

**MEMORANDUM OF UNDERSTANDING BETWEEN  
JEFFERSON COUNTY EMERGENCY COMMUNICATIONS AUTHORITY  
AND ADAMS COUNTY COMMUNICATION CENTER, INC.  
FOR THE INSTALLATION, OPERATION, AND USE OF A FIBER OPTICS  
COMMUNICATION PLANT AND THE INTERCONNECTION OF NETWORKS**

This Memorandum of Understanding ("**MOU**") is entered into by and between Jefferson County Emergency Communications Authority ("**JCECA**") and Adams County Communication Center, Inc. ("**ADCOM911**"). JCECA and ADCOM911 are referred to collectively as the "**Parties**" and individually as a "**Party**";

**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.*, to provide funding to the Broomfield and Jefferson Counties' public safety answering points for emergency dispatching services to the residents within such counties' jurisdictions. 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;

**WHEREAS**, on September 27, 2010, ADCOM911 was awarded a Grant by the NTIA through the Broadband Technology Opportunities Program to construct and operate a Long Term Evolution wireless broadband network for use by public safety entities within and outside of Adams County. ADCOM911 is the prime Grant recipient; JCECA is a Grant subrecipient for the limited purpose of installing the West Corridor Plant;

**WHEREAS**, as part of the larger LTE Project, JCECA wishes to contract with RTD to provide that RTD will install the West Corridor Plant as an integrated part of RTD's ongoing light-rail construction along Colorado Highway 6 between the Jefferson County Government Center and the Auraria West light-rail station;

**WHEREAS**, ADCOM911 wishes to provide Grant funding to JCECA for use in the installation of the West Corridor Plant as part of the larger LTE Project. In order for the West Corridor Plant to be a part of the larger LTE Project, ADCOM911's existing fiber network must be interconnected with the West Corridor Plant and fiber, and such interconnection must be sufficient to connect the ADCOM911 and JCECA public safety answering points;

**WHEREAS**, the Parties wish 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 ADCOM911's network; and

**WHEREAS**, ADCOM911, as the prime Grant recipient, is obligated to comply with the requirements imposed by the Controlling Terms and Conditions. JCECA understands the Controlling Terms and Conditions impose numerous duties and obligations on ADCOM911 and wishes to support ADCOM911 in complying with the Controlling Terms and Conditions.

**THEREFORE**, ADCOM911 will provide Grant funding to JCECA for use in installing the West Corridor Plant at such time as the Parties have executed a mutually acceptable Intergovernmental Agreement ("**Agreement**"), whether alone or in conjunction with third parties, that satisfies, at a minimum, all provisions of this MOU and such other terms and conditions as

the Parties may deem necessary or appropriate for the installation, operation, and use of the West Corridor Plant, and the interconnection of ADCOM911's network. The Grant funding provided by ADCOM911 to JCECA shall be paid at such times and in such amounts as are set forth in the Agreement.

## I. DEFINITIONS

In addition to the terms defined elsewhere in this MOU, the following definitions shall apply:

"**ARRA**" means the American Recovery and Reinvestment Act of 2009.

"**Controlling Terms and Conditions**" means the FCC Waiver Order, PSST Lease, Grant Application, notification of the Grant award, ARRA Award Terms, and Special Award Conditions, as well as all Federal or state laws or regulations, or agency rules, standards, or conditions, or any other law, rule, regulation, standard, or condition that applies to the Parties, individually or jointly, with respect to the Grant, the West Corridor Plant, the LTE Project, or the interconnection of ADCOM911's network.

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

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

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

"**West Corridor Plant**" means a ninety-six (96) strand single mode fiber optic cable that will be housed within RTD conduit, as well as all associated access points ("**Hand Holes**"). The West Corridor Plant will be located primarily 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.

## II. COMPLIANCE WITH CONTROLLING TERMS AND CONDITIONS

### A. **Grant Compliance**

Each Party shall identify, obtain, review, and comply with the Controlling Terms and Conditions applicable to it. If any provision of this MOU or the Agreement is in conflict with any provision of the applicable Controlling Terms and Conditions, the applicable Controlling Terms and Conditions shall control.

### B. **Compliance Disputes**

In the event that the Parties are unable to reach an agreement within a reasonable time regarding any issue arising under this MOU or the Agreement that affects ADCOM911's compliance with the Controlling Terms and Conditions, JCECA agrees that during the useful life of the LTE Project, ADCOM911 shall have final decision-making authority on such issue(s).

