

Exhibit “B”

CONTRACT

BETWEEN

WEST ORANGE NEW JERSEY

(Buyer)

and

EASTERN COMMUNICATIONS, LTD.

(Seller)

DATE: _____, 200

SYSTEM PURCHASE CONTRACT

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SYSTEM PURCHASE CONTRACT

THIS SYSTEM PURCHASE CONTRACT ("Contract") is made and entered into this ____ day of 200__ ("Effective Date"), by and between _____ (hereinafter referred to as "Buyer") and Eastern Communications, Ltd. (hereinafter referred to as "Seller").

RECITALS:

- R-1. Seller delivered a proposal entitled "_____" and originally dated _____, 200__, as amended on (dates) (collectively, the "Seller's Proposal") to provide the radio communication system and services requested by Buyer.
- R-2. Buyer has selected Seller's Proposal and now desires to contract with Seller to provide Buyer with the radio communications system and services set forth in Seller's Proposal.
- R-3. Buyer and Seller desire to enter into this Contract to set forth in writing their respective rights, duties and obligations hereunder.

NOW, THEREFORE, WITNESSETH that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

SECTION 1. DEFINITIONS:

As used herein, the terms set forth below shall have meanings set forth below.

- A. **"Acceptance"** shall mean acceptance of the System as set forth in Section 13 hereof.
- B. **"Acceptance Date"** shall mean the date the System is accepted or deemed accepted as set forth in Section 13 hereof.
- C. **"Acceptance Tests"** shall mean the testing procedures either described in Seller's Proposal or mutually agreed upon by Buyer and Seller to be performed to determine whether the System has met the acceptance criteria either set forth in Seller's Proposal or as mutually agreed upon in writing by Buyer and Seller.
- D. **"Certificate of Insurance"** shall mean the certificate to be provided by Seller evidencing the insurance coverage of Seller and the form of which certificate is set forth in Exhibit A attached hereto.
- E. **"Effective Date of the Contract"** shall be the date designated by the parties or, if no date is designated, shall be the date on which the Contract is signed by the last of the parties to sign the Contract. The "Effective Date" shall be the date inserted on the first page of the Contract.
- F. **"Hardware"** shall mean the equipment, parts and materials to be provided by Seller for the System as listed in Seller's Proposal.
- G. **"Installation Schedule"** shall mean the schedule either set forth in Seller's Proposal or otherwise mutually agreed upon by Seller and Buyer in writing for the delivery of the Hardware and Software and the performance of the Services described in the Statement of Work.
- H. **"Seller"** shall mean Eastern Communications Ltd. 48-14 36th Street, Long Island City, NY 11101
- I. **"Seller's Proposal"** shall mean the proposal provided by Seller to Buyer as described in the recitals of this Contract.

- J. **"Services"** shall mean the services to be provided by Seller to Buyer as set forth in Seller's Proposal.
- K. **"Software"** shall mean the proprietary computer software of Seller as owned exclusively by Seller or Seller's suppliers, as appropriate.
- L. **"Statement of Work"** shall mean the description of the work to be performed by Seller to deliver the Hardware, install the System and provide the Services, all as described in Seller's Proposal.
- M. **"System"** shall mean the radio communications system comprised of the Hardware and Software to be furnished by Seller to Buyer pursuant to the terms set forth in Seller's Proposal and this Contract.
- N. **"Total Contract Price"** shall mean the price of the Hardware, the Software license and the Services to be furnished by Seller to Buyer pursuant to the terms set forth in Seller's Proposal and this Contract.
- O. **"Documentation Deliverables"** shall mean the standard commercial quality manuals to be furnished by the Seller to the Buyer pursuant to the terms set forth in Seller's Proposal and this Contract.

SECTION 2. SCOPE OF WORK:

Seller shall furnish, deliver and install the Hardware and Software for the System and provide the Documentation Deliverables and Services in accordance with the terms of Seller's Proposal and this Contract.

