

**E-911 FIBER OPTIC PLANT
INTERGOVERNMENTAL AGREEMENT**

THIS **E-911 FIBER OPTIC PLANT INTERGOVERNMENTAL AGREEMENT** (this "IGA") is made and entered into this 31st day of October, 2011 (the "Effective Date") by and between the **JEFFERSON COUNTY EMERGENCY COMMUNICATIONS AUTHORITY** ("JCECA"), a legal entity organized pursuant to C.R.S. § 29-11-100.5, *et. seq.* and the **REGIONAL TRANSPORTATION DISTRICT** ("RTD"), a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. 32-9-101, *et seq.* JCECA and RTD may hereinafter be referred to individually as a "Party" and collectively as "Parties".

RECITALS

- A. RTD, a political subdivision of the State of Colorado, is authorized, pursuant to C.R.S. § 32-9-101, *et seq.*, to develop, maintain, and operate a mass transportation system for the benefit of the inhabitants of the district.
- B. JCECA is a legal entity organized pursuant to C.R.S. § 29-11-100.5, *et. seq.*, which assists in funding the Broomfield and Jefferson Counties' public safety answering points with providing emergency dispatching services to the residents within such counties' jurisdictions.
- C. Pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a) and C.R.S. § 29-1-201, *et. seq.*, JCECA and RTD may cooperate and contract with each other to provide any function, service, or facility lawfully authorized to each, and any such contract may provide for sharing of costs, including entering into this IGA.
- D. The West Corridor mass transit improvement project (the "West Corridor") is identified in the FasTracks Plan, which was approved by the voters of the district on November 2, 2004, and in the Denver Regional Council of Governments ("DRCOG") 2030 Metro Vision Regional Transportation Plan.
- E. Based upon voter and Federal Transit Administration ("FTA") approval, essential elements of the West Corridor and a source of funding have been identified. An Environmental Impact Statement ("EIS") was prepared for the West Corridor and a Record of Decision was signed on April 19, 2004 (the "ROD") by FTA adopting the EIS, including plans and mitigation measures set forth therein, as a duly authorized federal project. A revised Environmental Assessment was completed and the Finding of No Significant Impact was signed on November 16, 2007. The West Corridor has received all required approvals from DRCOG, pursuant to C.R.S. 32-9-107.7, and received FTA's approval to begin final design of the West Corridor on August 4, 2005. RTD received a letter of no prejudice from FTA dated September 25, 2007, authorizing RTD to begin West Corridor construction.
- F. RTD has entered into Contract No. 16-FF-W01 with Denver Transit Construction Group ("DTCCG") for construction work on the West Corridor (the "DTCCG Contract").
- G. RTD entered into Contract No. 18-DR-007 with Balfour Beatty Rail, Inc. ("Balfour") for construction work on the West Corridor (the "Balfour Contract").
- H. RTD will install its fiber optic plant for the West Corridor beginning at the RTD light rail station located near the Jefferson County Government Center in Golden (the "Jefferson County Station"), and ending at the Auraria Campus in Denver (the "RTD Plant").

- I. RTD has provided a cost estimate and final design for installation of a ninety-six (96) strand fiber cable into the same seven (7) chamber conduit in which RTD is installing the RTD Plant, plus fifteen (15) lateral connection points (the "Laterals") going to fifteen (15) hand holes (the "Hand Holes") along the West Corridor (the "JCECA Plant").
- J. RTD and JCECA have agreed to cooperate in the installation of the JCECA Plant within the same conduit in which RTD will install the RTD Plant (collectively, the "Plants") as part of the West Corridor. The JCECA Plant is a segment of the LTE Project (as defined below) as it enhances the ability for JCECA and ADCOM911 to communicate.
- K. RTD has executed change orders to the DTCG Contract and to the Balfour Contract to design and construct the Laterals and Hand Holes and install the JCECA Plant at JCECA's expense.
- L. The Adams County Communication Center, Inc. ("ADCOM911") is a Colorado, non-profit corporation that provides communication, dispatch, and data services to public safety entities located primarily within Adams County, Colorado. ADCOM911 is not a party to this IGA. On September 27, 2010, ADCOM911 was awarded a Broadband Technology Opportunities Program grant (the "BTOP Grant") to construct and operate a Long Term Evolution wireless broadband network for use by public safety agencies (the "LTE Project"). JCECA is a sub-recipient to ADCOM911 for use of BTOP Grant funds for the design, construction and installation of the JCECA Plant. JCECA will also provide some funds as a 30% match to the BTOP Grant.
- M. JCECA is subject to certain federal rules and responsibilities as a BTOP sub-grant recipient and RTD is subject to similar federal rules and responsibilities as a FTA grant recipient.
- N. Regardless of the BTOP Grant, JCECA has secured funding for design, construction, and other necessary services for the JCECA Plant, and the Parties have determined the necessity for this IGA concerning the rights, duties and obligations of the Parties in implementing the JCECA Plant.
- O. Promptly after installation of the JCECA Plant, RTD shall grant a permanent easement ("PE") to JCECA granting the right to house the JCECA Plant within property held in fee by RTD ("RTD Property").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. GENERAL.

