

**TOWN OF PRESCOTT VALLEY**  
**WIRED TELECOMMUNICATIONS SERVICES**  
**LICENSE ISSUED TO**  
**WECOM LLC D/B/A "WECOM FIBER"**

THIS LICENSE ("License") is issued by the Town of Prescott Valley, a municipal corporation of Arizona ("Licensor" or "Town"), to Wecom LLC d/b/a "Wecom Fiber", a Delaware limited liability company, ("Licensee"), (Town and Licensee collectively being "Parties" hereto), this 26<sup>th</sup> day of June, 2025.

**RECITALS**

WHEREAS, the Licensee has applied to the Town for permission to construct, install, operate, maintain, and use the Public Roadways in the Town in order to provide Telecommunications Services; and

WHEREAS, by the authority conferred by A.R.S. §§9-581 through 9-583, the Town is authorized to grant this License; and

WHEREAS, the Town Council has granted this License to the Licensee to construct, install, operate, maintain, and use Facilities in, along, under, over and across certain Public Roadways within the Town to provide Telecommunications Services;

**AGREEMENT**

The Town grants the Licensee a License on the following terms and conditions:

**SECTION 1. Definitions.**

For the purpose of this License, unless the context otherwise requires, the following terms, phrases, words, and their derivatives have these meanings. When not inconsistent with the context, words in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

"ACC" means the Arizona Corporation Commission.

"A.R.S." means Arizona Revised Statutes, as amended from time to time.

"Bridge" means any bridge structure owned by the Town. A bridge is Town private property and not part of a Public Roadway or Right-of-Way.

"Cable Services" and "Cable System" shall have the same meaning as defined in 47 CFR. § 76.5.

"Town Council" means the Common Council of the Town of Prescott Valley.

"Commercial Mobile Radio Services" means two-way voice commercial mobile radio services as defined by the Federal Communications Commission in 47 CFR § 9.3.

"Dark Fiber" means fiber-optic cables and strands of fiber-optics that are installed in the ROW to be leased, rented, or sold to an entity that will install and operate the necessary optical electronic

equipment for communications. Dark Fiber is not a Telecommunications Service and may be subject to an additional or separate license, requirements, and fees.

*“Environmental Laws”* means all federal, state, and local laws, ordinances, rules, regulations, statutes, and judicial decisions now or subsequently in effect, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or prevention or cleanup of pollution or contamination of the air, soil, surface water, or ground water.

*“Facilities”* means the plant, equipment, and property used in the provision of Telecommunications Services and not owned by the Town (including, but not limited to, poles, wires, pipe, conduits, pedestals, antennas, and other appurtenances placed in, on, or under Public Roadways).

*“FCC”* means the Federal Communications Commission.

*“Hazardous Substances”* means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

*“Interstate Telecommunications Services”* means a Telecommunications corporation that places underground or above ground Facilities in the Public Roadway, exclusive of Facilities used by the local networks and the portion of the interstate network that carries intrastate calls, for interstate Telecommunications Services.

*“License”* means this non-exclusive authorization granted by the Town to construct, operate, maintain, reconstruct, repair, and remove the Facilities.

*“Licensee”* means Wecom LLC d/b/a “Wecom Fiber” whose principal place of business is 2332 Kingman Avenue, Kingman Arizona 86401 and to which this License is granted.

*“Licensor”* means the Town of Prescott Valley, Arizona, a municipal corporation of the State of Arizona.

*“Micro-Trenching”* means micro-trenching technology and construction methods pursuant to the standards and guidelines issued and approved by the Town’s Public Works Director.

*“Pre-existing Environmental Condition”* means the presence, emission, disposal, discharge, or release of any Hazardous Substance at, in, on, under or about the Facilities, however caused, existing prior to the placement of Facilities within the Public Roadway, whether the nature and extent of such contamination is known or unknown at the time.

*“Private Line Services”* means the type of data and communications service that is offered to non-residential customers, businesses, government agencies, and other such classes of customers (and that is not available directly to the public).

*“Proprietary Information”* shall have the meaning prescribed in Section 24.

*“Provider”* means a corporation that constructs, installs, operates, repairs, or maintains Telecommunications Facilities in the Public Roadways.

*"Public Roadway" or "Roadway"* means all roads, streets, and alleys, and all other dedicated public rights-of-way and public utility easements of the Town. A bridge owned by the Town or other parties is not a Public Roadway or a Roadway; use of a Town bridge may require a Bridge Master License Agreement or a Revocable Permit.

*"Rights-of-way (ROW)"* shall have the same meaning as Public Roadway or Roadway.

*"Telecommunications"* means Facilities-Based Local Exchange Telecommunications Services in which the transmissions between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received. The term does not include Commercial Mobile Radio Services, pay phone services, interstate services, or cable TV or video services provided by a Cable System operator or a Video Services operator.

*"Telecommunications Corporation"* means any public service corporation to the extent that it provides Telecommunications Services in the State of Arizona.

*"Telecommunications Services"* means the offering of Telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the Facilities used.

*"Use Areas"* means the area of the Facilities in the Rights-of-way that have been approved by the Town.

## SECTION 2. Permission Granted.

2.1 Subject to the terms of this License, and to the Prescott Valley Town Code, Arizona Revised Statutes, and the Constitution of the State of Arizona, the Town grants to the Licensee the nonexclusive revocable license, right and privilege to construct, install, operate, maintain and use Facilities in, under, along, over and across Public Roadways to provide Telecommunications Services within the current and future corporate Town limits.

2.2 The permission granted by this License is limited to the locations identified in the system route map in the form approved by the Public Works Director. Any time its Facilities are extended, or the route is otherwise modified, or if portions of the route are abandoned, the Licensee will submit a revised system route map to the Public Works Director. The Licensee must keep a current route map on file with the Public Works Director during the term of this License.

2.3 If it is necessary for the Licensee to comply with any law or regulation of the FCC or the ACC to engage in business activities associated with use of the Public Roadways to provide Telecommunications Services, the Licensee shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this License.

## SECTION 3. Nonexclusive License.

This License is not exclusive, and nothing in this License may be construed to prevent the Town from granting other similar Licenses to any others, or to reduce the powers and privileges granted the Town under the Constitution and laws of the State of Arizona.

## SECTION 4. Term of License.

4.1 The term of this License shall be for a period of five (5) years beginning on the Effective Date ("Term"), unless terminated sooner as provided in this License.

4.2 At any time prior to the expiration of this License, the Licensee may apply to the Town for a renewal of the License in accordance with then-existing State and Town laws.

4.3 The Licensee acknowledges that this License is subject to cancellation by the Town pursuant to the provisions of A.R.S. § 38-511.

4.4 In any circumstance whereby the Licensee would remain in occupancy of the Use Areas after the expiration of this License, such holding over shall not be deemed to operate as a renewal or extension of this License but shall only create a use right from month to month that may be terminated at any time by the Licensor upon thirty (30) days' notice to the Licensee (or by the Licensee upon sixty (60) days' notice to the Licensor).

#### SECTION 5. Fees.

5.1 The Licensee may be required to pay to the Licensor an annual amount for use of the Public Roadways, Rights-of-way. The Licensee shall pay the License fee because, among other things, the Public Roadways, Rights-of-way which are used by the Licensee in the operation of its Facilities within the boundaries of the Town are valuable public properties acquired and maintained by the Town at great expense to its taxpayers, and that the grant to the Licensee to use said Public Roadways, Rights-of-way is a valuable property right without which the Licensee would be required to invest substantial capital in ROW costs and acquisitions. In consideration for issuing this License, the Licensee shall pay the compensation set forth below.

