

CONDUIT LEASE AGREEMENT

This Conduit Lease Agreement (this “Lease Agreement”) is made and entered into this ____ day of _____, 2019 (the “Effective Date”), by and between the City of Merced, a California Charter Municipal Corporation (“City”) and CVIN, LLC, a California Limited Liability Company, doing business as VAST NETWORKS (“Lessee”).

RECITALS

WHEREAS, Lessee is a registered Competitive Local Exchange Carrier (CLEC) pursuant to the provisions of Public Utilities Code Section 1013 and holds a valid full- facilities-based certificate of public convenience and necessity (“CPCN”) issued by the California Public Utilities Commission; and

WHEREAS, Lessee is proposing to install a fiber system using City owned conduit that would result in distributing Broadband Fiber Network to a Commercial and Industrial locations within the City; and

WHEREAS, the system would be integrated with the Lessee's broadband system; and

WHEREAS, City owns certain PVC/high density polyethylene conduit located within City right-of-ways (the “City System”); and

WHEREAS, Lessee desires to construct, install, operate, and maintain, at no cost to City, certain fiber optic facilities to provide its services (“Lessees’ Fibers”), and for that purpose desires to lease from City a portion of the City System identified and more particularly described in Exhibit A hereto (the “Leased Conduit”); and

WHEREAS, City is willing to lease a portion of its conduit, the Leased Conduit, to Lessee and allow Lessee to pull dark fiber optic cables for that purpose, subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1. LEASE

1.1 City, for and in consideration of the rents and covenants herein specified to be paid and performed by Lessee, hereby demises and leases to Lessee, and Lessee hereby hires and leases from City, the Leased Conduit, on an “as is, where is basis” without warranty for the Term and upon and subject to the terms and conditions and for the purposes herein set forth. Any and all installation and other cost, of whatever nature, for pulling Lessee Fibers through City’s System shall be at Lessee’s sole cost and expense.

ARTICLE 2. CONSIDERATION

2.1 The consideration for this Lease Agreement shall include a one-time payment to the City within thirty (30) calendar days upon execution of this Lease Agreement in the amount of \$2,250 for the 15-year term lease.

ARTICLE 3. TERM

3.1 Commencement. The term of this Lease (the “Term”) shall commence on the Effective Date and shall expire fifteen (15) years following the Effective Date.

3.2 Renewal. Provided that Lessee is not in default under this Lease Agreement, and the Lessee has the necessary governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, City and Lessee may negotiate in good faith to renew and/or extend this Lease Agreement in five year increments on mutually agreeable terms and conditions. Any agreed upon extension of the conduit that expands the system defined within Exhibit A and B herein, shall not increase the term of this Agreement without mutually agreement by both parties.

3.3 Holding Over. If Lessee shall hold over after the expiration of the Term, Lessee shall pay rent equal to \$3 per linear foot of conduit leased per year (exclusive of abatements, if any), together with an amount reasonably estimated by City, and shall otherwise be on the terms and conditions herein specified so far as applicable (but expressly excluding all renewal or extension rights). Lessee shall be liable to City for any loss, damages or liability of City resulting from Lessee’s failure to vacate upon the expiration or earlier termination of this Lease Agreement. Any options granted under the terms of this Lease Agreement shall be deemed terminated and shall be of no further effect during said tenancy at

sufferance. No holding over by Lessee after the Term shall operate to extend the Term. If Lessee fails to surrender the Premises or any part thereof upon the expiration or termination of this Lease Agreement despite City's demand to do so, Lessee shall indemnify, defend, protect and hold City harmless from all claims, losses, costs, expenses, damages and liabilities, including attorneys' fees, City incurs as a result of Lessee's failure to surrender, including, without limitation, any claim made by any succeeding tenant founded on or resulting from such failure.

3.4 Title. It is understood and agreed that City shall maintain legal title to the entire City Conduit System, subject to this Lease Agreement in the Leased Conduit while Lessee shall retain legal title to the fiber optic.

