

CITY FIBER NETWORK MAINTENANCE AGREEMENT

This City Fiber Network Maintenance Agreement is entered into this 21st day of January, 2025 by and between the City of Flagstaff, an Arizona municipal corporation (“City” or “Owner”), and Wecom LLC, a Delaware limited liability company, doing business as “Wecom Fiber” (“Wecom” or “Contractor”).

WHEREAS, the City owns a fiber network located in its public rights-of-way and public utility easements (“Public Highways”) and within roads or 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 is willing to maintain the City fiber network, which runs alongside Wecom’s network; 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 Conduit Lease Agreement dated January 21, 2025, for lease of City excess conduit and innerduct capacity, and this City Fiber Maintenance Agreement for maintenance of City fiber dated January 21, 2025.

NOW, therefore, the parties agree as follows:

1. DEFINITIONS.

As used in this Agreement, terms are defined as follows:

“City Fiber Network” means the City-owned fiber network, provided by Contractor under the Design Build Services Contract and small additional link as described in Exhibit A.

“Correction” means the correction of a Malfunction.

“Malfunction” means an interruption of a signal due to failure of the fiber of the City Fiber Network.

2. SERVICES.

a. Corrections. Contractor shall restore the City Fiber Network fiber to an operable and tested state within forty-eight (48) hours from the Wecom Network Operations Center becoming aware of a Malfunction; provided, however, if Contractor promptly commences and continues to diligently process the restoration work, City will agree to a reasonable time extension.

b. Utility Locating Services. Contractor shall perform all Arizona 811 utility locating services (Blue Stake) for the City Fiber Network and City Conduit (defined in that separate City Conduit Lease Agreement). Contractor will coordinate with City on appropriate procedure for utility locating services. Contractor’s obligation hereunder shall

be limited to (i) the City Fiber Network provided by Contractor and described in Exhibit A, and (ii) the City Conduit Contractor used to install the City Fiber Network and/or any fiber installed and owned by Contractor.

- c. **City Work on City Fiber Network.** City reserves the right to perform work on the City Fiber Network in the following situations: (i) Contractor has failed to correct a Malfunction in a timely manner; or (ii) City has offered to allow Contractor to perform work on the City Fiber Network that does not involve correction of a Malfunction and Contractor has declined to do such work at a competitive rate, as determined by at least three quotes obtained the City.
- d. **Licenses and Permits.** Contractor at its expense shall maintain current federal, state, and local licenses, permits, and approvals required for performance of the Agreement and provide copies to City upon request.
- e. **Compliance with Laws.** Contractor shall comply with all applicable federal, state, and local laws, regulations, standards, codes, and ordinances in performance of the Agreement.
- f. **Independent Contractor.** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act, Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
- g. **Control.** Contractor shall be responsible for the control of the work.
- h. **Work Site.** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
- i. **Safeguarding Property.** Contractor shall be responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
- j. **Quality.** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
- k. **Subcontracting.** Contractor was selected for its special knowledge, skills, and expertise, and Contractor shall not subcontract the services/materials required in the Agreement, in whole or in part, unless the appointed subcontractor has industry expertise and Contractor remains fully responsible to City for satisfactory completion of subcontracted work. The City reserves the right to require the subcontractor to be replaced if the subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Agreement, including but not limited to the requirements that City be named as an additional insured and receive a waiver of subrogation on any contract with a subcontractor. Contractor is responsible for Agreement performance whether or not subcontractors are used.

3. ACTION PLAN.

- a. **Notice.** Each party shall immediately notify the other party upon discovery of any Malfunction. City shall contact the Wecom Network Operations Center and open a ticket by telephone on +1 (928) 218 4373, or via email at noc@wecomfiber.com.
- b. **Immediate Response.** Contractor shall promptly commence work upon becoming aware of a Malfunction.
- c. **Cooperation.** The parties shall cooperate in good faith with each other in bringing any claim against a third party for recovery of damages or costs related to such third party's act or omission that causes or contributes to a Malfunction.

