

RESOLUTION R-58-15

**A RESOLUTION AUTHORIZING THE EXECUTION OF
A TELECOMMUNICATIONS LICENSE AGREEMENT
WITH SIGECOM, LLC D/B/A WOW!**

WHEREAS, the City of Wheaton, DuPage County, Illinois ("City") is an Illinois Home Rule municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution, 1970, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, Sigecon, LLC d/b/a WOW! is an interexchange carrier and local exchange carrier as designated by the Illinois Commerce Commission; and

WHEREAS, the City and Sigecom had entered into a telecommunications license agreement on February 17, 2015 for installation, operation and maintenance of certain work known as Sprint Tower 4 ("Original Agreement"); and

WHEREAS, Sigecom has requested an amendment to the Original Agreement for installation, operation and maintenance of additional work and the City is in agreement to grant the request; and

WHEREAS, the City Council finds the Telecommunications License Agreement between the City and Sigecom, LLC d/b/a WOW!, attached as Exhibit A, effectively sets forth the City's requirements and standards for installation, operation and maintenance of certain work as further depicted in the License Agreement.

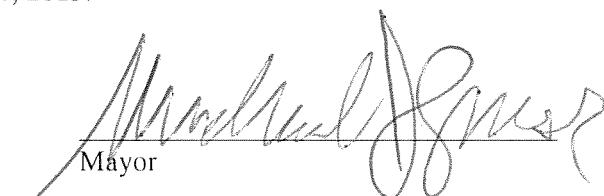
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign and the City Clerk is authorized to attest, a Telecommunications License Agreement between the City of Wheaton and Sigecom, LLC d/b/a WOW!

BE IT FURTHER RESOLVED that the Original Agreement is hereby rescinded and found to be null and void.

ADOPTED this 5th day of October, 2015.

ATTEST:


Alan Bennett Hagan
City Clerk


Michael J. Gresk
Mayor

Roll Call Vote:

Ayes: Councilman Prendiville
Councilman Rutledge
Mayor Pro Tem Suess
Councilman Saline
Councilwoman Fitch

Nays: None
Absent: Mayor Gresk
Councilman Scalzo
Motion Carried Unanimously

**TELECOMMUNICATIONS LICENSE AGREEMENT BETWEEN SIGECOM, LLC
D/B/A WOW! INTERNET, CABLE AND PHONE AND THE CITY OF WHEATON**

WHEREAS, the City of Wheaton (“CITY”) is an Illinois home rule municipality;

WHEREAS, Sigecom, LLC, d/b/a Wow! Internet, Cable and Phone (“Licensee”) is an interexchange carrier and local exchange carrier as designated by the Illinois Commerce Commission;

WHEREAS, Licensee has submitted proposed plans to the CITY for the installation of overhead and underground fiber optic cable as more accurately depicted in Exhibit A, attached hereto and made a part hereof of this License Agreement (generally the “Work”);

WHEREAS, Licensee is a telecommunications provider subject to provisions of Chapter 68 “Telecommunications” of the Wheaton City Code;

WHEREAS, Licensee’s plan for the Work in the CITY’s rights of way and public ways includes directional subsurface borings at a minimum of 48 inch depth, and overhead attachment to existing utility poles at a minimum height of 14 feet over street and driveway surfaces ; and

WHEREAS, Licensee is subject to the construction requirements set forth in Chapter 58, Article VIII “Construction Standards” of the Wheaton City Code.

NOW THEREFORE based upon the City of Wheaton the considerations recited herein and the granting of this license and Licensee agreeing to abide by the terms and conditions of this license, the City of Wheaton and Licensee agree as follows:

1. **RECITALS.** The recitals set forth above are incorporated herein and made a part of this Agreement.

2. **GRANT OF LICENSE.** City of Wheaton hereby grants a license to Licensee authorizing the implementation and construction , for the Work described in Exhibit A. This license shall be subject to all of the terms and conditions set forth herein, those set forth in

Article VIII "Conditions of Grant" of Chapter 68 "Telecommunications" of the Wheaton City Code, and all other applicable local, state and federal laws.

