

When recorded return to:

Clerk of the Board
PO Box 827
Florence, AZ 85132

**RIGHT OF WAY LICENSE AGREEMENT BETWEEN PINAL
COUNTY AND WECOM, LLC**

DO NOT DISCARD THIS PAGE. THIS COVER PAGE IS RECORDED AS PART OF YOUR DOCUMENT.
THE CERTIFICATE OF RECORDATION WITH THE FEE NUMBER IN THE UPPER RIGHT CORNER OF
THIS DOCUMENT IN THE PINAL COUNTY RECORDER'S OFFICE.

Right of Way License Agreement for Internet Services for Wecom Inc.

WHEREAS, this License Agreement (“**Agreement**”) is entered into between Pinal County, a body politic and corporate and a political subdivision of the State of Arizona (hereinafter “**County**”), by and through its Board of Supervisors, and Wecom LLC., an Delaware for-profit limited liability company (hereinafter “**Licensee**”); and

WHEREAS, County is authorized by A.R.S. section 11-251 to regulate and manage the public rights of way within its jurisdiction; and

WHEREAS, Licensee, a Delaware for-profit limited liability company, wishes to own, operate, and maintain private utility facilities under, over and through certain rights of way within Pinal County to benefit the public health, safety, and welfare of the residents of Pinal County; and

WHEREAS, Licensee desires continued access to certain rights of way within Pinal County to provide internet service to certain areas within Pinal County, as described in **Exhibit “A”** to this license; and

WHEREAS, it being determined by the Pinal County Board of Supervisors that the granting of this License is authorized by law and in the best interests of Pinal County and the inhabitants thereof;

NOW, THEREFORE, Pinal County and Licensee agree as follows:

Section 1: GRANT OF PERMISSION

Licensee is hereby authorized and empowered, on a non-exclusive basis, to use the County’s rights of way now existing or hereafter established and lying within the boundaries of Pinal County, under the terms and conditions set forth herein, and as identified in **Exhibit “A”** which is attached to this Agreement and incorporated herein by this reference, for the purpose of installing, repairing, replacing, and maintaining its underground fiber optic facilities.

Section 2: TERM

This Agreement shall be effective for a term of five (5) years from the Effective Date (as defined below), and extinguishes, supersedes, and replaces all previous or existing right of way agreements for fiber optics granted to Licensee by the County. The parties may negotiate an extension of this Agreement for up to three (3) five-year terms however, said extension shall not exceed an additional fifteen (15) year term. Such renewal must be made within one-hundred eighty (180) days prior to the expiration of the the initial term of the Agreement or then current renewal term, as applicable.

Section 3: REGULATION OF PINAL COUNTY RIGHTS OF WAY

All rights hereunder are granted under the express condition that the County shall have the power at any time to impose such restrictions and limitations upon, and to make such regulations as to,

Licensee's use of the County's rights of way as the County may be authorized by law to impose, including, but not limited to, the power to impose such restrictions, limitations, and regulations as the County is authorized to impose upon licenses or franchises under the Arizona law.

Section 4: SUPERIOR RIGHTS

The rights of the County in and to the use of all public rights of way located within the boundaries of Pinal County are and forever shall be paramount and superior to any and all rights of Licensee, granted under this Agreement.

Section 5: ALTERATION OF PUBLIC RIGHTS OF WAY

Nothing in this Agreement shall be construed so as to prevent the County from altering, improving, adjusting, repairing, or maintaining its facilities and public rights of way, and for that purpose to require Licensee to adjust, remove, replace, or relocate Licensee's facilities at no cost to the County. The County's facilities shall mean any physical object or improvement owned, possessed, made, installed, maintained, or constructed by the County or others at the request of the County, including, but not limited to, all paving, graded, highway, transportation, flood control, or other Pinal County-owned structures located within the County's rights of way.

Section 6: NONEXCLUSIVE USE

Nothing in this Agreement shall be construed to grant the Licensee an exclusive right to or use of the public rights of way. Licensee's facilities shall be erected, adjusted, installed, replaced, removed, relocated, and maintained in a manner that will not interfere with the reasonable use of the rights of way by the public, Pinal County, any other franchisee or licensee, or any other individual/entity that has a right to access the County's right of ways. The location of Licensee's facilities in the public rights of way shall not create or establish a vested interest in the rights of way, and its facilities shall be removed or relocated by Licensee whenever the County determines, at the County's sole discretion, that Licensee's facilities impact, restrict, obstruct, or hinder Pinal County or the public's existing or future use of the rights of way or the County's operation or location of the County's facilities.

