CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2024-276 Ground Lease Agreement with ALLO Communications LLC, a Nebraska limited liability company for the location of a central office and/or data bunker, which is a building for utilities, computers and a generator using electricity, but without any temporary or permanent occupancy.

MEETING DATE
July 15, 2024

ORIGINATING DEPT
Planning & Community Development

ATTACHMENTS
Council Bill 2024-276; Ground Lease Agreement (location 2749 E 30th Street, Joplin MO) ALLO Communications LLC

REVIEWED BY
Director of Planning, Development & Neighborhood Services: Troy Bolander; Public Works Director: Dan Johnson; Finance Director: Leslie Haase; City Attorney: Peter Edwards; City Manager: Nicholas Edwards

SUMMARY
This Council Bill approves the Ground Lease Agreement for a portion of land located at 2749 E. 30th Street, Joplin MO

BACKGROUND
April 15, 2024 council approved the Development Agreement between City of Joplin and ALLO Missouri, LLC for an amount not to exceed Five Million and 00/100 dollars ($5,000,000).
As part of the detailed design package, site specific requirements for hardened equipment and structures by specific location were established. This allows for the network design to have explicit attention to redundancy and overall system resilience and considering spatial composition of critical facilities. Hardening refers to the resiliency provided through enhanced protective barriers to the network, safeguarding it from technical or physical damage and ensuring uninterrupted internet access.
The City requested 2 Central Offices be placed with a buried fiber ring connecting the facilities providing redundancy of the Network in the event the primary CO is unable to serve the network. The locations of both locations were mutually agreed upon by the ISP and the City prior to the construction of the Network. One location will be on the site of City of Joplin Public Works facility at 1301 W 2nd St with a second location at 2749 E. 30th Street.

RECOMMENDATION
Staff recommends approval of Council Bill 2024-276, Ground Lease Agreement (Location 2749 E. 30th Street, Joplin MO) with ALLO Communications LLC.

GROUND LEASE AGREEMENT

This Ground Lease Agreement (**Agreement**) is entered into between the City of Joplin (**Landlord**) and ALLO Missouri, LLC, a Nebraska limited liability company (**Tenant**) as of August 6, 2024 ("Effective Date").

The Parties agree:

1. **DESCRIPTION**: Landlord leases to Tenant the area identified on Exhibit A, attached hereto and incorporated herein by reference, consisting of approximately 2,150 square feet at approximately 2749 E. 30th Street, Joplin, MO (**Premises**).

2. **TERM**: The initial term of this Agreement (**Initial Term**) shall commence as of the Effective Date and continue until the tenth (10th) anniversary of the Effective Date at which time it shall terminate, unless sooner terminated or renewed as provided herein. Upon providing no fewer than thirty (30) days written notice to Landlord prior to the expiration of the Initial Term or first Renewal Term, as applicable, Tenant shall have the option to extend this Agreement for two (2) additional ten (10) year terms (each, a **Renewal Term**, together with the Initial Term, the **Term**), upon the terms and conditions as stated herein. If Tenant fails to provide a notice of renewal, the Agreement shall renew on a month-to-month basis upon the same terms and conditions as stated herein and shall be terminable at any time, by either party, with thirty (30) days' written notice to the other party.

3. **RENT**: During the Term, Tenant shall pay to Landlord as Rent $500.00 per month, with payment due on the first day of each month, and such Rent shall be prorated for any partial calendar months. For each year of any Renewal Term and commencing on the first day of each year of any such Renewal Term, Rent for the applicable year shall be determined by multiplying the monthly Rent for the immediately preceding year by the lesser of: (a) 1.03, representing a three percent (3%) annual increase; or (b) a number equal to the percentage increase in the CPI over a 12 month period, calculated by using the most recently published CPI and the CPI published 12 months earlier. "CPI" shall mean the Revised Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, for United States City Average, All Items (1982-84 = 100).

4. **USE**: Tenant shall use the Premises for a central office and/or data bunker, which is a building for utilities, computers and a generator using electricity, but without any temporary or permanent occupancy. Tenant shall not, without the written consent of Landlord, use the Premises for any other purpose, which consent shall not be unreasonably conditioned, delayed, or withheld.

