

EMPIRE

2009-1012

CARRIER FACILITIES AGREEMENT

THIS AGREEMENT is entered into on the 12th day of March, 2009, by and between EMPIRE DISTRICT INDUSTRIES, INC. doing business as EMPIREconnect, a Delaware corporation with principal offices at 602 Joplin Street, Joplin, Missouri (hereinafter referred to as "EMPIRE") and the customer identified below (hereinafter referred to as "Customer") for the provision of capacity on certain fiber optic telecommunications facilities described in Carrier Facilities Descriptions attached hereto and accepted by EMPIRE under this Agreement, subject to the terms and conditions contained in this Agreement.

Customer agrees that this Agreement shall not be binding on EMPIRE unless accepted by an Authorized Representative of EMPIRE.


WITNESSETH:

1. INCORPORATION OF DOCUMENTS AND CONTROLLING PROVISIONS: This Agreement consists of all the terms and conditions contained herein, in the Carrier Facilities Descriptions that conform hereto and in documents incorporated herein specifically by reference; it constitutes the complete and exclusive statement of agreements and understandings between the parties and supersedes all proposals and prior agreements (oral or written) between the parties relating to FACILITIES (as defined in Section 5) provided hereunder. In the event any provision of this Agreement conflicts with any applicable statute, rule or order of any governmental unit or regulatory body, or tariff filed by EMPIRE, then such statute, rule, order or tariff shall control.

2. CARRIER FACILITIES DESCRIPTIONS: Facilities requested by Customer hereunder shall be requested on EMPIRE Carrier Facilities Description forms in effect from time to time. Each Carrier Facilities Description shall reference this Agreement by, Carrier Facilities Agreement under number ("CFA#") and when accepted in writing by EMPIRE shall become a part of this Agreement only to the extent that it specifies the type of facilities, quantity of circuits, originating and terminating cities, Requested Availability Date, Facilities Commitment Period, charges and other information necessary for EMPIRE to provide the Facilities to Customer. Any other terms and conditions that are typed, printed or otherwise included in any Carrier Facilities Description shall be deemed to be solely for the convenience of the parties.

3. EFFECTIVE DATE AND APPLICATION OF THIS AGREEMENT: This Agreement shall be effective between the parties as of the date first written hereon. This Agreement shall apply exclusively to Facilities provided to Customer pursuant to Carrier Facilities Descriptions identified with this Agreement and accepted by EMPIRE, for the Facilities Commitment Periods stated therein and any automatic extensions thereof. EMPIRE reserves the right not to accept a Carrier Facilities Description under this Agreement at any time.

4. FACILITIES COMMITMENT PERIOD, STATE OF FACILITIES AND AUTOMATIC EXTENSION: The Facilities Commitment Period for the Facilities described in a Carrier Facilities Description shall commence on the Requested Availability Date or the date upon which the Facilities first becomes available, in conformity with technical standards, whichever is later ("Start-Up Date"). Upon expiration, each

Initial: 

Facilities Commitment Period for Facilities shall automatically be extended to a date specified in a written notice of termination by either party not less than thirty (30) days after delivery of said notice to the other party, and the charges for Service during any such extension shall be the then current EMPIRE month-to-month charges for comparable facilities not to exceed one hundred twenty five percent (125%) of the Facilities charges during the Facilities Commitment Period.

5. SERVICE TO BE PROVIDED: As specified in Carrier Facilities Descriptions accepted by EMPIRE hereunder, EMPIRE will provide Customer with: (A) the installation, operation and maintenance of fiber optic facilities capable of providing the capacity requested by Customer for Customer to provide telecommunications service between EMPIRE-designated termination points specified in the Carrier Facilities Description (hereinafter "Facilities"), (B) Ancillary Services, all as may be requested by Customer and accepted by EMPIRE in accordance with the terms hereof. EMPIRE's liability for delays in installation, testing and operation of Facilities, and Ancillary Services is limited in Sections 15, 16, 17 and 18 of this Agreement.