3. **TERM: PAYMENTS.** The License granted by the City to Licensee shall be for a period of ten (10) years from the Effective Date of this Agreement. For the initial term, Licensee shall pay a license fee in an amount as depicted in Exhibit A to the City prior to the issuance of any permits. This Agreement may be renewed by mutual agreement of the parties for successive ten (10) year terms provided that Licensee makes written request for renewal of this Agreement at least sixty (60) days prior to the expiration of the current term. Unless otherwise provided by law, each renewal shall be subject to a License Fee that will be determined at the time of each renewal but shall be proportional to the amount of cable that has been installed up to that time in comparison to this initial license fee and installation. In the event the parties cannot agree upon an amount for the License Fee for a renewal term, this Agreement shall terminate and Licensee shall remove its fiber optic cable from all City rights of way and public ways and restore the same as required herein.

4. **PERMITS.** In addition to the License fee described in Section 3 of this Agreement Licensee shall pay all required permit and other fees and obtain all necessary and required permits from the City for its work prior to performing any work within the City's rights of way or public ways. Licensee shall also post such necessary letters of credit or other security for its work within the City's rights of way or public ways as required by the City. Licensee shall notify the City's Director of Engineering no less than five (5) days prior to commencing work in the licensed area. Licensee shall require any independent contractor or subcontractor of the Licensee, working in the license area accept all of the terms and conditions of this Agreement. Should the City's Director of Engineering determine that the Licensee or any of its

independent or subcontractors work or activities is inconsistent with, or in violation of the terms of this license, the Licensee shall stop Work at the direction of the City's Director of Engineering until all issues associated with the Work or activities are fully resolved. This remedy is a remedy in addition to that set forth in Section 7 of this Agreement. The selection of either remedy shall be in the sole discretion of the City.

5. **MAINTENANCE.** Maintenance of the fiber optic cable within the City's rights of way or public ways shall be the responsibility of Licensee. The fiber optic cable shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local law, regulations and policies. The City reserves the right to enter upon and repair any and all damage to the licensed areas and those areas surrounding the licensed areas, and if such damage is caused by Licensee or its contractors or subcontractors, then the actual, reasonable and documented cost of such repair shall be the responsibility of the Licensee.

6. **RESTORATION.** Licensee shall within 10 days after initial construction operations have been completed or, after repair, relocation or removal of the Work, grade and restore all areas disturbed or damaged by construction operations to the same condition that which existed prior to work. All disturbed or damaged grass areas shall be restored with sod and watered until such sod has been fully established, and repair any damage to any other City property or private property resulting directly or indirectly from its use of the license area and/or those areas surrounding license area. All restoration and repair work shall be performed in accordance with the direction of the City's Director of Engineering or designee. In order to ensure that all areas affected are properly restored or repaired, including any damage occurring outside of the license area, the Licensee or its contractor shall provide a restoration bond in the form of a surety, or a certified or cashier's check made payable to the City of Wheaton in an

amount reasonably determined by the City's Director of Engineering as necessary to complete full and adequate restoration. Such surety or funds shall be released or refunded, without interest, upon satisfactory restoration or repair of all the affected areas as accepted by the City engineer.

7. **FAILURE TO RESTORE.** In the event that the Licensee fails to properly restore the license area or repair any damage caused to areas outside the boundaries within 21 days of the effective date of the written notice from the City demanding the repair, the City shall have the right to take such action as it deems necessary to perform the restoration work or repair the damage, including the authority to engage the services of an independent contractor and to utilize the restoration bond deposited with the City pursuant to Section 6. If the costs and expenses incurred by the City in performing the restoration or repair work exceeds the amount of the restoration bond deposited with the City the Licensee shall be responsible for reimbursing the City for the additional costs and expenses in excess of the amount deposited within ten (10) days of service of the City's written demand of service.

8. **EMERGENCIES.** The City retains the right and privilege to cut or remove any facilities located within the rights of way or public ways of the City as the City may determine to be necessary, appropriate and useful in response to any public health or safety emergency. In the instance of a public health or safety emergency the City shall have no obligation to reimburse the licensee for the cost of restoration of the services or the equipment provided by the licensee in the rights of way or public ways.

