CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2024-277 Non-Exclusive Public Rights-of-Way ("ROW") Agreement with ALLO Missouri, LLC, a Missouri limited liability company for the purpose of ALLO installing, maintaining, operating and controlling a fiber optic infrastructure network in the Public ROW for the purpose of offering communications services, including but not limited to wholesale broadband transmission service to Internet Service Providers.

MEETING DATE
August 05, 2024

ORIGINATING DEPT
Planning & Community Development

ATTACHMENTS
Council Bill 2024-277; Non-Exclusive Public ROW License Agreement
ALLO Missouri, 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 Non-Exclusive Public ROW License Agreement

BACKGROUND
April 15, 2024 council approved the Development Agreement between City of Joplin and ALLO Missouri, LLC. 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. 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 St.
The City also requested that the Feeder Rings as well as routes connecting Anchor Institutions which include City Facilities, Public & Private Schools, Colleges and Hospitals, have buried infrastructure connections.

RECOMMENDATION
Staff recommends approval of Council Bill 2024-277, Non-Exclusive Public ROW License Agreement with ALLO Missouri, LLC.

NON-EXCLUSIVE PUBLIC ROW LICENSE AGREEMENT

This Non-Exclusive Public ROW License Agreement ("Agreement") is by and between **The City of Joplin**, a city organized and existing under the laws of the State of Missouri ("City"), and **ALLO Missouri, LLC,** a Nebraska limited liability company ("Licensee").

RECITALS

A. City has jurisdiction over the use of the public rights-of-way in City ("Public ROW").

B. Licensee desires, and City desires to permit Licensee, to install, maintain, operate, and control a fiber optic infrastructure network in Public ROW ("Network") for the purpose of offering communications services ("Services"), including wholesale broadband transmission service to Internet Service Providers ("Broadband Internet Services"), but excluding multichannel video programming services that would be subject to a video services franchise, to residents and businesses in City ("Customers"). The City acknowledges that Licensee may use all or portions of the Network for other lawful purpose, including but not limited to providing Services to residents and businesses outside the corporate limits of the City.

C. The Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities ("Network Facilities").

AGREEMENT

In consideration of the mutual promises made below, City and Licensee agree as follows:

1. Permission to Use and Occupy.

   1.1. Permission to Use and Occupy Public ROW. Pursuant to the terms of this Agreement and the exhibits thereto (which are incorporated into and made part of this Agreement), City grants Licensee permission to use and occupy the Public ROW (the "License") for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the "Work"). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee's use of any City owned property, including poles and conduits, will be governed under a separate Agreement regarding that use. In accordance with the City's standard policy for communications providers in the City, additional terms and conditions with respect

to Licensee's use and occupancy of the Public ROW to perform the Work are set forth on Exhibit A hereto.

1.2. Subject to Federal. State and Local Law. This Agreement and the License are subject to City's valid authority under federal, state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement. In the event of a material conflict between the terms of local law and the applicable provisions of this Agreement, the applicable provisions of this Agreement will prevail. Federal law is paramount.

1.3. Subject to City's Right to Use Public ROW. This Agreement and the License are subject and subordinate to City's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.

1.4. Subject to Pre-Existing Property Interests. City's grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, superior claims of title or other property interests that may affect the Public ROW, in addition to those uses permitted by the Joplin Municipal Code. Licensee will obtain at its own cost and expense any required permission or rights as may be necessary to accommodate such pre-existing property interests, so long as such pre-existing interests do not contravene state or federal law.

1.5. No Grant of Property Interest. The License does not grant or convey any property interest.

1.6. Non-Exclusive. The License is not exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("Person"), as well as the right in its own name as a City, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.

2. Licensee's Obligations.

2.1. Individual Permits Required. Subject to the requirements as described in Exhibit A hereto, Licensee will obtain City's approval of required individual encroachment, construction, excavation, and other necessary permits before placing its Network

Facilities in the Public ROW or other property of City as authorized. Licensee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by City. If there is a conflict between this Agreement and Exhibit A, the terms of the Agreement will be binding on the parties.