6. CUSTOMER RESPONSIBILITIES: Customer has sole responsibility for installation, testing and operation of facilities, services and equipment other than that specifically provided by EMPIRE as part of the Facilities described in a Carrier Facilities Description ("Customer Facilities"). In no event will the untimely installation or non-operation of Customer Facilities (including Local Access and customer premise equipment) relieve Customer of its obligation to pay charges for Facilities or Ancillary Services as of the Start-up Date.

7. ACCESS TO EQUIPMENT AT CUSTOMER INTERCONNECT LOCATIONS: EMPIRE and Customer will agree on Customer Facilities requirements for effective interconnection at Customer's premises. EMPIRE shall perform interconnection services including cable splicing, if necessary, and for such purpose, EMPIRE shall be given access to Customer's premises and Customer Facilities at reasonable times after reasonable notice to Customer for the purpose of installing, maintaining, modifying or removing the Facilities or for purposes of ensuring quality control and such access shall not be unreasonably denied. Without in any way limiting the foregoing, EMPIRE shall have access to Customer's premises as necessary to install multiplex cards in its own equipment to enable EMPIRE to further utilize its fiber optic network.

8. ADDITIONAL CHARGES: Customer acknowledges and understands that all charges stated in Carrier Facilities Descriptions are computed by EMPIRE exclusive of any applicable federal, state or local use, excise, gross receipts, sales and privilege taxes, duties, fees or similar liabilities (other than general income or property taxes) ("Additional Charges"), whether charged to or against EMPIRE or Customer because of the Facilities furnished by EMPIRE, and that such Additional Charges shall be paid by Customer in addition to all other charges provided for herein.

9. PAYMENT OF CHARGES: Payment for all pro-rated monthly recurring charges (charges for monthly Service provided for less than a calendar month), Installation and other non-recurring charges shall be due on the first day of the month following the month in which the Facilities was provided. Payment for all monthly recurring charges for full months during which Facilities or Ancillary Services are to be provided shall be due in advance on the first day of the month. EMPIRE hereby reserves the right to require Customer's non-refundable payment of up to one hundred percent (100%) of total EMPIRE Facilities Installation Charges indicated in any Carrier Facilities Descriptions accepted hereunder, due not less

than forty-five (45) days preceding the Requested Facilities Date for the corresponding Facilities or concurrent with EMPIRE's acceptance of Customer's request for such Facilities, whichever is shorter ("Installation Advance"). Customer agrees to remit payment to EMPIRE at the remittance address indicated on EMPIRE invoices to Customer. In the event Customer fails to pay EMPIRE's invoice in full or remit payment to the proper address on or before thirty (30) days after the due date, Customer shall also pay a late fee in the amount of the lesser of one and one-half percent (1 1/2%) of the unpaid balance per month or the maximum lawful rate under applicable state law.

10. ROUTINE MAINTENANCE: EMPIRE shall perform all routine maintenance of its equipment located at Customer's premises.

11. NON-ROUTINE MAJOR REPAIRS: EMPIRE shall repair or replace its equipment in the event of failure at its own cost, unless said failure is due to the negligence or misuse by Customer or unless said failure is due to a casualty loss at Customer's premises in which event Customer shall reimburse EMPIRE for the full cost of said repair or replacement.

12. SUSPENSION OF SERVICE: In the event payment in full is not received from Customer by the due date, EMPIRE shall have the right after giving Customer ten (10) days notice to suspend: (i) all or any use of the Facilities or (ii) upon subsequent notice, all or any additional portions of the Facilities to Customer; and, in either event, until such time as Customer has paid in full all charges then due, including any late fees as specified herein. If Customer fails to make such payment by a date determined by and acceptable to EMPIRE, Customer will be deemed to have canceled the Facilities suspended effective the date of such suspension.