Section 7: RELOCATION

Licensee shall be solely responsible for the design, adjustment, removal, or relocation, temporarily or permanently, of all Licensee's facilities that impact, conflict with, or interfere with the County's use of its rights of way or the County's improvement, relocation, or adjustment of any facilities located in Pinal County's rights of way. The cost of designing, adjusting, removing, relocating, or replacing Licensee's facilities shall be Licensee's sole responsibility. Prior to beginning any activity in a Pinal County right of way, Licensee shall obtain all required permits from Pinal County and any other applicable jurisdiction for the activity. Licensee's facilities shall be adjusted, removed, replaced, or relocated by Licensee in accordance with an activity schedule determined by the County and provided to Licensee within a reasonable period of time prior to the scheduled activity start date. If the schedule is unacceptable to Licensee or if Licensee finds it necessary to plead financial hardship regarding the cost of relocating its facilities, Licensee may appeal to the

Pinal County Board of Supervisors. If Licensee's facilities are not adjusted, removed, replaced, or relocated within the time period allotted by the County's activity schedule, County may, at its sole discretion, adjust or relocate Licensee's facilities. Licensee hereby agrees to be liable for all costs incurred by the County for the adjustment or relocation of Licensee's facilities necessitated by the County's activities, including overhead, support, and maintenance costs and an administrative surcharge in the amount of fifteen (15) percent of the total cost attributed to the adjustment or relocation of Licensee's facilities. In the event that the County incurs such costs, the County shall submit a bill (via mail or by electronic means) to Licensee for the incurred costs, and Licensee shall pay the County the invoiced amount within ninety (90) calendar days of receipt of the invoice. If the invoice is not paid by Licensee in a timely manner, all rights granted to Licensee under this Agreement shall be suspended and no permits will be issued to Licensee for any work within the County's rights of way until the invoiced costs are paid in full. Licensee may contest the propriety of such invoices by filing a written appeal with the Pinal County Board of Supervisors, whose decision with respect thereto shall be final.

Section 8: UNDERGROUNDING

The parties acknowledge that the County has the authority to require Licensee to underground its above-ground facilities in the County's rights of way at Licensee's sole cost and expense, when it determines, in its sole discretion, that such undergrounding is necessary to conform to County ordinances or is in the public interest. The County may require Licensee to conduct a study of the cost of the undergrounding for any portion or segment of Licensee's facilities located in the County's rights of way. Any such study shall set forth an estimate of the costs of undergrounding Licensee's facilities, including a breakdown of the cost allocated to labor, materials, design, and construction for converting above-ground facilities to underground facilities. Licensee shall submit a cost study of any specified segment of Licensee's facilities within ninety (90) calendar days after receiving written notice from the County requesting the cost study. The cost of preparing and providing any cost study requested by the County shall be exclusively borne by Licensee.

Section 9: PERFORMANCE OF WORK

The work required by Licensee to design, construct, reconstruct, pothole for, design, adjust, relocate, replace, or repair Licensee's facilities shall be Licensee's sole responsibility. The cost of any delay to the County's projects caused by Licensee's failure to complete its work in accordance with the County's activity schedule shall be Licensee's sole responsibility provided that the County has provided Licensee with reasonable advance notice of the need to take such action and a reasonable amount of time allowed to perform the necessary activities. In the event the County incurs such costs, it shall submit a bill to Licensee for the incurred costs, and Licensee shall pay the County the invoiced amount within ninety (90) calendar days of receipt of the invoice. If the invoice is not paid by Licensee in a timely manner, all rights granted to Licensee under this Agreement shall be suspended, and no permits will be issued to Licensee for any work within the County's rights of way until the invoiced costs are paid in full to Pinal County. Licensee may

contest the propriety of such costs by filing a written appeal with the Pinal County Board of Supervisors, whose decision with respect thereto shall be final.

Section 10: LOCATION OF FACILITIES

As a condition of this Agreement, Licensee hereby agrees to have and maintain precise, up-to-date maps of Licensee's facilities located in the County's rights of way, and to make this information available to the County within fifteen (15) calendar days of receiving a written request from the County. Beginning on the Effective Date of this Agreement, Licensee shall maintain precise and verifiable horizontal and vertical location information tied to an accepted County datum and provide such information to the County within fifteen (15) calendar days of receiving written notice from the County. As a condition of the issuance of this Agreement, Licensee agrees to provide surface location marking of Licensee's undergrounded facilities located within the public rights of way within two (2) working days of a request from the County. In the event Licensee is unable to provide the location information to the County within the allotted time frame, the County may, at its sole discretion, locate Licensee's facilities and Licensee shall be liable to the County for all costs and expenses it incurred in locating Licensee's facilities.

