

FIBER LICENSE AGREEMENT

This Fiber License Agreement (the “License Agreement” or “Agreement”) is issued on January 21, 2025, by the City of Flagstaff, an Arizona municipal corporation (hereinafter called “Licensor” or “City”), to Wecom LLC, a Delaware limited liability company doing business as “Wecom Fiber” (hereinafter called “Licensee” or “Fiber Company”), for the installation, placement, operation, and maintenance of fiber optic network system in, on, under, above, upon, along, and across public rights-of-way, public utility easements, and City property within the City limits in order to provide broadband and high speed internet throughout the community.

WHEREAS, the City of Flagstaff has authority to issue this license pursuant to any authority conferred by state and federal law, the Flagstaff City Charter Article VIII, and Flagstaff City Code Chapter 8-13.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. Definitions of Terms.

Unless otherwise defined herein, the terms, phrases, words, and their derivatives found in this License Agreement shall have the meaning defined in Flagstaff City Code as amended from time to time. Unless the context requires otherwise, the term “including” shall mean “including but not limited to” or “including without limitation.”

“**Cabinets**” means above ground enclosures placed within the Public Highway for the protection of active and passive equipment for the provision of service throughout the Communications Network.

“**Chambers**” means underground enclosures placed within the Public Highway facilitating access to the active and passive equipment for the provision of service throughout the Communications Network.

“**City Engineer**” means the City Engineer or the City Engineer’s designee.

“**Communications Network**” means all parts of Licensee’s fiber optic network under and above ground in the City, including the fiber optic cable and its component parts and appurtenances, and the other cables, wires, components, facilities, Cabinets, ducts, conduits, connectors, Chambers, manholes, manhole covers, pedestals, splitters, attachments, and other property, equipment, components, materials, apparatus, and appurtenances to the fiber optic network.

“**Customer**” means any person or entity receiving broadband internet services from Licensee over the Communications Network.

“**Effective Date**” means the date this License Agreement has been executed by both parties.

“**Force Majeure Event**” means labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, governmental, administrative or judicial order, or other event that is beyond the Parties’ reasonable control. Force Majeure Events include work delays caused by waiting for utility providers

to service or monitor their own utility infrastructure on which Licensee's fiber optic cable and/or equipment may be deployed (e.g., poles). Force Majeure Event also includes a third party's acts or omissions within the Public Highway which materially interferes with a Party's ability to perform its obligations under this Agreement.

"Gross Revenue" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from its Customers located within the Use Area, including but not limited to charges for broadband internet service and late charges; installation, removal, connection, or reinstatement of equipment necessary for a Customer to receive broadband internet service; forfeited deposits; sale or rental of equipment to provide broadband internet service. Gross Revenue also includes all consideration from the lease or licensing of all or a portion of its Communications Network in the Use Area, unless Licensee is remitting a local transaction privilege license tax on such gross revenues.

"Home" means a residential single-family dwelling, or a residential single dwelling unit located within a Multiple Dwelling Unit, located within the Use Area.

"Multiple Dwelling Unit" means an apartment building or other building containing more than four (4) dwelling units located within the Use Area.

"Party" means either Licensor or Licensee, and **"Parties"** means both Licensor and Licensee.

"Premises" means a Home, Multiple Dwelling Unit, office, or other building located within the Use Area.

"Public Highway" or **"Highway"** means all roads, streets, and alleys and all other dedicated public rights-of-way and public utility easements of the City of Flagstaff.

"Use Area" means the legal boundaries of the City as of the Effective Date, and any additions or subtractions to the City legal boundaries, by annexation or other legal means.

SECTION 2. License Granted.

2.1 **License for Broadband and Internet.** Licensor hereby grants to Licensee a non-exclusive license to erect, construct, repair, maintain, replace, operate, lease, install, remove, reconstruct, and upgrade the Communications Network in, on, under, above, upon, along, and across the Public Highways within the Use Area, and to make the Communications Network available to Premises within the Use Area for the purpose of providing broadband internet and voice over internet protocol services, subject to the applicable provisions of this License Agreement, the City Charter, City Code, and any future amendments to the City Charter or City Code, together with all applicable laws and reasonable regulations of any regulatory agency having competent jurisdiction (the "License").

2.2 **License Term.** The License shall commence upon the Effective Date and continue for a period of twenty (20) years, unless sooner terminated as provided for herein.

2.3 **Subordinate or Prior Rights.** Any privilege claimed under this License by Licensee in any Public Highway shall be subordinate to any prior or subsequent occupancy or use by City and shall be subordinate to any prior lawful occupancy or use by any other entity, and shall be subordinate to any prior easements; provided, however, that nothing in this License shall extinguish or otherwise interfere with property rights established independently of this License Agreement.

2.4 Reservation of Rights. There is hereby reserved to City every right and power which is required to be herein reserved or provided by any ordinance, the Flagstaff City Code, or the Flagstaff City Charter, and Licensee, by its acceptance of this License Agreement, agrees to be bound thereby and to comply with any action or requirements of City in its exercise of such rights or powers, heretofore or hereafter enacted or established and exercised in its sole discretion, except those actions or requirements which have been found to be unlawful under state or federal law. Neither the granting of any License Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of City.

