

## **REIMBURSEMENT AGREEMENT**

This AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between AT&T Corp., on behalf of itself and its affiliated companies, which has a place of business at 3001 Cobb Parkway, Atlanta, GA 30339 (“AT&T”) and City of Republic, which has a place of business at 213 N. Main, Republic, MO 65738. (“City”).

### **WITNESSETH:**

**WHEREAS**, AT&T is a grantee of an easement that is recorded in Deed Book 1981, Page 379, County of Greene, State of Missouri (the “Easement”); and

**WHEREAS**, the Easement and any AT&T buried cable and associated facilities that have been placed within the Easement will be adversely impacted by City’s proposed construction within the Easement strip; and

**WHEREAS**, City will reimburse AT&T for AT&T’s cost of protecting, relocating and/or lowering a section of the AT&T Springfield-Joplin Cable between AT&T Markers 70 and 71 (the “Cable”);

**NOW THEREFORE**, the parties agree as follows:

1. AT&T will provide engineering, plant protection, labor, materials, and supervision necessary to protect, relocate and/or lower the Cable, as deemed necessary in AT&T’s sole judgment (the “Work”). The Work is more particularly described in attached Exhibit A. The starting date will be set by the parties so that the Work can be completed as expeditiously as practicable.
  
2. City has heretofore paid AT&T the sum of Five Thousand Dollars (\$5,000) for preliminary detailed engineering designs of the Work (the “Engineering Designs”), which is included in the cost of the Work. City shall pay AT&T the actual cost of the Work, which is estimated to be \_\_\_\_\_ Dollars (\$\_\_\_\_\_), as shown on attached Exhibit B. The estimated cost less the Five Thousand Dollars (\$5,000) heretofore paid for the Engineering Designs shall be paid by City upon execution of this Agreement. City acknowledges that the estimated cost does not include rock removal costs and that if rock removal is required, the actual cost may greatly exceed the estimated cost. AT&T shall notify City if at any time the anticipated cost of Work is expected to exceed the estimate by more than 30%. In such event, the City shall have the option of terminating this agreement and rerouting their utilities so as to avoid any impact upon AT&T referenced easement. Upon completion of the Work, AT&T will send a final invoice to City for the actual cost of the Work. If the actual cost is greater than the estimated amount, City will pay to AT&T the difference within thirty (30) days from the invoice date. If the actual cost is less than the estimated amount, AT&T shall reimburse City the difference within sixty (60) days from the invoice date. [City further acknowledges that its proposed construction will require AT&T to relocate all or part of the Cable and to change the location of the Easement. Accordingly, City will grant to AT&T a replacement easement by executing and delivering to AT&T, concurrently with the

execution of this Agreement, a Grant of Communication Systems Right-of-Way and Easement in the form of attached Exhibit C.] [After AT&T completes the Work, AT&T will execute and deliver to City a [Partial] Release of Easement] [Partial] Release of Easement - Cable] in the form of attached Exhibit D.]

3. City agrees to exercise all due caution while working near the Cable, in order to prevent damage to the Cable. City agrees:

(a) to notify AT&T by telephone at 1-800 252-1133 at least forty-eight (48) hours prior to performing any construction, demolition or repairs at the Cable location;

(b) not to use at the Cable location any tool, equipment, or the machinery capable of being operated within ten (10) feet of the Cable;

(c) to perform construction, demolition, repair, modifications, additions and any other activities in compliance with all applicable laws and regulations and in a manner that does not interfere with the operations of AT&T; and

(d) not to work at the Cable location without AT&T's prior authorization and AT&T's On-Site Work Force personnel being present during the work.

4. City (the "Indemnifying Party") shall indemnify, defend and hold harmless AT&T (the "Indemnified Party") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) that may from time to time be asserted by third parties against the Indemnified Party because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors. For purposes of indemnifications set forth in this Agreement, "Indemnified Party" means AT&T, its affiliates, subsidiaries, parent, successors and assigns and its and their employees, directors, officers, agents, contractors and subcontractors. The Indemnified Party:

4.1 shall notify the Indemnifying Party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby;

4.2 shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and

4.3 shall reasonably cooperate with the defense.

5. AT&T MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT AS PROVIDED IN SECTION 4, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING , BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS OF CUSTOMERS OR OF OTHER THIRD PARTIES, OCCASIONED BY ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

7. **Insurance**

- a. With respect to each Party's performance under this Agreement, and in addition to each Party's obligation to indemnify, each Party shall:
- i. maintain the minimum insurance coverages and limits required by this Section and any additional insurance and/or bonds required by law.
    1. at all times during the term of this Agreement and until completion of all Work associated with this Agreement, whichever is later; and
    2. with respect to any coverage maintained in a "claims-made" policy, for two (2) years thereafter;
  - ii. require each subcontractor that may perform Work under this Agreement or enter upon the Work site to maintain the same coverages and limits listed in this Section from the time when the subcontractor begins Work, throughout the term of the subcontractor's Work and, with respect to any coverage maintained on a "claims-made" policy, for two (2) years thereafter;
  - iii. procure the required insurance from an insurance company eligible to do business in the State where Work will be performed and having and maintaining a Financial Strength Rating of "A" or better and a Financial Size Category of "VIII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of **Workers' Compensation** insurance, each Party may procure insurance from the state fund of the state where Work is to be performed; and
  - iv. deliver to the other Party certificates of insurance stating the types of insurance and policy limits, ~~with a cancellation clause amended to read as follows: "The issuing company will endeavor to provide at least 30 days advance written notice of cancellation or non-renewal to the certificate holder"~~. Each Party shall deliver such certificates:
    1. prior to commencement of any Work;
    2. prior to expiration of any insurance policy required in this Section; and
    3. for any coverage maintained on a "claims-made" policy, for two years following the term of this Agreement or completion of all Work associated with this Agreement, whichever is later.