1.1 **Recitals.** The recitals set forth above are incorporated herein by this reference.

1.2 **Exhibit.** The following exhibit is attached hereto and incorporated herein by this reference:

a. Exhibit A: Form of Permanent Easement.

2. **COMPLIANCE WITH FFGA AND BTOP GRANT.** The West Corridor will receive federal funding and costs incurred by RTD, including design and construction costs for the JCECA Plant, must comply with the terms of any FTA Full Funding Grant Agreement ("FFGA") that RTD receives for the West Corridor, and with all other applicable laws and regulations. Federal funds received by RTD shall not be applied to the cost of the JCECA Plant. JCECA will receive federal funding through the BTOP Grant and must comply with the terms of the BTOP grant and other applicable laws and regulations. Both parties shall comply with all applicable federal rules and regulations to ensure compliance with federal requirements.

2.1 **JCECA PLANT.** The JCECA Plant shall be installed per the design and engineering plans. The RTD Plant will be housed within a conduit that contains seven (7) cylindrical chambers (the "Conduit"). RTD will pay for the acquisition of the Conduit. RTD shall assign one (1) of the Conduit chambers to JCECA (the "JCECA Chamber") to house the JCECA Plant. The JCECA Plant shall not be integrated in any way with the RTD Plant. The JCECA Chamber shall not be used by any for profit entity or for any purpose other than that allowed under the BTOP Grant Application and related documents, or subsequently approved by federal BTOP Grant personnel. RTD may use the remaining chambers of the Conduit in any way, provided that such use does not interfere with the rights granted to JCECA under the PE. JCECA shall pay for the design, fiber, and construction of the JCECA Plant and own the JCECA Plant.

2.2 **Hand Holes.** The JCECA Plant will include fifteen (15) Hand Holes near RTD stations and major intersections, but outside of RTD Property. The Hand Holes will be connected to the mainline duct bank via lateral conduits. In order to determine the location of the Hand Holes, JCECA and RTD have determined a list of suitable locations. If one or more of the locations becomes unsuitable, the Parties shall cooperate to determine a mutually agreeable alternative location. The Hand Holes shall not be located within RTD Property. JCECA shall acquire all property rights needed for any part of the Laterals outside of RTD Property and for the Hand Holes.

2.3 **Fiber.** The fiber to be placed for the JCECA Plant shall be a ninety-six (96) strand single mode fiber optic cable (loose tube, single armor, single jacket, SMF-28 Corning glass or equivalent). A minimum of fifty feet (50') of slack will be left in each Hand Hole. Fiber testing will be carried out using an O.T.D.R. at 1550 nm. The objective for each fiber splice is 0.15 dB of loss or less. Final O.T.D.R. fiber testing will be bi-directional on each fiber with an objective loss of 0.20 dB/km or less. The traces will be saved in standard GN Nettest O.T.D.R. format and provided to JCECA for inspection and reasonable approval when testing is

completed. The birth certificate, manufacturer, product code, and the beginning and end cable sequential numbers will be provided for each reel of cable placed. The cable sequential measurements at the Hand Hole walls and at the splice case will be recorded and delivered to JCECA when placing and/or splicing is complete.