13. CANCELLATION: (A) After a Carrier Facilities Description is accepted by EMPIRE, Customer may cancel all or a portion of the Facilities described therein if Customer provides thirty (30) days advance written notice of cancellation to EMPIRE. In such case, Customer shall pay to EMPIRE all charges for Facilities provided (without the right of set-off against non-refundable charges) through the effective date of such cancellation plus a cancellation charge determined as follows: (i) if the Facilities Commitment Period for the cancelled Facilities is one (1) year or more and such cancellation becomes effective prior to completion of the first year of the Facilities Commitment Period, then the cancellation charge shall be an amount equal to the balance of the monthly Facilities charges that otherwise would have become due for the unexpired portion of the first year of the Facilities Commitment Period plus twenty-five percent (25%) of the balance of the monthly Facilities charges for the remainder of the Facilities Commitment Period beyond the first year; and (ii) if the Facilities Commitment Period for the cancelled Facilities is one (1) year or more and such cancellation becomes effective after completion of the first year of the Facilities Commitment Period, then the cancellation charge shall be an amount equal to twenty-five percent (25%) of the balance of the monthly Facilities charges that otherwise would have become due for the remainder of the Facilities Commitment Period; it is agreed that EMPIRE's damages in the event of a cancellation shall be difficult or impossible to ascertain. The provision for a cancellation charge in this subsection is intended, therefore, to establish liquidated damages in the event of a cancellation and is not intended as a penalty. (B) In the event of any cancellation described in Section 13(A), Customer shall also pay EMPIRE an amount equal to any termination charges, expenses, fees or penalties incurred by EMPIRE due to cancellation of Facilities plus any other reasonable costs, expenses or additional charges incurred in accordance with

Sections 6 and 8; (C) the foregoing to the contrary notwithstanding, and upon thirty (30) days prior written notice, either party shall have the right, without cancellation liability, to cancel: (i) an affected portion of the Facilities, if EMPIRE is prohibited by a court of law or governmental authority from furnishing said portion for any reason, or (ii) an affected portion of the Facilities, if any material rate or term contained herein is substantially changed by order of the highest court of competent jurisdiction to which the matter is appealed, the Federal Communications Commission, or other local, state or federal government authority.

14. FORCE MAJEURE: If EMPIRE's performance of this Agreement or any obligation hereunder is prevented, restricted or interfered with by causes beyond its reasonable control including but not limited to acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more said governments, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, then EMPIRE shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference. EMPIRE shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or cease. If EMPIRE's failure of performance by reason of force majeure specified above shall be for thirty (30) days or less, then Facilities affected thereby shall continue as is but, upon receipt of a Customer request directed to EMPIRE's designated Representative, a prorata credit of the charges for the affected Facilities and Ancillary Services shall be made; if for more than thirty (30) days, then said prorata credit shall continue and the affected Facilities may be cancelled by either party on thirty (30) days prior written notice without liability other than Customer's liability for payment for Facilities provided prior to cancellation.

15. NATURE OF AGREEMENT: This Agreement is in the nature of a lease of capacity for the term of the Facilities Commitment Period including any extensions. EMPIRE shall at all times during the Facilities Commitment Period retain ownership of the Facilities subject only to Customer's rights to utilize capacity thereon as provided in Carrier Facilities Descriptions for herein. This Agreement does not constitute an assignment or transfer by EMPIRE to Customer of any severable or identifiable component of the fiber optic cables or associated equipment over which capacity will be provided. EMPIRE reserves the right, in its sole discretion, to apportion or reapportion the use of circuits on its fiber optic network between and among its customers, including Customer, subject only to its obligations to provide the Facilities specified in the Carrier Facilities Descriptions.

16. SERVICE WARRANTY: (A) EMPIRE warrants that it will provide the Facilities to Customer in accordance with prevailing telecommunications industry standards (hereinafter "Technical Standards"). EMPIRE will use reasonable efforts under the circumstances to remedy any delays, interruptions, omissions, mistakes, accidents or errors in the Facilities or Ancillary Services (hereinafter "Defect" or "Defects") and restore same in accordance with the Technical Standards. Following the Start-up Date, if Customer reports a Defect to EMPIRE and EMPIRE is unable to restore the affected Facilities as warranted within one-half hour of such report, Customer shall, upon request directed to EMPIRE's designated Representative, receive a credit at the rate of 1/1440 of the monthly charges

applicable to the affected Facilities for each half hour or major fraction hereof in excess of the first half hour that the affected Service fails to conform to the Technical Standards. If a portion of the Facilities fails to conform to the Technical Standards over a period of thirty (30) days after written notice thereof by Customer to EMPIRE, Customer may terminate the affected portion of the Facilities without a cancellation charge. Customer's credit and termination rights shall not apply, however, in the event any Defect is caused or contributed to, directly or indirectly, by any act or omission of Customer or its customers, affiliates, agents, representatives, invitees, licensees, successors or assigns.

