that the Parties, or any of them, may enter into such additional agreements as they deem necessary or appropriate to establish further specific protocols and procedures or to otherwise accomplish the installation, operation, and use of the West Corridor Plant, and/or the interconnection of the City and ADCOM911 fiber optic cable networks. Any such additional agreements shall expressly reference this Agreement. If there is a conflict between such additional agreements and this Agreement, this Agreement shall control.

iii. This Agreement may be amended only by a document signed by the affected Parties, and the Parties' course of conduct shall not operate or be construed as effecting a modification of or amendment to this Agreement. For purposes of this section, "affected Parties" with respect to an amendment to Article III are JCECA and ADCOM911, "affected Parties" with respect to an amendment to Article V are the City and ADCOM911, and "affected Parties" with respect to an amendment to all other portions of this Agreement are JCECA, the City, and ADCOM911.

iv. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement.

v. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors, and permitted assigns. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement, expressly including enforcement of any of the terms and conditions of this Agreement; all rights of action relating to such enforcement shall be strictly reserved to the Parties.

vi. In any dispute arising from or relating to this Agreement, each Party shall bear its own attorneys' fees, costs, and expenses, except that the prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses incurred in collecting upon any judgment, order, or award.

vii. This Agreement may be executed in several counterparts and by facsimile, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives indicated below.

ATTEST:

_____, _____

**ADAMS COUNTY COMMUNICATION
CENTER, INC.**

William T. Malone, Executive Director
Date: _____

APPROVED AS TO FORM:

Dino A. Ross
Attorney for ADCOM911

ATTEST:

_____, _____

**JEFFERSON COUNTY EMERGENCY
COMMUNICATIONS AUTHORITY**

Jeffrey Irvin, Executive Director
Date: _____

APPROVED AS TO FORM:

Dennis Tharp
Attorney for JCECA

ATTEST:

Clerk and Recorder

CITY AND COUNTY OF DENVER

Michael Hancock, Mayor
Date: _____

APPROVED AS TO FORM:
Attorney for the City
and County of Denver

Assistant City Attorney

RECOMMENDED AND APPROVED:

_____, _____

REGISTERED AND COUNTERSIGNED:

Manager of Finance

Auditor
Contract Control No.

Contract Control Number: PWADM-201103593-00

Contractor Name: Jefferson County emergency Communications Authority and Adams County Communication Center, Inc.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of January 19, 2012.

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

Juan Guzman
Juan Guzman, Deputy Clerk &
Recorder

By Cary Kennedy
Cary Kennedy, Manager of
Revenue/Chief Financial Officer

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By Jennifer Welborn
Jennifer Welborn, Assistant City
Attorney

By Beth Machann
Beth Machann, City Controller

By Dennis J. Gallagher
Dennis J. Gallagher, Auditor



ATTEST:

**ADAMS COUNTY COMMUNICATION
CENTER, INC.**

William T. Malone

William T. Malone, Executive Director

Date: 11-4-2011

APPROVED AS TO FORM:

Dino A. Ross
Attorney for ADCOM911

ATTEST:

**JEFFERSON COUNTY EMERGENCY
COMMUNICATIONS AUTHORITY**

Jeffrey Irvin

Jeffrey Irvin, Executive Director

Date: 10/19/2011

APPROVED AS TO FORM:

Dennis Tharp
Attorney for JCECA

ATTEST:

Clerk and Recorder

CITY AND COUNTY OF DENVER

Michael Hancock, Mayor
Date: _____

APPROVED AS TO FORM:
Attorney for the City
and County of Denver

Assistant City Attorney

RECOMMENDED AND APPROVED:

REGISTERED AND COUNTERSIGNED:

Manager of Finance

Auditor
Contract Control No.