5. **CONDITION OF PREMISES**: Landlord makes no warranties as to the condition of the Premises, and Tenant acknowledges it is accepting the Premises in its current and "As Is" condition.

6. **ACCESS; FIBER FACILITIES**. Access to the Premises shall be nonexclusive,

i.e., the access shall be shared with other users, tenants and owners. In addition to Tenant's access rights described herein, Tenant shall also have the right to install and maintain conduit, fiber optic lines, and related facilities (which shall include, but not be limited to, any utilities, *e.g*., electricity, natural gas, or any similar utilities that may be reasonably required to operate the fiber facilities (collectively, **Fiber Facilities**) so as to allow Tenant to utilize its data bunker situated on the Premises. The Fiber Facilities shall be located in existing utility easements to the extent possible, but in any event within fifteen (15) feet of the boundary of the Premises in easements that are nonexclusive. Tenant and Landlord shall mutually agree on the exact placement of the Fiber Facilities prior to installation and Tenant shall be solely responsible for the repair and maintenance of the Fiber Facilities.

Landlord will grant Tenant any access and utility easements necessary for the installation of Fiber Facilities to Tenant's data bunker/central office located on the Premises. This obligation shall apply to the parcel containing the Premises, and to any adjacent parcels owned by Landlord.

7. **TAXES**: At any time, in the event improvements placed on the Premises by Tenant cause an annual tax increase over the taxes due in the year of the Effective Date of this Agreement (**Base Year**), Tenant shall, upon billing by Landlord and Landlord's provision of reasonable supporting documentation demonstrating the applicable increase, reimburse Landlord within twenty (20) days in the amount of the applicable tax increase. The obligations in this Section shall survive termination of this Agreement and Tenant shall remain obligated to pay taxes on improvements as stated herein that have accrued up to the date of termination or expiration of this Agreement.

8. **IMPROVEMENTS BY LANDLORD**: Landlord reserves the right to make improvements, alterations, or additions to the Premises, but shall not materially change the general appearance, location or area of the Premises. Further, Landlord's improvements shall not unreasonably disturb or interfere with Tenant's improvements.

9. **IMPROVEMENTS BY TENANT**: Tenant shall not make any improvements or alterations to the Premises (excluding replacement or rearrangement of personal property within the Premises) without submitting plans and specifications to Landlord and securing Landlord's written consent, which shall not be unreasonably conditioned, delayed, or withheld. Tenant shall pay all costs of improvements and alterations, shall provide evidence of such payment to Landlord upon request, and shall hold Landlord harmless from any costs, liens, or damages. Upon termination or expiration of this Agreement, Tenant shall, at Tenant's sole cost and expense, remove from the Premises all of Tenant's leasehold improvements, including without limitation, interior and exterior signs, trade fixtures and equipment, and other such items that have been installed or placed on the Premises by Tenant, by Tenant's predecessors in interest, or which have been installed or placed therein for the benefit of or on behalf of Tenant or Tenant's predecessors (all of which are hereinafter referred to as "Tenant's Property"), and Tenant shall repair all damage resulting from such removal.

Upon completion and installation of the central office and all associated fiber facilities and utilities, and at Tenant's request, Landlord and Tenant shall execute an addendum to this Lease documenting and approving the placement all Fiber Facilities and any associated improvements.

10. **MAINTENANCE OF PREMISES AND TENANT'S PROPERTY.** Tenant shall, throughout the Term of this Agreement, at its own cost, and without any expense to Landlord, keep and maintain the Premises and Tenant's Property, including all appurtenances, in good, sanitary and neat order, condition and repair, and, except as specifically provided in this Agreement, restore and rehabilitate its improvements on the Premises that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. This requirement to maintain includes, but is not limited to, snow removal, landscape maintenance, and utilities as required to effectively use the Premises.

11. **UTILITY CHARGES; TENANT GENERATOR**: The only utilities to the Premises shall be electricity and natural gas in Tenant's name and which Tenant shall cause, at Tenant's cost, to be separately metered from the remainder of Landlord's Property. Landlord acknowledges as part of Tenant's use of the Premises, Tenant shall install a generator.