Notwithstanding the foregoing, if at any time JCECA disagrees with ADCOM911's interpretation of the Controlling Terms and Conditions or final decision related thereto, the Parties shall submit such interpretation or final decision, and JCECA's basis for challenging the same, to the appropriate Federal agency or person having jurisdiction over resolution of such dispute. Each Party 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 neither Party shall seek to challenge or appeal the determination with any other agency, person, tribunal, or court. JCECA 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.

### III. INSTALLATION OF THE WEST CORRIDOR PLANT

#### A. **Responsibility for Installation**

1. JCECA shall supervise RTD in the installation of the West Corridor Plant, except to the extent, if any, that ADCOM911 is obligated to supervise RTD and/or the installation pursuant to the Controlling Terms and Conditions. All West Corridor Plant equipment shall be installed, constructed, operated, modified, maintained, removed, and relocated in accordance with the Controlling Terms and Conditions.

2. JCECA shall, at its sole cost, obtain, or ensure that RTD obtains, all rights-of-way, easements, state and local government permits, long-term leases, and other property interests necessary to install the entire West Corridor Plant, including without limitation, Hand Holes, fiber, and conduit, located within or outside of RTD property or easements. 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 the foregoing property interests.

3. 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.

#### B. **Costs and Funding for Installation**

1. JCECA shall prepare and submit to ADCOM911 an adequate budget on which ADCOM911's Grant funding commitment to JCECA will be based; provided, that under no circumstances shall ADCOM911's Grant funding commitment exceed \$553,000.00 ("**Maximum Grant Funding Obligation**"). ADCOM911 shall apply to the NTIA for application of ADCOM911's Grant funding commitment to JCECA, not to exceed ADCOM911's Maximum Grant Funding Obligation. ADCOM911 shall administer and disburse the Grant funds to JCECA in accordance with the terms of the Agreement and the Controlling Terms and Conditions.

2. JCECA shall contribute a cash match of 30% of the total project cost for the West Corridor Plant. If the total project cost exceeds the sum of JCECA's 30% cash match

and ADCOM911's Maximum Grant Funding Obligation, JCECA shall be solely responsible for such additional amount.

3. 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.

4. JCECA shall request disbursement of Grant funds only for allowable costs and purposes. 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. JCECA shall comply with all requirements related to advance and unused funds established by the Controlling Terms and Conditions.

5. The Parties shall account for any income directly generated by the West Corridor Plant. Any income generated by a Party shall be used only as permitted by the Controlling Terms and Conditions.

6. The Parties shall not incur costs or obligate Grant funds for any purpose beyond the expiration date stipulated in the Grant Award, other than those costs properly incurred in connection with project closeout activities.

7. The Parties shall each designate those specific individuals who have signature authority to authorize the expenditure of Grant funds.

### **C. Records and Reporting**

1. 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.

2. Upon request by ADCOM911, JCECA shall provide or make available to ADCOM911 all financial books and records related to the Grant funding. 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.

3. The Parties shall maintain comprehensive and accessible records and documents on all aspects of Grant funding and the West Corridor Plant installation, including without limitation, the source and application of all Grant funds and the West Corridor Plant goals, objectives, milestones, *etc.*, as well as on the subsequent ownership, operation, and use of the West Corridor Plant. Such records shall be maintained 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.

4. The Parties shall separately identify the expenditures for the Grant on the Schedule of Expenditures of Federal Awards and the Data Collection Form required by OMB Circular A-133, as necessary, in such form and detail as is required by the ARRA Award Terms.

5. ADCOM911 shall prepare and submit all reports that are required by the Controlling Terms and Conditions to be submitted by ADCOM911 or jointly by the Parties. JCECA shall timely provide ADCOM911 with all information and documentation required by ADCOM911 to prepare and submit such reports.

6. JCECA shall prepare and submit any reports that are required by the Controlling Terms and Conditions to be submitted by JCECA alone. ADCOM911 shall notify JCECA of the need for the report a minimum of 14 calendar days before the report is due.

#### **D. Procurements**

1. Each Party shall maintain written standards of conduct in accordance with the Controlling Terms and Conditions, which standards of conduct shall include: (i) 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) requirements for the performance of its directors, officers, and employees engaged in the award and administration of subawards and/or contracts; and (iii) procurement procedures and a system of contract administration.