5.2 The Town will not levy a tax, rent, fee or charge to a Telecommunications Corporation for the use of a Public Roadway to provide Telecommunications Services for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the Facilities used.

5.3 If the Licensee offers Private Line Services, the Licensee shall pay to the Town an annual fee of \$1.36 per linear foot of Facilities it operates in the Town's Public Roadways, Rights-of-way. The Licensee may request to be exempt from this annual fee for portions of the Licensee's network that has fifty-one percent (51%) of its facilities used by the local network to provide local exchange telecommunications services. The rate per linear foot shall be increased annually by the increase in the Consumer Price Index ("CPI") for All Urban Consumers (CPI-U), All Items as published by the United States Department of Labor, Bureau of Labor Statistics. If there is no increase in the CPI-U, or if the CPI-U is decreased, the linear foot fee shall remain what it was for the previous year. The annual fee will be based upon the total linear feet approved for installation in the Town less any amount removed or abandoned as provided in this License. The annual fee shall be due and payable by the first business day of the annual billing period.

5.4 The Licensee shall pay a transaction privilege tax on the business of providing Telecommunications Services or applicable use tax, as may be specified from time to time in the Town Code (except that this does not authorize the imposition of a transaction privilege tax on the business of providing Interstate Telecommunications Services).

5.5 If the Licensee is a Telecommunications Corporation that has placed Facilities in Public Roadways that carry interstate traffic between and among the Telecommunications Corporation's points of presence, exclusive of Facilities used by the local network and the portion of the interstate network that carries intrastate calls, the Licensee shall pay an annual fee based

on the number of linear feet of trench or conduit in the Public Roadways, Rights-of-way.

5.5.1 For this Licensee, the linear foot fee rate shall be \$1.36 per linear foot. The rate per linear foot shall be increased annually by the increase in the Consumer Price Index ("CPI") for All Urban Consumers (CPI-U), All Items as published by the United States Department of Labor, Bureau of Labor Statistics. If there is no increase in the CPI-U, or if the CPI-U is decreased, the linear foot fee shall remain what it was for the previous year. The annual fee will be based upon the total linear feet approved for installation in the Town less any amount removed or abandoned as provided in this License. The annual fee shall be due and payable by the first business day of the annual billing period.

5.6 Pay all Town fees for public Roadway construction, drawing plan reviews and permits, inspections, and ROW management.

5.7 Pay all reasonable costs associated with the construction, maintenance, and operation of its Facilities in the Public Roadways, Rights-of-way, including reasonable costs associated with damage caused to the Public Roadways, Rights-of-way, and any utilities located therein.

5.8 The Town and the Licensee may enter into a separate agreement for in-kind facilities or services that may offset fees required hereunder for this License.

5.9 Payments due to the Licensor under this provision shall be computed annually, for the preceding year, as of June 30. Each annual payment shall be due and payable no later than 30 days after the date listed in the previous sentence. If such payment is not made by the date due, the Town shall impose interest at a rate of one and one-half percent (1.5%) per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the Licensor. The amount due shall be reported and remitted to the Town on forms prescribed by the Town.

5.10 All payments for permits, inspections, and ROW management fees shall be made within 30 days of the date on the invoice. Any fees not paid are subject to collections action and additional collection fees after ninety (90) days past the original payment due date. The collections fee will be added to the past due amount and must be paid to have the account current. While in collections status for any payment, the Licensee will not be able to submit permits or perform construction work in the ROW.

## SECTION 6. Indemnification and Insurance.

6.1 The Licensee shall indemnify, hold harmless and waive all rights of subrogation against the Town, its agents and employees from and against all claims, damages, losses, and expenses of any nature, including reasonable attorney's fees sustained by the Town on account of any suit, judgment, execution, claim or demand arising out of the act, error or omission by the Licensee, its agents, employees and contractors pursuant to this License or the construction, installation, operation, maintenance, or use of Facilities, whether or not any act, error or omission complained of is authorized, allowed, or prohibited by this License.

6.2 Except for the indemnification obligations set forth herein and except for claims arising from intentional misconduct (including employee or contractor misconduct), in no event

shall the Town be liable to the Licensee for any indirect, incidental, special, punitive, or consequential damages whatsoever, arising out of, or in connection with, this License, including (but not limited to) lost profits, lost revenue, loss of goodwill, loss of anticipated savings, loss of data, incurred or suffered by the Licensee.

6.3 The Licensee shall comply with the insurance requirements attached to this License as Exhibit "A" and incorporated by this reference.

#### SECTION 7. Performance Bond

The Licensee shall file and maintain until completion of the initial Facilities, or for the installation of additional Facilities with a construction cost in excess of \$100,000.00, a performance bond in favor of the Town in the sum of \$500,000.00 to guarantee the Licensee's performance with the terms of this License during construction of the Facilities. In case of breach of any condition of this License, part or all of the performance bond may be forfeited to compensate the Town for any damages it may suffer by reason of the breach. The performance bond shall be acknowledged by the Licensee as principal and shall be issued by a surety with an AM Best rating of A-/VII or better. If any portion of the performance bond is drawn or claimed upon by the Town, the Licensee shall promptly and in any event within ten (10) business days replenish the bond to its full original sum.

#### SECTION 8. Installation and Operation of the Facilities.

8.1 All installations shall meet the applicable standard specifications and requirements of the Town, including any and all permits, inspections, pavement restoration, and discovery of artifacts. It is understood that, unless specifically approved otherwise by the Town at a particular location, all installation shall be either through directional underground boring, ploughing, trenching (except for trenching across major roads), micro-trenching, (on residential street classifications with a PCI of 60 or less, not collectors or arterials - unless otherwise approved by the Town in its sole discretion) or on existing overhead telephone or power poles (through approval of the owners of each pole).

8.2 The authority granted by this License to use the Public Roadways does not authorize the Licensee's use of the Facilities for operating a Cable Television System, a Cable System, Video Service System, or authorize the Licensee to operate as a cable TV or video service operator as those terms are defined in the Communications Act of 1934, state law, or the Town Code. The authority granted by this License does not authorize the use of the Public Roadways for an open video system as defined in the Telecommunications Act of 1996 or as defined or authorized by the FCC. The authority granted by this License is not in lieu of any other license or franchise the Town may require to occupy the Public Roadways to provide dark fiber or empty conduit, or any service other than Telecommunications Service. The Licensee agrees that if the Licensee gifts, donates, sells, rents or leases to others the Facilities for Telecommunications Services as defined by A.R.S. §§ 9-581 through 9-583, such sublicensee shall, before use of the Facilities, apply for and obtain from the Town any requisite authorization (including, if required, a Telecommunications Services License).

8.3 All the Licensee's Improvements shall comply with the following design requirements:

8.3.1 All the Licensee's Improvements shall conform to the applicable Town standards as they may be amended from time to time.

8.3.2 The Licensee shall perform any and all construction work on the Use Areas in

a workman-like manner as reasonably determined by the Licenser and in conformance with all applicable building codes and similar rules. The Licensee's construction work must not interfere with normal operation of the Use Areas. In any event, the Use Areas must be left in as good or better condition as they may be on the date of this License (or in such better condition as the Use Areas may hereafter be placed). Any damage to Town infrastructure through the work performed by or on behalf of the Licensee shall be promptly repaired by or on behalf of the Licensee. If prompt repair is not made, the Town (at its sole discretion) may make the necessary repairs and bill the Licensee for the Town's costs of repair.