ARTICLE 4. NETWORK ACCESS

4.1 Shared Facilities. City hereby grants to Lessee a non-exclusive license, subject to the limitations and other provisions of this Lease Agreement, to any manholes and handholes (the "Ancillary Facilities") that are necessary to access the Leased Conduit of City's Fibers identified in Exhibit A and that is solely in connection with its use of the Leased Conduit or other obligations of Lessee as defined within this Lease Agreement. Lessee shall notify City at least five (5) days in advance if it wishes access to an Ancillary Facility, and City shall have the right to have a representative present during any access to an Ancillary Facility.

4.2 Costs. Lessee shall pay City its costs in connection with each access to an Ancillary Facility, within thirty (30) days of the date of Lessee's receipt of City's invoice therefore. For purposes of this Lease Agreement, "costs" means all reasonable and direct costs incurred by City in accordance with generally accepted accounting principles and incurred by City for necessary work or services performed in support of Lessee's request to use the Ancillary Facilities.

ARTICLE 5. PERMITS; UNDERLYING RIGHTS; RELOCATION

5.1 Governmental Approvals, Permits and Consents.

(a) Lessee at its sole cost and expense, shall obtain and maintain any and all necessary governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, including but not limited to a City Business Tax Certificate and shall continuously comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to (1) its

operation or use of the Leased Conduit; and (2) Lessee's other rights and obligations under this Lease Agreement.

(b) Lessee shall ensure that its customers obtain and maintain any and all necessary permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance and comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to the Lessee's customers' use of the services provided over the Leased Conduit.

(c) If Lessee, its customers or any permitted assignee shall at any time fail to maintain such approvals or comply with all applicable legal requirements described in paragraphs (a) and (b) above, City may terminate this Lease Agreement under Article 10, without liability and without restriction to any other legal, equitable, or administrative remedy available to City. Lessee may contest the applicability or validity of any alleged legal requirement asserted against it or its customers, provided that Lessee gives prompt notice of such contest to City, adheres to proper legal procedures applicable to any such challenge, and indemnifies and holds harmless City and its affiliates and their officers, directors, employees, agents, servants, and assigns from any loss, damage, claims or proceedings to the extent resulting from such challenge or from the failure of Lessee, its customers, their contractors or their subcontractors to comply with this Section 5.1.

5.2 Relocations. City may relocate all or any portion of the City System or any of the facilities used or required in providing Lessee with the Leased Conduit: (1) if a third party with legal authority to do so orders or threatens to order such relocation (e.g., through filing or threatening to file a condemnation suit); (2) in order to comply with federal, state or local applicable laws; (3) to prevent or abate interference with or interruption of the City System, or an unreasonable risk thereof, due to the existence of physical conditions; or (4) if City determines to do so in its reasonable business judgment City shall provide Lessee as much advance notice as possible but shall use reasonable efforts to provide at least sixty (60) calendar days prior notice of any such relocation. City shall bear the costs of relocating its facilities and the Leased Conduit unless such relocation is proximately cause in whole or part by Lessee's negligence or material violation of this Agreement. In the alternative, the City shall have the right, in its sole and unfettered discretion, to terminate this Lease Agreement.

ARTICLE 6. USE OF LEASED CONDUIT, MAINTENANCE

6.1 Interference. Lessee shall not use the Lessee Fibers in a way that interferes in any way with or adversely affects the use of the fibers or cable of any other person using the City System or any of the other City owned facilities or infrastructure contained within City's rights-of-way. Lessee acknowledges that the City System includes or will include other participants, including City and other owners and users of fiber and telecommunication systems.

