

FIRST AMENDED CARRIER FACILITIES AGREEMENT

THIS FIRST AMENDED CARRIER FACILITIES AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2025, by and between the City of Republic Missouri (“City”) and Empire District Industries, Inc., which has d/b/a EMPIREconnect (“Empire”), a Delaware corporation with principal offices at 602 Joplin Street, Joplin, Missouri.

WHEREAS, City is a municipal corporation and Charter City located in Greene County, Missouri, and

WHEREAS, Empire is a for-profit foreign corporation authorized to do business in the State of Missouri, and

WHEREAS the Parties previously entered into and have continued to perform services and obligations as described in the Carrier Facilities Agreement dated March 12, 2009 and as modified via addendum on April 1, 2009, regarding fiber optic telecommunications facilities, and

WHEREAS, laws and circumstances change over time, and there has been no update to the Carrier Facilities Agreement dated March 12, 2009 since modified via addendum on April 1, 2009, and

WHEREAS, the Parties desire to update and clarify terms and conditions to stay consistent with applicable law and current practices,

NOW, THEREFORE, the City and Empire agree as follows:

1. Final Written Agreement: The Parties agree that this is the final written Agreement and supersedes all previous agreements or understandings between them regarding the subject matter described herein.
2. Agreement Documents: The Agreement shall consist of the following:
 - a. These numbered narrative provisions beginning with the caption “First Amended Carrier Facilities Agreement;” and
 - b. The “Liberty Connect Empire District Industries, Inc. Sales Order 2004-500-201;” attached and incorporated herein as **Exhibit A**; and
 - c. The “Carrier Facilities Agreement” dated March 12, 2009 and labelled CFA#2009-500; 2009-1012, as modified by the “Contract Addendum” dated April 1, 2009 modifying paragraphs 22 and 23; attached and incorporated herein as **Exhibit B**.
3. Incorporation, Inconsistencies and/or Conflicts: The terms of this Agreement include all the provisions and requirements contained within

the Agreement Documents, incorporated herein as Exhibits A and B as described above in section 2. To the extent that there are conflicts or inconsistencies among the Agreement Documents, these numbered narrative provisions, as described above in section 2(a), shall govern over all other Agreement Documents, including those described above in section 2(b) and 2(c). All Agreement Documents, and all terms, conditions, or provisions, if any, that cannot be reconciled with the requirements set forth in these numbered narrative provisions beginning with the caption "First Amended Carrier Facilities Agreement, and as described above in section 2(a), are disclaimed by the Parties.

4. Priority of Emergency Services: Empire acknowledges that the City is a public entity which provides emergency, law enforcement, and health and related services to the people and community which it serves. In the event of service disruption(s) within and around the City, Empire shall endeavor to prioritize installing/restoring services at emergency service locations, such as but not limited to, for example: emergency responders; law enforcement; water/wastewater treatment/processing facilities; and such other departments or facilities as determined by Empire in its discretion determines should be prioritized consistent with this provision. The Parties will coordinate with each other regarding service needs and priorities; however, the City acknowledges that Empire shall have discretion in determining methods and specific priority of installation/restoration of service efforts.
5. Foreign Corporation Authority: Empire represents that it is in compliance with laws regarding the authority of foreign corporations to conduct business in the State of Missouri, such as but not limited to as described in § 351.570, RSMo. and § 351.572, RSMo., to the extent applicable.
6. Unauthorized Workers: Empire represents that it is in compliance with laws regarding the use of unauthorized workers in the State of Missouri, such as but not limited to as described in § 285.525, *et. seq.* to the extent applicable.
7. Anti-Discrimination Against Israel Act: The Parties agree that no written certificate of compliance with the Anti-Discrimination Against Israel Act as described at § 34.600, RSMo. *et. seq.*, is required based on the total potential monetary value threshold set forth by that Act. If for any reason such a certificate is required, then execution of this Agreement by Empire shall be construed as affirmatively certifying that Empire is not currently engaged in and shall not, for the duration of the Agreement, engage in a boycott of goods or services from the State of Israel, companies doing

business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or persons or entities doing business in the State of Israel.