9. **INSURANCE.** Except as otherwise required by the City's Director of Engineering the Licensee and the Licensee's contractor shall purchase and maintain, during the term of this Agreement, insurance coverage, which will satisfactorily insure the Licensee and,

where appropriate the City, against claims and liabilities which may arise out of the use of the license area. Such insurance shall be issued by companies licensed to do business in the State of Illinois and approved by the City. The insurance coverage shall include the following:

- (A) Commercial general liability insurance with limits not less than:
 - (1) Five million dollars for bodily injury or death to each person;
 - (2) Five million dollars for property damage resulting from any one accident; and
 - (3) Five million dollars for all other types of liability.
- (B) Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each person and \$3,000,000.00 for each accident.
- (C) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00.
- (D) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.00.
- (E) The liability insurance policies required by this section shall be maintained by the Licensee throughout the terms of the license, and such other period of time during which the Licensee is operating without a license hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until 30 days after receipt by the city of a written notice addressed to the city manager of such intent to cancel or not to renew."
- (F) Within 60 days after receipt by the City of such notice, and in no event later than 30 days prior to such cancellation, the Licensee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.

10. **ADDITIONAL INSURANCE REQUIREMENTS.** Prior to commencing

work the Licensee shall furnish the City with certificates of insurance consistent with the foregoing. All insurance certificates and policies shall provide the no cancellation or

modification of the policies shall occur without at least 30 days prior written notice to the City. Claims made policies are not acceptable. Excluding the workmen's compensation coverage the policies of insurance shall name the City, and the Licensee, if a general contractor is posting the insurance, as co-insureds. Neither the Licensee or its contractor or sub-contractor shall enter the license area until evidence of all required insurance has been received and approved by the City.

11. **CONTRACTOR INDEMNIFICATION.** The Licensee hereby agrees to defend, hold harmless and indemnify the City in full conformance with subsections (a) and (b) of Section 58-232 "Indemnification" of Chapter 58 "Streets, Sidewalks and other Public Places of the Wheaton City Code.

12. **BREACH.** In the event that the Licensee's or its contractor breaches any provision contained herein the City may immediately terminate this Agreement by serving written notice as provided for in Section 13. A waiver by the City of any breach of one or more of the terms of this Agreement shall not constitute a waiver of any subsequent or other breach of the same or other term nor shall the failure on the part of the City to require exact, full and complete compliance with the terms contained herein be construed as changing the terms of this Agreement or stopping the City from enforcing full compliance with the provisions herein. No delay, failure or omission of the City to exercise any right, power, privilege or option arising from any breach shall impair any right, power, privilege or option, or be construed as a waiver or acquiescence of such breach or as a relinquishment of any right. No right, power, privilege or option of the City shall be construed as being exhausted by the exercise thereof in one or more of the instances. The rights, powers, privileges and options given to the City under this Agreement and by law shall be cumulative. The Licensee shall indemnify the City for all costs and expenses, including reasonable attorney and expert witness fees, incurred by the City in any legal

proceedings or action, whether at law or in equity, instituted for the purpose of enforcing any provision of this Agreement.

13. **NOTICE.** All notices required to be provided under this Agreement shall be in writing and either served: (a) personally during regular business hours; or (b) by facsimile transmission during regular business hours; or (c) by registered or certified mail, return receipt requested, properly addressed with postage pre-paid and deposited in the United States Mail. Notice shall be served upon the City and directed to the City Manager at 303 W. Wesley Street, Wheaton, Illinois 60187 and to Licensee at 1674 Frontenac Road, Naperville, Illinois 60563.

14. **NO RECORDING.** Licensee shall not record this Agreement or any other document referred to herein without the written consent of the City Manager. There are no third party beneficiaries of this Agreement.

15. **EXISTING UTILITIES.** Neither the Licensee nor its contractor shall damage, compromise or in any other way infringe upon or destroy any utilities existing in the right of way as of the date of the grant of this license.

16. **CHOICE OF LAW.** This Agreement shall be construed in accordance with the laws of the State of Illinois. The Agreement is a license and is not to be construed as an easement or a lease. The parties agree that any construction or determination of this License as an easement or lease will result in its immediate termination except for the Licensee's obligation to fully restore the license area and adjacent areas in conformance with the terms set forth herein. The exclusive jurisdiction and venue for any dispute between the parties regarding this Agreement shall be the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois,

17. **AMBIGUITIES.** No ambiguities in this document shall be interpreted against the drafter's client.

18. **NO TRANSFER OF ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. During the term of this Agreement, Licensee acknowledges and agrees that it does not have the right or authority to transfer or assign this Agreement or any interest herein without the prior written consent of the City, which will not be unreasonably withheld or delayed; provided, however, this Agreement may be assigned by Licensee without consent to an affiliate, or to a successor in connection with a merger, reorganization or sale of all or substantially all of Licensee's assets or ownership.