2.4 Approvals. JCECA shall obtain all approvals, permits and licenses necessary for the placement of all portions of the JCECA Plant, including without limitation, Laterals, Hand Holes, fiber and conduit located outside of the RTD Property prior to installation of the fiber for the JCECA Plant. The PE grants rights within RTD Property only. The West Corridor runs outside of RTD Property and crosses property owned by third parties (the "Third Parties") pursuant to easements or licenses acquired by RTD from such property owners ("Third Party Rights"). The Third Party Rights do not include the right to house the JCECA Plant and accordingly, JCECA shall (i) acquire all property rights from the Third Parties needed to house the JCECA Plant, and (ii) provide copies of documents granting such rights to RTD prior to installation of the fiber for the JCECA Plant within the property owned by the Third Parties.

2.5 Permanent Easement. Promptly after installation of the JCECA Plant, RTD will grant JCECA a permanent easement, in substantially the form attached hereto as Exhibit A, to be recorded by JCECA in the real property records of Jefferson and Denver Counties.

3. UTILITIES. JCECA shall relocate, at its sole cost and expense, utilities located outside of RTD Property that need to be moved in order to accommodate the JCECA Plant should JCECA select lateral sites requiring such relocation. Such relocation costs are not included in the Total Contract Amount (as defined below) and will be paid for separately by JCECA. RTD shall relocate, at its sole cost and expense, utilities located within RTD Property that need to be moved in order to accommodate the Plants.

4. CONTRACTORS. JCECA agrees to coordinate and cooperate with all RTD consultants, contractors and subcontractors concerning the performance of RTD's obligations hereunder and agrees to coordinate its efforts with such entities and RTD, as appropriate. JCECA acknowledges that RTD can and will delegate to any entity the duty to perform certain of RTD's obligations hereunder.

5. JCECA PLANT COSTS. JCECA will provide the funds for the entire cost of the JCECA Plant. JCECA's costs pursuant to this IGA shall be the actual cost of the fiber optic cable and the incremental cost attributable to adding the JCECA Plant to the West Corridor. The total cost to JCECA of the JCECA Plant, including design services, materials and construction of the Laterals and Hand Holes, is in the amount of Eight Hundred Thirteen Thousand Eight Hundred Eleven Dollars (\$813,811.00) (the "Total Contract Amount"). JCECA shall finance and be responsible for the costs of permitting, utility relocation, construction beyond the Hand Holes, operation and maintenance of JCECA Plant, at no cost to RTD. The Total Contract Amount shall be paid as follows: \$62,978 was paid via invoice 10362; \$45,278.13 is owed via invoice 11662; and another \$509,243.87 shall be paid in 2011 for a total payment in 2011 of \$617,500. On or before July 1, 2012 JCECA shall pay \$114,929.90. The balance of the Total Contract Amount (\$81,381.10) shall be paid within thirty (30) calendar days of acceptance of the fiber pursuant to paragraph 7.1.

6. INSPECTION. In order to facilitate orderly inspections and prevent the need for dual inspections, JCECA will coordinate its inspections through RTD. JCECA inspectors will be required to adhere to all RTD and DTCG safety requirements. JCECA shall not give direction to DTCG, any direction shall be provided through RTD.

7. **FINAL INSPECTION AND ACCEPTANCE.**

7.1 **Notice.** RTD shall inform JCECA when JCECA Plant elements have been completed and are ready for final inspection. Any such final inspection shall be attended by RTD, JCECA and the DTCG. RTD shall inspect the JCECA Plant utilizing the same acceptance criteria applicable to the RTD Plant. JCECA shall have fourteen (14) calendar days from the date of RTD advising whether the acceptance criteria has been satisfied to give written notice of acceptance or rejection of the work. If JCECA does not accept or reject the work within such fourteen (14) day period, such work shall be deemed accepted by JCECA. If deficiencies are noted, RTD shall direct any corrective work required. Once all such corrective work is complete, RTD, DTCG and JCECA shall re-inspect the JCECA Plant and notify JCECA if such JCECA Plant meets the original RTD acceptance criteria for RTD Plant and JCECA shall have fourteen (14) calendar days to give written notice of acceptance or rejection of the corrective work. If JCECA does not accept or reject the corrective work within such fourteen (14) day period, such work shall be deemed accepted by JCECA.