2.5 Lease or License for Use to Third-Party ROW Users. This License Agreement further authorizes Licensee in its ordinary course of business to lease to or contract with others for use of all or part of the Communications Network that have licenses or franchises with the City to use the Public Highways for their business purposes or are entitled to use the Public Highways pursuant to A.R.S. Section 9-582(E) (a “Third-Party ROW User”), provided that Licensee (i) promptly notifies the City Attorney in writing of the identity of the Third-Party ROW User upon entering into a lease or contract with such Third-Party ROW User; and (ii) provides the City Attorney with an annual report on or about February 1 annually that lists all such Third-Party ROW Users and the areas of use during the prior calendar year; and (iii) requires as part of a lease or contract with such Third-Party ROW User that: “You are required to separately apply for and obtain a City license or franchise for use of the Public Highway, unless the Flagstaff City Attorney confirms in writing that your company’s activities are exempt from a licensing or franchising requirement”; and (iv) if Licensee intends to allow such Third-Party ROW User to self-perform any work on the Communications Network within the Public Highways that such Third-Party ROW User shall obtain a Right-of-Way Permit and indemnify the City as required in such permit; and (v) Licensee pays all applicable transaction privilege license tax on gross receipts from such lease or contract. It is the express intention of the City that all Third-Party ROW Users are required to obtain licenses or franchises to use the Public Highways for telecommunications, interstate telecommunications, fiber networks, cable television operations, universal video service, and/or any other services to the extent permissible under state and federal law.

2.6 Rights Not Granted.

2.6.1 Multichannel Video System. This License does not grant Licensee the right to use the Public Highways for video service as defined by state law pursuant to System A.R.S. § 9-1401 et seq. Nothing herein shall be construed to prohibit Licensee from subleasing all or part of its Communications Network to a company with a universal video service license issued by the City.

2.6.2 Telecommunications. This License Agreement does not grant Licensee the right to use the Public Highways for Telecommunications as defined by state law pursuant to A.R.S. § 9-581 et seq. and Flagstaff City Code Chapter 3-07 as may be amended and which services would be regulated by the Arizona Corporation Commission. Nothing herein shall be construed to prohibit Licensee from subleasing all or part of its Communications Network to a company with a telecommunications license issued by the City.

SECTION 3. Design, Permitting, Construction, Maintenance, Relocation, and Conditions.

3.1 Design. Licensee shall design the Communications Network, including but not limited to the depth, width, and height of all equipment and other parts of the Communications Network, consistent with the City of Flagstaff’s Engineering Design Standards and any other applicable

laws. Phases of construction and installation relating to traffic control, backfilling, compaction, and paving, as well as the location or relocation of the Communications Network shall be subject to reasonable regulation by the City Engineer. Nothing in this Agreement requires Licensee to build to all areas of the City, and Licensee retains discretion to determine the scope, location, and timing of the design and construction of the Communications Network.

3.2 Right-of-Way Permits Required. Prior to the installation, construction, maintenance, abandonment, replacement, extension, or relocation of any portion of the Communications Network authorized herein, Licensee or its contractor shall apply for and obtain from City a Right-of-Way Permit(s) pursuant to the Flagstaff City Code for such work on the Communications Network. City shall issue such permits to Licensee on such conditions as are lawful and reasonable to ensure compliance with the terms and conditions of this License Agreement.

3.3 Compliance with Laws. The Communications Network shall be designed, constructed, installed, operated, leased, repaired, replaced, and maintained in accordance with the applicable laws, codes, regulations, policies, and standards, whether mandated by the City, State of Arizona, or any other governmental entity with jurisdiction over the Public Highways and, at a minimum, consistent with the terms of this License Agreement. All work performed under this License Agreement shall be done in compliance with the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments (“MAG”) as amended, City amendments to MAG, City of Flagstaff’s Engineering Design Standards, and Occupational Safety and Health Administration (“OSHA”) regulations, all of which may be amended from time to time.

3.4 Materials Testing. Licensee at its expense shall retain a qualified independent testing company to test all materials that will be used to remediate City and third-party pavement, asphalt, and facilities, and which are subject to materials testing pursuant to City’s Engineering Design Standards. Licensee shall submit test results to the City Engineer. The City at its own expense may separately retain a materials testing company for City quality control, and its determinations shall control in the event of any discrepancy between Licensee and City testing results.

3.5 Undergrounding. Licensee shall install its Communications Network underground, except for facilities may be collocated on existing utility poles with permission of the owner and above-ground Cabinets installed per specifications set forth in a City Right-of-Way permit.

3.6 Coordination with Utilities and Joint Trenching. The Licensee's installation of the Communications Network shall be in accordance with the City of Flagstaff’s Engineering Design Standards and as set forth in a City Right-of-Way Permit. Licensee shall make good faith efforts to coordinate the installation and relocation of the Communications Network with utilities and other companies using the Public Highways to accommodate opportunities for common trench installations to limit pavement cuts. City may require Licensee to locate Licensee facilities in a common trench for a City capital improvement project, and in a common trench for a new subdivision. Before the start of construction or repair work (other than emergency repairs) within Public Highways or other City-controlled property (where allowed by separate agreement), plans showing the proposed location of facilities to be constructed in relation to the location of other known adjacent conduit and facilities shall be submitted to the City Engineer for its review and consideration. These plans shall be prepared and submitted in accordance with the City's process for securing a Right-of-Way Permit.