2. The Parties shall comply with all requirements established by the Controlling Terms and Conditions for procurements related to the West Corridor Plant, including without limitation:

- a. Competition and sole-source contracting;
- b. Procurement RFP and contract terms;
- c. Minimum procurement standards;
- d. Minimum contractor standards;
- e. Davis-Bacon and Related Acts, including without limitation wage determination and wage recording requirements; and
- f. Procedures for and resolution of procurement disputes.

#### **E. Other Grant Compliance in Installation**

1. The Parties shall comply with all requirements established by the Controlling Terms and Conditions related to the reporting of false claims under the False Claims Act and the protection for persons making disclosure of fraud, waste, or abuse of ARRA funds under the ARRA Whistleblower Protection Act.

2. The Parties shall comply with the audit requirements established by OMB Circular A-133, and such other audit requirements as are applicable to the Grant or the installation of the West Corridor Plant. The Parties shall cooperate and assist one another in the compliance of each Party's audit requirements.

3. The Parties shall comply with the cost principals established by OMB Circular A-87, and such other cost principal requirements as are applicable to the Grant or the installation of the West Corridor Plant.

4. The Parties shall comply with any ongoing environmental assessment and/or environmental compliance requirements established by the Controlling Terms and Conditions and/or requested by the NTIA.

5. The Parties shall comply with all other Controlling Terms and Conditions governing the conduct of Grant recipients and subrecipients, including without limitation:

- a. Obtaining and maintaining a Dun and Bradstreet Data Universal Numbering System ("*DUNS*") Number and registration in the Central Contractor Registration;
- b. Complying with such terms of the ARRA Buy American requirement as are applicable to the Grant and for which the Secretary of Commerce has not granted a limited waiver;
- c. Displaying the ARRA Primary Emblem signage throughout the construction phase and in accordance with the terms of the ARRA;
- d. Complying with the provisions of the Drug-Free Workplace Act of 1988 and implementing regulations; and
- e. Complying with all restrictions related to lobbying and disclosure of lobbying activities, as applicable.

IV. OWNERSHIP, OPERATION, AND USE OF THE WEST CORRIDOR PLANT, AND INTERCONNECTION OF ADCOM911'S NETWORK

**A. Ownership and Use**

1. 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 as the Parties may mutually agree. 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.

2. 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.

**B. Maintenance and Repair**

1. All costs associated with upgrades to the West Corridor Plant shall be paid by JCECA, or jointly by JCECA and such other third party(ies) as the Parties may mutually agree. ADCOM911 shall have no obligation to pay for any upgrades to the West Corridor Plant.

2. During the useful life of the LTE Project, JCECA, or JCECA and such other third party(ies) as the Parties may mutually agree, shall, at their sole cost, make all maintenance and/or repairs that are necessary to ensure the proper and efficient administration, operation, and maintenance of the West Corridor Plant as part of the LTE Project. ADCOM911 shall not be responsible for making or paying for any maintenance or repairs to the West Corridor Plant; provided, that JCECA shall at all times permit ADCOM911 access to ADCOM911's Exclusive Use Strands, as consistent with JCECA's right of access to the West Corridor Plant fiber, to perform such maintenance and repairs as ADCOM911 deems appropriate, in its sole discretion. The Parties shall take such actions as may be necessary or appropriate to ensure ADCOM911's access to its Exclusive Use Strands is part of the Agreement and/or any easement granted by RTD to JCECA.

### **C. Other Grant Compliance in Ownership, Operation, and Use**

1. The Parties shall restrict use of the West Corridor Plant to: (a) public safety entities and such other public entities as are permitted by the Controlling Terms and Conditions; (b) other public entities approved by the NTIA or the Grant officer; and (c) other public entities authorized by Federal law or another Federal agency having jurisdiction. JCECA shall not 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. In such event, 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.

2. 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.

3. The Parties may impose user fees for the West Corridor Plant as permitted by the Controlling Terms and Conditions, except that JCECA shall not impose user fees if notified by ADCOM911 that the user fees will interfere with ADCOM911's compliance with the Controlling Terms and Conditions.

4. 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 shall assist ADCOM911 and cooperate fully in all respects as required by ADCOM911 to comply with such requirements and conditions.



**D. Interconnection of ADCOM911's Network**

1. As part of the Agreement, JCECA and/or a third party(ies) shall guarantee ADCOM911 interconnection between ADCOM911's existing fiber network and the West Corridor Plant, to include physical fiber connectivity between ADCOM911's Exclusive Use Strands in the West Corridor Plant and ADCOM911's existing fiber network (collectively, "*interconnection*"). Such interconnection shall be sufficient to connect the ADCOM911 and JCECA public safety answering points, as reasonably determined by ADCOM911.