8.4 All the Licensee's improvements and other construction work (whether or not specifically described herein) upon or related to the Use Areas (collectively the "Licensee's Improvements") shall comply with the following:

8.4.1 The Licensee's Improvements include, without limitation, all modification, replacement, repairs, installation, construction, grading, structural alterations, utility, lighting, plumbing, sewer, landscaping, or other alterations, parking or traffic alterations, removal, demolition, or other cumulatively significant construction, or similar work of any description (and all installation or alteration).

8.5 Any and all work performed on the Use Areas by the Licensee shall be performed in a workman-like manner as reasonably determined by the Licenser and shall be diligently pursued to completion and in conformance with all applicable national laws, state laws, county laws, Town laws (including, but not limited to, Town building codes), and similar rules, policies, procedures, and orders. All the Licensee's Improvements shall be of high quality, safe, fire resistant, modern in design, and attractive in appearance (all as approved by the Licenser through the utility permit approval processes described in this License, in addition to any zoning, building code, or other regulatory processes that may apply).

8.6 The Licensee must coordinate its construction schedule in accordance with the requirements of the Public Works Department. The Public Works Department may delay or revise the Licensee's construction schedule in order to control the Licensee's activities in the Public Roadways, Rights-of-way with other public or nonpublic works activities in the License area.

8.7 This License does not convey the right to install any of the Licensee's Facilities on private property that is not within a public utility easement.

8.8 This License does not convey the right to install any of the Licensee's Facilities on a Town-owned bridge, Town-owned non-right-of-way property, or onto or within a Town building.

#### SECTION 9. Condition of Title.

9.1 The Licensee's rights hereunder are subject to covenants, conditions, restrictions, easements, licenses, liens, reservations, and encumbrances upon (and all other recorded or unrecorded matters or conditions of title to or licenses or documents regarding) the Use Areas and any and all existing or future licenses allowing any use of the Use Areas, and all amendments to any such licenses.

9.2 The Licenser does not warrant its own or any other person's title to or rights to use the Use Areas or any other property.

9.3 The Licensee's rights hereunder are further subject to all present and future building

restrictions, regulations, zoning laws, and all ordinances, resolutions, rules, and orders of all bodies, bureaus, commissions (and bodies of any municipal, county, state, or federal authority) now or hereafter having jurisdiction over the Use Areas or the Licensee's use thereof. The Licensee shall comply with all of the foregoing.

#### SECTION 10. Public Right-of-Way Priority and Property Interest.

10.1 ROW Use Priority. All existing or future uses of the Use Areas shall be primary and superior to any of the Licensee's uses of the Use Areas. Without limitation, the Licensee shall not obstruct, occupy, or interfere with or prevent others from using any portion of the Use Areas designated by the Licenser for use by the public or by others lawfully at the Use Areas from time to time. The Licensee must not interfere in any way with use of the Use Areas for any other use. Any damage or harm to the Licensee or the Licensee's property arising from uses by the Licenser are the Licensee's responsibility.

10.2 No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, the Licensee's rights are limited to the Use Areas, and the Licensee's rights in the Use Areas are limited to the specific limited License rights created by this License, which creates only a revocable License in the Use Areas. The Licenser and the Licensee do not by this instrument intend to create a lease, easement, or other real property interest. The Licensee shall have no real property interest in the Use Areas.

#### SECTION 11. Location and Relocation of Facilities.

11.1 The Licensee is responsible for ensuring that its Facilities are installed, constructed, and maintained in strict accordance with the Town Code and that all required licenses and permits are applied for and obtained before any work commences, and that the terms and conditions thereof are strictly followed. If a Facility has more than one Licensee, each Licensee is fully responsible for ensuring that all requirements are satisfied. Facilities shall be installed, constructed, and maintained so that no additional costs are imposed upon the Town, and so that the Facility does not interfere with other uses or users of the public ROW.

11.2 The Facilities to be constructed, installed, operated, and maintained by the Licensee shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses over, under, or through the ROW. "As-builts" will be required to be filed with the Town pursuant to the Town's standards operating procedures. Those phases of construction relating to traffic control, as well as the location or relocation of said Facilities shall be subject to regulation by the Town.

11.3 The Licensee shall keep accurate installation records of the location of all Facilities in the rights-of-way and furnish them to the Town upon request or at such periodic intervals as the Town may require. Upon completion of new or relocation construction of underground Facilities in the ROW, the Licensee shall provide the Town, if requested or as required, with installation records in a format compatible with the then-current Town mapping format showing the location of the underground and above ground Facilities.

11.4 Whenever the Licensee shall cause any opening or alteration whatever to be made for any purpose in any ROW, the work shall be completed within the time specified in any applicable provisions of the Town Code, the license or permit (or, if no time is specified, then within a reasonable time). In addition, the Licensee shall, without expense to the Town and upon the completion of such work, restore the property disturbed in a manner consistent with the Town's



applicable standards, or as required by its permits, licenses, or franchises.

11.5 The installation, use, and maintenance of the Licensee's facilities within the ROW authorized in this License shall be in such a manner as not to interfere with the Town's placement, construction, use, and maintenance of its ROW, street lighting, water pipes, drains, sewers, traffic signal systems, or other Town systems that have been, or may be, installed, maintained, used, or authorized by the Town. Upon the Town's request, the Licensee's facilities will be relocated at the Licensee's expense, unless state law expressly requires otherwise. Upon the Town's request (by a time specified by the Town), if the Licensee fails to move its Facilities, the Town may do so and may bill the Licensee the costs therefor and the Licensee shall pay those costs within 30 days after its receipt of the invoice therefor. Further, the Licensee shall reimburse the Town any additional cost the Town incurs due to the location or relocation of the Licensee's Facilities, including all design and construction costs.

11.6 The Licensee shall not install, maintain, or use any of its Facilities in such a manner as to damage or interfere with facilities of another located within the ROW of the Town. Particularly with regard to Town water and wastewater facilities, Licensee must ensure that said facilities are not negatively impacted. Those and other public utilities must be potholed/located and the information placed on design plans prior to Town approval.

11.7 All Facilities shall be installed according to plans approved by the Town. The Licensee may install Facilities on existing utility poles or in existing conduit where permission is granted by owner of the utility pole or conduit, except where those same poles are scheduled to be replaced with buried facilities. The Town may require the Licensee to prove that it has such permission from the owner to use the owner's facilities. No new poles, or longer poles, will be permitted in the ROW for any new Facilities, without the expressed written permission of the Town. If the Licensee installs Facilities on existing poles as provided herein, the Licensee shall bury its Facilities when such poles are removed and not replaced in kind for any reason.

11.8 The Licensee must obtain and maintain such insurance, bonding, and security fund requirements as specified by the Town. No work shall commence unless these requirements have been satisfied, and the Town may require the Licensee to remove or stop work on Facilities, or require a Licensee to cease using the Facility, when any insurance, bonding, or security fund requirements are not satisfied.

11.9 A permit shall be obtained from the Town prior to a Licensee installing, removing, abandoning, relocating, or reconstructing any portion of a Licensee's Facilities. It is understood that permits will be issued in phases to allow the Town to maintain control and knowledge of the work within the ROW. Licensee will be required to provide an overall construction schedule, phased construction schedule that matches each ROW permit phase, and weekly updated schedules so the Town can plan inspections accordingly and put information out on social media to the public. Notwithstanding the foregoing, the Town understands and acknowledges there may be instances when a Licensee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. The Licensee will notify the Town prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification.

