

## COMMUNICATION SHARED DUCT LEASE AGREEMENT

THIS COMMUNICATION SHARED DUCT LEASE AGREEMENT [ Lease Agreement] is entered into this 11<sup>th</sup> day of September, 2014, between THE CITY OF LANCASTER (CITY), a Municipal Corporation, and FREEDOM TELECOMMUNICATIONS, LLC, dba WILCON (WILCON), a Delaware limited liability company.

WHEREAS, the CITY owns and operates fiber optic and hard wire twisted pair communication cables within an existing network of underground ducting and overhead lines; and

WHEREAS, WILCON wants to share existing duct space and lease 15.04 miles (79,411 LF) of the existing and available duct space within the CITY right-of-way as outlined in Attachment "A"; and

WHEREAS, WILCON will lease said duct space per the Terms (as defined below) for a five-year (5) term with three (3) five-year (5) renewal periods, unless earlier terminated pursuant to Section 9 of this Agreement; and

WHEREAS, WILCON will install at no cost to the CITY and for the CITY's use, 10.58 miles (55,862 LF) of a maximum 96ct fiber optic cable within the CITY's existing 2-inch duct network per Attachment "A"; and

WHEREAS, WILCON will, at its own cost, disconnect and re-connect communication wires; remove, modify and replace existing CITY owned aboveground splice box pedestals and install at a minimum #5 vaults where CITY owned hard wire twisted pair and fiber optic cables will reside; and

WHEREAS, the CITY will grant the installation of a maximum 96ct fiber optic cable within the CITY's duct space for WILCON's own use; and

WHEREAS, the CITY will grant the installation of splice and slack loop storage vaults within the CITY right-of-way for the installation and maintenance of WILCON fiber optic cable, subject to the CITY's prior review and approval of proposed locations; and

NOW, THEREFORE, for good and valuable consideration of the acts and promises contained herein, the parties hereby agree as follows:

1. Definitions.

- (a) "Agreement Term" means the length of time that this Agreement is in effect, and as may be extended from time to time.
- (b) "Premises" shall mean all CITY owned communications ducting within the CITY right-of-way.

- (c) "Duct Work" shall mean all CITY owned communications ducting within the CITY right-of-way.
- (d) "Fiber Optic Cable" (FOC) shall mean 24ct or 96ct fiber optic cables.
- (e) "Lease" shall mean a right to use specified property, but does not convey title, ownership, or rights of possession in any real or personal property.
- (f) "Contractors" shall mean contractors working for Lessee.
- (g) "Shared Duct" shall mean duct space and overhead lines shared by the CITY and WILCON.

2. Agreement Term.

- (a) The term of this Agreement shall be five (5) years commencing on the date of execution of this Agreement.
- (b) This Agreement shall automatically renew for three (3) successive five (5) year periods (the "Renewal Term") on the same terms and conditions as set forth herein, unless WILCON notifies CITY of its intention not to renew prior to commencement of the succeeding Renewal Term or unless this Agreement is terminated by either Party pursuant to Section 9 of this Agreement.

3. Lease.

- (a) Within fifteen (15) business days of the Commencement Date and on the first day of each month thereafter, WILCON shall pay to the CITY as Lease payment \$1,000.00 per month (Lease). Lease for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Lease shall be payable to (City of Lancaster) at 44933 N. Fern Avenue, Lancaster, CA 93534; Attention: Public Works Transportation Division.
- (b) The Lease shall be increased on the first day of the month following the first anniversary of the Commencement Date and on each anniversary thereafter (the "Adjustment Date(s)") to an amount (the "Adjusted Lease") equal to the Lease in effect during the month immediately preceding the current Adjustment Date (the "Current Lease") multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, U.S. City Average, published by the United States Department of Labor Statistics (the "Index") for the Los Angeles-Anaheim-Riverside Metropolitan Statistical Area, as of the month immediately preceding the current Adjustment Date, and the denominator of which is the Index as of one (1) year and one (1) month immediately preceding the numerator Index. Notwithstanding the foregoing, the increase in Lease shall not be less than two percent (2%) or more than five percent (5%) of the Current Lease and will be increased of Index adjustment percentage. If the Index is discontinued or revised, such other government Index or computation with which it is replaced shall be used in order to obtain substantially the same result as if the Index had not been discontinued or revised.