3.7 Inspections of Work. During construction, the City will inspect and test all work in

accordance with City of Flagstaff Engineering Design Standards. City's inspection shall not be construed to waive any nonconformity or noncompliance in the work.

3.8 Interference with Use of Public Highways. The Communications Network to be constructed, installed, operated, leased, repaired, replaced, maintained, upgraded, and removed under this License shall be so located as to interfere as little as reasonably possible with the traveling public, including but not limited to motor vehicles, bicycles, and pedestrians, and other authorized users within Public Highways.

3.9 Plans and Specifications. As part of the Right-of-Way Permitting process, Licensee shall submit its details, plans, and specifications for City review and consideration as a condition of installation, operation, maintenance, location, and attachment of any and all of the Communications Network. The proposed locations of Licensee's Communications Network shall be depicted on engineering drawings provided to City with the submittal of the plans and specifications during the permitting process. If Licensee desires to change the location of any part of the Communications Network, including any related facilities or equipment, from the location set forth in the initial Right-of-Way Permit, Licensee shall apply for a new permit prior to any relocation or construction and cross-reference the original permit number.

3.10 As Built Drawings. Licensee shall maintain as-built drawings of the Communications Network, and shall furnish electronic or hard copies, as requested by the City. Licensee shall cooperate with City to furnish such information in an electronic mapping format approved by the City Engineer and which may be updated periodically.

3.11 Utility Locate Requirements. Licensee shall comply with Arizona Revised Statutes §§ 40-360.21 et seq. by participating as a member of the Arizona 811 (or other appropriate organization selected by the City) with the necessary records and persons to provide the location and identity of Licensee's underground facilities upon receipt of a locate call or as promptly thereafter as possible, but in no event later than two (2) working days after receipt of a locate call. A copy of Licensee's membership in Arizona 811 shall be submitted to the City upon request.

3.12 Property Damage and Restoration. If Licensee damages, disturbs, or alters the surface or subsurface of any Public Highway or adjoining public property, or any public improvement, landscaping, or property of third parties, then Licensee shall promptly, at its own expense, and in a manner reasonably acceptable to the City, repair and restore the damage or disturbance to a condition substantially comparable to its prior state. In the event Licensee is unaware of the damage or unaware that the repair is unacceptable to the City, the City shall give Licensee notice and allow Licensee the opportunity to repair. If Licensee fails to complete such repair within a reasonable time or in a manner reasonably acceptable to the City, then the City may perform such repair, and Licensee shall pay all the actual, reasonable, and fully documented direct costs expended to complete the repair. City-owned fiber must be completely replaced to the nearest established splice point (e.g., cabinet, pole, pedestal, vault).

3.13 Emergencies. In the event of a public emergency, City shall have the right to sever, disrupt, or dig-up facilities of Licensee, after reasonable efforts have been made to reasonably avoid severing, disrupting, or digging up the facilities of Licensee. City shall, where reasonable, notify and work with Licensee in responding to the emergency.

3.14 Maintenance of Communications Network. Licensee shall be solely responsible for all

repairs, maintenance, and adjustments, and damage to the Communications Network, and City shall have no obligation to repair such damage—except where the damage is caused by the sole and exclusive actions of the City or its agent. Excluding relocations reasonably requested by the City and repairs or maintenance to the Communications Network, Licensee shall not relocate, materially modify, or materially alter the Communications Network components any time after issuance of the permit(s), except upon City’s written approval, which approval will not be unreasonably withheld, delayed, or conditioned.

3.15 Relocation of Communications Network. Licensee shall bear the entire cost of timely relocating its Communications Network facilities located within Public Highways, the relocation of which is necessitated by the construction of public improvements by or on behalf of the City. If Licensee is required to relocate its Communications Network facilities due to the construction of a scheduled public improvement, the City shall provide Licensee with at least sixty (60) calendar days' notice before any required action of Licensee to relocate affected portions of the Communications Network and shall cooperate with Licensee to identify a replacement and alternative location within the Public Highways for the relocation of affected portions of the Communications Network. In the event the Parties are unable to identify a replacement and alternative location within the Public Highways, Licensee at its own expense is responsible for relocating on private property. Licensee shall promptly remove the designated portions of the Communications Network. Licensee, at its sole cost and expense, shall restore all public and private property damaged by Licensee's removal and relocation of the Communications Network to a condition substantially comparable to the condition before removal and relocation of the Communications Network. City will make reasonable efforts to design and construct projects pursuant to this section so as to minimize relocation expenses to Licensee and shall entertain a reasonable request to support existing facilities in place. If Licensee fails to timely relocate as required herein, the Licensee 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.

3.16 Local Agent. Licensee shall maintain a local agent within, or within one hundred (100) miles of, the Flagstaff city limits who is familiar with Licensee's facilities and who is responsible for satisfying the information needs of City and other public rights-of-way users. Licensee shall be available to staff employees of any City department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Communications Network. Licensee will provide the City Engineer with emergency contacts before submitting for permits. The Licensee will inform City Engineer promptly of any changes to its agent’s contact information.

