

CONDUIT LEASE AGREEMENT

THIS CONDUIT LEASE AGREEMENT (“Lease”) is entered into this 21st day of January 2025 by and between City of Flagstaff, an Arizona municipal corporation (“Lessor” or “City”), and Wecom LLC, a Delaware limited liability company, doing business as Wecom Fiber (“Lessee” or “Wecom”).

WHEREAS, the City of Flagstaff owns excess conduit and innerduct capacity in its public rights-of-way and public utility easements (“Public Highways”) and within roads, rights of way, owned and/or maintained by the Arizona Department of Transportation (“ADOT Roads”) and/or BNSF Railway Company (“BNSF ROWs”); and

WHEREAS, Wecom desires to lease excess conduit and innerduct capacity for its purposes; and

WHEREAS, City issued a competitive solicitation, Request for Solicitation No. 2023-64, for construction of a City fiber network, and Wecom was selected to provide this work; and

WHEREAS, City and Wecom are entering into a Fiber License Agreement dated January 21, 2025, to allow use of Public Highways, a Design Build Services Contract for design and construction of a City fiber network dated January 21, 2025, a City Fiber Maintenance Agreement dated January 21, 2025, for maintenance of City fiber, and this Conduit Lease Agreement dated January 21, 2025, for lease of City excess conduit and innerduct capacity.

NOW, therefore, the parties agree as follows:

1. LEASED FACILITIES.

City hereby leases to Lessee all excess conduit and innerduct, pull boxes, and vaults identified in Exhibit A (“the Facilities”) subject to the terms and conditions of this Lease. A portion of the Facilities are not available for lease until after construction is completed, as noted in Exhibit A. If Lessee does not use a portion(s) of the Facilities for five (5) years from the Effective Date of this Lease, then, after written notice to Lessee, City may unilaterally remove such portion(s) from the Facilities available for lease and update Exhibit A. City may require relocation of Facilities as set forth in section 8 of this Lease, and upon relocation update Exhibit A. A copy of each updated Exhibit A will be attached to this Lease.

2. PERMISSIBLE USE.

Lessee shall use the Facilities solely for the purpose of installation, maintenance, repair, and replacement of fiber in the Facilities (“Fiber Improvements”) for a fiber optic network. Lessee may sublease Fiber Improvements but shall not allow a sublessee to pull its own fiber through the Facilities.

3. SHARED USE

a. **Shared Use.** City and Lessee will use the Facilities on a shared, co-located basis. The parties will work in good faith to coordinate use of the Facilities. In the event of any conflict between Lessee use and City use, City shall have priority rights to use the Facilities.

b. **Access.** Each party shall have the right to unrestricted access to the Facilities for operation of its respective fiber network.

- c. **Inspections.** Each party at its own expense shall have the right to inspect and test the Facilities upon at least twenty-four (24) hours' advance written notice to the other party, except in the case of an emergency in which case notice shall be provided as soon as possible.
- d. **Interruptions.** Each party shall provide at least seventy-two (72) hours' notice of any repairs, maintenance, or other work that may interrupt functionality of the fiber networks located within the Facilities, except where such repairs or other work are necessitated by an emergency.
- e. **Damages.** If either party in any way damages the Facilities, such party shall immediately notify the other party and at its own expense shall be responsible for restoring the Facilities to good or better condition as before for any and all damage in or to Facilities occasioned by the intentional or negligent acts, omissions, or fault of such party, its agents, or employees.

4. FIBER IMPROVEMENTS

- a. **Permits and Authorizations.** Lessee at its expense shall obtain all permits, licenses, and authorizations required by the City Community Development Division, City Engineer, Fire Department, Water Services, Arizona Department of Transportation, BNSF Railway Company, or other applicable authority before commencing any Fiber Improvements.
- b. **Supervision and Control.** Any physical work within the Facilities related to Fiber Improvements shall be under contract, supervision, and control of Lessee.
- c. **Safeguarding Property.** Lessee shall be responsible for any damage to property of the City or adjacent property in performance of any work related to use of the Facilities and safeguard the worksite.
- d. **Quality.** All Lessee work related to use of the Facilities shall be of good quality and free of defects and performed in a diligent and professional manner.
- e. **Compliance with Laws; Construction Standards, Rules, and Regulations.** Lessee shall ensure that all Fiber Improvements in the Facilities are constructed to conform to all applicable statutes, ordinances, building codes, rules, and regulations of any governmental authority having jurisdiction. Lessee shall require in all contracts for construction that all contractors also comply with all applicable statutes, ordinances, codes, rules, and regulations. Lessee's construction work shall be subject to inspection by the City's Community Development Division and its authorized personnel during reasonable business hours.
- f. **Insurance.** Lessee shall require its construction contractors to procure and maintain insurance for any construction and installation protecting both Lessee and City, as well as the construction contractors, with policy amounts and coverage as the City in each instance determines is appropriate and provide certificates of insurance naming the City as an additional insured before commencing Fiber Improvements.
- g. **Cost of Improvements.** Lessee shall bear all costs of the construction of any and all Fiber Improvements.
- h. **Liens.** Lessee shall not permit or suffer the placement of any lien on the Facilities, or on any fixture, addition, betterment, or improvement thereto, including but not limited to tax liens and liens arising out of any labor or materials supplied by or on behalf of Lessee or any of its

contractors or subcontractors, for the Facilities. Should any such lien be made or filed, Lessee shall bond against or discharge the lien within ten (10) days after written request by the City.