## SECTION 12. Conflict with Town Projects.

12.1 If, during the design process for public improvements, the Town discovers a potential conflict with proposed construction, the Licensee shall either:

12.1.1 Locate and, if necessary, expose its Facilities in conflict; or

12.1.2 Use a location service under contract with the Town to locate or expose its Facilities. The Licensee shall reimburse the Town for the cost resulting from the use of such location service.

12.1.3 The Town shall make reasonable efforts to design and construct projects to avoid relocation expense to the Licensee. The Licensee shall furnish location information to the Town in a timely manner, but in no case longer than ten (10) calendar days from the date of the Town's request.

12.2 The Town reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any ROW, aerial, surface, or subsurface improvements, including (but not limited to) water mains, traffic control conduits, cable, devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the ROW of the Town.

12.3 When the Town invokes its prior superior right to the ROW, the Licensee shall move its Facilities located in the ROW, at its own cost, to such a location as the Town directs.

12.4 If, during the course of a project, the Town determines the Licensee's Facilities are in conflict, the following shall apply:

12.4.1 Prior to Town notice to proceed to contractor: The Licensee shall, within a reasonable time, but in no event exceeding one (1) month, remove or relocate the conflicting Facility. This time period shall begin running upon receipt by the Licensee of written notice from the Town. However, if both the Town and the Licensee agree, the timeframe may be extended based on the requirements of the project.

12.4.2 Subsequent to Town notice to proceed to contractor: The Town and the Licensee will immediately begin the coordination necessary to remove or relocate the Facility. Actual construction of such removal or relocation is to begin no later than seventy-two (72) hours, if practicable, after written notification from the Town of the conflict.

### SECTION 13. Damage to Town ROW and Facilities.

13.1 If, in the installation, use, or maintenance of its Facilities, the Licensee damages or disturbs the surface or subsurface of any ROW or adjoining public property, or the public improvement located thereon, therein, or thereunder, the Licensee shall promptly, at its own expense, and in a manner acceptable to the Town, restore the surface or subsurface of the ROW or public property, or repair or replace the public improvement thereon, therein, or thereunder, in as good a condition as before such damage or disturbance. If such restoration, repair, or replacement of the surface, subsurface, or any structure located thereon, therein, or thereunder is not completed within a reasonable time (or such repair or replacement does not meet duly adopted standards), the Town shall have the right to perform the necessary restoration, repair, or replacement, either through its own forces, or through a hired contractor. The Licensee shall pay the Town for its expenses in so doing within 30 days after its receipt of the Town's invoice therefor.

13.2 The Licensee shall reimburse the Town for all costs arising from the reduction in the service life of any public road or pavement damage resulting from any pavement cuts by the Licensee. The Licensee shall pay such costs within 30 days from the date of issuance of an invoice from the Town.

#### SECTION 14. Relocation of Facilities and Dispute Resolution.

14.1 The Town shall not bear any cost of relocating existing Facilities, irrespective of the function served, where Town facilities or other facilities occupying the ROW under authority of a Town permit, license, or franchise which must be relocated, are already located in the ROW and the conflict between the Licensee's potential Facilities and the existing Facilities can only be resolved expeditiously as determined by the Town by the movement of the existing Town or other approved Facilities.

14.2 If the Licensee's relocation effort so delays construction of a public project causing the Town to be liable for delay damages, the Licensee shall reimburse the Town for those damages attributable to the delay created by the Licensee.

14.3 If the Licensee should dispute the amount of damages attributable to the Licensee, or the construction permit fee and other fees payable by the Licensee pursuant to this License, the matter shall be referred to a Dispute Resolution Board. The Dispute Resolution Board shall consist of 1 member selected by the Town, 1 member selected by the Licensee, and a third (3<sup>rd</sup>) person agreed upon by both parties. The person agreed upon by both parties shall be chairperson of the Dispute Resolution Board. Expenses of the Dispute Resolution Board shall be shared equally by the Town and the Licensee. The Board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than 60 days after notification by the Town of the Licensee's allocated share of damages suffered by the Town. All decisions of the Dispute Resolution Board are non-binding on either the Town or the Licensee. However, the findings of the Dispute Resolution Board shall be admissible in any legal action.

14.3.1 The Town and the Licensee shall accept or reject findings of the Dispute Resolution Board within 30 days after receipt of the findings. If damages are assessed by the Dispute Resolution Board, the Licensee shall pay the Town within 30 days of receipt of an invoice. Late charges of five percent (5%) and interest charges of 1.5% per month shall be added for late payment.

14.4 Except as otherwise provided in a license, franchise, or permit (or by other provision of law), the entire cost of relocation shall be borne by the Town if the Licensee is required by the Town to relocate Facilities which are located in private easements obtained by the Licensee prior to dedication of the public street or easement from which the Facilities must be relocated. These prior rights of the Licensee would also be unaffected by any subsequent relocation. A prior right as used in this subsection means private easement rights obtained by the Licensee prior to dedication of the streets or public ways from which the facilities are requested by the Town to be relocated. In the case of a Facility that serves multiple purposes, the prior right must extend to all uses for this exception to apply.

#### SECTION 15. Transfer of License.

15.1 This License and the related rights and privileges may not be assigned or otherwise transferred without the expressed written consent of the Town (which consent shall not be unreasonably withheld or delayed). The new licensee shall be equally subject to all the obligations and privileges of this License (including any amendments), which will remain in effect as if the new licensee were the original Licensee.

15.2 This License shall not be sublet or assigned, nor shall any of the related rights or privileges be leased, assigned, sold or transferred (either in whole or in part), nor shall title (legal

or equitable), or any right or property interest pass to or vest in any person other than the Licensee (either by act of the Licensee or operation of law), without the consent of the Town. Prior to any proposed assignment becoming final, the Licensee shall seek the consent of the Town.

15.3 The approval of any change in ownership interest shall include an assignment agreement signed by the assignee, the Licensee, and the Town. The Licensee shall provide the Town a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, transfer, or lease, certified and sworn to as correct by the Licensee. The Licensee shall notify the Town within 60 days of any change in mailing address.

15.4 After assignment, the License (including any amendments) shall be binding on the assignee to the full extent that it was binding upon the Licensee.

15.5 Nothing in this Section prohibits a pledge, hypothecation, mortgage, or similar instrument transferring conditional ownership of all or part of the Licensee's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of the Licensee, the lender may assume the rights and obligations of the Licensee. The lender may not transfer or change control of the License without submitting the change to the Town for approval. If the lender continues operation on any basis at any time, the lender shall be subject to all provisions of the License. No later than three (3) years after assumption of control by the lender, the lender shall apply to the Town for the right to continue assumption of control or to transfer the License. Application by the lender for approval of assumption of control or transfer shall be subject to consent by the Town Council that shall not be unreasonably denied or withheld. A "lender" for the purposes of this License does not include a company, person or corporation or other entities that operate cable television or video service systems or fiber optic Telecommunications systems as a principal or important business. This subsection is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the License without Town Council review and approval.

15.6 Notwithstanding the foregoing, prior consent shall not be required for 1 transfer to any company which is owned or controlled or under common control and with the same direct parent as the Licensee, and which is intended after such transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent; provided that, no such transfer shall be valid unless the Licensee and the proposed transferee submit a binding agreement and warranty to the Town stating that:

15.6.1 The proposed transferee has read, accepts, and agrees to be bound by the License.

15.6.2 The proposed transferee assumes all obligations, liabilities, and responsibility under the License for the acts and omissions of the Licensee (known and unknown) for all purposes and agrees that the transfer shall not permit it to take any position or exercise any right that the Licensee could not have exercised.