3.17 Inspection of Business Records; Record Retention. City may examine the relevant business records of Licensee, at reasonable times and upon at least ten (10) days’ prior written notice, to the extent reasonably necessary to ensure Licensee’s compliance with this Agreement or applicable tax laws. Licensee will retain all business records relating to this Agreement at least six (6) years after expiration, termination, or revocation of this Agreement.

3.18 Data Deliverable. Within ninety (90) days after the installation of any segment of the Communications Network, the Licensee shall supply the City Engineer with electronic files showing the installed location of the fiber optic cable associated with the Communications Network in a format acceptable to the City. Licensee shall supply GIS data attributes and to a file transfer protocol (FTP) acceptable to the City. The City will use data for project coordination.

3.19 Construction Commencement. Licensee will use commercially reasonable efforts to commence construction within six (6) months after the Effective Date.

SECTION 4. License Fee; Credit.

4.1 License Fee. Licensee shall pay a license fee equal to two percent (2%) of monthly Gross Revenues (“the License Fee”) on a monthly basis. In consideration for payment of the License Fee, Licensee shall not be required to pay Right-of-Way Permit fees. Nothing herein shall be construed to waive any applicable chip seal fees, pavement maintenance, pavement cut, or similar fees adopted by the City.

4.2 Credit for In-Kind Material or Services. If agreed upon by the Parties, Licensee may provide in-kind material or services to City in exchange for a credit against payment of the License Fee. Consistent with A.R.S. § 9-582(D), the valuation of any in-kind materials or services shall be set forth in Exhibit A to this License Agreement.

4.3 Pass Through. Licensee may pass through a pro-rata share of the cost of the License Fee to any Customer whose service is provided by the Communications Network by separately itemizing such cost on the Customer billing statement.

SECTION 5. Indemnification and Assumption of Risk.

5.1 Indemnification of City. In addition to the indemnity requirements set forth in Flagstaff City Code, Licensee shall defend, indemnify, and hold harmless City, its Mayor and Council members, officers, agents, employees, boards, and commissions (collectively, including City, “City Indemnitees”) from and against all third-party claims, demands, damages, losses, and expenses of any nature (including an award of attorneys’ fees), sustained by the City Indemnitees on account of any suit, judgment, execution, claim, or demand whatsoever arising out of or resulting from the acts or omissions of Licensee, its customers, officers, agents, employees, contractors, successors, or assigns (collectively, “Licensee and its Agents”), or the performance of work by Licensee and its Agents pursuant to this License or the installation, operation, or maintenance of the Communications Network, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License (each, a “Claim”), except to the extent such Claim arises due to the sole and active negligence or willful misconduct of the City Indemnitees. The amount and type of insurance coverage requirements set forth in this License will not be construed as limiting the scope of the indemnity stated in this section. In the event of any Claim specified in this section, the City Indemnitees shall give reasonable, prompt notice to Licensee of such Claim. Failure of the City Indemnitees to timely give such notice to Licensee shall relieve Licensee of its indemnity obligations hereunder only to the extent Licensee is actually prejudiced or damaged by such failure. Licensee shall have reasonable control of the defense of any action or litigation of a Claim and all negotiations for the settlement or compromise of the same, except that Licensee may not make any non-monetary settlement or compromise without the City Indemnitees’ consent, which consent shall not be unreasonably withheld or delayed. The City Indemnitees shall

cooperate with Licensee in the defense and settlement of any Claim at Licensee's expense. No City Indemnitee shall take any action to settle, to compromise, or otherwise to make any payment, admission, or statement to or for the benefit of any third-party claimant without Licensee's written consent.

5.2 Licensee Customers. For the avoidance of doubt, Licensee's Customers shall be considered third parties for purposes of Section 5.1, and the Parties acknowledge that Licensee shall indemnify City Indemnitees against any suit, judgment, execution, claim, or demand whatsoever from its Customers, so long as it is alleged to arise or result from the installation, operation, maintenance, repair, or condition of any facilities authorized under this Agreement including the Communications Network, the delivery of services over the Communications Network, or the condition of public or private property altered as a result of Licensee's activities.

5.3 Attorney General Investigation, Effect of Determination. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona and City and Licensee are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Licensee posts such bond; and provided further, that if the Arizona Supreme Court determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further rights, interests, or obligations under this License Agreement, or claim against the other Party for a breach of default under this License Agreement.

5.4 Statutory Authority, Effect of Lack Thereof. Licensee shall assume the risk of, and hereby relinquishes any claim of any kind whatsoever against City in connection with, any final, non-appealable order or determination by a court of competent jurisdiction that City lacked the statutory authority under Arizona law to issue this License. The Parties agree that if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order or determination that City did not have the authority to issue a License to Licensee under Arizona law, then this License shall be considered a revocable permit with a mutual right in either Party to terminate without cause upon giving sixty (60) days' notice to the other. In such an event, the requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and right of termination. If this License shall be considered a revocable permit as provided herein, the Licensee acknowledges the authority of the City Council under Title 9 of the Flagstaff City Code to issue a revocable permit and the power to revoke as provided herein.

SECTION 6. Letter of Credit.