2.2. Licensee's Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense, or with any local, State or Federal grants and other funding that may become available to Licensee.

2.3. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing the Work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by City.

2.4. Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.

2.5. No Nuisance. Licensee will maintain its Network Facilities in good and safe condition.

2.6. Repair. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is directly caused by Licensee's Work and no other Person is responsible for the damage (*e.g.,* where a Person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section 2.6 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.

2.7. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in the Public ROW and will provide them to City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections.

2.8. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City, and Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network Facilities.

2.9. Video Service Provider Fee. In accordance with RSMo §67.2689, Licensee shall pay to the City a Video Service Provider Fee that is four and one-half percent (4.5%) of Licensee's gross revenues. Said Fee shall decrease on the following schedule:

a. Beginning August 28, 2024: 4.0%

b. Beginning August 28, 2025: 3.5%

c. Beginning August 28, 2026: 3.0%

d. Beginning August 28, 2027 and continuing thereafter: 2.5%

3. City's Obligations.

Notwithstanding City's obligation as outlined in Section 3 of this Agreement, Licensee's use of Public ROW or City property shall be conducted in a manner consistent with lawful and applicable public easement rights.

3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents, City and/or other public utilities may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City and any affected public utility will, however, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City and any other public utility benefitting from this provision will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City and any affected public utility for its actual, reasonable, and documented costs or expenses incurred for any such emergency work, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse City and any affected public utility under this section will be separate from Licensee's obligation to reimburse City for any other reasonable expense City may incur.

3.2. Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with planned use of the Public ROW or City property, or property of any other political subdivision (as defined by the IRS) for any governmental purpose as reasonably determined by the City, Licensee will, upon written notice from any of the foregoing entities, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may

be mutually agreed by the parties, taking into account the needs of the governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City or any such public entity may not require Licensee to relocate or remove its Network Facilities with less than sixty (60) days' notice.

3.3. Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless the City reasonably determines, and substantiates in writing to Licensee, that a failure to relocate Network Facilities will result in a significant and material detriment or financial loss to the citizens of the City of Joplin. In that event, Licensee shall be entitled to reimbursement of its reasonable costs and expenses incurred in relation to the relocation of its Network Facilities. If there is a dispute between Licensee and the affected third party, City will attempt to mediate the dispute between the parties so as to avoid or mitigate unreasonable delays.

3.4. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to the same or similar conditions existing prior to the Licensee's construction, and shall comply with the applicable provisions of the Joplin Municipal Code.

4. Contractors and Subcontractors.

4.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf.

4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.

4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization ("Authorized Individuals"). City will accept permit applications under this Agreement submitted and signed by Authorized Individuals,

and will treat those applications as if they had been submitted by Licensee under this Agreement.

5. Defense and Indemnity.

5.1. Obligations. Licensee shall indemnify, protect, defend and hold City and its officers, elected representatives, and employees, harmless from any and all claims, demands, liabilities and costs, including reasonable attorney's fees, costs and expenses, arising from damage or injury, occurring as a result of any acts or omissions of Licensee, its constituent members or partners, their employees, agents, contractors, or other acting through or under Licensee in connection with Licensee's activities connected with this Agreement and/or in connection with Licensee's use of City right-of-way and any services provided under this Agreement.

5.2. Exclusions. Section 5 (Defense and Indemnity) will not apply to the extent the underlying allegation (a) arises from or is related to the negligence or willful misconduct of an indemnified party or (b) is made by City's employee and covered under applicable workers' compensation laws.

5.3. Conditions. Section 5.1 (Obligations) is conditioned on the following: (a) City making its best efforts to promptly notify Licensee in writing of any claim or demand and any allegation(s) that preceded the claim or demand no later than fifteen (15) days after City became aware of the claim or demand; (b) City must reasonably cooperate in the defense at Licensee's request; and (c) City must tender sole control of the indemnified portion of any claim and legal proceeding to Licensee, subject to the following: (i) City may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring City to admit liability, pay money, or take (or refrain from taking) any action, will require City's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

6. Limitation of Liability. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

7. Performance Bond. In accordance with the terms of Section D(1) of Exhibit A, Licensee will provide City with a performance bond in the amount of fifty thousand dollars ($50,000.00).

