

TELECOMMUNICATIONS SERVICE PROVIDER ACCESS AGREEMENT

WHEREAS the City of Edmonton as Landlord entered into a Lease Agreement dated April 11, 2000 (the "Head Lease") with the Edmonton Public Library Board as Tenant with respect to that land legally described as Plan 9925162 Block 101 Lot 41 and being municipally described as 460 Riverbend Square, Edmonton ("Demised Premises") whereon the public facility commonly known as the Riverbend Branch (the "Building") is located;

AND WHEREAS the Head Lease has a term of five years commencing on January 1, 2000 and ending on December 31, 2004 with the right of renewal for one further term of five years;

AND WHEREAS pursuant to the authority granted in Clause 19 of the Head Lease, the Edmonton Public Library (hereinafter referred to as the "Licensor") wishes to enter into a Telecommunications Service Provider Access Agreement

NOW THEREFORE in consideration of the sum of ONE (\$1.00) DOLLAR (receipt of which is acknowledged) hereby paid by: **BELL WEST INC.**, ("Bell") to **EDMONTON PUBLIC LIBRARY BOARD** ("Licensor"), together with other valuable consideration described herein: **THE PARTIES AGREE AS FOLLOWS:**

1. **Address where Premises are located:** **460 Riverbend Square, Edmonton, Alberta** ("Building")
As legally described in Schedule "A".
2. **Premises:** Described in Schedule "B".
3. **Term:** First Term expires **December 30, 2004**.
4. **Commencement Date:** **June 1, 2004** or the date installation commences, whichever is sooner.
5. **Option to Extend:** To exercise the one (1) option to extend this License for a further term of five (5) years, Bell shall provide ninety (90) days written notice to Licensor prior to end of the Term. The renewal term is subject to the terms and renewal of the Head Lease between the Licensor and the City of Edmonton, and in particular, the exercising by the Licensor of any right of renewal of the term of the Head Lease, as provided for in the Head Lease. Nothing in this License shall be deemed to operate as the granting of any perpetual right of renewal.
6. **Taxes:** Bell shall pay its own business taxes and, upon receipt of written proof, any increase in realty taxes assessed against Licensor by reason of the installation of the Equipment or its use of the Premises.
7. **Use of Premises and Utilities:** To install, maintain and supplement Bell's equipment, cable, apparatus and ancillary attachments ("Equipment") for the communication of signals to and from customers located in the Building and as support or back-up for Bell's ring technology in the event of an interruption in service. Bell may construct within the Building such Improvements necessary for the support and installation of the Equipment (the "Improvements"). The Equipment and Improvements shall comply with such plans as are approved by the Licensor. Bell may connect to all necessary utilities, trunk lines, customers' equipment and Licensor's electrical grounding system in accordance with the plans approved by the Licensor and may have access to required conduits, risers, closets and meter rooms, subject to the Licensor's general restrictions and the provisions of this Agreement.

8. **Electricity:** Bell will pay for its own electrical consumption. If required by the Licensor, Bell, at its sole cost and expense, shall install a separate meter to determine Bell's electricity consumption. The Licensor shall use commercially reasonable efforts to notify Bell in advance of any planned utility outages that may interfere with Bell's use.

9. **Prior to Commencement Date Bell Shall:**

- (a) Submit Equipment and Improvement plans to Licensor for approval;
- (b) Obtain all consents, licenses and permits required to install and operate the Equipment and Improvements and Licensor agrees to cooperate and provide all consents, authorizations reasonably required to Bell;
- (c) Conduct all tests required to satisfy itself that the Premises are suitable for its intended purpose; and
- (d) Bell, at its own expense, shall take out and maintain in force while this Agreement is in effect, comprehensive general liability insurance in a minimum amount of Five Million Dollars (\$5,000,000) per occurrence for injury, death or property damage arising out of Bell's operations pursuant to this Agreement, which insurance shall contain cross liability and severability of interest clauses.

10. **Installation and Maintenance of Equipment and Improvements:**

- (a) Bell shall forthwith repair any damage to the Building caused by its installation, maintenance or removal of Equipment and Improvements during and at the end of the Term.
- (b) Bell shall remove all Equipment and Improvements at the end of the Term or earlier termination.
- (c) The Equipment and Improvements shall be installed, operated, maintained, removed and supplemented in a good and workman like manner in accordance with sound engineering practices and without interference to the Licensor's daily operations in the Building.
- (d) Bell shall ensure that no liens are registered against the Building as a result of its work and hereby indemnifies Licensor in connection herewith.
- (e) Bell will comply and will ensure that its sub-trades comply with all health and safety and environmental legislation and hereby indemnifies Licensor for a breach thereof.
- (f) Bell will ensure that its Equipment and Improvements do not interfere with the signals or equipment of service providers granted prior access by Licensor.

10. **Performance by Bell:** Bell may have access to the building for the purposes of this Agreement during regular business hours (as determined by the Licensor) subject to the Licensor's general restrictions and reasonable security requirements. Bell may have access to the Building beyond the Licensor's regular hours with the Licensor's permission, and Bell and the Licensor agree to co-operate in allowing Bell such access to the Building so as to allow Bell to fulfill its obligation to the Licensor under this Agreement.