6.2 Maintenance. Lessee shall bear all costs associated with its use of the Lessees' Fibers, including without limitation the cost of installation, maintenance and repairs of the Lessees' Fibers. Such installation, maintenance and repairs shall be performed in a good and workmanlike manner, including the National Electrical Safety Code, the National Electrical Code, and any statewide electric codes adopted by the State of California or any department or agency thereof, applicable industry standards, and in accordance with laws and regulations of any federal, state or local government, or any agency or instrumentality thereof, having competent jurisdiction over Lessee, Lessees' Fibers, or the Leased Conduit including applicable General Orders of the Public Utilities Commission of the State of California and any supplements thereto and revisions thereof. Lessee shall be responsible for the proper design and maintenance of its fiber optic facilities and other equipment that occupies shared right of way systems or other facilities, and shall perform work in shared conduit systems and other facilities in a safe and workmanlike manner and at its sole cost. Lessee shall permanently identify, by tags or other suitable means, all of its cables and other equipment that are placed in shared conduit systems or other facilities. Each party agrees to take all necessary precautions to avoid damaging the other party's facilities and to protect such facilities in the same manner as such party protects its own facilities. City shall be responsible for maintenance of Leased Conduit unless such maintenance is necessary due to Lessee's negligence, omission or breach of this Lease Agreement. In the event that repair or maintenance of the Leased Conduit is due to Lessees' negligence, Lessee shall have an affirmative duty to repair and maintain at their cost.

6.3 No Sub-Lease. The Lessee may not sublease the Leased Conduit.

6.4 No Liens. The Lessee shall at all times keep the Leased Conduit or City's Conduit free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on said Leased Conduit or City's Conduit by Lessee. In the event the Leased Conduit or City's Conduit

becomes subject to a lien, claim, demand for work or materials performed or any encumbrance of title not approved by City, Lessee shall immediately take such necessary efforts to clear the encumbrance of title to the Leased Conduit or City's Conduit.

6.5 Right of Inspection. City shall have the right to inspect the Leased Conduit and the lessee Fibers installed in the Leased Conduit during the Term.

ARTICLE 7. LIMITATION OF LIABILITY/INDEMNITY

7.1 Lessee shall indemnify, protect, defend and hold harmless City, the City System, the Leased Conduit, City's agents, employees, public officials, council members, and the respective agents and employees of each of these parties (each a "City's Party," collectively "City Parties"), from and against any and all claims, loss of rents and/or damages, losses, costs, liens, judgments, penalties, loss of permits, reasonable attorneys' and consultants' fees, expenses and/or liabilities (collectively "Claims") arising out of, involving, or in connection with this Lease; the use or occupancy of the Lease Conduit or the City System; the conduct of Lessee's business; any act, omission, fault or neglect of Lessee, its agents, employees, representatives, contractors, customers, sublessees, licensees, invitees or other visitors; and out of any default or breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease Agreement including, without limitation, any violation of or failure to comply with laws; excepting only to the extent such Claims are caused by the negligent or willful acts or omissions of City or its authorized representatives. The foregoing indemnity shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of Claims made against City and/or any City's Party) litigated and/or reduced to judgment. In case any action or proceeding is brought against City or any City's Party by reason of any of the foregoing matters, Lessee upon notice from City shall defend the same at Lessee's expense by counsel reasonably satisfactory to the indemnified party and City shall cooperate with Lessee in such defense. The indemnified party need not have first paid any such claim in order to be so indemnified. The obligations of Lessee under this Section 7.1 shall survive the expiration or termination of this Lease Agreement. Notwithstanding the foregoing provisions, Lessee shall not be obligated to indemnify City for any Claims arising (i) outside the Leased Conduit to the extent not caused by the negligence or willful misconduct of Lessee, or Lessee's employees, invitees or guests, agents or contractors, or (ii) inside the Leased Conduit to the extent arising from the negligence or willful misconduct of City, or City's employees, invitees or guests,

agents or contractors. The indemnity obligations of Lessee under this Section 7.1 are not intended to, and shall not, (i) restrict or modify Lessee's insurance and other obligations under this Lease Agreement; (ii) be restricted, limited or modified by Lessee's compliance with its insurance and other obligations under this Lease or (iii) supersede any inconsistent agreement of the parties set forth in any other provision of this Lease Agreement.