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT OF ANY DEFECT IN THE FACILITIES WHATSOEVER, NEITHER EMPIRE NOR ANY THIRD PARTY PROVIDER OR OPERATOR OF FACILITIES EMPLOYED IN THE PROVISION OF THE FACILITIES SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER.

17. GENERAL LIMITATION OF LIABILITY: Except as otherwise specifically provided herein, EMPIRE will not be liable for consequential damages or for loss of use, loss of revenue or loss of profit as a result of any Defect at any time during the term of this Agreement including any extensions.

18. EMPIRE NOT GUARANTOR: EMPIRE is not the manufacturer or vendor of the composite fiber optic cable or associated equipment over which the Facilities will be provided under this Agreement. EMPIRE does not make any representation, warranty, or covenant, express or implied with respect to the design, condition, durability, suitability, fitness for use or merchantability thereof and shall not be responsible for any patent or latent defects therewith.

19. INDEMNITY: In the event parties other than Customer (e.g., Customer's switched or non-switched service customers) shall have use of the Facilities through Customer, then Customer agrees to forever indemnify and hold EMPIRE and any third party provider or operator of facilities employed in provision of the Facilities harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said parties, arising out of or relating to any Defect in the Facilities.

20. NOTICES: Notices under this Agreement shall be in writing and delivered to the person identified as the "Party to Receive Notices" at the Full Business Addresses of the parties as they appear herein or as otherwise provided for by proper notice hereunder and the effective date for any notice under this Agreement shall be the date of delivery of such notice, not the date of mailing.

21. USE OF FACILITIES: Upon EMPIRE's acceptance of a Carrier Facilities Description hereunder, EMPIRE will provide the Facilities specified therein to Customer upon the condition that the Facilities shall not be used for any unlawful purpose.

22. PROPRIETARY INFORMATION: Customer understands and agrees that the terms and conditions of this Agreement and all documents referenced herein are confidential as between Customer and EMPIRE and shall not be disclosed by Customer to any party other than the directors, officer, and employees of Customer or agent's of Customer who have specifically agreed to nondisclosure of the terms and conditions hereof. Violation by Customer or its agents of the foregoing provision

shall entitle EMPIRE, at its option, to discontinue providing the Facilities to Customer without further obligation or liability to Customer.

23. INDUCEMENT: As a material inducement to EMPIRE to enter into this Agreement, Customer represents and warrants to EMPIRE that Customer's principal business is that of a communications carrier/reseller of switched access and private line telecommunications services for its own use, the use of select customers or to the general public. Breach of the foregoing warranty shall entitle EMPIRE, at its option, to discontinue providing the Facilities to Customer without further obligation or liability to Customer.

24. ASSIGNMENT TO EMPIRE AFFILIATES: EMPIRE reserves the right to assign all of its rights, duties and obligations under this Agreement to an affiliate of EMPIRE at any time during the term of this Agreement including any extensions, without liability to Customer and without causing cancellation of the Agreement. EMPIRE shall notify Customer in writing of any such assignment within forty-five (45) days thereof.