Section 11: WORK IN THE RIGHTS OF WAY

11.1 *Permits required.* Prior to performing any work within the right of way, Licensee shall obtain a permit from the County in accordance with Title 7 of the Pinal County Development Services Code, as amended, or as may otherwise be required by the County, and shall comply with all insurance requirements imposed by the County.

11.2 *Damage to other facilities.* In the construction, adjustment, removal, relocation, repair, operation, and maintenance of Licensee's facilities, it shall avoid causing or permitting any damage, disturbance, or unnecessary modification or alteration to the County's facilities including pavement, or to the facilities of others located in the County's rights of way. If Licensee causes or permits any such damage, disturbance, or unnecessary alteration or modification, Licensee, at its sole expense and in a manner approved by the Pinal County Engineer, shall restore the damaged, disturbed, altered, or modified facilities to the condition in which they existed before being damaged, disturbed, modified or altered. Licensee also shall be liable to owners of said facilities for any other losses or expenses that may accrue because of said damage, disturbance, modification, or alteration. The restoration of facilities shall be initiated promptly and completed expeditiously by Licensee, who shall give priority to the restoration, repair, or replacement of such facilities over all non-emergency activities of Licensee.

11.3 *Damage to vegetation.* In the construction, adjustment, removal, relocation, repair, operation, and maintenance of its facilities, Licensee shall use all necessary care to avoid any damage to or disturbance of existing vegetation in the public rights of way. If Licensee causes or permits any such damage or disturbance, Licensee shall re-vegetate the rights of

way at its sole expense to the County's reasonable satisfaction and in accordance with any Pinal County regulations then in effect.

11.4 *Adjacent properties.* Licensee shall provide prior written notice to the owners or residents of adjoining properties of any activity of Licensee which may temporarily interfere with access to or use of said adjoining property fifteen (15) days prior to the start of said activity. Licensee shall maintain access to adjoining properties during all construction activities or other operations, unless the requirement of access is waived in writing by the owners and residents of the affected properties. If an emergency requires activity without written notice, Licensee shall use its best efforts to provide timely actual notice to the owners and residents of adjoining properties.

Section 12: DESIGN AND LOCATION OF FACILITIES

12.1 *Injury to Persons and Property.* Licensee shall use reasonable care at all times to avoid damage or injury to persons and property during the construction, adjustment, removal, relocation, repair, operation, and maintenance of Licensee's facilities.

12.2 *Location and Construction of Facilities.* The location and construction of Licensee's facilities in public rights of way shall conform to the County standards and guidelines then in effect and as may be directed by the County, in order not to interfere with a planned future use of the public rights of way by the County.

12.3 *Interference with Other Uses.* Licensee's facilities shall be located in a manner designed to cause the least amount of interference with the public's existing or future use of roads, streets, alleys, and other public rights of way, and in such a way as it will minimize interference with the rights and convenience of adjacent property owners.

12.4 *Relocation of Facilities.* The County may require Licensee, at Licensee's sole cost and expense, to remove, relocate, mitigate, or underground any of Licensee's facilities that present a potential hazard to the public, that interfere, with the public's use of the public rights of way, or that are determined by the County to be aesthetically undesirable in County's sole discretion.

12.5 *Neighboring Property Owners.* Licensee shall be responsible for notifying owners or residents of adjoining properties in writing about permanent or temporary above- or below-ground facilities to be constructed in the County's rights of way. Licensee shall make every reasonable effort to resolve the concerns of property owners and residents regarding the construction of Licensee's facilities. Should the County determine that Licensee failed to

reasonably evaluate all options available to alleviate residents' concerns, the County may require Licensee to relocate its facilities at Licensee's sole cost and expense.

12.6 *Excavation Costs.* Licensee shall be responsible for any costs and expenses that the County incurs in locating, excavating, or exposing any of the Licensee's underground facilities in the County's construction projects with its rights of way.