8. **OWNERSHIP AND MAINTENANCE.** JCECA shall own the JCECA Plant and RTD shall own the RTD Plant. The Plants shall be maintained in accordance with the PE.

9. **PROJECT LIAISONS.**

9.1 **JCECA.** JCECA's project liaison, Jeff Irvin, shall coordinate the exchange of documentation, plan review and approval, construction inspection and any other similar activities by JCECA required under this IGA. The JCECA Executive Director, or duly authorized delegate, is the JCECA representative authorized to make and be responsible for JCECA approvals required hereunder.

9.2 **RTD.** RTD's project liaison, Frank Buczkowski, shall coordinate the exchange of documentation, plan review and approval, construction inspection and any other similar activities by RTD required under this IGA. RTD's General Manager, or duly authorized delegate, is the RTD representative authorized to make and be responsible for RTD approvals required hereunder.

10. **DISPUTES.** Disputes shall be initially resolved between the project liaisons. If the project liaisons are unable to resolve the dispute, they shall document the basis for dispute, either independently or together, and forward such information to RTD's Assistant General Manager for Capital Programs and JCECA's Board Chairman,.

11. **LIABILITY.** As between the Parties, and without either JCECA or RTD waiving any of the rights and protections provided under the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., each Party hereto shall be responsible for its own negligence and that of its agents and employees in the performance of this IGA. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this IGA or the design or construction of the West Corridor and/or the JCECA Plant, it agrees to give the other Party prompt written notice of such claim or suit.

12. **HAZARDOUS MATERIALS.** In the event hazardous materials are encountered during the installation of the JCECA Plant outside of the RTD Property, JCECA will be solely responsible for any and all costs associated therewith including without limitation remediation or removal costs and corrective action costs under common law or any federal, state, or local environmental statute. JCECA will be notified of discovery of any hazardous materials and will

be included in any negotiations regarding remediation of such materials outside of RTD Property. In the event hazardous materials are encountered during the installation of the JCECA Plant inside of the RTD right of way, RTD will be solely responsible for any and all costs associated therewith including without limitation remediation or removal costs and corrective action costs under common law or any federal, state, or local environmental statute. This Section shall survive expiration or termination of this IGA.

13. **APPROVAL BY JCECA AND RTD BOARDS.** This IGA is expressly subject to, and shall not be or become effective or binding on JCECA or RTD until approved by the JCECA Board of Directors (the "JCECA Board") and the RTD Board of Directors (the "RTD Board"), respectively.

14. **APPROPRIATION BY JCECA AND RTD BOARDS.** Except as provided herein regarding funds committed by JCECA, this IGA does not commit any present funding by either Party. Implementation of this IGA implies future financial commitments by both Parties subject to approval by the RTD Board and JCECA Board and subject to each entity's legally required budgeting, authorization, and appropriation process. Any and all obligations of JCECA and RTD under and pursuant to this IGA which require funding are subject to prior annual appropriations of funds expressly made by JCECA Board and the RTD Board, respectively, for the purposes of this IGA. Nothing herein shall be construed by either Party as a multiple fiscal year obligation as described by Article X, Section 20 of the Colorado Constitution.

15. **MISCELLANEOUS.**

15.1 **Merger.** This IGA represents the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements, understandings or negotiations shall be deemed merged herein. No representations, warranties, promises or agreements, express or implied, shall exist between the Parties, except as stated herein.

15.2 **Amendment.** No amendment to this IGA shall be made or deemed to have been made unless in writing executed and delivered by the Party to be bound thereby.

15.3 **Governing Law.** This IGA shall be interpreted and enforced according to the laws of the State of Colorado, the applicable provisions of federal law, and the applicable rules and regulations promulgated under any of them. Venue for any action hereunder shall be in Denver County District Court, Denver, Colorado.

15.4 **Term and Termination.** This IGA shall commence on the Effective Date and shall remain in effect until terminated in writing by mutual agreement of the Parties or by court order. All provisions of this IGA that provide rights or create responsibilities for the Parties after termination shall survive termination of this IGA.