Licensee shall provide and maintain an irrevocable letter of credit in a form acceptable to the City Attorney of no less than One Hundred Thousand Dollars (\$100,000.00) as security for the faithful performance by it of all the provisions of this License for the full term of the License plus an additional six (6) months thereafter. The letter of credit shall provide for sixty (60) days prior written notice to the City before cancellation or material alteration of the letter of credit. This Agreement may be revoked by City if Licensee fails to maintain the required letter of credit. Every five (5) years from and after the Effective Date of this Agreement, the letter of credit amount shall be increased by Five Thousand Dollars (\$5,000.00). In the event City makes any draw upon the letter of credit, Licensee shall immediately restore the letter of credit to the amount required under this Agreement.

SECTION 7. Insurance.

7.1 General Requirements.

7.1.1 Licensee, at its own expense, shall carry and maintain insurance of the types and amounts required in this section with companies possessing a current AM Best, Inc. rating of A- or better and legally authorized to do business in the State of Arizona with policies and forms reasonably satisfactory to City.

7.1.2 All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement and may result in termination of this Agreement.

7.1.3 The failure to renew any of the insurance policies required pursuant to this Agreement prior to their expiration shall constitute a breach of this License Agreement.

7.1.4 All insurance policies, except Workers' Compensation, required by this Agreement shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, City, its agents, representatives, officers, directors, officials, and employees as additional insureds.

7.1.5 Licensee's insurance shall be primary insurance over any insurance available to the City and as to any claims resulting from this Agreement, it being the intention of the Parties that the insurance policies so effected shall protect both Parties and be primary coverage for any and all losses covered by the described insurance. The insurance provided by Licensee shall not require contribution from any other insurance or self-insurance maintained by the City or the City's agents, representatives, officials, officers, directors, or employees.

7.1.6 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the Licensee's acts, errors, mistakes, omissions, work, or service.

7.1.7 The insurance policies may provide coverage requiring deductibles, but payment of such deductibles shall be assumed by and shall be the sole responsibility of the Licensee.

7.1.8 Licensee will provide City with notice of cancellation of any policy required above in accordance with policy provisions.

7.2 Proof of Insurance; Certificates of Insurance.

7.2.1 Prior to commencing work or services under this Agreement, Licensee shall furnish to City Certificates of Insurance issued by Licensee's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates of Insurance.

7.2.2 If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City within five (5) business days of the expiration date.

7.2.3 All Certificates of Insurance shall identify the policies in effect on behalf of the Licensee, their policy period(s), and limits of liability. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the Agreement documents. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.

7.2.4 City reserves the right to request and to review at a mutually agreeable location, within ten (10) working days, copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Licensee of any deficiencies in such policies and endorsements, and such receipt shall not relieve Licensee from, or be deemed a waiver of City's right to insist on, strict fulfillment of Licensee's obligations under this Agreement.

7.3 Required Coverage.

7.3.1 Such insurance shall protect Licensee from claims set forth below which may arise out of or result from the operations of Licensee under this Agreement and for which Licensee may be legally liable, whether such operations be by the Licensee or by a sub-consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. Form CG00010413 or equivalent thereof including, but not limited to, severability of interest and waiver of subrogation clauses.

7.3.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Licensee's employees.

7.3.3 Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom.

7.3.4 Claims involving contractual liability insurance applicable to the Licensee's obligations of indemnification.

7.4 Commercial General Liability – Minimum Coverage Limits.

Any combination between general liability and excess general liability alone amounting to a minimum of \$3,000,000.00 per occurrence and an aggregate of \$6,000,000.00 in

coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISC) Additional Insured, Form B, CG 2010, or equivalent, and shall include coverage for Licensee's operations and products, and completed operations.

7.5 Worker's Compensation and Employer's Liability.

Licensee shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees engaged in the performance of the work or services; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit. In case any work is subcontracted, Licensee will require the subcontractor to provide Worker's Compensation and Employer's Liability to at least the same extent as required by Licensee.

7.6 Automobile Liability.

Licensee shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the Licensee's work. Coverage shall be at least as broad as coverage code 1, "any auto" (Insurance Service Office, Inc. Policy Form CA 0011293, or equivalent).

SECTION 8. Abandonment of Facilities.

Upon termination or expiration of this Agreement, Licensee at its expense shall either (i) enter into a new license allowing the Communications Network to remain within the Public Highways, or (ii) transfer the Communications Network to another entity with a license to use the Public Highways and provide evidence thereof to City, or (iii) abandon all or part of its Communications Network in place subject to City's sole discretion and written approval. If Licensee desires to abandon all or part of its Communications Network, Licensee first shall submit to the City a proposal for abandonment and instruments for transferring ownership to the City. If abandonment is approved by City, Licensee must notify the Arizona 811 of such abandonment and shall record the abandonment consistent with Arizona Revised Statutes §§ 40-360.21 et seq.

SECTION 9. Assignment of License.

9.1 In General. Except as provided for in Section 9.2, neither Party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other Party, which shall not be unreasonably withheld, conditioned, or delayed. Licensor reserves the right to condition assignment or transfer of the License upon demonstration of the transferee or licensee's qualifications to perform all rights and obligations of the License, the City Conduit Lease Agreement dated January 21, 2025, the City Fiber Network Maintenance Agreement dated January 21, 2025, and upon condition that Licensee shall remain liable for all acts, omissions, or liabilities arising under such agreements prior to the date of such assignment or transfer.