8. Insurance.

   8.1. Licensee will carry and maintain liability insurance in the amounts and in accordance with the terms set forth in Section D (2) of Exhibit A.

9. Term. Consistent with the terms of Section F(3) of Exhibit A, this Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any required implementing ordinance becomes effective in accordance with its terms and state law ("Effective Date"). The Agreement will expire automatically on the tenth (10th) anniversary of the Effective Date ("Original Term"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Agreement will automatically renew for successive ten (10) year terms (each a "Renewal Term") unless a party provides at least ninety (90) days' prior written notice to the other party of its intent not to renew.

10. Equal Protection**.** If any other provider of Services (without regard to the technology used to deliver such services) is lawfully authorized by the City or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the City, the City shall within thirty (30) days of a written request from Licensee, modify this Agreement to insure that the obligations applicable to Licensee are no more burdensome than those imposed on the competing provider. If the City fails to make modifications consistent with this requirement, Licensee's Agreement shall be deemed so modified thirty (30) days after the Licensee's initial written notice. As an alternative to the Agreement modification request, the Licensee shall have the right and may choose to have this Agreement with the City be deemed expired thirty (30) days after written notice to the City. Nothing in this Agreement shall impair the right of the Licensee to terminate this Agreement and, at Licensee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

11. Termination.

    11.1. Termination by City. City may terminate this Agreement if Licensee is in material breach of the Agreement, provided that City must first provide Licensee written notice of the breach and one hundred eighty (180) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Licensee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired.

11.2. Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.

12. Assignment. Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

12.1. Notwithstanding the foregoing, Licensee may at any time, on written notice to City, assign this Agreement or any or all of its rights and obligations under this Agreement:

11.1.1 . to any Affiliate (as defined below) of Licensee;

11.1.2. to any successor in interest of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or

1 1.1.3. to any purchaser of all or substantially all of Licensee's Network Facilities in City if Licensee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement.

12.2. Following any assignment of this Agreement to an Affiliate, Licensee will not remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and (b) "control" means, with respect to: (i) a U.S. corporation, partnership, or other legal entity, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, partnership, or other legal entity, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

13. Notice. All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City, to the City of Joplin Public Works Director, 602 S. Main St. Joplin, MO 64801 with a copy to the City Attorney. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted

by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

14. General Provisions. This Agreement is governed by the laws of the state of Missouri. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement and the exhibits thereto sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms, including, but not limited to, amendments or modifications, must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may use electronic signatures.

15. Approval. This Agreement shall not be effective until the execution of this Agreement by the City has been approved by resolution of its City Council.

16. Non-discrimination. Licensee will comply (and similarly require compliance by contractors from time to time used or hired to plan, construct or maintain Network Facilities pursuant to this Agreement) with applicable federal, state, and local laws with respect to prohibitions against discrimination on the basis of race, color sex, age, disability, political or religious opinions, affiliations or national origin.

17. Interest of Members of a City. No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the Agreement, shall have any personal financial interest, direct or indirect, in this Agreement, and the Licensee shall take appropriate steps to ensure compliance.

18. Reservation of Rights. The parties expressly reserve any rights either of them may have under state or federal law concerning the subject matter of this Agreement and further agree that by execution and performance of this Agreement, neither party shall be deemed to have waived any such rights.

19. Severability. If any part of this Agreement is deemed invalid, illegal, or unenforceable, the remainder of this Agreement will remain in effect.

20. Governing Law, Jurisdiction & Venue. This Agreement shall be governed by the laws of the State of Missouri. Jurisdiction and venue for any dispute between the parties shall lie exclusively in the Circuit Court of Jasper County, Missouri.

[Signature page follows]

EXECUTED this ____ day of _____, 2024.