15.6.3 The transfer will not substantially diminish the financial resources available to the Licensee.

15.7 Prior to completing a transfer described in this Section, the Licensee and the proposed transferee shall submit to the Town a description of the nature of the transfer and submit complete information regarding the effect of the transfer on the direct and indirect ownership and control of the License.

## SECTION 16. Licensee Abandonment of the Facilities.

16.1 If the Licensee abandons use of its fiber, ducts, or other Facilities to provide Telecommunications Services under or pursuant to the License (or upon cancellation, revocation, or termination of this License), the Licensee shall notify the Town and may, subject to the Town's approval, permanently abandon the improvements in place. In lieu of permanent abandonment, the Town may require the Licensee (to the reasonable satisfaction of the Town and, without cost or expense to the Town), promptly to remove its Facilities and restore the Public Roadways, Rights-of-way to a reasonable condition under the supervision of the Town. Upon permanent abandonment, if the Town does not require removal, the Licensee shall submit to the Town a proposal and instruments for transferring ownership to the Town. Any Facilities which are not removed within one hundred twenty (120) days of either termination or revocation (or from the date the Town issued a permit authorizing removal, whichever is later), shall automatically become the property of the Town. The Arizona 811 (Blue Stake Center) must be notified to record abandoned Facilities.

16.2 Nothing in this Section shall result in Facilities being deemed abandoned or require the Licensee to remove Facilities that the Licensee uses for the provision of services other than Telecommunications Services (so long as the use of Facilities for the provision of the other services is authorized by the Licensors pursuant to any separately-issued authorization required by the Town).

## SECTION 17. Breach by Licensee.

17.1 Breach by Licensee. The Licensee shall comply with, perform, and do each performance and thing required of the Licensee herein and shall cause all persons using the Use Areas or claiming through or under the Licensee or this License to do the same. The Licensee's failure to do so shall be a material breach by the Licensee of this License.

17.2 Events of Default. This entire License is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by the Licensee of the Licensee's material obligations under this License:

17.2.1 If the Licensee shall fail to maintain any insurance required by this License. Notwithstanding the preceding sentence, such failure shall not be a default if within 5 calendar days after written notice from the Licensors, the Licensee provides to the Licensors the required insurance and the required evidence thereof. Such insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by this License.

17.2.2 If the Licensee or any other person or entity having liability for all or part of the Licensee's obligations under this License shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding (or if any assignment of any of the Licensee's or such other person's property shall be made for the benefit of creditors, or if the Licensee or such other person is not regularly paying its debts as they come due) (collectively a "Licensee Insolvency").

17.2.3 If any material information the Licensee provides concerning activities or other matters concerning the Use Areas or this License is false.

17.2.4 If the issuer of any insurance policy shall fail for any reason to timely and fully honor any request by the Licensors for funds or other performance under the instrument

within 10 days after such request.

17.2.5 If the Licensee shall fail to timely pay taxes, annual fees, or other amounts herein required to be paid by the Licensee to any person. Such failure to pay an amount shall not be an event of default if the Licensee gives immediate notice to the Licensor of the Licensee's intent to challenge the amount claimed to be due, the Licensee does in fact promptly challenge said amount, and the Licensee delivers to the Licensor with said notice a letter of credit or other financial security in the Licensor's discretion adequate to assure the Licensee's ability to pay the disputed amount and adequate to protect the Licensor and the Use Areas from adverse consequences of the Licensee's failure to pay.

17.2.6 If the Licensor shall be exposed to any liability, obligation, damage, cost, expense, or other claim of any description, related to this License (whether or not asserted), unless the Licensee gives immediate notice to the Licensor of the Licensee's commitment to indemnify, defend, and hold the Licensor harmless against such claim, the Licensee does in fact promptly commence and continue to indemnify, defend, and hold the Licensor harmless against such claim, and the Licensee delivers to the Licensor with said notice bonds or other financial security that in the Licensor's reasonable discretion are adequate to assure that the Licensee will indemnify, defend, and hold the Licensor harmless against such claim and adequate to protect the Licensor and the Use Areas from adverse consequences of such claim.

17.2.7 If the Licensee shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. The following shall constitute a repeated failure by the Licensee to comply with such provision:

17.2.7.1 Three (3) or more failures to comply with any provision of this License during any 90-day period after the Licensor has once given notice to the Licensee of any such failure.

17.2.7.2 Six (6) or more failures to comply with any provision of this License during any twelve (12)-month period after the Licensor has once given notice to the Licensee of any such failure.

17.2.7.3 If the Licensee shall fail to meet its obligations under this License with respect to public safety.

17.2.7.4 If the Licensee shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of 30 days after the Licensor has notified the Licensee in writing of such failure or neglect.

17.3 Licensor's Remedies. Upon the occurrence of any event of default, the Licensor may, at its option (and from time to time) exercise at the Licensee's expense any or all or any combination of the following cumulative remedies in any order and repetitively at the Licensor's option:

17.3.1 Terminate this License and be excused without any liability to the Licensee therefor from further performance of any obligations under this License.

17.3.2 Terminate or suspend any and all the Licensee's rights or any and all of the Licensor's obligations under this License.

17.3.3 Without demand or notice, enter into and upon all or part of the Use Areas and repossess the same, and expel the Licensee and those claiming by, through, or under it, and remove their effects (if any), forcibly, if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

17.3.4 Cause a receiver to be appointed for all or part of the Use Areas and for the continuing performance of the Licensee's obligations at the Use Areas and operation of the Licensee's business thereon.

17.3.5 Pay or perform, for the Licensee's account, in the Licensee's name, and at the Licensee's expense, any or all payments or performances required hereunder to be paid or performed by the Licensee.

17.3.6 Abate at the Licensee's expense any violation of this License.

17.3.7 Notwithstanding anything in this License to the contrary, unilaterally and without the Licensee's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds, or other funds or security held or obligated by the Licensee, the Licensor, or any third party pursuant to this License (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by this License.

17.3.8 Insist upon the Licensee's full and faithful performance under this License and upon the Licensee's full and timely payment of all amounts during the entire remaining term of this License.

17.3.9 Require an additional security deposit adequate in the Licensor's sole discretion to protect the Licensor and the Use Areas.

17.3.10 Declare to be terminated any rights the Licensee may then have related to any extension of this License.

17.3.11 Assert, exercise, or otherwise pursue at the Licensee's expense any and all other rights or remedies (legal or equitable) to which the Licensor may be entitled.

17.4 Notice of Licensee's Breach. The Licensee shall promptly give notice to the Licensor of any event or circumstance, that is (or which with the passing of time or the giving of notice or both will become) an event of default under this License. The Licensee shall also promptly give to the Licensor notice of any notice or claim given by any third party alleging that an event or circumstance has occurred that is (or which with the passing of time or the giving of notice or both will become) an event of default under this License.

17.5 Non-waiver. The Licensee acknowledges the Licensee's unconditional obligation to comply with this License. No failure by the Licensor to demand any performance required of the Licensee under this License (and no acceptance by the Licensor of any imperfect or partial performances under this License), shall excuse such performance or impair in any way the Licensor's ability to insist (prospectively and retroactively), upon full compliance with this License. No acceptance by the Licensor of payments or other performances hereunder shall be deemed a compromise or settlement of any right the Licensor may have for additional, different, or further payments or performances. Any waiver by the Licensor of any breach of condition or covenant

herein contained to be kept and performed by the Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent the Licensor from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant (or otherwise). No statement, bill, or notice by the Licensor or the Licensee concerning payments or other performances due hereunder, or failure by the Licensor to demand any performance hereunder, shall excuse the Licensee from compliance with this License, nor estop the Licensor (or otherwise impair the Licensor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this License. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against the Licensor unless made in writing by a duly-authorized representative of the Licensor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. THE LICENSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

#### SECTION 18. Revocation of License.

18.1 This License may be revoked prior to expiration if the Licensee fails to comply with any material term or condition of the License or applicable law.