9.2 Assignment to an Affiliate. Licensee shall have the right to assign this Agreement to an Affiliate without prior written consent of Licensor, provided that Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this section, (a) "Affiliate" means any person that now or in the future, directly or indirectly controls, is controlled with

or by, or is under common control with Licensee; and (b) “control” means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other person, fifty percent (50%) or more ownership interest in said person, or the power to direct the management of such person.

SECTION 10. Nonexclusive License.

This License grant is not exclusive, and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm, or corporation to use the Public Highways.

SECTION 11. Revocation of License.

This License may be revoked by the Licensor prior to expiration of the then-current Term if any one of the following events occurs:

- i. The Licensee fails to comply with the material terms and conditions of the License or applicable law and does not remedy or cure such failure to comply as provided by Section 12;
- ii. The Licensee is or becomes insolvent or is a party to a voluntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the City, threaten the financial viability of Licensee as a going concern, or if there is any similar action that affects Licensee’s capability to perform its obligations under this License; or
- iii. The Licensee is the subject of a petition for involuntary bankruptcy not dismissed within sixty (60) days.

SECTION 12. Breach; Rights and Remedies; Termination.

12.1 Licensee Breach or Default. In the event the City believes that Licensee has not complied with or is otherwise in default of any material term of this Agreement, the City shall promptly notify Licensee in writing with specific details regarding the exact nature of the alleged noncompliance or default (a “City Breach Notice”).

12.1.1 Licensee’s Right to Cure or Respond. Licensee shall have forty-five (45) days from its receipt of a City Breach Notice (the “Initial Licensee Cure Period”) to either:

- i. respond to the City, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest, but in the event the Parties are unable to resolve such contest within thirty (30) days of Licensee’s response, City may proceed to enforce any of the remedies set forth in Section 12.1.2 ; or
- ii. cure an actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the Initial Licensee Cure Period, then so long as Licensee initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies the City of the steps being taken and the projected

date that they will be completed, the Initial Licensee Cure Period shall be extended for a reasonable amount of time to permit such cure but not to exceed ninety (90) days from Licensee's receipt of a City Breach Notice (the "Extended Licensee Cure Period" and together with the Initial Licensee Cure Period, the "Licensee Cure Period"). If Licensee is unable to cure the default during the Initial Licensee Cure Period or Extended Licensee Cure Period (whichever is applicable), then City may proceed to enforce any of the remedies set forth in Section 12.1.2.

12.1.2 City Rights and Remedies. If Licensee fails to cure any actual noncompliance or default as provided in Section 12.1.1 within the applicable Cure Period, the City may take any or all of the following actions:

- i. terminate this License;
- ii. seek special action or other similar relief (whether characterized as mandamus, injunction, or otherwise), requiring Licensee to undertake and to fully and timely address or to enjoin any construction or activity undertaken by Licensee which is not in accordance with the terms of this Agreement;
- iii. seek indemnity (including but not limited to filing an action for damages) arising under Licensee's indemnity or duty to hold harmless obligations set forth in Section 5, or seek damages for failure to restore property under Sections 3.3, 3.6, 3.12, or 3.15; or
- iv. enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Licensee or City pursuant to this Agreement.

Notwithstanding anything to the contrary in this Agreement, in no event shall the City be permitted to terminate this Agreement if the City has an uncured breach or default under this Agreement.

12.2 City Breach or Default. In the event Licensee believes that the City has not complied with or is otherwise in default of any material term of this License, Licensee shall promptly notify the City in writing with specific details regarding the exact nature of the alleged noncompliance or default (a "Licensee Breach Notice"). The failure to promptly provide such notice, however, shall not act as a waiver of any rights and remedies of Licensee hereunder unless and only to the extent that the City is materially prejudiced by such failure.

12.2.1 City's Right to Cure or Respond. The City shall have forty-five (45) days from its receipt of a Licensee Breach Notice (the "City Cure Period") to:

- i. respond to Licensee, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest, but in the event the Parties are unable to resolve such contest within thirty (30) days of City's response, Licensee may proceed to enforce any of the remedies set forth in Section 12.2.2; or
- ii. cure an actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the City Cure Period, then so long as City initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies the Licensee of the steps being taken and the projected date that they will be completed, the City Cure Period shall be extended for a reasonable amount of time to permit

such cure but not to exceed ninety (90) days from City's receipt of a Licensee Breach Notice (the "Extended City Cure Period"). If City is unable to cure the default during the City Cure Period or Extended Licensee Cure Period (whichever is applicable), then Licensee may proceed to enforce any of the remedies set forth in Section 12.2.2.

12.2.2 Licensee Rights and Remedies. If the City fails to cure any actual noncompliance or default as provided in Section 12.2.1 within the applicable Cure Period, Licensee's sole and exclusive remedies shall be limited to any or all of the following, as applicable:

- i. file a special action or seek other similar relief (whether characterized as mandamus, injunction, or otherwise), requiring City to undertake and to fully and timely perform its obligation under this Agreement;
- ii. an action for damages for repairs to its Communications Network as set forth in Section 3.12 if applicable; and
- iii. in the event of the breach of, noncompliance with, or default under any material term of this Agreement, terminate this Agreement and seek recovery of termination-related attorneys' fees.