15.5 **Authority.** The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the undersigned signatories to execute this IGA on behalf of the Parties and to bind the Parties to its terms.

15.6 **Severability.** To the extent that this IGA may be executed and performance of the obligations of the Parties may be accomplished within the intent of the IGA, the terms of the IGA are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other terms or provision hereof.

15.7 **Waiver.** The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon a subsequent breach.

15.8 **No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person under this IGA. It is the express intention of the Parties to this IGA that any person or entity other than the Parties receiving services or benefits under this IGA be deemed an incidental beneficiary only.

15.9 **Changes in Law.** This IGA is subject to such modifications as may be required by changes in city, state or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this IGA on the effective date of such change as if fully set forth herein.

15.10 **Independent Contractors.** The Parties hereto are independent contractors and not partners or joint ventures of one another.

15.11 **Conflict of Interest.** No officer, employee or agent of RTD, nor any member of its Board, nor any member of Congress, nor any other public official or employee of the governing

body of the locality or localities included within the district, during his or her tenure, or for one (1) year thereafter, shall have any personal pecuniary or property interest, direct or indirect, in this IGA or the proceeds hereof.

15.12 **Paragraph Headings**. The captions and headings set forth in this IGA are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.

15.13 **Counterparts**. This IGA may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

16. **NOTICES**. Except as may be specifically required herein, all communications required by this IGA shall be made in writing, via U.S. First Class Post, e-mail or facsimile, to the following individuals (or their delegates), who shall be the project liaisons for their respective organizations:

To JCECA: Jeff Irvin, Executive Director
Direct: 303 539 9410, Cell: 303 898 0586, Fax: 303 539 9593
email: jirvin@jceca.org , web: www.jceca.org

Mailing address:
JCECA, POB 16184, Golden, CO 80402-6003

Physical office address:
West Metro Fire Administration Building
433 S Allison Pkwy, Suite 231, Lakewood, CO 80226-3133

To RTD: Jim Starling, West Corridor Project Manager
Regional Transportation District
10455 W. 6th Avenue
Lakewood, CO 80228

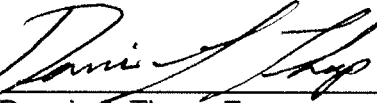
Phone: 303-299-2301
Facsimile: 303-299-2872
e-mail: james.starling@rtd-fastracks.com

Project liaisons may be changed or additions made at the discretion of each Party by written notice to the other Party.

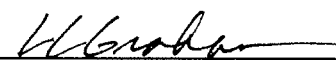
IN WITNESS WHEREOF, JCECA and RTD have executed, through their respective lawfully empowered representatives, this IGA as of the day and year above written.

APPROVED AS TO LEGAL FORM FOR **JEFFERSON COUNTY EMERGENCY COMMUNICATIONS AUTHORITY**
JCECA:

By: 
Jeff Irvin
Executive Director

By: 
Dennis J. Tharp, Esq.
Date: 10/31/11

APPROVED AS TO LEGAL FORM FOR RTD: **REGIONAL TRANSPORTATION DISTRICT**

By: 
Lori L. Graham
Associate General Counsel
Date: 11-03-11


By: 
Rick Clarke
Assistant General Manager
Planning and Development

EXHIBIT A

E-911 FIBER OPTIC PLANT EASEMENT

This **E-911 Fiber Optic Plant Easement** (this "Easement"), made this _____ day of _____, 201_ (the "Commencement Date"), by and between the **REGIONAL TRANSPORTATION DISTRICT** ("RTD"), a political subdivision of the state of Colorado, and **JEFFERSON COUNTY EMERGENCY COMMUNICATIONS AUTHORITY** ("JCECA"), a legal entity with an address of POB 16184, Golden, CO 80402-6003, and **ADAMS COUNTY COMMUNICATION CENTER, INC.**, a public entity, with an address of 7321 Birch Street Commerce City, CO 80022 ("ADCOM911").