18.2 Before revoking the License, the Town Manager shall give written notice to the Licensee of the basis for revocation and give the Licensee 60 days within which to cure.

18.3 The Town need not provide a 60-day cure period prior to revocation if the Town finds that the defect in performance is due to intentional misconduct, a violation of criminal law, or is a part of a series of violations where the Licensee has already had notice and opportunity to cure.

18.4 If the Licensee requests a hearing before revocation, the Licensor shall provide a hearing prior to final action on the notice of intent to revoke.

#### SECTION 19. Hazardous Substances.

19.1 The Licensee is responsible for proper investigation and management of all Hazardous Substances under its control (including Hazardous Substances which it uses, generates, or disposes of), and must comply with all Environmental Laws in carrying out its obligations under this License. In the event the Licensee releases to the environment Hazardous Substances under its control, to the extent that a governmental agency with jurisdiction requires reporting, investigation, cleanup, or remedial measures to be taken, the Licensee shall (at its sole cost and expense), promptly undertake such required actions. If the Licensee discovers a Pre-existing Environmental Condition, the Licensee shall immediately notify the Town.

19.2 The Licensee's activities upon or about the Use Areas shall be subject to the following regarding any hazardous or toxic substances, waste, or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste, or toxic substances (and their reporting requirements) (collectively "Toxic Substances"):

19.2.1 The Licensee shall not produce, dispose, transport, treat, use, or store any Toxic Substances upon or about the Use Areas. The prohibitions of the preceding



sentence shall not apply to ordinary gasoline, diesel fuel, or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction or service vehicles (or machinery serving the Use Areas). However, such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery.

19.2.2 The Licensee shall dispose of any Toxic Substances away from the Use Areas as required by law and as reasonably required by the Licensor.

19.2.3 The Licensee shall not use the Use Areas in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environmental Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this License.

19.2.4 In addition to and without limitation of any other indemnities or obligations, the Licensee shall pay, indemnify, defend, and hold the Licensor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Use Areas attributable to or caused by the Licensee or anyone using the Use Areas under this License (or acting or claiming under the Licensee or this License or otherwise relating to this License).

19.2.5 The Licensee shall immediately notify the Licensor of any Toxic Substance at any time discovered or existing upon the Use Areas. The Licensee is not responsible for Toxic Substances that may exist at the Use Areas if the Licensee, the Licensee's contractors, and other persons using the Use Areas under this License did not do any of the following:

19.2.5.1 Participate in the Toxic Material coming to the Use Areas.

19.2.5.2 Fail to immediately report the Toxic Material to the Licensor.

19.2.5.3 Participate in spreading or otherwise disturbing the Toxic Material.

19.2.5.4 Exacerbate the effects of the Toxic Material or the difficulty or cost of dealing with the Toxic Material.

19.3 The Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. The Licensee acknowledges the possibility that the Use Areas may contain actual or presumed asbestos and other Toxic Substances containing materials.

19.4 Within twenty-four (24) hours after any violation by the Licensee of this License pertaining to Toxic Substances, the Licensee shall give the Licensor notice reporting such violation.

19.5 Disturbance of Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, the Licensee shall cause the contractor or other person performing such work to give to the Licensor notice by the method described in this License to the effect that the person will inspect for such materials, will not disturb such materials, and will indemnify, defend, and hold the Licensor harmless against any disturbance in such materials in the course of the contractor's or other person's work. The Licensee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work

involving Toxic Substances by the Licensee in connection with the Use Areas to be performed by persons, equipment, facilities, and other resources that are at all times properly and lawfully trained, authorized, licensed, permitted, and otherwise qualified to perform such services. The Licensee shall promptly deliver to the Licensor copies of all reports or other information regarding Toxic Substances.

#### SECTION 20. Locator Service of Facilities.

The Licensee shall comply with A.R.S. §§40-360.21 et seq. by participating as a member of the Arizona 811 (Blue Stake Center) with the necessary records and persons to provide location service of the Licensee's Facilities upon receipt of a "locate call" as promptly as possible (but in no event later than two (2) working days). A copy of the Licensee's agreement to locate or proof of membership in Arizona Blue Stake Center shall be filed with the Town.

#### SECTION 21. Notices.

21.1 All notices, consent, or other communication under this License shall be in writing and either: (1) delivered in person; (2) sent via e-mail; (3) deposited in the United States mail, postage prepaid; or (4) deposited with any commercial air courier or express service and addressed as follows:

To: Wecom LLC d/b/a Wecom Fiber  
2332 Kingman Ave,  
Kingman AZ 86401  
Paul Fleming, CEO  
Email: [paul@wecomfiber.com](mailto:paul@wecomfiber.com)

With a Copy to:

Wecom LLC d/b/a Wecom Fiber  
3028 E Sunset Avenue,  
Las Vegas NV 89124  
Clint Wiley, COO  
E-Mail: [clintw@wecomfiber.com](mailto:clintw@wecomfiber.com)

Emergencies:

Emergency Contact Number  
Phone: 928-753-3829

To the Town: Town of Prescott Valley  
Attn: Town Manager  
7501 E. Skoog Blvd  
Town of Prescott Valley, Arizona 86314  
Phone: (928) 759-3101

With a copy to: Town of Prescott Valley  
Attn: Town Attorney  
7501 E. Skoog Blvd  
Town of Prescott Valley, Arizona 86314  
Phone: (928) 759-3031

21.2 Notice shall be deemed received: (a) at the time it is personally served; (b) on the day it is sent via e-mail; (c) on the second (2<sup>nd</sup>) day after its deposit with any commercial air courier or express service; or (d) if mailed, 3 calendar days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received (unless noted otherwise).

21.3 Any Party may change its mailing address or the person to receive notice by notifying the other party as provided in this Section. Notices sent by e-mail shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by e-mail.

## SECTION 22. General Conditions.

22.1 All construction work shall be performed in accordance with applicable Town Code provisions (including the National Electrical Code), and Town policies and procedures (and comply with all OSHA and ADOSH requirements, and the National Electrical Safety Code).

22.2 Any trimming of trees by the Licensee in the Public Roadways, Rights-of-way shall be subject to regulation by the Town to protect the public health, safety, and convenience.

22.3 In all matters of License administration, the Town Manager (or his designee) has authority to determine the Licensee's compliance with the terms and provisions of this License. In the event of non-compliance, the Town Manager may exercise any or all of the remedies included in this License (and as provided by Arizona law).

22.4 The Town has the right to inspect all construction or installation work subject to the provisions of this License, and to make any tests it finds necessary to ensure compliance with the terms of this License (and other pertinent provisions of law).

22.5 The Town reserves the right to acquire the property of the Licensee utilized in the performance of this License by negotiation, purchase, or through the exercise of the right of eminent domain. However, under no circumstances shall any valuation be made for any right or privilege granted by this License should the Town acquire the property of the Licensee.

22.6 The Licensee shall not be relieved of its obligation to comply with any of the provisions of this License by reason of any failure of the Town upon one or more occasions to insist upon or to seek compliance with any License terms and conditions.