ARTICLE 8. INSURANCE

8.1 Lessee shall obtain and maintain in force, at its own expense, and shall require each of its contractors and subcontractors to obtain and maintain in force:

(a) Commercial General Liability Insurance, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form;

(b) Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000.00 per accident;

(c) Comprehensive Auto Liability coverage, including owned, non-owned and hired autos in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.; and

(d) Any other insurance coverages specifically required or adjustment to the above coverage as set forth above in the event the City's Risk Manager determines that such adjustment is in the City's best interest.

(e) City shall be listed as an additional insured on all commercial general liability and commercial automobile insurance policies relevant to the project and maintained by the Lessee and the Lessee's contractors and subcontractors.

8.2 Unless otherwise agreed, Lessee's insurance policies shall be obtained and maintained with companies rated "A" or better by Best's Key Rating Guide and each party shall provide the other with an insurance certificate confirming compliance with this requirement for each policy providing such required coverage.

8.3 If Lessee fails to obtain the required insurance or fails to obtain the required certificates from any contractor and a claim is made or suffered, Lessee shall indemnify and hold harmless City from any and all claims for which the required insurance would have provided coverage. Further, in the event of any such failure which continues after seven (7) days written notice thereof by City, City may, but shall not be obligated to, obtain such insurance and will have the right to be reimbursed for the cost of such insurance by the Lessee.

8.4 If coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for the insurance provided above, the Lessee shall make good faith efforts to pursue such claim with its carrier.

ARTICLE 9. NOTICES

9.1 All notices and other communications required or permitted under this Lease Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

To Lessee: CVIN LLC, dba VAST Networks
7447 N. Palm Bluffs Ave, Suite #105
Fresno, CA 93711
Attn: David Nelson
Facsimile: 559-442-6047
Email: dnelson@vastnetworks.com

WITH A COPY TO:
Vast Networks
Care of Dowling Aaron
Larry Lindenau
3rd Floor
8080 Palm Ave.
Fresno Ca 93711
(559) 432-4500

To City: City of Merced
Attention: City Manager
678 W 18th Street
Merced, CA 95340
Phone: (209) 385-6834

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

ARTICLE 10. DEFAULT

10.1 Defined. A default shall be deemed to have occurred under this Lease Agreement if:

(a) In the case of a failure to pay any amount when due and payable under this Lease Agreement, the Lessee fails to pay such amount within fifteen (15) days of when due; or

(b) In the case of any other material breach of this Lease Agreement, a party fails to cure such within thirty (30) days after notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

10.2 Remedies. Upon the failure of a party to comply with Section 10.1 (a) or to timely cure any breach after notice thereof from the other party and expiration of the above cure periods as defined in Section 10.1 (b), then the non-defaulting party may, subject to the terms of Article 7 (Limitation of Liability/Indemnity), pursue all remedies provided for in this Lease Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

10.3 City Remedies. In addition to the remedies set forth in Section 10.2, if Lessee fails to cure any other default of the terms of this Lease Agreement within the cure periods described in Section 10.1 above, City may, in addition to any other remedies that it may have under this Lease Agreement or by law, in its sole discretion, take the following actions upon ninety (90) calendar days' notice:

(a) Disconnect and remove at Lessee's expense the Lessee Fibers; and/or

(b) Terminate this Lease Agreement. At the expiration or termination of this Lease Agreement subject to this Article, all rights of Lessee to use the Leased Conduit, or any part thereof, shall cease, and the Lessee shall surrender to City possession of the Leased Conduit. All rights to the use of the Leased Conduit therein shall revert to City.

10.4 No Waiver. A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

10.5 Interest. If Lessee fails to make any payment under this Lease Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at an annual rate of eighteen

percent (18%) compounded monthly or, if lower, the highest percentage allowed by law.