2. ADCOM911, JCECA, and any third party(ies), if applicable, shall agree on the allocation of costs for establishing the interconnection, as well as for providing ongoing maintenance and repair of the parties' respective equipment, facilities, and property.

**V. INDEMNIFICATION AND TERMINATION**

**A. Indemnification**

1. To the extent permitted by law, each Party shall indemnify and hold the other Party harmless from any and all claims of liability in connection with the installation, operation, and use of the West Corridor Plant, and for the interconnection of ADCOM911's network, arising from the conduct of that Party or its officers, directors, employees, contractors, subcontractors, or other agents. Each Party shall be solely liable for the defense and resolution of any claims, demands, damages, liability, causes of action under any theory of law or equity, costs, fees (including attorneys' fees), expenses, and compensation arising from or relating to such Party's indemnification.

2. JCECA shall promptly correct any act or condition that it knows or reasonably should know may constitute a failure by it to comply, or that may cause ADCOM911 to fail to comply, with the Controlling Terms and Conditions. JCECA shall reimburse ADCOM911 for any liability imposed on ADCOM911 as a result of its default.

**B. Term and Termination**

1. The term of the Agreement shall commence on the effective date of the Agreement and shall continue until the end of the useful life of the LTE Project; provided, that the Parties may mutually agree on a term of years governing those provisions of the Agreement related solely to the installation of the West Corridor Plant. Notwithstanding the foregoing, any provision of the Agreement and/or the Controlling Terms and Conditions that continues for the useful life of the LTE Project shall survive for the entire useful life of the LTE Project.

2. If, for any reason, all or part of the Grant funds are not available to either Party, that Party may immediately terminate the Agreement.

3. ADCOM911 may terminate the Agreement for convenience at any time upon 90 days prior written notice of termination to JCECA. JCECA may terminate the Agreement for convenience at any time with ADCOM911's prior written consent; such termination shall become effective 90 days after ADCOM911's written consent is given.



4. If a Party defaults in its performance of any obligation under the Agreement or required by the applicable Controlling Terms and Conditions, the non-defaulting Party shall provide written notice of the cause of such default to the defaulting Party. The defaulting Party shall have 30 calendar days to cure the default. If the default continues uncured, and without substantial effort to cure such default, for more than 30 calendar days, the non-defaulting Party may immediately terminate the Agreement. However, if JCECA is the defaulting Party, ADCOM911 may elect to cure the default after the 30 day period and JCECA shall be obligated to pay ADCOM911 upon demand all costs, expenses, and disbursements (including reasonable attorneys' fees, costs, and expenses) ADCOM911 incurred in curing the default. JCECA's obligation to pay ADCOM911 shall be limited to the amount of Grant funds received by JCECA through the date of default, plus the reasonable attorneys' fees, costs, and expenses ADCOM911 incurred in connection with the default.

5. If the Agreement is terminated for any reason, except for a termination for convenience by ADCOM911, then ADCOM911 shall have the right to purchase: (a) all or any part of the broadband facilities and equipment acquired or improved with Grant 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. Such purchase by ADCOM911 shall be on such terms and conditions as the Parties may mutually agree.

## VI. ADDITIONAL PROVISIONS

### A. **Effective Date**

This MOU shall be effective on the date the last Party hereto signs this MOU.

### B. **Governmental Immunity**

This MOU 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.*

### C. **Non-Fund Obligor Document**


This MOU is not a fiscal obligor document. Any appropriation, allocation, disbursement, or other transfer or expenditure of funds by a Party pursuant to this MOU will be handled in accordance with applicable laws, regulations, and procedures. Such appropriation, allocation, disbursement, or other transfer or expenditure of funds will be outlined and authorized in the Agreement in accordance with applicable law. This MOU does not provide such authorization.

### D. **Miscellaneous**

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

Colorado. This MOU is not intended to, and shall not, confer rights on any person or entity not named as a party to this MOU. In any dispute arising from or relating to this MOU, the prevailing Party shall be awarded its attorneys' fees, costs, and expenses, including any attorneys' fees, costs, and expenses incurred in collecting upon any judgment, order, or award. This MOU 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.

**ADAMS COUNTY COMMUNICATION  
CENTER, INC.**



William T. Malone, Executive Director

Date: 8-22-11

**JEFFERSON COUNTY EMERGENCY  
COMMUNICATIONS AUTHORITY**



Lynn Johnson, Chairman

Date: 8-17-11