5. CONDITION OF LEASED FACILITIES.

The Facilities are leased in an “as is” condition. EXCEPT AS SET FORTH IN THIS AGREEMENT, CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE FACILITIES OR THE CAPABILITIES, CHARACTERISTICS, AVAILABILITY OR USE THEREOF, OR ANY SERVICES PERFORMED BY CITY OR ITS AGENTS IN CONNECTION THEREWITH. CITY SPECIFICALLY DISCLAIMS, AND LESSEE HEREBY WAIVES, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY ARISING FROM USAGE OF TRADE OR COURSE OF DEALING.

6. TERM OF LEASE.

The term of this Lease shall commence on January 21, 2025 (the “Effective Date”), and continue for a period of twenty (20) years, unless sooner terminated as provided for herein. The term of the Lease shall automatically terminate upon the expiration or termination of the separate City Fiber Network Maintenance Agreement.

7. CONSIDERATION FOR LEASED FACILITIES.

The Facilities are leased to Lessee as partial consideration for the services being provided by Wecom, LLC to City pursuant to the Design Build Services Contract and for the services being provided by Wecom, LLC pursuant to the City Fiber Network Maintenance Agreement.

8. RELOCATION OF LEASED FACILITIES.

Lessee shall bear the entire cost of timely relocating its Fiber Improvements located within Facilities, the relocation of which is necessitated by the construction of public improvements by or on behalf of the City or ADOT or BNSF Railway Company and relocation of the Facilities in which the Fiber Improvements are housed. If Lessee is required to relocate its Fiber Improvements due to the construction of a scheduled public improvement, the City shall provide Lessee with at least sixty (60) calendar days' notice before any required action of Lessee to relocate affected portions of the Fiber Improvements and shall cooperate with Lessee to identify a replacement and alternative location within the Public Highways or ADOT Roads or BNSF ROWs for the relocation of affected portions of the Fiber Improvements. In the event the parties are unable to identify a replacement and alternative location within the Public Highways or ADOT Roads or BNSF ROWs, Lessee at its own expense is responsible for relocating on private property. Lessee shall promptly remove the designated portions of the Fiber Improvements. Lessee, at its sole cost and expense, shall restore all public and private property damaged by Lessee's removal and relocation of the Fiber Improvements to a condition substantially comparable to the condition before removal and relocation of the Fiber Improvements. City will make reasonable efforts to design and construct projects pursuant to this section so as to minimize relocation expenses to Lessee and shall entertain a reasonable request to support existing Facilities in place. If Lessee fails to timely relocate as required herein, the Lessee shall reimburse City for the actual and reasonable direct damages and costs incurred by City as a result of such delays to the public improvement project.

9. ABANDONMENT OF LESSEE FIBER.

Upon termination or expiration of this Lease, Lessee at its expense shall either (i) enter into a new lease of Facilities, or (ii) transfer its own Fiber Improvements to another entity with a lease of the Facilities and provide evidence thereof to City, or (iii) abandon all or part of its Fiber Improvements in place. If Licensee desires to abandon its Fiber Improvements, Lessee first shall submit to the City instruments for transferring ownership to the City. Lessee must notify the AZ811 of such abandonment and shall record the abandonment consistent with Arizona Revised Statutes §§ 40-360.21 et seq. At the time of abandonment, Lessee shall have no further rights with respect to the abandoned Fiber Improvements, and Lessor shall have the authority to remove, reuse, or resell the abandoned Fiber Improvements.

10. LIMITATION OF LIABILITY.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING LOST PROFITS OR PUNITIVE DAMAGES (WHETHER OR NOT THE SAME ARE FORESEEABLE). ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING SUCH DAMAGES IS SPECIFICALLY WAIVED AND BARRED.

11. INDEMNIFICATION.

Lessee shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense, arising out of the acts, errors, or omissions of Lessee, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Lease. In the event any such action or claim is brought against the City, Lessee shall, if the City so elects, and upon tender by the City: (a) defend the same at Lessee's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Lessee, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Lease. This indemnification shall survive termination or expiration of the Lease.

12. INSURANCE.

The City's insurance requirements attached hereto as Exhibit B are hereby incorporated into this Lease by reference.