Signed by authorized representatives of the parties on the dates written below.

ALLO Missouri, LLC

By: _____
Printed Name: _____
Title: _____
Address:
330 S 21st Street
Lincoln, NE 68510

CITY OF JOPLIN, MISSOURI a Municipal Corporation

By: _____
Nicholas Edwards
City Manager

APPROVED AS TO FORM:

_____
Peter Edwards, City Attorney

EXHIBIT A

STATEMENT OF POLICY AND STANDARD SPECIFICATIONS FOR COMMUNICATIONS CABLE ON CITY PROPERTY.

This Statement of Policy and Standard Specifications for Communications Cable on City Property (the "Policy" or "Exhibit A") is hereby appended to, incorporated by reference into, and made a part of that certain Non-Exclusive Public ROW License Agreement by and between the City and Licensee (the "Agreement"). This Exhibit A shall not be amended or modified except by written instrument executed by the City and Licensee in accordance with the terms of Section 14 of the Agreement. Capitalized terms used herein but not otherwise defined shall be ascribed such meanings as are set forth in the Agreement.

SECTION A - AUTHORITY REQUIRED

No person shall use any space above, on or beneath the surface of any street, alley, sidewalk or other public ground within the City of Joplin for the installation, operation and maintenance of any underground fiber optic cable, coaxial cable, or any other communication cable, line or appurtenance, unless such person has received authority therefore granted by agreement approved by Resolution/Ordinance of the City Council or as otherwise provided by the City Code; the City acknowledges that the Agreement satisfies the foregoing requirement in accordance with this Policy and applicable local law. This Policy shall not apply to any cable installed or operated by the holder of any State or City franchise under its terms for telephone or cable communications purposes wherein such telephone, communications, or cable television service is provided to the inhabitants of the City as described in such franchise.

SECTION B - APPLICATION FOR PERMIT

(1) Prior to moving forward with work authorized by Section A of this Policy and for any project of Licensee, the Licensee shall be responsible to secure required approval for any work or segment of work to be performed. Licensee's contractors shall be responsible for securing appropriate excavation and other permits for work performed, which work shall also be subject to this Policy. Application for such approval shall be made to the Public Works Department, and such application shall be in writing, stating specifically the space desired, its length, breadth and depth, the streets, alleys, sidewalks or other public space intended to be used, the use intended to be made thereof, a description of the users if the facility is not to be available to the general public, a description of all users if any conduit is to be shared by a number of users, and the carrying capacity and diameter of the cable or other facilities being installed. In addition thereto, the Public Works Department may request such additional information as they deem reasonable or appropriate for their determination or that of the City Council with reference to such application. All such applications, for which there is no agreement in effect conforming to this Policy and these specifications, shall be referred to the City Council for an agreement to be approved by Resolution prior to the granting of any permit. Other permits (for which such an agreement is in effect) may be granted by the Permits and Inspections Division with the approval of the Public Works Department.

(2) Following initial application and discussions with the Public Works Department concerning the placement of such cable and its appurtenances, the Licensee shall supply accurate drawings sealed by a licensed professional engineer produced to a scale of one (1) inch equaling fifty (50) feet. The plans shall be a detailed plan of the proposed route, with right of way lines and pavement lines shown. Such plans must show typical sections for pavement cuts and crossings, with specific details for conflicts with other utility structures and conduits.

(3) Thirty (30) days after completion of the work, as-built construction drawings, prepared by a qualified outside engineer designated by Licensee, must also be

submitted to the Public Works Department in a pdf file. Updated route maps and required drawings must be provided to the Public Works Department whenever a change is made to the approved cable placement.

SECTION C - CONSTRUCTION SPECIFICATIONS

(1) The work shall be constructed in accordance with plans and specifications approved by the Public Works Department, which approval shall be granted in a competitively neutral and non-discriminatory manner. The Public Works Department will work with Licensee to allow construction of any project in segments as long as in the reasonable opinion of the Public Works Department, the extent of the work in any segment or on multiple segments, will not materially interfere with the public's use of the public right-of-way. All excavations in public streets and right-of-way shall comply with the applicable provisions of the Joplin Municipal Code and all of Licensee's contractors shall comply with all permitting requirements, except that the provisions concerning bonds contained within this Policy shall control.