- b. The insurance coverage required by this Section includes:
  - i. **Workers' Compensation** insurance with benefits afforded under the laws of the state in which the Work is to be performed and **Employers Liability** insurance with minimum limits of:
    - \$1,000,000 for Bodily Injury – each accident
    - \$1,000,000 for Bodily Injury by disease – policy limits
    - \$1,000,000 for Bodily Injury by disease – each employee
  - ii. **Commercial General Liability** insurance written on Insurance Services Office (ISO) Form CG 00 01 10 01 or later, with minimum limits of:
    - \$2,000,000** General Aggregate limit
    - \$1,000,000** each occurrence limit for all bodily injury or property damage incurred in any one (1) occurrence
    - \$1,000,000 each occurrence limit for Personal Injury and Advertising Injury
    - \$2,000,000** Products/Completed Operations Aggregate limit
    - \$2,000,000** each occurrence limit for Products/Completed Operations
 The total limit may be met with any combination of primary and Umbrella/Excess Liability limits. The **Commercial General Liability** insurance policy must:
    - 1. be primary and non-contributory with respect to any insurance or self-insurance that is maintained by the other Party.
  - iii. **Automobile Liability** insurance with minimum limits of \$1,000,000 combined single limit per accident for bodily injury and property damage, extending to all owned, hired, and non-owned vehicles.

8. City shall keep the Cable and other property of AT&T free from all mechanic's, artisan's, materialman's, architect's, or similar services' liens which arise in any way from or as a result of its activities and cause any such liens which may arise to be discharged or released.

9. Except for payment of the cost of the Work, neither party shall have any liability for its delays or its failure in performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the Elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.

10. A party shall be in default if it fails to perform or observe any material term or condition of this Agreement and the failure continues unremedied for thirty (30) days after receipt of written notice (fourteen (14) days in the case of City's failure to pay AT&T the estimated and/or actual cost of the Work); provided, however, that when such default (excluding City's non-payment) cannot reasonably be cured within such thirty (30) day period, this period will be extended if that party promptly commences to cure the same and prosecutes such curing with due diligence. Upon the default by a party, the

other party may terminate this Agreement and pursue any legal remedies it may have under applicable law or principles of equity.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. City shall not assign, transfer, or dispose of this Agreement or any of its rights or obligations hereunder without prior written consent of AT&T; provided, however, that City may assign or transfer this Agreement to a controlling or controlled affiliate or to a successor in the event of reorganization, including a merger or sale of substantially all of its assets, without the consent of AT&T. An assignment, transfer or disposition of this Agreement by City shall not relieve City of any of its obligations under this Agreement. AT&T shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement, either in whole or in part, to any party. An assignment, transfer or disposition of this Agreement by AT&T shall not relieve AT&T of any of its obligations under this Agreement. Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

12. Any demand, notice or other communication to be given to a party in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, or by commercial overnight delivery service addressed to the recipient as set forth below or to such other address or individual, as may be designated by notice given by the party to the other:

**AT&T:**

AT&T CORP.  
3001 Cobb Parkway  
Atlanta, GA 30339  
Room 162  
Attention: Right of Way Dept.

With a copy to:

AT&T Services Inc.  
Law Department  
175 East Houston Street – 210  
San Antonio, TX 78205  
Attention: General Attorney and Assistant General Counsel

**City:**

City of Republic  
213 N. Main  
Republic, Missouri  
Attention: City Administrator

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and if given by registered or certified mail, return receipt requested or by commercial overnight delivery service on the date of receipt thereof.

13. The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.

14. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of **Missouri** without reference to its choice of law principles.

15. Each party represents and warrants that:

- (a) It has full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (b) It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and
- (d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court or body.

16. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral and written communications, understandings and agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are an integral part hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

17. Each action or claim against any party arising under or relating to this Agreement shall be made only against such party as a corporate, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section 17 and shall be entitled to enforce the obligations of this Section 17.

18. The relationship between the parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this Agreement shall be deemed to

constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

19. This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to benefit of the parties and each of their respective permitted successors and assigns.

20. No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such a section or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

21. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their authorized representatives as of the date first above set forth.

**CITY OF REPUBLIC**

**AT&T CORP.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**THE WORK**

**EXHIBIT B**  
**ESTIMATED COST**

[Engineering Designs	\$5,000]
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Total	_____
	\$

**[EXHIBIT C]**

**[GRANT OF COMMUNICATION SYSTEMS RIGHT-OF-WAY AND  
EASEMENT]**

**[EXHIBIT D]**

**[PARTIAL] RELEASE OF EASEMENT]**

**[PARTIAL] RELEASE OF EASEMENT - CABLE]**