4. Tests and Construction.

- (a) WILCON shall have the right at any time following the full execution of this Agreement to enter upon the Land (City right-of-way) for the purpose of making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests and constructing the WILCON Ductwork and Vault Facilities, subject to prior approval by City, which approval shall not be unreasonably withheld.
- (b) Prior to commencing construction of the WILCON Ductwork and Vault Facilities, WILCON and CONTRACTORS shall obtain the necessary licenses and permits and submit necessary insurance documentation for WILCON Duct Work and Vault Facilities.
- (c) During construction WILCON shall be responsible for the overall condition of the existing fiber optic cable and hard wire twisted pair cable presently within the CITY ductwork. WILCON shall replace all damaged cable and is responsible for reestablishing existing communications service to the CITY network.
- (d) During construction and while performing maintenance, WILCON and/or his CONTRACTOR shall follow all City of Lancaster construction requirements, USA Dig-Alert, OSHA and MUTCD requirements. Before the start of construction WILCON and/or CONTRACTOR will submit to the Public Works, Traffic Engineering Division a traffic control and work schedule plan.
- (e) Upon the completion of construction the WILCON shall submit to the CITY a complete set of as-built drawings showing the modification of existing CITY infrastructure and placement of WILCON facilities within the CITY right-of-way.

5. Taxes.

- (a) If property taxes are assessed, WILCON shall pay any portion of such taxes directly attributable to the installation of WILCON Facilities.

6. Maintenance and Repairs.

- (a) WILCON shall be responsible for the maintenance and repair of WILCON owned fiber optic cable, ducts and vaults installed for their use. The CITY will be responsible for the maintenance and repair of City fiber optic cable, hard wire twisted pair cable, ducts and vaults.
- (b) Access to the CITY "shared duct" network shall be granted to WILCON for the repair and maintenance of their systems. WILCON will notify the CITY 72 hours in advance and must pull the necessary encroachment permits to work within the CITY right-of-way, with the exception of an emergency.
- (c) In the case of an emergency where a rapid response is required after normal business hours and weekends to access shared duct, WILCON shall notify CITY personnel by calling the Public Works after hours standby phone at 661-510-4362.
- (d) Service provided by the CITY to locate underground CITY services and shared duct (USA Dig-Alerts) will only cover CITY-owned assets within the shared duct. If damage is incurred during a mismark the CITY will not be responsible for WILCON'S damaged cable.

7. Relocation.

- (a) Should City, State, Federal or private projects require the relocation of the shared duct or WILCON owned Facilities; WILCON would be responsible for the relocation of its own cable, conduit, vaults and facilities at no cost to the CITY. The CITY will relocate the shared duct and its cabling at its own expense.

8. Hazardous Substances

- (a) WILCON agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. Within thirty (30) days of the Commencement Date, WILCON shall furnish the CITY with applicable Material Safety Data Sheets (MSDS) for any chemicals used by WILCON for the construction or maintenance of the "shared duct" and the WILCON Facilities. If the CITY requires updates to the Material Safety Data Sheets, WILCON shall obtain such updates at its sole cost and expense. The CITY represents, warrants and agrees (1) that neither CITY, nor to the CITY's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (defined below) on, under, about or within the Land in violation of any law or regulation, and (2) the CITY will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. The CITY and WILCON each agree to defend, indemnify and hold harmless the other and the other's partners, elected officials, officers, employees, affiliates, agents against any and all losses, liabilities, claims and/or costs (including reasonable Attorney's fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Land is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

9. Termination.

- (a) This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by WILCON if, for any reason or for no reason, it delivers written notice of early termination to the CITY no later than thirty (30) days prior to the Commencement Date; or (iii) by either Party if WILCON does not obtain or maintain any license, permit or other approval necessary for the lawful construction and/or operation of the WILCON Facilities; or (iv) at any time during the third (3<sup>rd</sup>) or fourth (4<sup>th</sup>) Renewal Terms, the CITY may terminate



this Agreement for any reason or no reason upon providing WILCON no less than twelve (12) months prior written notice.