13. ASSIGNMENT.

Lessee was selected for its special knowledge, skills, and expertise for construction of a City Network pursuant to the Design Build Contract, and in consideration for a separate City Fiber Network Maintenance Agreement. Lessee shall not assign this Lease, in whole or in part, without the City's prior written consent, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. City will not give its consent to assignment, unless the Fiber License Agreement, this City Conduit Lease Agreement, and the City Fiber Network Maintenance Agreement are all assigned to the same assignee. No assignment shall relieve Lessee (Assignor) from any of its obligations and liabilities under the Lease with respect to the City. The City Attorney shall have authority to consent to an assignment on behalf of the City.

14. RECORDS.

The City shall have the right to inspect and audit all Lessee books and records related to the Lease for up to five years after completion of the Lease.

15. COMPLETE AGREEMENT.

The Lease is intended to be the complete and final agreement of the parties.

16. AMENDMENTS.

The Lease may be amended by written agreement of the parties.

17. SEVERABILITY.

If any term or provision of the Lease is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted and the remainder of the Lease shall remain in full force and effect.

18. NO WAIVER.

Both parties have the right to insist upon strict performance of the Lease, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.

19. BINDING EFFECT.

The Lease shall be binding upon and inure to the benefit of the parties and their successors and assigns.

20. TERMINATION FOR DEFAULT.

Prior to terminating the Lease for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches, the non-defaulting party may elect to terminate Lease by written notice to Lessee, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition to the Lease remedies provided for herein.

21. REMEDIES.

In the event of a party's default, the other party may pursue all remedies available at law, except as provided for herein.

22. TERMINATION DUE TO INSOLVENCY.

If Lessee becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Lessee under federal bankruptcy law or any state insolvency law, Lessee shall

immediately provide the City with a written notice thereof. The City may terminate the Lease, and Lessee is deemed in default, at any time if the Lessee becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Lessee's ability to perform under the Lease.

23. CANCELLATION FOR GRATUITIES.

The City may cancel the Lease at any time, without penalty or further liability to Lessee, if City determines that Lessee has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Lease.

24. CANCELLATION FOR CONFLICT OF INTEREST.

Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Lease, the City may cancel the Lease within three years after its execution, without penalty or further liability to Lessee.

25. THIRD-PARTY BENEFICIARIES.

The Lease is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.

26. GOVERNING LAW.

The Lease shall be construed in accordance with the laws of Arizona.

27. FORUM.

In the event of litigation relating to the Lease, any action at law or in equity shall be filed in Coconino County, Arizona.

28. ATTORNEYS' FEES.

If any action at law or in equity is necessary to enforce the terms of the Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees, and expenses.

29. NOTICES.

All notices given pursuant to the Lease shall be delivered at the addresses as specified below or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective five (5) days after being sent; or (c) sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.

If to the City:

City of Flagstaff
IT Director
211 W. Aspen Avenue
Flagstaff, AZ 86001

If to Lessee:

Wecom LLC
General Counsel
3028 E. Sunset Rd.,
Las Vegas, NV 89120

With a copy to:
Grants and Contracts Administration
211 W. Aspen Avenue
Flagstaff, AZ 86001

With a copy to:
Chief Executive Officer
2332 Kingman Avenue
Kingman, AZ 86401

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Lease to be executed.

LESSOR: CITY OF FLAGSTAFF

By: Greg Clifton, City Manager

Attest:

Stacy Saltzburg, City Clerk

Approved as to form:

City Attorney

STATE OF ARIZONA)
)SS
County of Coconino)

On this _____ day of _____, 2025, before me, a Notary Public, personally appeared Greg Clifton whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and who acknowledged to have signed this instrument on behalf of the corporation.

Notary Public

My Commission Expires:

EXHIBIT A

LEASED FACILITIES

EXHIBIT B

STANDARD INSURANCE REQUIREMENTS

(Last Updated January 19, 2023)

*The term "Contractor" shall mean "Lessee."

1. **IN GENERAL:** Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.
2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor's obligations under the Contract have been met, including any warranty periods. Contractor's failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.
3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Where applicable, as related to the Scope of Work, Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability

Any Automobile or Owned, Hired, and Non-owned Vehicles	\$1,000,000
Combined Single Limit Per Accident for Bodily Injury & Property Damage	

d. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

e. Professional Liability \$2,000,000

f. Reserved.

4. **RESERVED.**

5. **SELF-INSURED RETENTION:** Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.
6. **OTHER INSURANCE REQUIREMENTS:** The insurance policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured: In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
 - b. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.
 - c. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
 - d. Each Insured: Contractor's insurance policies shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited: Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.
 - f. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.
7. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or reduced in coverage or in limits unless prior written notice has been given to the City. Notices shall reference the contract number.
8. **ACCEPTABILITY OF INSURERS:** Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.
9. **CERTIFICATES OF INSURANCE:** Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before

the Contractor commences work.

10. **POLICIES:** The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by the Contract. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under the Contract.
11. **MODIFICATIONS:** Any modification or variation from the insurance requirements in the Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.