12. **WASTE**: Tenant shall not commit or permit any waste of the Premises, nor any public or private nuisance on the Premises.

13. **INSURANCE**. Tenant shall, during the entire Term, keep in full force and effect, solely, at Tenant's cost and expense, a policy of commercial general liability insurance with respect to the Premises and the activities of Tenant thereon, for which the limits shall not be less than One Million and no/100 Dollars ($1,000,000.00) covering bodily injury, sickness or death and loss of or damage to Premises, naming Landlord as an additional insured and providing that it is the primary coverage for liability on the Premises. Such coverage shall include a broad form general liability endorsement. The policy shall also be endorsed to provide that the additional insured party will be notified of the cancellation or non-renewal at least thirty (30) days before the effective date of such cancellation or non-renewal except in the event of cancellation due to non-payment of premium then a ten (10) days' notice shall be given.

14. **INDEMNIFICATION**. Tenant shall indemnify, protect, defend and hold City and its officers, directors, members, city council, employees and agents (collectively, the "Indemnified Parties" or, individually, an "Indemnified Party") harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character to persons or property occurring or allegedly occurring as a result of any acts or omissions of Tenant, its constituent members or partners, their employees, agents, independent contractors, licensees, invitees or others acting by, through or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Agreement and/or in connection with Tenant's use of the Premises.

15. **ASSIGNMENT**: Tenant shall not assign or sublet any portion of the Premises without the prior written consent of Landlord, which shall not be unreasonably conditioned, delayed, or withheld. Any such assignment or subletting without the consent of Landlord, shall be void and, at the option of Landlord, Landlord may terminate this Agreement. Notwithstanding anything to the contrary contained herein, Tenant may assign its entire interest under the Agreement or sublet the Premises or any portion thereof to a corporation, partnership, or other legal entity controlling, controlled by or under common control as Tenant, or to any successor to

Tenant by purchase, merger, consolidation, reorganization, or sale of substantially all assets without the consent of Landlord.

16. **QUIET ENJOYMENT**: Landlord warrants that Tenant shall have possession and quiet enjoyment of the Premises for so long as Tenant is in compliance with the terms of this Agreement.

17. **DEFAULT**: Each of the following acts and omissions shall constitute a default and a breach of this Agreement:

a. Voluntary or involuntary bankruptcy, assignment for benefit of creditors, reorganization or rearrangement under the Bankruptcy Act, receivership, dissolution or the commencement of any action or proceeding for dissolution or liquidation of Tenant or Landlord whether instituted by or against Tenant or Landlord, as applicable, or any other similar action or proceeding.

b. The failure of Tenant to pay the Rent for a period of ten (10) calendar days after Tenant receives written notice of such non-payment.

c. The failure of Tenant or Landlord to comply with any other provision of this Agreement for a period of thirty (30) days after written notice of such failure; provided, however, in the event that such cure shall be reasonably expected to exceed thirty (30) days, Tenant's or Landlord's cure right shall be extended provided that such cure is commenced within thirty (30) days and such cure is diligently pursued.

18. **REMEDIES**: In addition to any other remedies available to the non-defaulting party, upon a default by a party, the non-defaulting party shall have the right to terminate this Agreement immediately by providing written notice to the breaching party.

19. **HOLDING OVER**: If Tenant remains in possession after the termination date without the written consent of Landlord, Tenant shall be deemed to be a trespasser. If Tenant shall have paid, and Landlord shall have accepted, rent in respect to such holding over, Tenant shall be deemed to be occupying the Premises only as a Tenant from month-to-month subject to all the terms of this Agreement except for the rental charged, which during the hold over period shall be at a rate which is the same as the last rental rate.

20. **EFFECT OF SALE**: A sale of the Premises will operate to release Landlord from all obligations pursuant to this Agreement, except liabilities which arose prior to the closing of such sale, and Tenant shall attorn to Landlord's successor in interest.