Should WILCON fail to remove the WILCON Facilities from the Property within thirty (30) days of the expiration or earlier termination of this Agreement, the CITY may remove and store the WILCON Facilities at WILCON,'s sole cost and expense. If WILCON does not claim the WILCON Facilities, at termination of this Agreement, the WILCON Facilities will be deemed abandoned and the CITY can thereafter dispose of the WILCON Facilities as it sees fit at WILCON'S sole cost and expense.

10. Obligations of WILCON.

- A. WILCON shall perform as required by this AGREEMENT. WILCON also warrants on behalf of itself and all subcontractors engaged for the performance of this AGREEMENT.
- B. WILCON shall be responsible for payment of all employees' and subcontractor's wages and benefits and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.

11. Hold Harmless and Indemnification. WILCON agrees to indemnify and hold harmless the CITY, its officers and employees, from and against any and all claims, losses, obligations or liabilities whatsoever, including reasonable Attorney's fees, incurred in or in any manner arising out of or related to WILCON'S negligent or willful wrongful acts, errors or omissions, or those of its employees or agents. WILCON agrees to defend the CITY, its officers and employees, from and against any and all claims arising from any alleged negligent or wrongful acts, errors or omissions on the part of WILCON or on the part of its employees. The provisions of this Section 11 shall survive the expiration or termination of this Agreement.

12. Amendments. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon mutual written approval by the CITY MANAGER and WILCON.

13. Non-Discrimination and Equal Employment Opportunity.

(a) In the performance of this Agreement, WILCON shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, religion, ancestry, sex, national origin, physical or mental disability or age. WILCON will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, sex, national origin, physical or mental disability or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) The provisions of subsection (a) above shall be included in all solicitations or advertisements placed by or on behalf of WILCON for personnel to perform any services under this Agreement. The CITY shall have access to all documents, data and records of WILCON and its subcontractors

for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section.

14. Independent Contractor. WILCON, and any of WILCON's subcontractors, shall have no power or authority to incur any debt, obligation or liability on behalf of the CITY. It is expressly understood between the parties to the Contract that no employee/employer relationship is intended; WILCON is an independent contractor.

15. Insurance. WILCON agrees to comply with the following provisions:

(1) WILCON agrees to provide and maintain the following insurance coverage at his/her/its expense on a per project basis.

<u>Coverage</u>	<u>LIMITS</u>	
	<u>Per Occurrence</u>	<u>Aggregate</u>
General Liability	\$2,000,000	\$5,000,000
Fire Legal	\$300,000 Minimum Limits	
Medical Expense	\$10,000 Minimum Limits	
Commercial Automobile Liability	\$1,000,000	None
Combined Single Limit per Accident for bodily injury and property damage	\$5,000,000	
Workers Compensation	Statutory Limits	
Employer's Liability		
each accident/employee	\$1,000,000	
bodily injury by disease	\$1,000,000	
D&O	\$3,000,000	\$3,000,000

(2) Insurance shall be at least as broad as ISO form GC 20 10 11 85 or CG 20 10 10 01 and CG 20 37 10 01 covering Commercial General Liability. Commercial Automobile coverage shall be at least as broad as ISO form CA 00 01. Required insurance limits may be attained by use of commercial umbrella.

(3) Any deductibles or self-insurance retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respect to the CITY insured entities or, the insurer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- (4) All insurance shall be primary and non-contributory as respect to the CITY insured entities. Any insurance or self-insurance maintained by the CITY insured entities shall be in excess of WILCON'S insurance and shall not contribute with it.
- (5) The coverage provided under this contract shall not contain any special limitations on the scope of protection afforded to the CITY insured entities.
- (6) Insurance provided and maintained by Contractor must be placed with insurers with a rating of A-: VIII or better by Best's Key Rating Guide, latest edition.
- (7) Insurance written on a "claims made" basis must be renewed for a period of five (5) years after this contract expires or is terminated. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this contract, and will cover WILCON for all claims made by CITY insured entities arising out of any acts or omissions of WILCON or its officers, employees or agents during the time this Agreement was in effect.
- (8) WILCON shall furnish the CITY with Certificates of Insurance and with original endorsements effecting coverage required by this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies at any time.
- (9) Certificates of Insurance must be deposited with the City of Lancaster for all coverage required by this contract. Certificates shall meet the following requirements.
  - (a) Show that the insurance policy has been endorsed to state that coverage shall not be canceled or non-renewed except after 30 days prior written notice (10 days written notice for non-payment) by Certified Mail, return receipt requested to the City of Lancaster.
  - (b) List in the "Descriptions of Operations, etc." section:

The Certificate Holders, as well as their officers, agents, servants and employees are included as additional Insured as respects GL and Auto Liability coverage for liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. (This does not apply to Professional Liability policies.)
  - (c) List in the "Certificate Holder" section:



The City of Lancaster, the Lancaster Successor Agency, the Lancaster Financing Authority, the Lancaster Housing Authority, the Lancaster Boulevard Corporation, the Lancaster Community Services Foundation, and the Lancaster Museum and Public Art Foundation, as well as each of their officers, agents, servants and employees, 44933 North Fern Avenue, Lancaster, California 93534.

- (d) List in the "Cancellation" section:

Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice (10 days written notice for non-payment) to the Certificate Holders named to the left.

- (10) Contractor shall include all subcontractors as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. Subcontractors are subject to the same insurance requirements as the Contractor.

16. Resolution of Disputes.

- A. Disputes regarding the interpretation or application of any provisions of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.
- B. If the parties cannot resolve the dispute through good faith negotiations, either party may give Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator. Mediation shall be conducted in Lancaster, California. Each party shall pay its own Attorneys' fees and the costs of mediation shall be split equally between the parties.

If the dispute has not been resolved by mediation within 45 days after Notice of Dispute, or the parties are unable to agree to a mediator, within 15 days after Notice of Dispute, then, the dispute may, upon agreement of the parties be resolved by binding arbitration.

- C. If any action at law or in equity is brought to enforce to interpret any provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable Attorney's fees, cost and necessary disbursements, in addition to such other relief as may be sought and awarded.

17. Attachments.

The following attachments to which reference is made in this Agreement are deemed incorporated herein in their entirety:

Attachment "A" Street Listing



18. Governing Law.

This Agreement shall be governed by the laws of the State of California.

19. Effective Date.

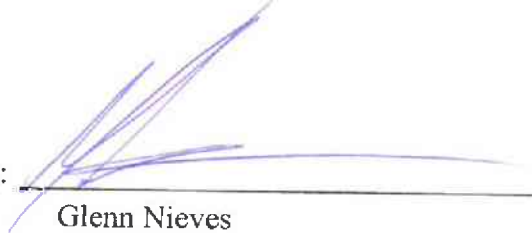
This Agreement shall become effective as of the date set forth below on which the last of the parties, whether the CITY OF LANCASTER or WILCON TELECOMMUNICATIONS, INC., executes said Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed and attested by their respective officers thereunto duly authorized.

FREEDOM TELECOMMUNICATIONS, LLC  
DBA WILCON  
LOS ANGELES, CALIFORNIA

CITY OF LANCASTER  
LANCASTER, CALIFORNIA

Approved by Department Head:

By:   
Glenn Nieves  
Vice President, General Counsel &  
Corporate Secretary

Robert C. Neal, Director of Public Works

Dated: 9/14/14

By: \_\_\_\_\_  
Mark V. Bozigian, City Manager

Dated: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Britt Avrit, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Allison E. Burns, ESQ, City Attorney

ATTACHMENT "A"

STREET LISTING

Street	From	To
10th St. West	Avenue H	Avenue I
Avenue I	10th St. West	Trevor Avenue
Sierra Hwy.	Avenue I	Avenue M
Avenue K	Sierra Hwy.	10th St. West
10th St. West	Avenue K	Walt Troth Drive
Avenue J	Sierra Hwy.	20th St. West
20th. St. West	Avenue J	North of Hwy. 14 Freeway
Avenue K	Sierra Hwy.	30th St. East
Division St.	Avenue K	Avenue K-4
20th. St. East	Avenue K	Avenue J
Avenue J	20th St. East	17th St. East
Avenue M	Sierra Hwy.	10th St. West