(a) In those instances that Licensee is desiring to install cable at shallow depths, Licensee's installation shall be controlled by this subsection. It is contemplated that cable pursuant to this Policy shall, if possible, be placed on the property side of the public sidewalk and if there is no sidewalk, it shall be placed on the property side of the curb of the street. In those instances where this is not reasonably feasible in Licensee's discretion, then the Licensee can request specific permission from the City - either in an application for approval to the Public Works Department or as part of a field deviation request - to place the cable between the public sidewalk and the curb of the street. Cable installed pursuant to this subsection shall be buried at a minimum depth of six (6) inches. In no instances shall cable be buried to a depth of less than six (6) inches. Pull boxes and other items shallower than the depth above

specified shall be clearly shown on the completed plans covering the installation work.

(b) In those instances that Licensee cannot install cable needed for its operation pursuant to Section C(1)(a) and must install the cable needed for their operation beneath public streets, sidewalks, or sidewalks, the limitations in this subsection shall apply. Where the cable is located beneath the pavement in all major traffic streets and arterial streets, the minimum depth from the top of the cable to the surface of the ground shall be thirty (30) inches. Cable buried beneath residential streets shall have a minimum depth of twenty-four (24) inches. In no instances shall cable or any other items that are buried in a public street be buried at a depth of less than twenty-four (24) inches. Cable buried beneath sidewalks or drive approaches shall have a minimum depth of fourteen (14) inches from the top of the cable to the surface of the ground. The City and Licensee will cooperatively work together to address potential field exceptions if this minimum depth requirement poses an issue for Licensee. Pull boxes and other items shallower than the depth above specified shall be clearly shown on the completed plans covering the installation work.

(2) All land surfaces and all pavement shall be restored to the same or similar conditions existing prior to the Licensee's construction, and shall comply with applicable provisions of the Joplin Municipal Code. In addition thereto, all established lawns and other earth surfaces which have been disturbed by the installation shall be tamped and seeded, if necessary, unless otherwise specified in the permit.

(3) The City acknowledges and agrees no City permits shall be required for (1) cable drop work that is outside of Right of Way, (2) cable drop work that does not involve the disturbance of hardscape infrastructure (*e.g.*, concrete or asphalt), or (3) cable drop work does not involve any lane closures, shoulder closures, traffic controls, construction staging across roadways, or otherwise impact the normal flow of vehicular pedestrian traffic in a particular area.

(4) All cable buried beneath public streets must be encased in a protective sheath strong enough to avoid damage from the first accidental contact with hand tools. All pavement cuts must be completed in accord with current City Ordinances and specifications.

(5) Prior to the installation of any cable or other equipment in the Public right-of-way that is outside of the public street, Licensee shall be responsible to inform any adjacent property owner of the work that is to be performed by providing at least five (5) days' notice. The City and Licensee will work cooperatively to develop additional communication plans to inform the affected members of the public prior to the construction of a segment by Licensee. Further, Licensee shall make reasonable efforts not to impact the ability of citizens to access any garage that a citizen may have on their residential property.

(6) In the event that Licensee has to maintain, repair, relocate, or replace any cable after its initial installation for any reason, Licensee shall restore all land surfaces and pavement to the same or similar conditions existing prior to the Licensee's work.