4. PARTS, MATERIALS, AND EQUIPMENT.

- a. **Stock.** Contractor shall stock parts, materials, and test equipment in Flagstaff or surrounding areas where Contractor operates necessary to complete the Services in a timely manner.
- b. **Quality.** Contractor warrants that all materials supplied under the Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. The City's inspection, testing, acceptance, or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Agreement.
- c. **Manufacturer's Warranties.** Contractor shall deliver all manufacturer's warranties to the City upon the City's acceptance of the materials.
- d. **Liens.** All materials and other deliverables supplied to the City shall be free of all liens, other than the security interest held by Contractor, until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.

5. PERSONNEL.

- d. **Training.** Contractor personnel shall be qualified and trained to perform the Services in accordance with industry standards. All Contractor personnel will maintain current OSHA certification.
- e. **Point of Contact.** Each party shall designate a project manager and principal point of contact, to include name, title, address, telephone number, and email address, for all Services under this Agreement by written notice to the other party. For outage situations, City shall contact the Wecom Network Operations Center by telephone on +1 (928) 218-4373, or via email at noc@wecomfiber.com.

6. REPORTING OF CORRECTIONS.

Contractor shall provide a report to City promptly following completion of a correction of a Malfunction showing:

- a. Time, location, and cause of Malfunction;

- b. Time when Malfunction was corrected;
- c. Test results showing Malfunction was corrected, where applicable.

Upon receipt of such report, City may request Contractor to provide additional information that is reasonable and appropriate for ongoing operational concerns.

7. ACCEPTANCE.

After City's receipt of a report (above), City has five (5) days to complete any testing to confirm that the Malfunction was corrected and to notify Contractor of any nonconformities. In the event City does not notify Contractor of any nonconformities, City is deemed to have accepted the correction work. Materials and services failing to conform to the Agreement specifications may be rejected in whole or part. If rejected, Contractor is responsible for all associated costs arising from rejection.

8. CONSIDERATION.

- a. **In General.** Contractor shall provide all Services at its own expense. Contractor acknowledges that Contractor is providing the Services under this Agreement as partial consideration for the City Conduit Lease Agreement and the Fiber License Agreement (specifically the credit against the License Fee). In addition, Contractor is providing Services under this Agreement because it is efficient for Contractor to maintain both its network and the City Fiber Network to avoid or minimize potential conflicts in repairs to the systems which run alongside each other.
- b. **City Reimbursements.** Notwithstanding the foregoing subsection a, City shall reimburse Contractor for the Contractor's actual, reasonable costs of correcting a Malfunction which occurs when: (i) as a result of City accessing a pull box, only the City's fiber is damaged; (ii) as a result of City splicing fiber midway between pull boxes, only the City's fiber is damaged; (iii) if City damages Contractor's fiber as a result of accessing a pull box, splicing fiber midway between pull boxes, or any other action. In either of such instances, Contractor shall invoice City and include sufficient detail and documentation for City to confirm payment is due.
- c. **Invoices for City Reimbursements.** Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, the City will not honor any invoices or claims submitted after August 15 incurred for the prior fiscal year.

9. TERM.

The term of this Agreement begins on January 21, 2025, and continues for a period of twenty (20) years, unless sooner terminated. The term of the Agreement shall automatically terminate upon the expiration or termination of the separate City Conduit Lease Agreement.

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.

Contractor 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 Contractor, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Agreement. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects, and upon tender by the City: (a) defend the same at Contractor'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 reasonable attorneys' fees, suffered or incurred by the City. The City shall promptly notify Contractor of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Agreement. This indemnification shall survive termination or expiration of the Agreement.