Recitals

- A. RTD, a political subdivision of the State of Colorado, is authorized, pursuant to C.R.S. § 32-9-101, *et seq.*, to develop, maintain, and operate a mass transportation system for the benefit of the inhabitants of the district.
- B. JCECA is a legal entity organized pursuant to C.R.S. § 29-11-100.5, *et. seq.*, which assists the Broomfield and Jefferson Counties' public safety answering points with providing emergency dispatching services to the residents within such counties' jurisdictions.
- C. The West Corridor mass transit improvement project (the "Project") is identified in the FasTracks Plan, which was approved by the voters of the district on November 2, 2004 ("FasTracks"), and in the Denver Regional Council of Governments ("DRCOG") 2030 Metro Vision Regional Transportation Plan.
- D. RTD will install as part of the Project a seven (7) cylindrical chamber conduit (the "Conduit") beginning at the RTD light rail station located near the Jefferson County Government Center in Golden and ending at the RTD Auraria West light rail station in Denver (the "Auraria Station") within RTD property owned or controlled by RTD. For its own use RTD will place a fiber optic cable into one (1) of the chambers in this conduit (the "RTD Plant").
- E. Pursuant to the West Corridor E-911 Fiber Optic Plant Intergovernmental Agreement dated October 31, 2011 (the "E-911 IGA"), RTD will install a ninety-six (96) strand single mode fiber optic cable (the "JCECA Plant") in one (1) of the chambers ("JCECA Chamber") for use by JCECA, ADCOM911 and by other governmental entities (the "JCECA Plant"). This Easement is Exhibit B to the E-911 IGA.
- F. RTD and JCECA wish to establish the terms and conditions related to JCECA's and ADCOM911's use of the JCECA Plant and JCECA Chamber.

Agreement

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RTD, JCECA and ADCOM911 hereby agree as follows:

I. RECITALS, EXHIBITS. The recitals listed above and the following exhibit, attached hereto, are incorporated herein by this reference:

A. Exhibit 1, General Depiction of the Property.

II. PREMISES. RTD owns or controls a parcel of land in the City and County of Denver and in Jefferson County, Colorado, as indicated on Exhibit 1, on which it will construct, operate and maintain a mass transit rail system (the "Property"), and within which it will install the Conduit. RTD shall assign one (1) of the Conduit chambers to JCECA (the "JCECA Chamber") to house the JCECA Plant. The JCECA Chamber is also referred to herein as the "Premises." JCECA desires to have installed and will maintain the JCECA Plant within the Premises for the purposes indicated herein.

III. GRANT. RTD hereby grants a nonexclusive, non-transferable perpetual easement to JCECA and ADCOM911 to use the Premises subject to and in accordance with the terms, covenants and conditions of this Easement. JCECA shall obtain the permission of property owners to use the Premises on Property not owned in fee by RTD.

IV. EQUIPMENT. The initial installation shall be limited to a ninety-six (96) strand single mode fiber optic cable. JCECA shall not install additional equipment on the Property or the Premises without the prior, written consent of RTD.

V. JCECA'S USE.

A. Permitted Use. The Premises may be used by JCECA and ADCOM911 only to install, maintain, repair, replace, remove, and/or operate the JCECA Plant in connection with the performance of public communications functions (the "Permitted Use") authorized in the E-911 IGA. The JCECA Plant will include fifteen (15) access points ("Hand Holes") near RTD stations and major intersections, but outside of property owned by RTD ("RTD Property"). The Hand Holes located outside of RTD Property will be connected to the mainline duct bank via lateral conduits. JCECA and ADCOM911 may only access the JCECA Plant and Premises via the Hand Holes. The Permitted Use expressly does not include the right to access the Property, nor to sell, lease or otherwise utilize the JCECA Plant, the Property or the Premises for commercial purposes; any such use shall be deemed a material breach of this Easement and may result in termination of this Easement by notice from RTD to JCECA.