11. **Indemnity:** Licensor and Bell indemnify and save harmless each other for loss or damage to person or property caused by their own negligence or those for whom they are responsible and neither party shall be responsible for consequential damages. Licensor shall be responsible for any pre-existing environmental contamination of the Building and indemnifies and holds harmless Bell therefrom. Bell shall indemnify Licensor against any environmental contamination caused by Bell or Bell's equipment.

12. **Default and Termination:**

- (a) The Licensor may terminate this Agreement if Bell has failed to cure a breach for which it has received thirty (30) days' prior written notice from Licensor, unless the breach is incapable of remedy within such period and Bell has diligently commenced to cure the default. Either party to this Agreement may terminate this Agreement upon sixty (60) days prior written notice to the other party.

- (b) In the event Bell no longer provides services to customers located in the Building the Licensor may, upon written notice to Bell, terminate this Agreement and Bell shall within thirty (30) days remove its Equipment and Improvements from the Building.
13. **Transfer:** Bell shall not assign this Agreement without the prior written approval of Licensor, acting reasonably. Notwithstanding the foregoing, Bell may assign this Agreement to a corporate affiliate, its senior lenders or their collateral agents or a purchaser of a material portion of its business. Bell shall ensure that Licensor is informed of such assignment and except for an assignment to a purchaser, as described above, shall remain liable under this Agreement.
14. **Notices:** All notices under this Agreement shall be in writing and may be delivered by mail, facsimile or in person to the addresses below and shall be deemed received three business days later if mailed and the next business day following the date of transmission by facsimile or personal delivery.
15. **Force Majeure:** Without limiting or restricting the applicability of the law governing frustration of contracts, in the event either party fails to meet any of its obligations under this Agreement within the time prescribed, and such failure shall be caused, or materially contributed to, by force majeure, such failure shall be deemed not to be a breach of the obligations of such party under this Agreement, and the time for the performance of such obligation shall be extended accordingly as may be appropriate under the circumstances. For the purpose of this Agreement, force majeure shall mean any acts of God, war, natural calamities, strikes, lockouts or other labour stoppages or disturbances, civil commotions or disruptions, riots epidemics, acts of government or any competent authority having jurisdiction, or any other legitimated cause beyond the reasonable control of such party, and which, by the exercise of due diligence, such party could not have prevented, but lack of funds on the part of such party shall not be deemed to be a force majeure.
16. **General:** This is the entire Agreement between the parties affecting the subject matter, described herein. Any amendments must be in writing and signed by both parties. If any portion of this Agreement is found to be invalid, such portion shall be severed without affecting the validity of the balance of the Agreement. Except for reason of financial inability, delay in performance by either party shall be excused for delay for causes beyond their reasonable control. The parties warrant that there are no restrictions contained in any other Agreement to which they are a party that would prevent either party from entering into this Agreement. The provisions of this Agreement shall be subject to all applicable regulatory laws and regulations, which will prevail in the event of conflict. Licensor is entering this Agreement in its capacity only as an owner of real property and nothing in this Agreement shall constitute the granting of any approval or permit as may be required pursuant to the Municipal Government Act R.S.A. 2000 c. M-26. This Agreement is binding on the parties and their respective successors and assigns.
17. **CRTC:** Licensor and Bell acknowledge that the access rights of telecommunications providers in multi-tenant buildings is presently subject to a regulatory proceeding initiated by the CRTC. In the event the CRTC issues a ruling or decision in respect of such access rights while this Agreement is in effect, this Agreement shall be amended by the parties, acting reasonably, in such a manner so as to give effect to such ruling or decision, including, without limitation, the termination of the Agreement if necessary.

18. **ENTIRE AGREEMENT:** This Agreement cancels, replaces and supersedes as of its effective date all existing agreements and understandings, written or oral, between the parties hereto relating to the subject matter of this Agreement. The whole contract between the parties hereto is contained in this Agreement and no preliminary proposals, written or oral, form any part of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement by the hands of their respective officers duly authorized in that behalf as of the date first above written:

Bell West Inc.

Edmonton Public Library Board

Per:

Per:

Name:

Name: Linda C. Cook

Title:

Title: Director of Libraries

Date:

Date: June 28, 2004

I have the authority to bind the Licensee.

I have the authority to bind the Licensor.

Mailing Address for Notices:

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Bell West Inc.

21st Floor, 111 - 5th Avenue SW
Calgary, Alberta T2P 3Y6

Edmonton Public Library Board

7 Sir Winston Churchill Square
Edmonton, Alberta T5J 2V4

Attn: Legal: Senior Counsel Manager

Attn: Associate Director, Management Services

Fax: (403) 410-4019 Tel: 1-888-333-2811

Fax: (780) 496-7097 Tel: (780) 496-6822

SCHEDULE A

LEGAL DESCRIPTION OF LANDS:

PLAN 9925162
BLOCK 101
LOT 41
EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE
ATS REFERENCE: 4;25;52;11;SW

MUNICIPALITY: CITY OF EDMONTON

REFERENCE NUMBER: 992 257 239

MUNICIPAL DESCRIPTION OF LANDS:

460 RIVERBEND SQUARE, EDMONTON, AB