SECTION 3. BUYER'S OBLIGATIONS:

- A. The Buyer's obligations set forth in Seller's Proposal and this Contract shall be performed by Buyer in a timely and proper fashion in accordance with the Installation Schedule, or as otherwise agreed upon by Buyer and Seller, to allow Seller to timely perform its obligations under this Contract.
- B. In addition to the obligations specifically identified in Seller's Proposal, Buyer shall also have the following additional obligations.
 - (1) Buyer shall designate a project manager to act as Buyer's primary interface with the Seller.
 - (2) Buyer shall provide ready access to all sites owned, leased or otherwise controlled by Buyer.
 - (3) All towers, shelters and associated equipment provided by or mandated by Buyer shall be satisfactory in all manners to accommodate the System proposed by the Seller.

SECTION 4. FACILITIES SITES:

Any sites where Seller will operate and perform System installation under the terms of this Contract must be approved by Buyer, whose approval shall not be unreasonably withheld, delayed or conditioned. Buyer shall be responsible, at Buyer's expense, for obtaining all rights to use sites including, but not limited to, all permits and licenses necessary to perform work on the sites and all FCC and FAA approvals. Buyer shall be responsible for paying all utility charges to the appropriate utility for providing utility services to the System installation areas.

SECTION 5. DELIVERY, TITLE AND RISK OF LOSS:

- A. Seller shall ship the Hardware to Buyer at Buyer's expense on or before the dates set forth in the Installation Schedule. Partial deliveries shall be permitted. Upon delivery to the carrier, title to each portion of the Hardware and all risk of loss or damage shall pass to Buyer; provided, however, that Seller shall

remain responsible until Acceptance of the System for loss or damage resulting from the willful misconduct or negligent acts or omissions of Seller, its employees, agents, and subcontractors. Buyer shall keep the Hardware fully insured for the total amount of all monies then due, or yet to become due, to Seller with respect to this Contract.

- B. If Buyer fails to take delivery of any of the Hardware, Seller may place such Hardware in storage at the place of manufacture or elsewhere. In such event: (1) Seller shall notify Buyer of the placement of any Hardware in storage; (2) Seller's delivery obligations shall be deemed fulfilled and title and all risk of loss or damage shall thereupon pass to Buyer; (3) any amounts otherwise payable to Seller upon delivery shall be payable upon presentation of Seller's invoices.

SECTION 6. PRICE:

The Total Contract Price to be paid by Buyer to Seller is _____ Dollars (\$_____). The individual prices for the units of Hardware, the Software license and the Services to be performed are as set forth in Seller's Proposal.

SECTION 7. TAXES:

In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or any Products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall otherwise furnish Seller with tax exemption certificates acceptable to all applicable taxing authorities.

SECTION 8. PAYMENTS:

- A. The Total Contract Price for the Hardware, the Software license and the Services shall be paid by the Buyer to Seller as follows:

1. **Initial Payment**

Zero percent (0%) of the Total Contract Price shall be due at the time of the signing of the Contract by the Buyer and Seller.

2. Zero (0%) of the Total Contract Price shall be due at the time of the first System design review meeting or within 30 days of the Effective Date of this Contract if no System design review meeting is scheduled, whichever occurs earlier.

3. **Hardware**

Sixty five percent (65%) of the total value of the System shall be due upon delivery of all Hardware.

4. **Installation**

Twenty five (25%) of the total System value shall be due upon installation unless Buyer's sites are not available; in which case 25% shall be due without completion of installation.

5. **Services**

Zero (0%) of the Project/Site Management, System Engineering or other Services separately priced shall be payable in equal monthly payments over the time period of the Contract through the date of Acceptance of the System, as described in the Project Schedule.

6. **Final Payment**

The final payment of the remaining Contract Value for all Hardware, Software and Services shall be due upon final Acceptance of the System.

B. Payment Dates

The Payment(s) associated with the event(s) above shall be due thirty (30) days following the date of Seller's invoice.

C. Other Amounts

Any other amounts due Seller hereunder shall be due upon Buyer's receipt of Seller's invoice.