22.7 The Town reserves every right and power which is required to be reserved or provided by any statute, Town Code provision, or Town policy, and the Licensee (by its acceptance of this License), agrees to be bound thereby and to comply with any action or requirements of the Town in its exercise of those rights or powers (whenever enacted or established). Neither the granting of this License nor any provision of it constitutes a waiver or bar to the exercise of any governmental right or power of the Town. No privilege or exemption is granted under this License except those specifically described.

22.8 The Licensee's representations and warranties made under this License (or any permit issued hereunder) shall survive termination or revocation.

22.9 The Licensee warrants that no person has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the Town Council, or any employee of the

Town, has any interest (financial or otherwise) in this License. For breach or violation of this warranty, the Town shall have the right to annul this License without liability.

22.10 This License constitutes the entire agreement between the Town and the Licensee with respect to this License, and supersedes all prior negotiations, communications, discussions, and correspondence (whether written or oral), concerning this License. No supplement, modification, waiver, or amendment of any term of this License shall be binding or effective unless executed in writing by the Parties. No waiver of any provision of this License shall constitute a waiver of any other provision (whether or not similar), nor shall any waiver constitute a continuing waiver.

22.11 If any covenant, condition, term, or provision of this License is held to be illegal, invalid, or unenforceable, the remainder of this License (or the application of such covenant, condition, term, or provision to persons or in circumstances other than those to which it is held invalid or unenforceable) shall not be affected.

22.12 The Parties agree that the recitals are accurate and correct and are incorporated by this reference.

### SECTION 23. Licensee's Records.

23.1 The Licensee shall prepare and maintain any records or reports that are required of it by federal, state, or local law. The Town shall have the right to obtain, in writing, copies of records and reports as appropriate and reasonable to determine whether the Licensee is in compliance with this License. The Licensee shall make available to the Town the requested reports or records in the formats in which they are customarily prepared by the Licensee. The Licensee may seek appropriate confidentiality protections for any information to be produced to the Town.

23.2 There shall be kept in designated Licensor offices a separate record for the License, which record shall show the things hereafter set forth. The Licensee shall provide such information in such form as may be required by the Licensor for said records. The Licensee shall provide the Town an annual report on the following:

23.2.1 The books of records kept by the Licensee shall be open to examination by the Licensor at any time during the business hours of the Licensee's office. The information shall be furnished by the Licensee to the Licensor upon request, and at the Licensee's own cost and expense.

23.2.2 The Licensor shall have the right to inspect all books, records, maps, plans, and data which is limited to and relates to the License, financial statements, and other like material of the Licensee which is pertinent to the License at any time during normal business hours.

23.3 In order for the Licensor to determine the Licensee's compliance with the terms of this License, within 30 days of a request for disclosure by the Licensor, the Licensee shall provide the documentation requested by the Licensor. Upon reasonable request and notice by the Licensor, the Licensee shall make available for joint inspection and testing the current services being provided by the Licensee through the Facilities. Such information may include the Licensee's documentation of what services the Licensee is offering its customers. If the Licensee determines that, in order to respond to the Licensor's request for documentation and inspection it must reasonably provide proprietary information, the Licensee shall so designate such claim to proprietary treatment on documents provided to the Licensor.

## SECTION 24. Proprietary Information.

24.1 Proprietary information disclosed by the Licensee for the purposes of this License shall mean any document or material clearly identified as confidential ("Proprietary Information"). Such Proprietary Information shall include (but not be limited to) any customer lists, financial information, technical information, or other information clearly identified as confidential pertaining to services provided to its customers.

24.2 Proprietary Information disclosed by the Licensee to the Town or its constituent departments shall be regarded as proprietary as to third parties. If the Town receives a request to disclose such information, the Town shall notify the Licensee of such request and allow the Licensee a reasonable opportunity to defend its information from disclosure. The foregoing does not apply to any information which is already in the public domain. However, if public domain information is included with Proprietary Information on the same document, the Town shall only disclose those portions within the public domain.

24.3 Notwithstanding any provision in this License, the Licensee acknowledges and understands that the Licensors are political subdivisions of the State of Arizona and are subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. §§ 39-121, et seq).

## SECTION 25. Public Safety and Emergency Disruption.

25.1 If the Licensee's Facilities or any other Licensee equipment, improvements, or activities within the Use Areas present any immediate hazard or impediment to the public, to the Licensors, to the Licensors' equipment or facilities, or to the Licensors' ability to safely and conveniently operate the ROW or perform the Licensors' utility, public safety, and other public health, safety and welfare functions, then the Licensee shall immediately remedy the hazard, comply with the Licensors' requests to secure the Use Areas, and otherwise cooperate with the Licensors at no expense to the Licensors to remove any such hazard and impediment to the Licensors performing any and all of the listed functions. The Licensee's work crews shall report the Use Areas within 2 hours of any request by the Licensors under this subsection.

25.2 Emergency Disruption by Licensors. The Licensors may remove, alter, tear out, relocate, or damage portions of the Licensee's Facilities in the case of fire, disaster, or other emergencies if the Licensors' Town manager or designee deems such action to be reasonably necessary. In such event, neither the Licensors nor any agent, contractor, or employee of the Licensors shall be liable to the Licensee or its customers (or third parties) for any harm so caused to them or the Licensee's Facilities. When practical, the Licensors shall consult with the Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Licensee's Facilities. In any event, the Licensors shall inform the Licensee after such actions.

25.3 Damage to or Destruction of the Use Areas. In the event of damage to or destruction of the Licensee's Facilities by fire, explosion, the elements, a public enemy, or other casualty, the Licensee shall commence restoring the casualty damage within 30 days. The Licensee shall complete the restoration work within 120 days after commencing the restoration work. The Licensee's restoration work shall be subject to the utility permit approval process and all other requirements for the Licensee's improvements. The Licensee shall perform all restoration work at the Licensee's sole cost and expense. The Licensee shall provide to the Licensors no later than the tenth (10<sup>th</sup>) day of each month a written report of the progress of the restoration work.

## SECTION 26. Acceptance of License Terms and Conditions.

26.1 This License shall not become effective until it has been filed with the Town Clerk. By accepting this License, the Licensee covenants and agrees to perform and be bound by all of the terms and conditions imposed by state statutes, the Town Code, Town policies, and this License.

26.2 The Licensee acknowledges and accepts the right of the Town to issue a License.

26.3 The Licensee has reviewed the Licensor's ability to grant a License and accepts a License as the Town may now be legally able to grant.

26.4 In the event of conflict between the terms and conditions of the License and the terms and conditions on which the Town may grant a license or permission to use the Public Roadway as set forth in applicable federal law, Arizona law, or the Town Code, the applicable federal law, Arizona law, and Town Code shall control.

26.5 Nothing in this License waives any of the requirements of the various codes, ordinances, regulations, and procedures of the Town regarding permits, fees to be paid, or manner of construction.

26.6 The Licensee shall comply with all applicable federal and state laws, as well as all Town codes, ordinances, resolutions, rules, regulations, and policies whenever adopted or established as they pertain to the exercise of the rights and duties under this License.

26.7 Nothing in this License, whether expressed or implied, is intended to confer any right or remedies on any persons other than the Parties to this License and their respective successors and permitted assigns. Nothing in this License is intended to relieve or discharge any obligation or liability of any person who is not a Party to this License. No person who is not a Party to this License has a right of subrogation or action over or against any Party to this License.