12.2.3 Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City. Notwithstanding anything to the contrary in this Agreement, in no event shall the Licensee be permitted to terminate this Agreement if the Licensee has an uncured material breach or default under this Agreement, and has received a City Breach Notice prior to seeking to terminate for convenience.

12.3 Limitation of Liabilities:

12.3.1 In General. The City and its officers, agents, elected or appointed officials, employees, departments, boards, and commissions shall not be liable to Licensee or to its affiliates, Customers, sublicensees, or contractors for any interference with or disruption in the operation of Licensee's Communications Network or the provision of services, or for any damages arising out of Licensee's use of the Public Highways.

12.3.2 Official Acts. The Licensee shall have no recourse whatsoever against the City's officers, elected or appointed officials, boards, commissions, agents, or employees for any loss, cost, expense, or damage arising out of any actions taken in their official capacities pursuant to this Agreement.

12.3.3 Damages. Except where explicitly permitted by the terms of this License Agreement, City and Licensee each waives its respective right to seek and recover consequential (including lost profits or harm to business), indirect, incidental, reliance, exemplary, special, beneficial, numerical, punitive, or similar damages from the other.

SECTION 13. Acceptance of License Authority.

The Licensee acknowledges and accepts the right of the City to issue a License, and Licensee agrees it shall not now or at any time hereafter challenge this right to issue the License in any way or

in any City, state, or federal court. The Licensee has reviewed the Licensor's ability to grant a License and accepts such a License as the City may now be legally able to grant.

SECTION 14. Severability.

14.1 If any section, paragraph, clause, phrase, or provision of this License Agreement shall be adjudged invalid or unconstitutional, or preempted by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, the same shall not affect the validity of this License as a whole or any part of the provisions of this License other than the part superseded or adjudged to be invalid or unconstitutional.

14.2 The Parties agree that this License is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, order, and ordinances. Accordingly, any provision of this License which conflicts with any such applicable law shall be invalid and unenforceable, whether occurring before or after execution of this License, it being the intention of the Parties: (i) to preserve their respective rights and remedies under all applicable laws; and (ii) that the execution of this License does not constitute a waiver of any rights or obligations by either Party under any applicable law. In the event that a provision is invalid and unenforceable, all other provisions shall remain in full force and effect. Both the City and Licensee expressly reserve all rights they may have under law to the maximum extent possible; neither the Licensor nor the Licensee shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this License.

SECTION 15. Notices.

All notices, requests, demands, claims, and other communications permitted or required to be given pursuant to this License must be in writing and shall be deemed duly given and received (i) if personally delivered, when so delivered; (ii) if mailed, five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below; (iii) if sent through an overnight delivery service in circumstances to which such service guarantees next day delivery, the day following being so sent.

If to the City: Grants and Contracts Administration
211 W. Aspen Avenue
Flagstaff, Arizona 86001

With a copy to: City Engineer
211 W. Aspen Avenue
Flagstaff, Arizona 86001

If to Licensee: The Chief Executive Officer
Wecom LLC d/b/a Wecom Fiber
2332 Kingman Avenue
Kingman, Arizona 86401

With a copy to: The General Counsel
Wecom LLC d/b/a Wecom Fiber
3028 E. Sunset Rd.,
Las Vegas, Nevada 89120

Either Party may from time to time designate any other address for this purpose by written notice to the other Party in the manner set forth above.

SECTION 16. Entire Agreement and Amendment.

This License Agreement constitutes the entire agreement of the Parties regarding the matters set forth herein and may be amended or modified only by a written instrument signed by an authorized representative of each Party.

SECTION 17. Governing Law; Arizona Legal Requirements.

This License will be governed by, enforced, and construed in accordance with the laws of the State of Arizona and applicable federal law, and any Party bringing a claim hereunder may bring such claim only in the Superior Court of Coconino County, Arizona, or the United States District Court for the District of Arizona, as applicable. The Parties hereby irrevocably designate these courts as the only courts of proper jurisdiction and venue for any actions or proceedings relating to this Agreement and waive any objections or defenses relating to jurisdiction with respect to such action or proceeding. Each Party consents to service of process under the statutes and rules applicable to the Superior Court of Coconino County, Arizona, and the United States District Court for the District of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this License Agreement shall be Coconino County, Arizona. The Parties acknowledge the following Arizona statutes applicable to this Agreement and any terms required to be in this Agreement based on such statutes are deemed included herein: A.R.S. § 38- 511 (cancellation of political subdivision contracts); A.R.S. § 42-17106 (expenditures limited to budgeted purposes); A.R.S. § 35-393.01 (Israel boycott divestments); and A.R.S. § 38-504 (conflict of interest – prohibited acts).

SECTION 18. Attorneys' Fees.

The prevailing Party in any litigation arising out of this License Agreement shall be entitled to the recovery of its actual reasonable attorneys' fees, court costs, and other litigation-related costs and fees from the other Party.

SECTION 19. Force Majeure.

Except as otherwise expressly set forth in this License, the Parties will not be held in default under, or in breach or noncompliance with, the provisions of this License, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of this Agreement), where such noncompliance or alleged defaults occurred or were caused by any Force Majeure Event.