D. Late Payments

All amounts past due over thirty (30) days shall accrue interest from their due date at the rate of one and one-half percent (1-1/2%) per month (or such lesser rate as may be the maximum permissible rate under applicable law).

E. Security Interest

Until the Total Contract Price is fully paid to Seller, Seller shall retain and Buyer hereby grants to Seller a purchase money security interest in the Hardware and Buyer shall join with Seller in executing any required filings to perfect such security interest.

SECTION 9. SUBCONTRACTING:

Seller may subcontract any portion of work to be performed by Seller hereunder provided that Seller shall be responsible for the performance and work of any such subcontractors.

SECTION 10. SELLER'S INSURANCE:

A. Seller shall maintain in force at all times during Seller's performance under the Contract not less than the following insurance coverage with insurers authorized to do business in the state(s) in which work hereunder is to be performed by Seller:

- (1) workers' compensation insurance as required by law;
- (2) general liability insurance with limits of liability of not less than \$1,000,000 combined single limits for bodily injury and property damage per occurrence; and
- (3) motor vehicle liability insurance with limits of liability of not less than \$500,000 combined single limits for bodily and property damage per occurrence.

B. Within ten (10) business days of execution of this Contract, Seller shall provide Buyer with a Certificate of Insurance in the form set forth in Exhibit A evidencing the insurance coverage.

SECTION 11. TESTING AND ACCEPTANCE:

A. Seller shall notify Buyer that the System is ready for Acceptance Tests at least ten (10) days before commencement of the Acceptance Tests. Buyer and Seller shall jointly commence the Acceptance Tests on the date specified in Seller's notice (or other mutually agreeable date) and a representative of Seller and a representative of Buyer shall sign off on the form provided as part of the test procedure whether each item of the test was passed or failed. If Buyer does not have a representative attend the Acceptance Tests, Seller shall proceed with those tests and immediately forward the test results to Buyer. If the System does not fulfill the requirements of the Acceptance Tests, Seller shall correct the defects at no additional cost to Buyer as soon as practicable. Upon correction of the defects the Acceptance Tests for the applicable part of the System shall be repeated in accordance with the procedures set forth in this Section. Successful completion of the Acceptance Test is the sole criterion for technical system acceptance and the initiation of the warranty period.

Final system acceptance shall occur when the Hardware and Software for the System, Documentation Deliverables and Services have been furnished, delivered, installed and tested.

- B.** Notwithstanding the acceptance testing of the System set forth in Section 13.A above, if Buyer commences use of any portion of the System for its intended purpose, other than for the express purpose of training or testing as mutually agreed upon by Seller and Buyer in writing, prior to System Acceptance, the applicable portion of the System shall be deemed accepted by Buyer. The final payment for the applicable portion of the System shall be due and payable upon such acceptance. The Warranty Period for the applicable portion of the System put into use together with the associated installation Services shall be deemed to have commenced concurrently with the use of the applicable portion of the System for its intended purpose. The use of the applicable portion of the System for its intended purpose shall be deemed to have occurred when Buyer commences to use and rely primarily on the applicable portion of the System for its communications.
- C.** As used in the Contract, the term "Acceptance Date" shall mean and "Acceptance" of the System shall be deemed to occur upon the earlier of: (1) the date on which the System is deemed accepted pursuant to subsection (A) above, or (2) the date on which the System is deemed accepted pursuant to subsection (B) above.

SECTION 12. WARRANTIES:

A. Hardware and Services

Seller warrants for a period of twelve (12) months from the Acceptance Date for the mobile and portable radios ("Subscriber Units") and for a period of twelve (12) months from the Acceptance Date for all other Hardware (hereinafter referred to as the "Warranty Period"), that the Hardware and installation Services furnished by Seller under this Contract shall be free from defects in material and workmanship and shall conform to the Contract specifications. Any and all claims for breach of this warranty are conclusively deemed waived unless made within the Warranty Period.