B. Maintenance and Repair.

1. JCECA Plant. JCECA shall own, and, directly or through ADCOM911, operate and maintain all or a portion of the JCECA Plant. If maintenance,

modification, repair or removal by the JCECA or ADCOM911 of the JCECA Plant become necessary, JCECA, ADCOM911 or their delegates may only do so via the Hand Holes. JCECA shall neither damage nor permit any damage to the Property or Premises. If JCECA or ADCOM911 does, however, damage the Property or the Premises, JCECA shall promptly repair such damage at its sole cost and expense, to the reasonable satisfaction of RTD. If JCECA should fail to timely complete repairs or maintenance required by this Easement, RTD may, at RTD's option, (i) complete such repairs or maintenance and JCECA shall promptly reimburse RTD for its reasonable costs and expenses; and/or (ii) upon notice to JCECA, terminate this Easement

2. RTD Plant. RTD shall own, operate and maintain the RTD Plant. RTD shall not damage nor permit any damage to the JCECA Plant or Premises. If RTD does, however, damage the JCECA Plant or Premises, RTD shall promptly repair such damage at its sole cost and expense, to the reasonable satisfaction of JCECA. If RTD should fail to timely complete repairs or maintenance required by this Easement, JCECA or, if applicable, ADCOM911, may, at JCECA's option, complete such repairs or maintenance via the Hand Holes, and RTD shall promptly reimburse JCECA for its reasonable costs and expenses.

C. Nonexclusive Use. JCECA acknowledges and agrees that RTD, at its sole discretion, has the right to grant other easements or rights of use, of any kind or nature, to parties other than JCECA with respect to the Property and Conduit.

VI. NO WARRANTY.

A. RTD does not grant or purport to grant any right not specifically set forth herein. Obtaining permission for JCECA, ADCOM911 or their contractors to traverse the Property is the sole responsibility of JCECA or ADCOM911, as applicable, as is procurement of any applicable regulatory permission or consent.

B. JCECA understands that the RTD mass transit rail catenary system is electrified twenty-four (24) hours per day and conducts approximately seven hundred fifty (750) volts direct current at three thousand (3000) amps. The catenary system shall be considered live at all times and cannot be de-energized except in cases of emergency.

C. The JCECA specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that the JCECA or its contractor stores on the Property, whether the loss, damage or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

VII. TERMINATION. This Easement may be terminated without penalty or further obligation, except as otherwise provided herein, by either party for a material default of any covenant or term hereof by the other party, which default is not cured within thirty (30) calendar days following receipt of written notice of such default, or such longer period as may be required to diligently complete a cure commenced within such thirty (30) calendar day period.

VIII. END OF TERM.

A. Removal of Equipment. Upon termination of this Easement, JCECA shall quit and surrender to RTD the Premises and shall remove the JCECA Plant from the Premises and restore the Premises to the condition it was in prior to the execution of this Easement, reasonable wear and tear excepted. JCECA shall not have an obligation to repair, or pay for the repair, of the premises to a condition better than the chamber housing the RTD Plant. If, within sixty (60) calendar days after the expiration or earlier termination of this Easement, JCECA has not removed the JCECA Plant and has not restored the Premises as provided herein, RTD may do so, and JCECA shall reimburse RTD for all costs and expenses for removal, storage and sale of the JCECA Plant and restoration of the Premises. This Section shall survive the termination of this Easement.

IX. CASUALTY.

A. Repair. If the Premises or a portion thereof is damaged during the term of this Easement by any casualty which is insured under standard fire and extended coverage insurance policies, RTD may, at RTD's sole option, repair or rebuild the Premises to substantially the same condition it was in immediately prior to such destruction. If the Premises is damaged to the extent that it would take, in RTD's reasonable judgment, more than thirty (30) days to repair, then either RTD or JCECA may terminate this Easement or negotiate an alternate solution.

B. Responsibility. JCECA will be responsible for any and all damage done to the Property, including without limitation the Premises, by its employees, contractors, agents, officers or invitees.

X. COMPLIANCE WITH LAWS. JCECA will promptly materially comply with all applicable laws relating to JCECA's use of the Property and the Premises. At its sole cost and expense, JCECA will promptly cause the Premises to comply with all laws to the extent that such compliance is required as a result of JCECA's use or occupancy of the Premises.

XI. LIABILITY. As between the Parties, and without either the JCECA or RTD waiving any of the rights and protections provided under the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., each Party hereto shall be responsible for its own negligence and that of its agents and employees in the performance of this IGA. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this IGA or the design or construction of the Project, it agrees to give the other Party prompt written notice of such claim or suit.