8. Open Records Laws: The Parties understand that records retained by public entities, such as the City, may be subject to state or federal law requiring closure or disclosure of public records. This Agreement shall not be construed to mandate or in any way require closure or disclosure of any record. Records required to be closed pursuant to applicable law shall be closed without regard to this Agreement. Permissive closure of records shall be in the sole discretion of the City. The closure or disclosure of records, including and not limited to records related to this Agreement, and regardless of intent in determining to close or disclose records, shall not under any circumstances entitle Empire to damages or relief of any kind.
9. Subpoenas, Discovery, and Court orders. The Parties understand that records retained by any entity, including the Parties, may be subject to disclosure pursuant to subpoena, the rules of discovery, or court orders. This Agreement shall not be construed to require any Party to provide notice of, or to oppose in any way, any subpoena, discovery, court order, or similar judicial process calling for disclosure of records, including records related to this Agreement.
10. Public Entity and Officer Immunity and Defenses: In no event shall the language or requirements of this Agreement constitute or be construed as a waiver or limitation of any rights or defenses with regard to applicable sovereign, governmental, official, or any individual immunities and any other protections or defenses as provided by federal and state constitutions, statutes, and laws. The procurement and maintenance of insurance, including any required by the Agreement, shall not be construed as waiving any such defense otherwise available. If any insurance is determined, against the intent of the Parties, to provide coverage of a type that would in effect waive any public entity or officer immunity or defense, such is disclaimed.
11. Jurisdiction and Venue: The Agreement shall be governed by the laws of the State of Missouri and forum and venue as to any disputes related to this Agreement shall be Circuit Court of Greene County, Missouri.
12. Liability: Nothing in the Agreement shall be construed to create any liability on behalf of the City for any direct, special, indirect, liquated, consequential damages, or attorney fees.
13. Indemnification: Missouri law does not allow a governmental entity to

indemnify a private company. The City will not defend, indemnify, or hold harmless Empire, its officers, agents, successors, assigns, or any other individual or entity, and the Agreement shall not be construed to require any such obligation.

14. Litigation: Nothing in the Agreement shall be construed to waive the right to resolve disputes through litigation nor limit the jurisdiction of the State of Missouri.
15. Attorney Fees: No attorney fees shall be assessed against the City for any matter related to this Agreement.
16. Independent Contractor: The Parties to this Agreement are separate and independent from each other. This Agreement shall not be construed as creating any type of joint venture or partnership between the Parties. This Agreement shall not be construed as an agreement for the benefit of any third party, including, but not limited to, that this Agreement does not create any employment relationship of any kind, including any between any individual who provides services under this Agreement, and no such individual shall be entitled to wages or employment benefits or compensation of any kind, including any pursuant to any employment law liability theory, such as, but not limited to: the Fair Wage and Labor Standards Act of 1938, and as subsequently amended, all Missouri statutory laws, including Workers' Compensation, or common law.
17. Benefits: Empire and the individuals through whom it provides services contemplated by the Agreement are not employees of the City and will not be entitled to any of the benefits established for the employees of the City, including that no part of this Agreement will be construed to require coverage of such individuals by the City's workers' compensation plan or carrier.
18. Conflict of Interest: No salaried officer or employee of the City, and no elected official or member of the City Council, shall have a financial interest, direct or indirect, in the Agreement.
19. Discrimination: The Parties shall not unlawfully discriminate against any employee or participant in the performance of the duties, responsibilities, and obligations under this Agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.
20. Execution: The Parties agree that signatures transmitted by facsimile or scanned and emailed shall have the legal effect of original signatures. In addition to facsimile or scanned and email signatures, this Agreement may be executed by the Parties in accordance with the applicable version of the