SECTION D - BOND, INSURANCE AND PUBLIC LIABILITY

(1) Every applicant for such permit shall file with the City a continuing bond in the amount of Fifty Thousand dollars ($50,000.00) to cover all construction efforts during the term of this Agreement or until Licensee is no longer operating its Communications facilities within the City, whichever is sooner. All bonds and sureties shall be approved by the City before such permit becomes effective. All bonds shall be conditioned that the person to whom such permit shall be issued, and their heirs, successors and assigns, shall save and keep the City free and harmless from any and all loss or damages or claims for damages arising from or out of the use of the space therein mentioned (except those arising from the City's negligence or intentional misconduct), and for the maintenance of the street, alley, sidewalk or other public ground in such condition that the street, alley sidewalk or other public ground shall at all times after the completion of the work be safe for public use; for the full and complete protection of the City against any and all

litigation arising directly as a result of the granting of such permit or anything done under such permit (except to the extent previously specified and/or to the extent such liability arises from the City's negligence or intentional misconduct), and for the removal of any cable or other facility buried by the Licensee to the extent that the same is required by the City, at the sole expense of the Licensee or its appropriate heirs, successors or assigns; for the faithful performance and observance of all of the terms and conditions of this division and the conditions and applicable provisions of the Joplin Municipal Code; and such bond shall also be conditioned for the prompt and full payment of the compensation required by this division, or by any other Ordinance, during the period said permit shall be outstanding. Following the issuance of such permit, and as long as the use continues in such public space, the owners of the permitted facility from time to time shall also be responsible to the City for the performance of all of the conditions of the bond above described. In the event that the City reasonably concludes that the surety on such bond given for such permit issued hereunder has become legally insufficient and shall so declare in writing sent by regular U.S. Mail to the applicant, a new bond for such permit shall thereupon be filed with a new surety to be approved by the City in an amount not to exceed the amount set forth in Section D (1) above.

(2) In addition to the bond, the applicant shall at all times have in full force and effect a policy of liability insurance in the minimum amount of One Million Dollars ($1,000,000.00) for the injury or death of any number of persons per occurrence, and Two Hundred Fifty Thousand Dollars ($250,000.00) for property damage per occurrence. Such coverage shall name the City of Joplin as an additional insured, as its interest may appear, for all acts and omissions of Licensee, its agents and contractors arising out of or in any way connected with the permit and their use and occupation of the public right of-way. All such policies and certificates in insurance shall be issued by companies authorized to do business in the State of Missouri and shall be approved by the City of Joplin Legal Department prior to the commencement of such use and provide that any such policy shall not be cancelled

until thirty (30) days' written notice of such cancellation shall have been filed with the City Clerk. Any termination or lapse of such insurance will automatically revoke any permit issued pursuant to this division.

SECTION E - INTERFERENCE WITH OTHER PUBLIC FACILITIES, RELOCATION, IDENTIFICATION OF COMMUNICATIONS CABLE

(1) No person, whether permitted under this policy or otherwise shall ever use the space under any street, alley, sidewalk or public ground in such manner as to materially interfere (as reasonably determined by the City of Joplin Public Works Department) with any traffic control or energy cable, sewer, gas or water conduit, or any other public facilities or utilities lawfully in such street, alley, sidewalk or other public space unless by consent of the City specially granted in the permit. Whenever any Licensee under this policy is given permission to relocate any existing public facility, such relocation shall be entirely at the cost and expense of the Licensee. All such relocation work shall be subject to the control of the City of Joplin or other public entity controlling such public facility, and all such work shall be done promptly in accordance with the directions of the Public Works Department so as to minimize the interruption of the public's use of such facilities.

(2) All work undertaken by the Licensee which requires inspection by the City shall be performed subject to the requirement that the City be fully reimbursed for its reasonable and documented inspection costs, whether the same are part of the initial installation or the relocation of either Licensee's facilities or those belonging to the City or any other public utility service.

(3) In addition thereto, all permits governed by these specifications are granted subject to the requirement that whenever any work is initiated by the City of Joplin, the State of Missouri, or any other political subdivision (as defined by the IRS), the facilities of the applicant must be relocated within a reasonable time, not to exceed sixty (60) days from written demand for the same, in order to reasonably accommodate such public use. If the Licensee fails to undertake or cause the relocation of its facility within a reasonable time not to exceed sixty (60) days from written demand for the same, then the City of Joplin retains the right to relocate or allow relocation of the cable and other appurtenant facilities and to

assess and collect the reasonable and documented cost from the Licensee or any other owner of the facility if the same fail to relocate the cable in a timely manner; provided, however, that City shall not undertake the foregoing remediation steps, including relocation and assessment of costs, prior to sixty (60) days from written demand for the same Notice as set forth above.