26.8 This License will be governed by the laws of the State of Arizona and the Prescott Valley Town Code. Any action at law, suit in equity, or judicial proceeding for the enforcement of this License shall be instituted only in the courts located within Yavapai County, Arizona.

26.9 The Licensee shall have no recourse against the Town or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damage arising out of any provision, requirement, or enforcement of the License (or because of defects in issuing the License).

26.10 This License is subject to general ordinance and Town Code provisions now in effect and as amended from time to time. Except as specifically provided herein, nothing in this License shall be deemed to waive the requirements of various Codes and ordinances of the Town of Prescott Valley regarding the Licensee's use of the Town's ROW. The License is subject to (and the Licensee shall comply with), any future ordinances and Town Code provisions that may be adopted by the Town Council pertaining to the Licensee's installation, repair, and use of its Facilities in the ROW.

## SECTION 27. Reservation of Powers.

27.1 The Parties agree if a regulatory body or a court of competent jurisdiction determines by a final, non-appealable order that the Town did not have the authority to issue this License

under A.R.S. §§9-581 to 9-583, then this License will be considered a revocable permit with a mutual right in either Party to terminate without cause upon giving 60 days written notice to the other. The requirements and conditions of such revocable permit will be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and the right of termination.

2.5 The Town reserves every right and power which is required to be reserved or is provided by state statutes, the Town Code, and Town policies. The Licensee, by its acceptance of this License, agrees to be bound thereby and to comply with any action or requirements of the Town in its exercise of such rights or power (whenever enacted or established), except those actions or requirements which have been found to be unlawful under state or federal law. Neither the granting of this License, nor any of its provisions, constitute a waiver or bar to the exercise of any governmental right, privilege, immunity, or power of the Town.

***[Signature Page Next Page]***

The Parties have executed this License as of the date first set forth above.

“Licensee”

WECOM LLC d/b/a WECOM FIBER

“Licensor”

TOWN OF PRESCOTT VALLEY

By: \_\_\_\_\_

Its: \_\_\_\_\_

By \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney





**EXHIBIT "A"**  
**INSURANCE REQUIREMENTS**

Concurrently with the execution of this License, the Licensee will furnish the Town a certificate of insurance on a standard insurance industry ACORD, referencing the agreement/service/project in the description and showing the certificate holder as "Town of Prescott Valley, 7501 E. Skoog Blvd., Prescott Valley, AZ 86314."

The Licensee, any sublicensee, and any contractors must procure and maintain until all of their obligations have been discharged, including any warranty periods under this License are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of any construction, installation, or restoration work by the Licensee, any sublicensee, and any contractors (their agents, representatives, employees, subcontractors, or subconsultants).

The insurance requirements are minimum requirements for this License and in no way limit the indemnity covenants contained in this License.

The Town in no way warrants that the minimum limits are sufficient to protect the Licensee, any sublicensee, or contractor from liabilities that might arise out of the performances under this License by the Licensee, any sublicensee, and any contractors (their agents, representatives, employees, subcontractors, or subconsultants), and the Licensee, any sublicensee, and any contractors are free to purchase any additional insurance as they may determine necessary. The Town will not pay for higher limits, but if the Licensee, any sublicensee, and any contractors pay for insurance with higher limits, they will name the Town as an additional insured on any additional insurance.

**MINIMUM SCOPE AND LIMITS OF INSURANCE**

The Licensee, any sublicensee, and any contractors must provide coverage at least as broad and with limits of liability not less than those stated below.

**Commercial General Liability-Occurrence Form**

General Liability/Aggregate	\$ 1,000,000
	\$ 2,000,000
Products-Completed Operations Aggregate	\$ 2,000,000
Personal & Advertising Injury	\$ 2,000,000
Each Occurrence	\$ 1,000,000
Fire Damage (Any one fire)	\$ 100,000
Medical Expense (Any one person)	Optional

**Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles**

Combined Single Limit Per Accident	\$ 1,000,000
For Bodily Injury and Property Damage	

**Workers Compensation and Employers Liability:**

Workers Compensation	State Statutory
Employers Liability: Each Accident	\$ 100,000
Disease - Each Employee	\$ 100,000
Disease - Policy Limit	\$ 500,000

## **SELF-INSURED RETENTIONS**

Any self-insured retentions and deductibles must be declared to and approved by the Town. If not approved, the Town may require that the insurer reduce or eliminate any self-insured retentions with respect to the Town, its officers, officials, agents, employees, and volunteers.

## **OTHER INSURANCE REQUIREMENTS**

The policies are to contain, or be endorsed to contain, the following provisions:

Commercial General Liability and Automobile Liability Coverages: The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

The Town of Prescott Valley, its officers, officials, agents, and employees are additional insured's with respect to liability arising out of activities performed by, or on behalf of, the Licensee including the Town's general supervision of the Licensee; Products and Completed operations of the Licensee; and automobiles owned, leased, hired, or borrowed by the Licensee.

The Town, its officers, officials, agents, and employees must be additional insured's to the full limits of liability purchased by the Licensor even if those limits of liability are in excess of those required by this License.

The Licensee's insurance coverage must be primary insurance with respect to the Town, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the Town, its officers, officials, agents, and employees must be in excess of the coverage provided by the Licensee and must not contribute to it.

The Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Coverage provided by the Licensee must not be limited to the liability assumed under the indemnification provisions of this License.

The policies must contain a waiver of subrogation against the Town, its officers, officials, agents, and employees, for losses arising from any work performed by the Licensee for the Town.

Workers' Compensation and Employers Liability Coverage: The insurer must agree to waive all rights of subrogation against the Town, its officers, officials, agents, employees, and volunteers for losses arising from any work performed by the Licensee for the Town.

Claims Made: In the event any insurance policies required by this License are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the required provisions for the 3 year period.

## **SUBLICENSEES' AND CONTRACTORS' INSURANCE**

Any sublicensees' and contractors' certificates must include all subcontractors and subconsultants as insured's under their policies or the Licensee must maintain separate certificates and endorsements for each subcontractor and subconsultant. All coverage's for subcontractors and subconsultants must be in the amounts shown above.

## **NOTICE OF CANCELLATION**

Each insurance policy required by the insurance provisions of this License must provide the required coverage and must not be suspended, voided, canceled by either party, or reduced in coverage or in limits (except after first giving 30 days written notice, by certified mail, return receipt requested to:

Town of Prescott Valley  
Human Resources Department  
7501 E. Skoog Boulevard  
Prescott Valley, AZ 86314  
Attn: Risk Manager)

## **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an A. M. Best's rating of no less than B++6. The Town in no way warrants that the above required minimum insurer rating is sufficient to protect the Licensee, any sublicensee, and any contractor from potential insurer insolvency.

## **VERIFICATION OF COVERAGE**

The Licensee must furnish the Town Certificate of Insurance ACORD form or equivalent approved by the Town) and with original endorsements affecting coverage as required by this License. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage's must be clearly noted on the Certificate of Insurance.

All certificates and endorsements are to be received and approved by the Town before work

commences. Each insurance policy required by this License must be in effect on or before the earlier of commencement of performance under the License or the signing of this License. Failure to maintain the insurance policies as required by this License or to provide evidence of renewal is a material breach.

All Certificates of Insurance required by this License shall be sent directly to the Town of Prescott Valley's Risk Manager. The Town reserves the right to require complete, certified copies of all insurance policies required by this License, at any time.

## **APPROVAL**

Any modification or variation from the insurance requirements in this License must be approved by the Town of Prescott Valley Risk Manager, whose decision is final. This action will not require a formal License amendment but may be made by administrative action.