Uniform Electronic Transactions Act ("UETA") and the Electronic Signatures in Global and National Commerce Act ("ESIGN"). The Parties hereto agree to conduct transactions by electronic means and hereby affirmatively consent to use electronic records to memorialize and execute this Agreement and any alterations thereto. At the request of any party, the Parties shall promptly exchange executed original counterparts of this Agreement or any amendment. Empire expressly acknowledges that, regardless of the method of delivery of executed documents, the City can only execute such to the extent authorized by law, and regardless of any expressed opinion, representation, writing, or signature, by any individual or entity purporting to act on behalf of the City, execution of the Agreement and any addendum can only be done by the City to the extent authorized by Missouri law, including that the City can only approve such as authorized by its governing body, either directly or through its duly authorized agent of record.

21. Headings: The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
22. Whereas Clauses: The "Whereas" clauses stated above are incorporated herein by reference.
23. Assignment: This Agreement may not be assigned by any Party without the prior written consent of the other parties.
24. Severability Clause: A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part, of this Agreement shall not affect the validity of the remaining parts to this Agreement.
25. Contingent Upon Funds and Approval: This Agreement is contingent upon the City having sufficient funds available for the subject of this Agreement. Empire shall have no right of action against City in the event City is unable to perform its obligations under this Agreement as a result of insufficient funds. Further, this Agreement and all payments thereunder are subject to and conditioned upon approval by City Council.
26. Limits of Liability and Contribution: The Agreement shall not be construed to limit liability or prevent Parties from seeking full contribution as to any damages, regardless of how categorized. This includes that the Parties are not limited to liquidated damages.
27. Markups, "Overtime," and Service Fees: The City shall not pay markups, "overtime," service fees, or similar increases, nor charges of any kind that are premised on reimbursable costs or other differently authorized fees.

For illustrative purposes only, if an Agreement Document purports to authorize Empire assessing reimbursement for reasonably necessary costs that are paid up-front by Empire, then Empire shall only be reimbursed up to the amounts actually expended by Empire, without additional markup or service fee. For additional example, if Empire provides services that, if provided by an employee, would qualify as professional exempt services within the meaning of Fair Labor Standards Act, under no circumstances will the City pay “overtime” or increased rates for staff used by Empire, regardless of whether or not Empire authorizes its own staff to work more than eight hours in a day, or on weekends, or after ordinary business hours. Further, staff used by Empire to provide services under the Agreement will not be construed as dual, joint, or statutory employees, or employees of the City of any kind or for any purpose.

28. Disputed Charges, Late Fees, Interest: In the event of disputed charges, the City shall provide reasonable notice to Empire of the dispute. Under no circumstances will this be construed to require that the City provide notice within less time than the due date for the invoice containing the disputed charge(s). No late fees, attorney fees, or collection costs of any kinds shall be assessed against the City; except that if the Parties do not resolve a disputed charge within 45 days of the City having provided notice of the dispute to Empire, then Empire may start assessing interest from that point forward of the lesser of either 1.5% percent (1.5%) per month or the maximum lawful rate under applicable law.
29. Notices: Any notice, request or demand provided for in this Agreement shall be deemed to have been given when the same shall have been personally delivered to the following offices or deposited in the United States Mail, Registered or Certified, with postage thereon prepaid as follows:

City of Republic, Missouri: 4221 S. Wilson’s Creek Blvd.
Republic, Missouri 65738

Empire: 602 Joplin Street
Joplin, Missouri 64801.

IN WITNESS WHEREOF, the Parties have caused this to be signed by their duly authorized representatives, the day and year set forth below.

EMPIRE

_____ Dated: _____
Signature

Printed Name and title

City of Republic, Missouri

_____ Dated: _____
Signature

Lisa Addington, Interim City Administrator

Attest: Laura Burbridge, City Clerk

Approved as to form:

Damon Phillips, Interim City Attorney