ARTICLE 11. ABANDONMENT

11.1 Should Lessee, for any reason, abandon all or part of its use of capacity or facilities installed pursuant to this Lease Agreement, then the below provisions shall apply. "Abandon" shall be defined for the purposes of this Lease Agreement as failure to use the Leased Conduit for more than one (1) year or at such time that notice of abandonment is provided by Lessee.

(a) If City rejects all or a portion of the proposed transfer of abandoned facilities from Lessee, then Lessee shall remove any facilities it proposed to abandon which were rejected by City within ninety (90) days of City's rejection. If the Lessee fails to so remove the abandoned rejected facilities, then City may remove them at Lessee's expense, which shall be paid within thirty (30) days of receipt of the invoice.

(b) At the time of any accepted abandonment, Lessee shall have no further rights with respect to the abandoned facilities. At such time, City shall have the authority to remove, reuse, or resell the abandoned facilities.

(c) Unless expressly rejected by City in writing within 90 days of a written abandonment notification, Lessee's abandoned facilities shall be transferred to the ownership of City.

ARTICLE 12. TERMINATION

12.1 Termination. If Lessee is not in default of this Lease Agreement as defined within Article 10, or has not abandoned the Leased Conduit as defined in Article 11, and if at the expiration of the Term as defined within Article 3 of this Lease Agreement or any mutually agreed upon extensions to the Term, Lessee shall have the election to do either of the following:

(a) Lessee will remove all fiber optic cable owned by Lessee within the City's conduit; or

(b) The parties if mutually agreed upon, may leave the fiber optic cable in the City's conduit wherein City will acquire and retain all proprietary and ownership interest to the fiber optic cable and conduit at no

cost to the City with no further right, title or interest by Lessee in any of the Lessees' Fiber. In the event the parties fail to mutually agree to this subsection (b), Lessee shall be obligated to comply with subsection (a) of this Article 12.

ARTICLE 13. TRANSFERS, ASSIGNMENTS AND EXPANSION

13.1 Lessee may not transfer or assign all or any part of its interest in this Lease Agreement or in the Leased Conduit, in whole or in part, or delegate any duties, burdens, or obligations arising hereunder, without the prior written consent of City, which consent may not be unreasonably withheld. A transfer or assignment in violation of this Article shall be void and shall constitute a material breach of this Lease Agreement.

13.2 Any desire or interest of either party to this Lease Agreement for future expansion of the system will be subject to following: 1) City shall have the initial right to expand the system by competitively bidding and paying prevailing wage through its own contractors and receiving additional lease revenue for use of that system by Lessee consistent with the compensation structure of agreement; 2) Lessee may develop, construct and lay their own conduit and hook up customers only to that part of the City System expanded in accordance with this subsection with no lease payment to City based on those revenues generated by the private line if City decides not to exercise its rights in option one; 3) Lessee and City both decide not to expand system. If City exercises its rights under option 1 of this section 13.2, all other provisions of this Lease Agreement shall apply not inconsistent with this Article.

ARTICLE 14. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

14.1 Each party represents and warrants that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Lease Agreement; and

(b) This Lease 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.

14.2 City makes no warranty, express or implied with respect to the Leased Conduit, including any warranty of merchantability or fitness for a particular purpose, and all such warranties are hereby expressly disclaimed.

ARTICLE 15. FORCE MAJEURE

15.1 Neither party shall be liable to the other party and each party's performance under this Lease Agreement shall be excused, if and to the extent that any failure or delay in such party's performance of one or more of its obligations hereunder caused by any of the following conditions, and such party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay; act of God; fire; flood; war or civil disorder; strikes or other labor disputes; or any other cause beyond the reasonable control of such party ("Force Majeure Event"). The party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said Force Majeure Event, and the party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay; PROVIDED HOWEVER THAT, the provisions of this paragraph shall not operate so as to excuse or release Lessee from the prompt payment of the ARC or other amounts due and payable under this Lease Agreement. PROVIDED FURTHER THAT, if the City System and/or the Leased Conduit are totally destroyed, or rendered unusable, by a Force Majeure Event, City may terminate this Lease Agreement, without liability to lessee, as of the date of such Force Majeure Event.