(4) The Licensee shall, at its own cost, maintain an agent available on a twenty four hour per day, seven day per week basis, to provide to the City, any public entity, or any other persons, permitted to do work in the street right-of-way, detailed and accurate information concerning the locations, whether in plan, section or profile, or any combination of the same, of the Licensee's cable, appurtenances or other facilities. This requirement can be satisfied by the Licensee's utilization of a local utility locating service maintained by others, or this provision may be satisfied by any other local, competent agency.

(5) The Licensee, its heirs, successors and assigns, shall at all times remain responsible for injuries caused by its cable, its appurtenances and other facilities injured by any party and due to any inaccuracies in the information given with respect to such facility's location. The City of Joplin, and its contractors, shall be responsible for injuries to the Licensee's facilities only to the extent that such injuries result from their negligence or misconduct.

SECTION F - REVOCATION OF PERMIT; REMOVAL OF FACILITIES

(1) A permit issued under this Policy may be revoked by Resolution of the City Council upon a finding by the Council of such facts shown below and a failure of Licensee to cure such breach within ninety (90) days (or such later date as may be mutually agreed upon in writing by the parties) of sending written notice to Licensee by the City Clerk, for the following reasons:

a) Failure of the Licensee to pay the compensation required within thirty (30) days after the payment due date;

b) Failure or neglect of the Licensee to comply with the material provisions of these specifications or any provision of the Joplin Municipal Code applicable to the permit and the use and occupancy of right-of-way.

(2) Upon revocation of the permit, the permit holder shall forthwith, at the option of the City, either remove or abandon in place the cable and appurtenances for which the permit was granted. All directly buried cable, however, may be abandoned in place at the option of the permit holder. All removals and restoration of the public facilities shall be at the cost of the Licensee, and the Licensee shall hold the City of Joplin free from any and all encroachments or claims of any type. Such facilities which are not removed by the permission of the City of Joplin shall become the property of the City of Joplin upon the City's certification that the Licensee has complied with all requirements of abandonment or cancellation with respect to the specific segment of cable involved. Whenever the Licensee has failed or refused to undertake such removal, abandonment and restoration within six (6) months after such revocation of any such permit, then the City may cause such work to be done and the cost of such work shall be paid by the Licensee and become a lien against the property of the Licensee.

(3) Upon a determination by the City Council that the space for which the permit is granted is needed for other public use and that no relocation within the specific right-of-way is an available, reasonable alternative, then the rights under said permit shall be transferred, to the extent possible by the co-operation of the City and the permit holder, to another specific nearby right-of-way. Such relocation work shall be accomplished by the permit holder at its costs within the time frame specified in Section E (3) hereof. This Agreement shall continue in force and effect for a period of ten (10) years from the execution date of this Agreement, and may thereafter be renewed for additional term periods as may be agreed upon by agreement of the parties, unless terminated by either party by giving written notice of its intention to do so not less than ninety (90) days prior to the end of any period.

COUNCIL BILL NO. 2024-277 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 ALLO installing, maintaining, and operating facilities for communications related services including but not limited to wholesale broadband transmission service to Internet Service Providers within the City's Rights-of-Way and ensuring compliance with the City's requirements of such use of City property; authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and setting a date when this Ordinance shall become effective.

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.

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

Section 1. That the Agreement between the City of Joplin and ALLO Missouri LLC, for the purpose of ALLO installing, maintaining, operating and controlling a fiber optic infrastructure network in Public ROW and ensuring compliance with the City's requirements of such use of City property, a true and accurate copy of said agreement being attached hereto and incorporated 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 Rights-of-Way Agreement or agreement in substantially similar form, by and on behalf of the City of Joplin, Missouri.

Section 3. That this Council Bill shall have an effective date of August 20, 2024.

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 2024-277