21. **TERMINATION**: Upon termination of this Agreement, Tenant shall:

a. Deliver possession of the Premises to Landlord in good condition as at the commencement of this Agreement, ordinary wear and tear excepted.

b. Leave undisturbed all non-trade fixtures and improvements.

c. Remove from the Premises all trade fixtures and other personal property of Tenant. Tenant shall, at Tenant's expense, repair any damage to the Premises arising from the removal of such trade fixtures or personal property.

22. **MISCELLANEOUS**:

No term or condition of this Agreement shall be construed to have been waived by Landlord or Tenant, unless Tenant or Landlord shall have secured such waiver from the other party, as applicable.

Each person executing this Agreement on behalf of an entity represents and warrants that they have complete and full authority and capacity to act on behalf of that entity.

The invalidity or unenforceability of any term or condition of this Agreement shall not prejudice the enforceability of any other term or condition.

This Agreement shall not be amended or modified, except by a written instrument executed by both Landlord and Tenant.

Any notice, demand, request, or other instrument which may be or is required to be given under this Agreement shall be delivered in person or sent by United States certified or registered mail, postage prepaid and shall be addressed (a) if to Landlord, at City of Joplin, 602 S. Main Street, Joplin, MO 64801 and (b) if to Tenant, at ALLO Communications LLC, c/o President, 330 S. 21st Street, Lincoln, NE 68510.

Landlord and Tenant represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Premises. Each of them will indemnify the other against any claim for fees or commissions from anyone other than the Broker.

This Agreement shall be binding upon the successors in interest of the parties.

This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri. EACH PARTY HERETO, TO THE FULLEST EXTENT PERMITTED BY LAW, WAIVES THE RIGHT TO A TRIAL BY JURY FOR ANY ACTION ARISING FROM, OR RELATED TO, THIS AGREEMENT.

The foregoing constitutes the entire agreement between the parties.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Agreement on the day first set forth above.

LANDLORD: **City of Joplin**

By:_____
Its:_____

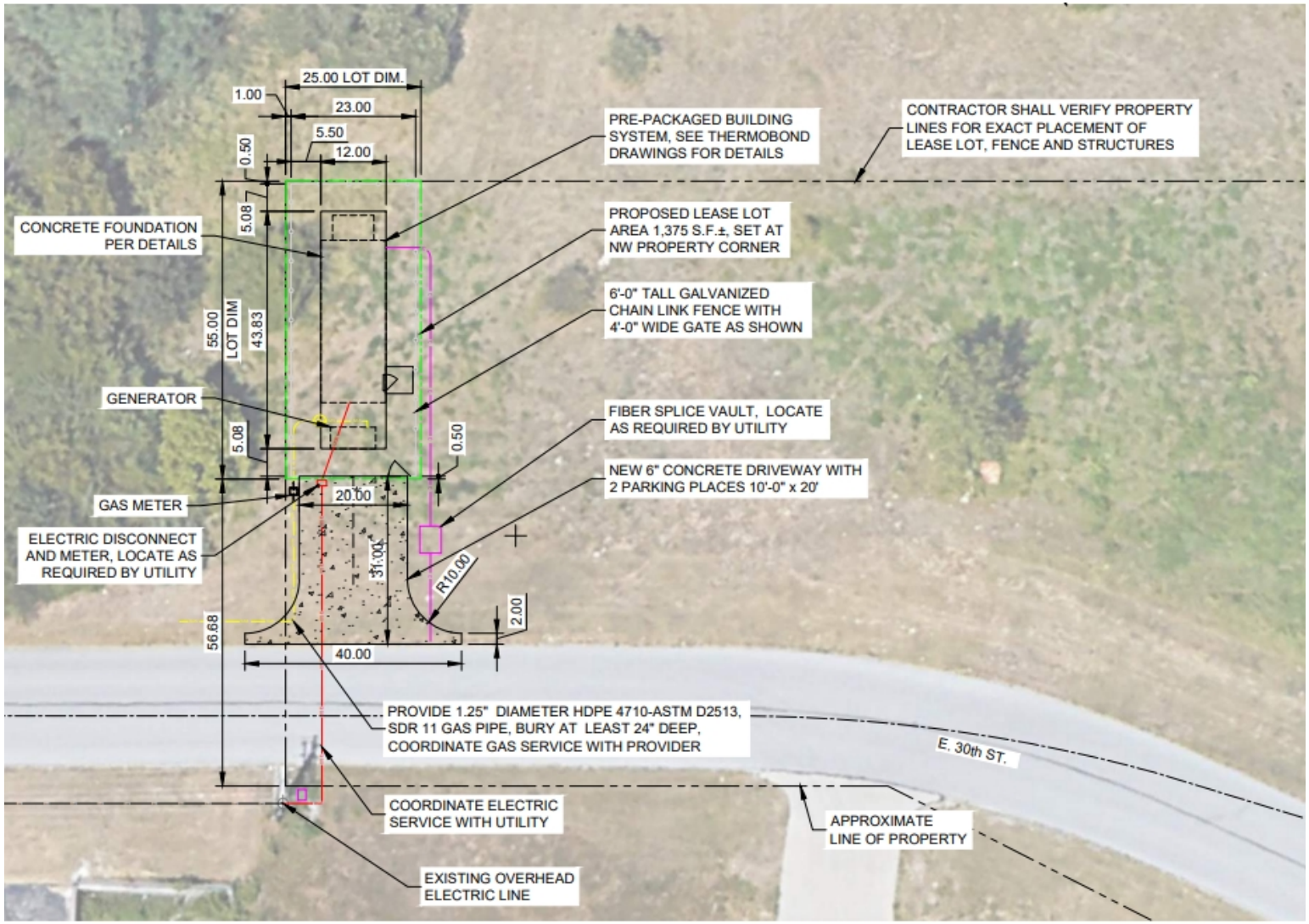
Name:_____
(Please Print)