ARTICLE 16. GENERAL

16.1 Binding Effect. The failure of either party hereto to enforce any of the provisions of this Lease 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, but the same shall nevertheless be and remain in full force and effect.

16.2 Taxes. City hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Lessee acknowledges that this Lease Agreement may create a possessory interest and Lessee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107. Lessee shall be responsible for and shall pay all Impositions:

(a) Imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to Lessee with respect to the ownership or use of the Leased Conduit; or

(b) Which have been separately assessed, allocated to, or imposed on the Leased Conduit; or

(c) Which are imposed, based on, or otherwise measured with respect to construction services performed by City for Lessee.

“Impositions” means all taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, possessory interest taxes, franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Lease Agreement that are imposed upon the City System by any federal, state or local government or other public taxing authority; but shall not include taxes, fees or similar levies based on income.

16.3 Attorney’s Fees. If either party brings any legal action or proceeding against the other to enforce or interpret this Lease Agreement, or otherwise arising out of this Lease Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its reasonable costs and expenses of suit and enforcing the judgment awarded to it, including reasonable attorneys’ fees, in addition to any other relief or award to which it may be entitled.

16.4 Governing Law. This Lease Agreement and all matters relating to it shall be governed by the laws of the State of California without reference to its choice of law principles and any action brought relating to this Lease Agreement shall be held exclusively in a state court in the County of Merced, State of California.

16.5 Rules of Construction. The captions or headings in this Lease Agreement are strictly for convenience and shall not be considered in interpreting this Lease Agreement or as amplifying or limiting any of its content. Words in this Lease Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

(a) Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

(b) Except as set forth to the contrary herein, any right or remedy of Lessee or City shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

(c) Nothing in this Lease Agreement is intended to provide any legal rights to anyone not an executing party of this Lease Agreement.

(d) This Lease Agreement has been fully negotiated between and jointly drafted by the parties.

(e) All actions, activities, consents, approvals and other undertakings of the parties in this Lease Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Lease Agreement the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a party's performance.

16.6 Entire Agreement. This Lease Agreement, together with any Confidentiality Agreement entered into in connection herewith, constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Lease Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Lease Agreement, the terms of this Lease Agreement shall prevail. This Lease Agreement may only be modified or supplemented by an instrument in writing executed by each party.

16.7 Relationship of the Parties. The relationship between Lessee and City shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Lease 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. Lessee and City, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

16.8 Severability. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Lease Agreement, the remainder of this Lease Agreement shall not

be affected thereby, and each term, covenant or condition of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

16.9 Legislative Function of City. This is a proprietary contract and is subject to the legislative functions and power of the City and right of eminent domain and nothing within this Lease Agreement shall waive or restrict any of those legislative functions or rights of the City.

16.10 Lessee's Customer Contracts. Lessee shall provide in any contracts with third party customers a provision that holds City harmless and without liability in the event Lessee breaches any third party customer contracts, goes into bankruptcy, fails to perform or is in default under this Lease Agreement or the third party customer contracts, this Lease Agreement is terminated, or City exercises any rights it has under this Lease Agreement.

16.11 Lessees' Customers. Lessee agrees to include in all contracts with any third parties or customers of Lessee which would use Lessees' Fiber a provision that in the event Lessee breaches or fails to supply service to those third party/customer contracts, goes into bankruptcy or fails to perform either under this Lease Agreement or any contracts with their customers, the City would have no liability to their customers in exercising any rights it has under this Lease Agreement.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the Effective Date.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Shaundra A. Holt 8/28/19
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

EXHIBIT A

Use of conduit on North Side of Main Street crossing Canal Street