19. **FUTURE ORDINANCE AMENDMENTS AND MASTER LICENSE AGREEMENT.** The City has informed the Licensee that its staff is currently drafting proposed amendments to City Code to provide for a master license agreement for the type of telecommunications facilities authorized by this Agreement: as well as pole mounts. If the Corporate Authorities of the City adopt such amendments and master license agreement then Licensee agrees that neither the license granted herein, nor any prior license granted, provides any vested rights or precedence for future licenses and that if the Licensee enters into a master license agreement with the City that the fee, operation, utility priority, maintenance and default provisions of the master license agreement shall become applicable to this and any other prior license issued by the City to the Licensee, without amendment of this License.

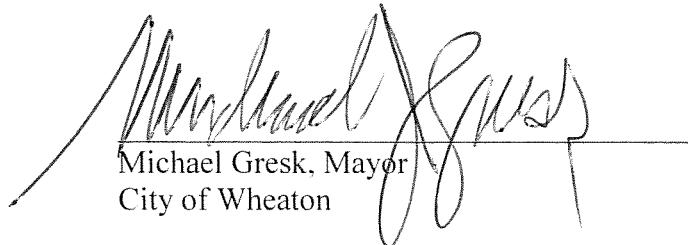
20. **AMENDMENTS.** This Agreement represents the entire agreement between the parties. No oral changes or modifications of this Agreement shall be permitted or allowed. Changes or modifications to this Agreement shall be made only in writing and upon necessary and proper signature of the Licensee and the City.

21. **TAXES.** Nothing contained in this Agreement shall be construed to exempt Licensee from any fee, tax, property tax levy or assessment which is or may be hereafter lawfully

imposed, and Licensee shall be responsible for the payment of any taxes assessed relative to its use of the City's rights of way or public ways for the operation of the fiber optic cable.

10-6-15

Date



Michael Gresk, Mayor
City of Wheaton

ATTEST:

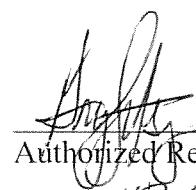


City Clerk,
City of Wheaton

Date

SUBSCRIBED to and SWEORN before me
On this 12 day of September, 2015

Angela Newson
Notary Public



Authorized Representative of WOW!

Angela Newson
VP Operations

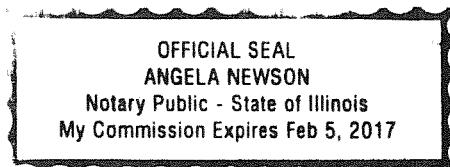


Exhibit A

WOW! fiber optic cable installation listing by permit.

Project Name	Plan Date	Route	Length (feet)	Aerial	Buried	Fee
WWVZEL 06-5 CH IIT S Wheaton 201 E Loop Road	1/26/2014	East Loop Road from Butterfield Road to IIT	0	900		\$900.00
WWVZEL 06-6 CH South Wheaton 71 Marywood Trail	1/27/2015	Orchard Water Tower to Somerset Ln to Brighton Dr to Danada Dr to Naperville Rd to East Loop Rd to IIT	0	7800		\$7,800.00
WWWVZEL 06-7 CH Wheaton 303 Delles Rd	2/27/2015	300 Carlton Av to Roosevelt Rd to IL Prairie Path to Academy Ln to Orchard Rd to Brighton Dr to Golden Pond Ln to Orchard Water Tower	3428	3281		\$6,709.00

WWVZEL 06-8 CH Wheaton College 401 E Franklin St	2/3/2015	300 Carlton Av to Liberty Dr to West St to Franklin St to Washington St	4800	1700	\$6,500.00
WWVZEL 06-9 CH North Winfield 440 Pleasant Hill Rd	2/27/2015	IL Prairie Path at Lincoln Av to Washington St to Franklin St	3414	1544	\$4,958.00
WWVZEL 7-17 CH IIT S Wheaton 201 East Loop Rd	4/7/2015	IIT to Jahns Dr to East Loop Rd to Naperville Rd to Butterfield Rd	1103	2655	\$3,758.00
College Avenue Metra SC 374 N President St	7/8/2015	Washington St at Franklin St to Harrison Av to President St to Alley south of College Av	4702	1178	\$5,880.00