SECTION 20. Representations and Warranties.

20.1 Subject to the limitations set forth in Section 13 (Acceptance of License Authority) and this Section 20, the City represents and warrants to Licensee that, as of the date of the execution of this License Agreement, to the best of its knowledge: (a) it has full authority (including the authority required by any applicable law, ordinance, rule, or regulation) to enter into and perform this License Agreement and the execution, delivery, and performance of this License Agreement, and the consummation of the transactions contemplated hereby and thereby are within the right, power, and authority of the City and have been duly authorized by all necessary action on the part of City, (b) this

License Agreement has been duly executed and delivered by the City and it constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and by general principles of equity), and (c) the execution and delivery of this License Agreement by the City and its performance hereunder and thereunder does not violate any law, ordinance, rule, or regulation applicable to the City.

20.2 Licensee represents and warrants to the City that: (a) it has full authority to enter into and perform this Agreement and the execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated hereby and thereby are within the power and authority of Licensee and have been duly authorized by all necessary action on the part of Licensee, (b) this Agreement has been duly executed and delivered by Licensee and it constitutes a legal, valid and binding agreement of Licensee enforceable against Licensee in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and by general principles of equity), and (c) the execution and delivery of this Agreement by Licensee and its performance hereunder and thereunder will not violate any law, rule, or regulation applicable to Licensee.

20.3 OTHER THAN THE EXPLICIT REPRESENTATIONS AND WARRANTIES MADE BY LICENSEE TO CITY UNDER THIS AGREEMENT, LICENSEE MAKES NO REPRESENTATIONS OR WARRANTIES TO THE CITY OR ANY PERSON WITH RESPECT TO THE COMMUNICATIONS NETWORK (OR THE COMPONENTS THEREOF) AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT LICENSEE MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

SECTION 21. No Third-Party Beneficiaries.

This License Agreement is intended to be for the sole benefit of City and Licensee, and there shall be no third-party beneficiaries of this License or any provisions hereof. Nothing in this Agreement shall confer on any person or entity, other than City and Licensee, any rights, benefits, or remedies under or by reason of this License Agreement.

SECTION 22. No Rights to the Communications Network.

The City expressly agrees that, except as expressly set forth in this License Agreement, it does not claim any interest or estate of any kind in the Communications Network. Licensee shall, at all times, retain title to and ownership of the Communications Network and all future extensions of the Communications Network during the term of this License.

SECTION 23. Construction.

Each Party to this License Agreement has been represented by legal counsel in connection with preparation of this Agreement. Legal or equitable principles that might require the construction of this Agreement or any provision hereof against the Party drafting this Agreement shall not apply in any construction or interpretation of this Agreement and is expressly waived. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

SECTION 24. Waiver.

No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective. No failure or delay by a Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

SECTION 25. Survival.

The rights and obligations of the Parties under Sections 5 (Indemnification and Assumption of Risk), 6 (Letter of Credit), 7 (Insurance), 8 (Abandonment of Facilities), 18 (Attorneys' Fees), 24 (Waiver), and any other obligations which reasonably should survive expiration or termination of this License Agreement shall remain in effect following termination or expiration.

SECTION 26. Severability.

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement (which other terms and provisions shall remain in full force and effect) or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

SECTION 27. Public Records.

Licensor is a political subdivision of the State of Arizona and is subject to Arizona Public Records Law, A.R.S. §§ 39-121 set seq. As such, records related to this License may be subject to disclosure.

SECTION 28. Obligations to Customers.

Licensee shall take commercially reasonable steps to protect personal financial information of Customers. Licensee shall not discriminate against any Customer in violation of any civil rights law or protected class. Licensee shall comply with all federal, state, and local laws and regulations related to customer service standards, if any.

SECTION 29. Counterparts.

This Agreement may be signed in any number of counterparts, each of which will be deemed an original, with the same effect as if the signatures were upon the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (including PDF) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

In witness hereof, the Parties have caused this License to be executed.

LICENSEE: Wecom LLC, a Delaware limited liability company

By: _____

Its: _____

Date: _____

STATE OF)
)SS
County of)

On this _____ day of _____, 2025, before me, a Notary Public, personally appeared _____ 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
Credit Against Annual License Fee – In-Kind Materials/Services

In partial consideration of the In-Kind Materials and Services provided by Licensee pursuant to the Design-Build Services Contract for design and construction of a City Network entered into by and between the parties dated January 21, 2025, and pursuant to the City Fiber Network Maintenance Agreement entered into by and between the parties dated January 21, 2025, for a period of 20 years, the License Fee shall be adjusted as follows:

Year 1- 3	No Annual License Fee
Year 4 - 10	1.5% of Gross Revenues
Year 11 - 20	2% of Gross Revenues

Provided, however, in the event the City amends the Flagstaff City Code within two (2) years from the Effective Date of this License Agreement to allow for use of micro-trenching within Residential Local Streets for installation of a fiber network, then the License Fee shall be reset at 2% of Gross Revenues from and after the effective date of such amendment to the Flagstaff City Code.

Residential Local Streets shall mean all streets not identified as arterial or collector streets in the City of Flagstaff Engineering Design Standards.