SECTION 13. INTERFERENCE:

Radio system coverage and performance are subject to degradation due to anomalous propagation and interference beyond the reasonable control of Seller. Seller cannot be responsible for degradation or disruption of Service caused by operation of other radio systems or by natural phenomena or other interference over which the Seller has no reasonable control. In the event of a case of degradation due to interference by an outside party, Seller will provide engineering support to Buyer at Buyer's expense to support Buyer's efforts in resolving the interference issue with the outside party.

SECTION 14. LIMITATION OF LIABILITY:

- A.** Except for Seller's liability to third parties for its willful misconduct or negligent acts or omissions as more particularly described in the Indemnification Section of this Contract, the total liability of Seller, including its subcontractors or suppliers, for all claims of any kind for any loss or damage, whether in contract, warranty, tort (including negligence or infringement), strict liability or otherwise, arising out of, connected with, or resulting from the performance or non-performance of this Contract or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Service, shall not exceed the amount paid by Buyer allocable to the particular item of Hardware, Software or Service which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the Warranty Period.
- B.** IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY OR OTHERWISE, SHALL SELLER, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE HARDWARE OR ANY

OTHER EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR DOWNTIME COSTS.

- C. Any action for any claim of any kind for any loss or damages arising out of, connected with, or resulting from the performance, non-performance or breach of the Contract, or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Services, shall be commenced within one (1) year after the cause of action accrued or it shall be deemed waived or barred.
- D. The provisions of this Section, LIMITATION OF LIABILITY, shall apply notwithstanding any other provisions of this Contract or any other agreement.
- E. The provisions of this Section, LIMITATION OF LIABILITY, shall survive the expiration or termination of this Contract.

SECTION 15. NOTICES:

Notices and other communications between the parties shall be transmitted by facsimile or in writing to the parties at the addresses set forth below and shall be deemed effective upon receipt by the receiving party. Either party may change its address by giving notice in writing thereof to the other party.

IF TO BUYER:

Attn:
E-mail Address:

WITH A COPY TO:

Attn:
E-mail Address:

IF TO SELLER:

Eastern Communications, Ltd.
48-14 36th Street
Long Island City, N.Y. 11101

Attn: Michael Wolf
E-mail Address: msw@easterncommunications.com

SECTION 16. TERM:

The term of this Contract shall commence upon the Effective Date of this Contract and shall run through the end of the Warranty Period (as defined in the Warranty Section) except as otherwise provided in this Section. The term of the Software license is set forth in the Software License Agreement.

SECTION 17. ENTIRE AGREEMENT:

This Contract together with all Exhibits and Seller's Proposal which is incorporated herein by reference constitute the entire understanding and agreement between Buyer and Seller concerning the subject matter hereof and any negotiations, prior discussions, representations, promises, understandings, proposals, agreements, warranties, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on either party. SELLER DOES NOT ASSUME ANY OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THE SALE OF THE SYSTEM OTHER THAN THOSE EXPRESSLY STATED IN THIS CONTRACT AND DOES NOT AUTHORIZE ANY PERSON (INCLUDING SELLER'S MANUFACTURER'S REPRESENTATIVES AND SALES AGENTS) TO ASSUME FOR SELLER ANY OTHER OBLIGATIONS OR LIABILITIES.

SECTION 18. AMENDMENT:

No modification or amendment or other change to this Contract shall be binding on either party unless set forth in a writing signed by both Buyer and the Project Manager or other authorized representative of Seller.

SECTION 19. SEVERABILITY:

The invalidity, in whole or in part, of any Section or part of any Section of this Contract shall not affect the validity of the remainder of such Section or the Contract.

SECTION 20. WAIVER:

No term of this Contract may be waived except in a writing signed by the party waiving enforcement. No term of this Contract shall be deemed to be waived by reason of any failure to previously enforce such term.

IN WITNESS WHEREOF, Buyer and Seller have executed this Contract.

BUYER

WITNESS:

By: _____

Name: _____

Witness Name: _____

Title: _____

Date: _____

SELLER

EASTERN COMMUNICATIONS, LTD.

WITNESS:

By: _____

Name: _____

Witness Name: _____

Title: _____

Date: _____