XII. RELOCATION. RTD may, in its sole discretion and cost, relocate any or all of the JCECA Plant to another location. RTD shall provide a minimum of sixty (60) days notice of its intent to relocate the JCECA Plant. If any or all of the JCECA Plant is relocated to another location, all the terms and conditions and stipulations herein expressed with reference to the JCECA Plant shall continue to apply.

XIII. EQUIPMENT TITLE. Title to the JCECA Plant shall be held by JCECA. The JCECA Plant shall remain JCECA's personal property and not fixtures. JCECA has the right to remove all of the JCECA Plant at its sole expense before or within sixty (60) calendar days subsequent to the termination of this Easement; provided, however, that JCECA is not in default of this Easement, and JCECA promptly repairs any damage to the Property caused by such removal .

XIV. ASSIGNMENT. JCECA shall not assign this Easement without the express, written consent of the RTD, which shall not be unreasonably withheld. Notwithstanding the foregoing, this Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, ownership of the JCECA Plant from east of Sheridan Boulevard to the Auraria Campus (the "Denver Portion") may be transferred to the City and County of Denver ("Denver"), provided that concurrent with such transfer, (i) this Easement is partially assigned to and assumed by Denver, or (ii) this Easement is amended to remove the Denver Portion from it and a separate easement is granted by RTD to Denver.

XV. MISCELLANEOUS PROVISIONS.

A. **Amendment.** All amendments to this Easement shall be in writing, signed by the parties.

B. **Representations of Parties.** The parties represent and warrant that each has taken all actions that are necessary or that or required by its procedures, bylaws, or applicable law to legally authorized the undersigned signatories to execute this Easement on behalf of the parties and to bind the parties to its terms. The persons executing this Easement warrant that they have full authorization to execute this Easement on behalf of the Party each represents.

C. **Severability.** To the extent that this Easement may be executed and performance of the obligations of the parties may be accomplished within the intent of the agreement, the terms of this Easement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other terms or provision hereof.

D. **Waiver and Breach.** The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon a subsequent breach.

E. **Complete Understanding.** It is hereby mutually agreed and understood that this Easement and the E-911 IGA contains all agreements, promises and understandings between RTD and JCECA and that no other agreements, promises or understandings with respect to the subject matter of this Easement shall or will be binding on either RTD or JCECA in any dispute, controversy or proceeding at law, and that any addition, variation or modification to this Easement shall be void and ineffective unless in writing and signed by the parties hereto.

F. **Jurisdiction and Venue.** This Easement shall be governed by the laws of the State of Colorado.

G. **Inspection.** RTD reserves the right to enter, at any time, the Premises to inspect the same.

H. **ADCOM911.** The parties expressly understand and agree that ADCOM911 is a signatory to this Easement only for the purpose of ensuring its has access the Hand Holes to install, maintain, repair, replace, remove, and/or operate the JCECA Plant. ADCOM911 is not subject to, shall not be construed as assuming, and does not assume, any obligations, duties, or liabilities imposed on JCECA pursuant to this Easement.

XVI. NOTICES. All notices under this Easement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, properly addressed as follows:

RTD: Manager of Real Property
1560 Broadway, Suite 650
Denver, CO 80202

with a copy to:

General Counsel
1600 Blake Street
Denver, CO 80202

JCECA: Jeff Irvin

Direct: 303 539 9410, Cell: 303 898 0586

email: jirvin@jceca.org

Mailing address:

JCECA, POB 16184, Golden, CO 80402-6003

Physical office address:

West Metro Fire Administration Building, Suite 231
433 S Allison Pkwy, Lakewood, CO 80226-3133

In witness whereof, the parties hereto have executed this Easement as of the day and year written above.

REGIONAL TRANSPORTATION DISTRICT:

By: _____

Printed Name: Richard Clarke
Title: Assistant General Manager
Capital Programs Planning and
Development Administration

APPROVED AS TO LEGAL FORM:

By: _____

Lori L. Graham
Associate General Counsel

**JEFFERSON COUNTY EMERGENCY
COMMUNICATIONS AUTHORITY:**

By: _____

Printed Name: Jeff Irvin
Title: Executive Director

**ADAMS COUNTY COMMUNICATION
CENTER, INC:**

By: _____

Printed Name: William T. Malone
Title: Executive Director