Section 13: CONSTRUCTION SAFETY

Any opening, obstruction, or dangerous condition in the public rights of way caused by Licensee during the course of Licensee's activities in the rights of way shall be guarded, cornered off, and protected at all times by safety barriers erected by Licensee, which safety barriers shall be designated clearly by warning lights during periods of dusk, darkness, and low-visibility conditions. Any work performed by Licensee in or adjacent to a public roadway open for travel shall be signed and marked properly by Licensee with warning and directional devices in accordance with all applicable state and local traffic regulations, and in accordance with the Arizona Department of Transportation's Traffic Control Manual for Highway Construction and Maintenance and the Manual on Uniform Traffic Control Devices for Streets and Highways.

Section 14: DRAINAGE

During construction or excavation in the public rights of way, Licensee shall provide proper drainage so that the public rights of way will be free from standing surface water and adequately drained so as not to cause flood or erosion damage to the facilities of Licensee or surrounding property. For projects with a material impact upon local drainage patterns, as may be determined by the County in its sole discretion, Licensee may be required by the County to submit drainage engineering data and design plans to the County for review and approval prior to the issuance of any Right-of-Way Use Permit by the County. Licensee's drainage engineering data and design plans shall comply with all applicable local, state and federal ordinances, codes, regulations, laws, statutes, industry standard, and any other applicable standards.

Section 15: ISSUANCE OF PERMIT NOT APPROVAL OF VIOLATION

The County's review, approval, or acceptance of plans or specifications or issuance of a permit for the installation, construction, or location of a facility by Licensee shall not be construed to be an authorization for or approval of a violation of any federal, state, or local law or regulation, or of any industry standard, pertaining to the location or construction of a utility facility in public rights of way.

Section 16: COUNTY INSPECTION

The County, if it deems necessary, has the right to inspect any work by Licensee in the public rights of way to ensure proper performance of the terms of this Agreement and conformance with any applicable federal, state, or local laws, ordinances, and regulations. The County may require Licensee to pay a reasonable and uniform fee to cover the actual costs of inspections performed by the County or its contractor under this provision. The County may, at its sole discretion, pothole

Licensee's facilities to verify conformance with Section 10, above. Licensee shall be liable for the cost of potholing, and for an administrative surcharge in the amount of fifteen (15) percent of the total cost of potholing, should Licensee's facilities be found to be out of conformance. Licensee shall be responsible for taking corrective action to bring as-builts into conformance with verified facilities and any other applicable standard.

Section 17: ABANDONMENT OF FACILITIES

Abandonment in place of any of Licensee's facilities located within the County's rights of way may occur only upon written approval from the County.

Section 18: LIABILITY AND INDEMNITY

Licensee acknowledges its sole responsibility for any and all of its facilities and/or equipment installed in the public rights of way, and for any and all liabilities arising from any and all activities Licensee performs within the public rights of way. Licensee agrees to indemnify, hold harmless, and defend the County and its Board, officials, agents, servants, contractors, employees and volunteers against any and all claims for injuries to persons or damage to property, whether intentional, negligent, or otherwise, arising out of Licensee's work in the public rights of way, or due to the existence of Licensee's facilities and/or equipment in the public rights of way, or in any way related to Licensee's exercise of its rights under this Agreement. Neither the issuance of a County permit for installation or location of a facility or equipment, nor County approval of such installation or location, nor the failure of the County to direct Licensee to take any precautions, to make any changes, or to refrain from doing anything shall excuse Licensee of its responsibilities hereunder to the County or others in the case of any injury to persons or damage to property.

In the event that any suit or action is instituted against the County in any court by any person, firm, association, or corporation to recover damages for injuries to person or property on account of the installation, repair, operation, and/or maintenance of Licensee's facilities or equipment, or in any way related to Licensee's exercise of its rights under this Agreement Licensee shall defend such suits, pay any and all attorney's fees and litigation costs incurred including, but not limited to, any resulting judgments, appeals, awards and/or settlements, and shall, at the option of the County, be made a party to any such court proceeding.

Section 19: PINAL COUNTY PARTICIPATION IN LEGAL ACTIONS

The County shall have the right at all times to take part in any suit or action instituted by or against the Licensee in which any judgment or decree can be rendered, which might result in the foreclosure of any lien on any Licensee property situated within public rights of way, or which could affect the rights, powers, or duties of Licensee to perform under this Agreement, and also to take such steps as the County may deem appropriate to protect the interests of the County or the public. The County shall have the right to intervene in any suit, action, or proceeding by any person or persons, firm, or corporation seeking to enjoin, restrain, or in any manner interfere with Licensee in the performance or observance by it of any of the terms or conditions of this Agreement, or of any regulation, notice, or direction of the County in such connection, or which involves or might

involve the constitutionality, validity, or enforcement of this Agreement. The County also may move for dissolution of any such injunction or restraining order or take any other appropriate step, in any such suit, action or proceeding that it may deem necessary or advisable in order to protect its interests and rights.