12. INSURANCE

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

13. ASSIGNMENT.

Contractor was selected for its special knowledge, skills, and expertise for construction of a City Network pursuant to the Design Build Services Contract, and in consideration for a separate City Fiber License Agreement (specifically the credit against the license fee set forth in Exhibit B of the Fiber License Agreement). Contractor shall not assign this Agreement, in whole or in part, without the City's prior written consent, which may not be unreasonably withheld. Any assignment without such consent shall be null and void. City will not give its consent to assignment, unless the City Fiber License Agreement, this City Fiber Network Maintenance Agreement, and the City Conduit Lease all are assigned to the same assignee. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Agreement 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 Contractor books and records related to the Agreement for up to five (5) years after completion of the Agreement.

15. COMPLETE AGREEMENT.

This Agreement is intended to be the complete and final agreement of the parties.

16. AMENDMENTS.

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

17. SEVERABILITY.

If any term or provision of the Agreement 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 Agreement shall remain in full force and effect.

18. NO WAIVER.

Both parties have the right to insist upon strict performance of the Agreement, 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 Agreement 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 Agreement 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 Agreement by written notice to the other, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition to the Agreement 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 Contractor 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 Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate the Agreement, and Contractor is deemed in default, at any time if the Contractor 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 Contractor's ability to perform under the Agreement.

23. CANCELLATION FOR GRATUITIES.

The City may cancel the Agreement 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 Agreement.

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 Agreement, the City may cancel the Agreement within three years after its execution, without penalty or further liability to Lessee.

25. THIRD-PARTY BENEFICIARIES.

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

27. FORUM.

In the event of litigation relating to the Agreement, 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 Agreement, 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 Agreement 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

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

If to Lessee:

Wecom LLC
General Counsel
3028 E. Sunset Rd.
Las Vegas, NV 89124

Wecom LLC
2332 Kingman Ave
Kingman, AZ 86401

30. NONDISCRIMINATION.

Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, or familial status and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In addition, any Contractor whose business is located within the Flagstaff City limits shall comply with the Flagstaff City Code, Chapter 14-02, *Civil Rights*, which also prohibits discrimination based on sexual orientation, or gender identity or expression.

31. DRUG FREE WORKPLACE.

The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Agreement.

32. IMMIGRATION LAWS.

Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Agreement and shall subject Contractor to penalties up to and including termination of the Agreement. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Agreement if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by A.R.S. § 23-214(A).

33. FORCE MAJEURE.

- a. There may be events that occur during the term of the Agreement that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). These Events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of the Agreement.
- b. There shall be no claims arising from a temporary delay of contractual deliverables or the permanent inability to provide the contractual deliverables caused by the Events, and the City shall not pay additional costs incurred by Contractor as a result of such Events.
- c. The parties shall act in good faith to extend the Agreement completion date without any penalty to Contractor, and the extension will be in an amount of time equal to any

temporary dela caused by an Event. This provision of the Agreement supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

34. NO BOYCOTT OF ISRAEL.

Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a party has over ten (10) employees and the Agreement is worth at least one-hundred thousand dollars and no cents (\$100,000), the party shall certify that it is not currently engaged in, and agrees, for the duration of the Agreement, will not engage in a boycott of Israel.

34. FORCED LABOR OF ETHNIC UYGHURS.

If Contractor engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. § 35-394, the Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People’s Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and 3) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. If the Contractor becomes aware during the term of the contract that the company is not in compliance with the written certification, the Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. If the Contractor does not provide the City with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the City of the noncompliance, this Agreement terminates, except that if the contract termination date occurs before the end of the remedy period, the Agreement terminates on the Agreement termination date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

CITY OF FLAGSTAFF

By: Greg Clifton, City Manager

Attest:

Stacy Saltzburg, City Clerk

Approved as to form:

City Attorney

CONTRACTOR: WECOM LLC

By: _____

Print Name:

Title:

EXHIBIT A
CITY NETWORK

New City Conduit to be leased and maintained by Wecom Fiber

●●● Conduit

Existing City Conduit to be leased and maintained by Wecom Fiber

— Flagstaff Existing Conduit

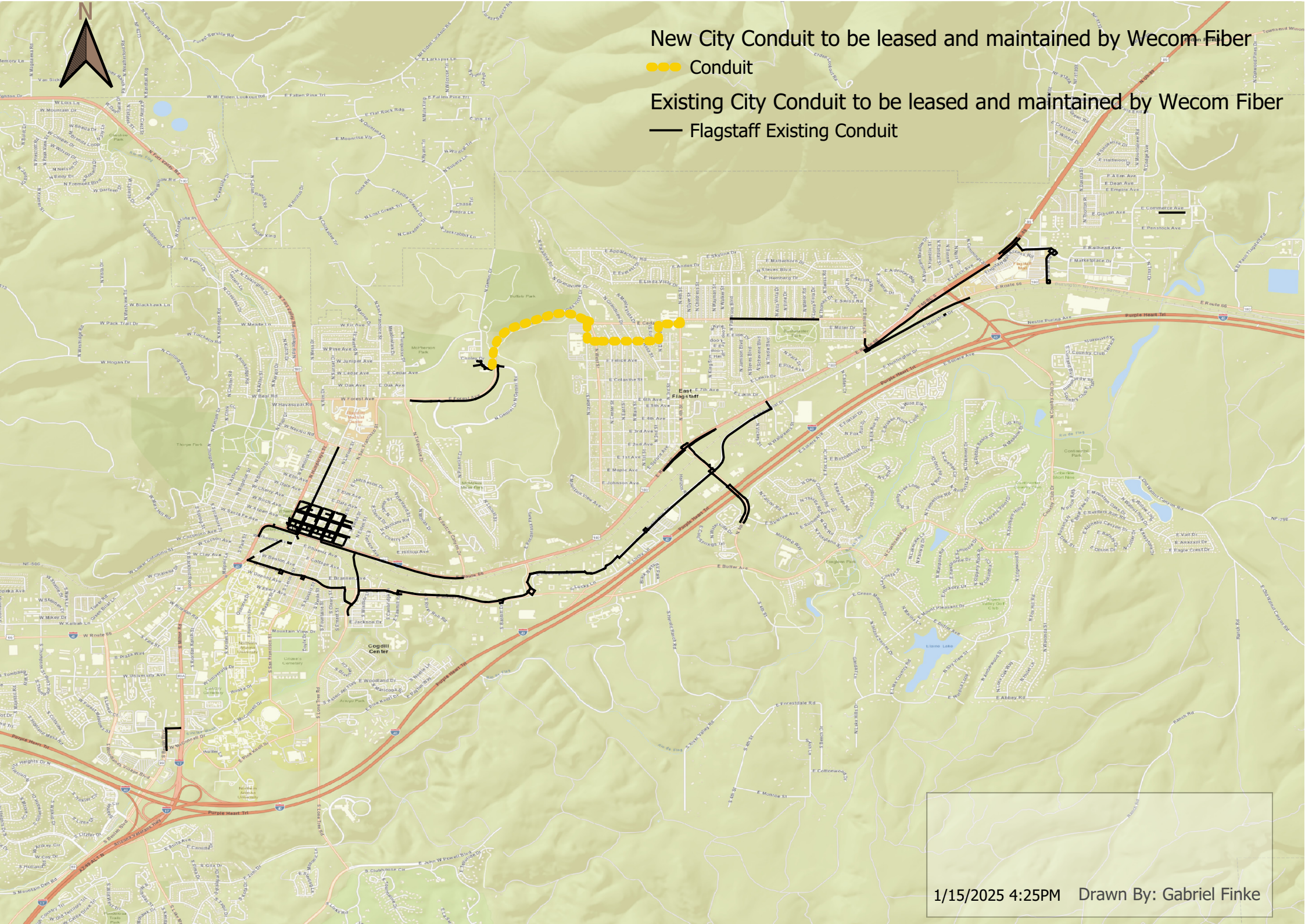


EXHIBIT B

**STANDARD INSURANCE
REQUIREMENTS**

(Last Updated January 19, 2023)

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 required by this section 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.