25. GENERAL PROVISIONS: (A) Customer will execute such other documents, provide such information and affirmatively cooperate with EMPIRE, all as may be reasonably required by EMPIRE and relevant to providing the Facilities. (B) The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or conditions of this Agreement or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this Agreement and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing (C) The provision of the Facilities will not create a partnership or joint venture between the parties or result in a joint communications service offering to the customers of either EMPIRE or Customer; (D) In the event suit is brought or an attorney is retained by EMPIRE to enforce the terms of this Agreement or to collect any moneys due hereunder or to collect money damages for breach hereof, it shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith; (E) No subsequent agreement between Customer and EMPIRE concerning the Facilities shall be effective or binding unless it is made in writing by an authorized representative of Customer and Authorized Representative of EMPIRE, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein; (F) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns, provided, however, that Customer shall not assign or transfer its rights or obligations under this Agreement without the prior written consent of EMPIRE, which consent shall not be unreasonably withheld, and further provided that any assignment or transfer without such consent shall entitle EMPIRE to terminate this Agreement at its option upon ten (10) days prior written notice; (G) This Agreement shall be a contract between EMPIRE and Customer and the terms hereof shall be construed under the laws of the State of Missouri without regard to choice of law principles; (H) This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings relating to the subject matter hereof; (I) If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part to the

extent necessary to render such part valid and enforceable; (J) The terms and provisions contained in this Agreement that by their sense and context are intended to survive the performance thereof or hereof by either or both parties hereto shall so survive the completion of performance and termination of this Agreement, including, without limitation, provisions for indemnification and the making of any and all payments due hereunder; (K) Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement; (L) Words having well-known technical or trade meanings shall be so construed, and all listings of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably apply in the interpretation of this Agreement.

Nothing in this Agreement shall be construed as obligating EMPIRE to do any act, or perform any service, that would subject EMPIRE to regulation as a telecommunications corporation providing telecommunications services under the Missouri Public Service Commission Law or as a communications carrier under the Federal Telecommunications Act.

Customer agrees that any addition, deletion or modification to the terms and conditions contained in this agreement shall not be binding on EMPIRE until accepted by an Authorized Representative of EMPIRE.

IN WITNESS WHEREOF, the parties have executed this Carrier Facilities Agreement on the date first written above.

EMPIRE DISTRICT INDUSTRIES, INC.

CITY OF REPUBLIC, MISSOURI
(Customer Name)

By: Kent Medlin
(Empire Representative Name)

By: Toby Schaefer
(Customer Representative Name)

Full Business Address:

Full Business Address:

602 Joplin Street
Joplin, Missouri 64801

213 North Main Ave.
Republic, Missouri 65738

Attn: Tina Gaines
(Party to Receive Notices)
Tel. No.: 417-625-6121

Attn: Jim Krischke
(Party to Receive Notices)
Tel. No.: 417/732-3110

Billing Address:
SAME AS ABOVE

Billing Contact: Brandie Cutler
Tel. No. 417/732-3131

ACCEPTANCE:

By: Kelly Walters
(Authorized Representative)

By: Jim Krischke
(Authorized Representative)

Kelly Walters
(Signature)

[Signature]
(Signature)

Vice President
(Title)

City Administrator
(Title)

(Date)

4-1-09
(Date)

COMMENTS: One Page Contract Addendum attached.

Approved as to Form

[Signature]
City Attorney

CONTRACT ADDENDUM

WHEREAS, the City of Republic and Empire District Industries, Inc., agree to amend Paragraphs 22 & 23 of the contract for the carrier facilities agreement (CFA) to the City of Republic.

NOW THEREFORE IT IS HEREBY AGREED by and between the City of Republic and Empire District Industries, Inc., that the contract entered into by the aforesaid parties for the providing of carrier services to the City of Republic be amended by adding the sentence setout below to Paragraph 22 and the sentence setout below to Paragraph 23 to read as follows:

22. PROPRIETARY INFORMATION: Any information that becomes a public record as defined in Revised Missouri Statutes Chapter 610 shall not be subject to this paragraph except as specifically authorized in Chapter 610.

23. INDUCEMENT: The parties recognize that Customer is a government entity principally engaged in providing government services to the citizens of the City of Republic, Missouri, with the need to use the services of EMPIRE in its day to day municipal operations.

City of Republic Missouri:



Jim Krischke, City Administrator

Date: 4-1-09

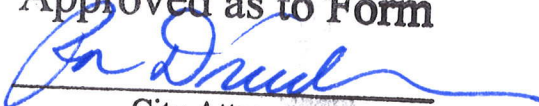
Empire District Industries, Inc.:



Kelly Walters, Vice President

Printed Name and Title

Approved as to Form



City Attorney