Section 20: COMPLIANCE WITH AGREEMENT CONDITIONS AND ORDINANCES

Licensee agrees to conform to, abide by, and perform all the conditions, provisions, requirements, and limitations in this Agreement. Licensee shall be subject to all Pinal County regulations, ordinances, and codes now in force or hereafter lawfully adopted, including all regulations, ordinances and/or codes relating to the use of public rights of way by utilities. Licensee agrees that it will not assert any claim against the County that the provisions of this Agreement or any applicable County ordinance or regulation in force at the time of execution of this Agreement are unreasonable, arbitrary, or void.

Section 21: NONEXCLUSIVE LICENSE

This license and the privileges granted herein shall not be exclusive and the Pinal County Board of Supervisors expressly reserves the right to grant, at any time, similar franchises, licenses, and privileges over the same highways, roads, streets, alleys, and thoroughfares, or any portion thereof, to any other person, firm, corporation, or entity.

Section 22: ASSIGNMENT

Licensee agrees that neither this Agreement nor any of Licensee's facilities in the County's rights of way shall be sold, assigned, or transferred without the prior written approval of the Pinal County Board of Supervisors. The decision to approve or deny the sale assignment, or transfer of this Agreement shall be within the sole discretion of the Pinal County Board of Supervisors, and the

Board may deny Licensee's request to sell, assign or transfer this Agreement if such denial is in the best interests of the County.

Section 23: CONTRACT INFORMATION

All notices or correspondence concerning this Agreement shall be provided in writing and mailed to the below addresses.

If to Company:

Wecom LLC.
3028 E. Sunset
Las Vegas, NV 89120
(928) 753- 3829

If to Pinal County:

Pinal County Public Works
P.O. Box 727
Florence, Arizona 85132
(520) 866-6324

Any change in any of the foregoing contact information for either party shall be made in writing to the other party.

Section 24: EFFECTIVE DATE

This Agreement shall be effective upon the filing of a fully executed original hereof with the Pinal County Clerk's Office. This Agreement shall expire on the fifth (5th) anniversary thereof, unless sooner terminated or extended by either party hereto.

Section 25: TERMINATION

This Agreement may be terminated by either the County or Licensee upon 180 days' written notice.

Section 26: COMPLIANCE WITH LAWS

The parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.

Section 27: LICENSEE'S LICENSES

Licensee shall maintain in current status all federal, state, and local licenses and permits required for the operation of its business in general, for its operations under the agreement, and if required by this Agreement, the work itself.

Section 28: A.R.S. § 38-511

This Agreement may be terminated for conflict of interest subject to the provisions of A.R.S. § 38-511.

Section 29: ATTORNEYS' FEES

In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

Section 30: JURISDICTION AND GOVERNING LAW

The terms of this Agreement shall be enforced pursuant to and under the laws of the State of Arizona. The parties agree that the exclusive venue for any legal actions arising out of this Agreement shall be filed in the courts of Pinal County in and for the State of Arizona.

Section 31: IMPLIED LAW

Each provision of law and any terms required by law to be in this Agreement shall be deemed to be an integrated part of this Agreement as if fully stated herein.

Section 32: SEVERABILITY

Any term or condition deemed or found illegal or invalid shall be stricken from this Agreement and shall not affect any other term or condition of this Agreement.

Section 33: ARBITRATION

It is understood and agreed that no provision of this Agreement shall require arbitration upon the County except by the County's express written consent given subsequent to the execution of this Agreement. However, if both parties agree, disputes may be resolved through arbitration. The dispute shall be resolved as provided for in A.R.S. § 12-1501, et seq. Licensee shall continue to perform all obligations under this Agreement without interruption, notwithstanding the provisions of this section.