TENANT: **ALLO Missouri, LLC, a Nebraska limited liability company**

By:_____
Its: President and CEO

Name: Bradley A. Moline

EXHIBIT A
The Premise



NORTH

SITE PLAN

SCALE: 1" = 20'

COUNCIL BILL NO. 2024-276 ORDINANCE NO.

AN ORDINANCE authorizing the City of Joplin, Missouri, to enter into an Agreement with ALLO Communications LLC, a Nebraska limited liability company, for the purpose of leasing a certain land in the area commonly known as 2749 E 30th Street, Joplin MO to ALLO Communications LLC to use the premises for a central office and/or data bunker, which is a building for utilities, computers and a generator using electricity, but without any temporary or permanent occupancy; authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin.

WHEREAS, in the Smarter Joplin Roadmap expand internet access and improve connectivity was identified as a primary concern in a resident survey; and

WHEREAS, the Broadband Gap Analysis Report identified the specific challenges with connectivity in the city of Joplin including issues with availability, capacity and affordability; and

WHEREAS, the COVID-19 Pandemic has shown that residents need to be connected to be able to work, educate, and receive healthcare from home; and

WHEREAS, for the City of Joplin to remain competitive in the areas of business attraction and retention, transportation, education, health care and other sectors that rely on the exchange of data and information;

WHEREAS, Council Bill 2024-264 approved the Development Agreement with ALLO Missouri, LLC to construct a fiber optic network that is able to offer high quality, fiber optic broadband to substantially all residents, anchor institutions, and business in the City that are accessible using public rights-of-way and similar public easements, ways and extensions and additions thereto.

WHEREAS, this Council Bill deals generally with the placement of a Central Office on city property and the lease of that property from the City to ALLO.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows;

Section 1. That the Lease Agreement between the City of Joplin and ALLO Communications LLC, for the leasing of real estate located at 2749 E. 30th Street, Joplin, Missouri, a true and accurate copy of said Lease Agreement being attached hereto and incorporated herein by reference as Exhibit “A”, be, and the same is, hereby approved.

Section 2. That the City Manager, or his designee, is hereby authorized and directed to execute said Lease Agreement by and on behalf of the City of Joplin, Missouri.

Passed by the Council of the City of Joplin, Missouri, this _____ day of_____, 2024, by a vote of_____.

_____

ATTEST: Keenan T. Cortez, Sr., Mayor

_____
Holly Nagy, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

Council Bill 2024-276