Section 34: AMENDMENTS

This Agreement may be modified only by way of amendment within the scope of this Agreement and must be in writing and agreed to by an individual who is authorized to bind the parties. Changes to this Agreement directed by a person who is not specifically authorized by the County in writing or which are made unilaterally by the Licensee are violations of this Agreement and of applicable law. Such changes, including unauthorized written Agreement amendments shall be

**EXHIBITS A
TO
RIGHT OF WAY LICENSE AGREEMENT BETWEEN WECOM, LLC AND PINAL
COUNTY**

Exhibit A; MAP OF SERVICE AREA FOR RIGHT OF WAY LICENSE AGREEMENT BETWEEN WECOM, LLC AND PINAL COUNTY is on file in the following Departments:

- Pinal County Community Development Department
- Pinal County Clerk of the Board Department

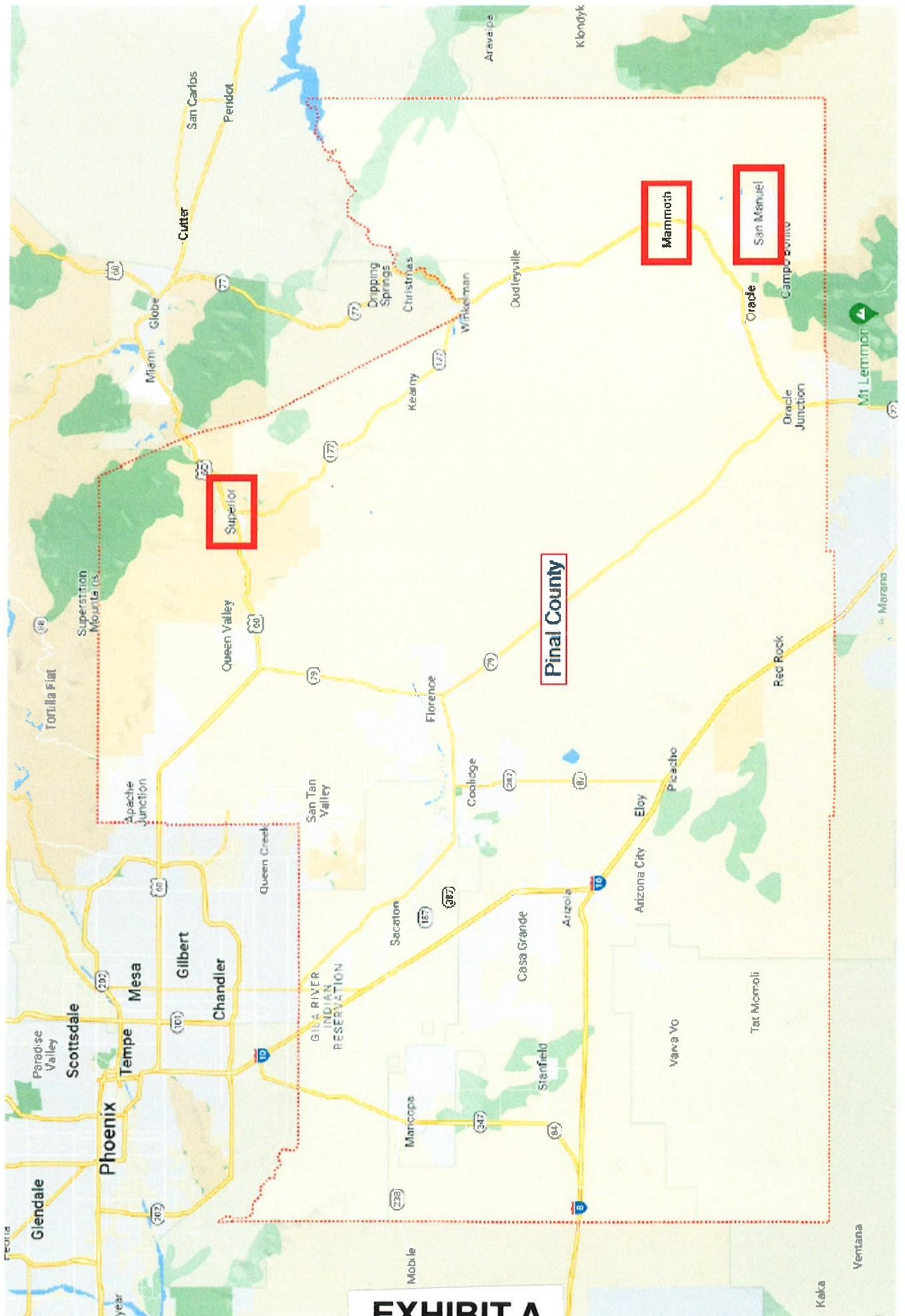


EXHIBIT A