



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: November 21, 2024**

**AGENDA TITLE**

Consideration of a motion to approve and authorize the city manager to enter into, execute, and negotiate administrative amendments prior to or during the term, a 20-year Fiber Backbone Lease Agreement, in substantially the same form as in **Attachment A**, between the City of Boulder and ALLO Communications LLC, leasing the city's dark fiber backbone for retail broadband services with the City Council finding that the lease and the construction associated therewith will provide a public benefit to the city of Boulder

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Chris Meschuk, Deputy City Manager  
Andy Frohardt, Assistant City Attorney III  
Jennifer Douglas, Chief Innovation & Technology Officer  
Mike Giansanti, Deputy Chief Innovation & Technology Officer

**EXECUTIVE SUMMARY**

The purpose of this item is for the City Council to consider directing the city manager to proceed with executing a 20-year Fiber Backbone Lease Agreement, **Attachment A**, with ALLO Communications LLC (ALLO) to deliver on community broadband objectives. In 2018, the City Council outlined a goal to ensure every home and business in the city of Boulder was able to access state-of-the-art fiber-based broadband internet services offered at an affordable price. That goal began with the construction of a citywide fiber backbone. Construction on that backbone was completed in 2024. Today, nearly seven years later, this council has an opportunity to leverage the substantial investment in the city's fiber backbone and enter into an agreement with ALLO to make the completion of this goal a reality by 2030.

In October 2023, the City Council directed staff to proceed with the negotiation of an agreement with a private party to deliver on community broadband objectives. After a robust solicitation and review process, ALLO was selected as the internet service provider that could most effectively aid the city in achieving its six community broadband objectives: citywide access, competitive marketplace, equitable and inclusive, future oriented, net neutrality, and consumer privacy. Over the last several months, city staff have worked with ALLO to arrive at a set of lease terms that align with the council's objectives. Key aspects of the agreement include:

- **Citywide Access:** ALLO will achieve 80% coverage by 2028 and 97% by 2030.
- **Competitive Pricing:** ALLO's rates will be at or below those in other Colorado markets with greater than 10,000 ALLO customers, with transparent fee free pricing, providing affordable options for community members and businesses.
- **Equitable and Inclusive Service:** ALLO will offer discounted rates for low-income households (including proactive marketing to city-designated low-income housing units), free service for 25 community non-profit organizations, and complimentary service upgrades for students, ensuring broad, equitable access across diverse demographics. ALLO will also maintain a physical storefront in Boulder, accessible by public transportation.
- **Future-Ready Infrastructure:** ALLO's fiber network supports scalable, high-speed connectivity and includes sustainable materials to minimize environmental impact.
- **Net Neutrality and Consumer Privacy:** ALLO will maintain an open internet with no data caps or traffic prioritization and strict protections on consumer data usage in compliance with the Colorado Privacy Act.

The 20-year agreement includes ALLO leasing a portion of the city's fiber backbone. This will yield the city a \$1.5 million upfront lease payment, ongoing lease revenue from success-based fees, and a share of ALLO's wholesale revenue, which, in total, will fund future community initiatives. Staff estimate the total net present value of the lease deal to be about \$9M. Under the agreement, ALLO is also responsible for building a 288-strand fiber micro duct within an empty conduit owned by the city which will be fully owned and operated by the city for other needs. This agreement advances Boulder's goals for a digitally inclusive, economically competitive, and environmentally responsible community, positioning the city as a leader in equitable broadband access.

## STAFF RECOMMENDATION

### **Suggested Motion Language:**

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to approve and authorize the city manager to enter into, execute, and negotiate administrative amendments prior to or during the term, a 20-year Fiber Backbone Lease Agreement, in substantially the same form as in **Attachment A**, between the City of Boulder and ALLO Communications LLC, leasing the city's dark fiber backbone for retail broadband services with the City Council finding that the lease and the construction associated therewith will provide a public benefit to the city of Boulder

## PUBLIC FEEDBACK

City staff recently engaged with Community Connectors to discuss key terms in the ALLO broadband agreement and better understand community priorities. These discussions highlighted the importance of ensuring that broadband services are affordable, accessible, and easy for residents to navigate. Based on this feedback, staff reinforced specific provisions in the agreement with ALLO, including:

- **Local, Accessible Retail Presence:** ALLO will maintain a physical retail space within Boulder that is easily accessible by public transportation and offers convenient hours, ensuring that residents can get in-person assistance with their internet service needs.
- **Affordability and Transparent Pricing:** Staff stressed the need for straightforward, competitive pricing that avoids hidden fees or complex terms.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

**Economic** - High-speed, affordable internet is critical for business operations, especially for small businesses, startups, and tech-based companies. ALLO's presence in Boulder will provide reliable, high-speed fiber-based service at competitive rates, helping local businesses improve productivity, attract customers, and expand their digital operations. Enhanced connectivity may also make Boulder more attractive for companies considering relocation, further boosting the local economy.

**Environmental** - The agreement has been structured to minimize environmental impacts including:

- A commitment to a local retail space supports accessibility via public transit, reducing the need for residents to drive.
- A commitment to recycling materials wherever feasible during construction, maintenance and upgrades, contributing to reduced landfill waste.

**Social** - The agreement ensures broadband access is equitable, inclusive, and responsive to community input. The deal ensures accessibility across demographics with provisions for affordable pricing, clear service options, and the establishment of a local retail space make broadband more accessible.

## **OTHER IMPACTS**

**Fiscal** - The agreement includes an upfront payment of \$1.5 million to the city and ongoing success-based monthly payments. The city will also receive 1.5% of ALLO's wholesale revenue, contributing to a new revenue stream that will support city projects and infrastructure. No additional funding is required beyond existing budget resources, as the project is designed to be financially sustaining and beneficial to the city's fiscal health.

**Staff Time** - Staff anticipate continuing oversight and collaboration with ALLO throughout implementation and service.

## **BACKGROUND**

City Council approved an investment in fiber backbone infrastructure in 2018 as the first of multiple steps to bring high-quality internet services to Boulder. The approach in 2018 was to construct the backbone and, initially, use it to improve connectivity with city sites, traffic signals, and public safety assets. Ultimately, the vision was to either leverage the backbone with a private provider or use it to create a municipal internet utility to deliver affordable fiber-based broadband service to the entire city. A detailed history of Boulder's Community Broadband efforts can be found in the [January 12, 2023, City Council memo](#).

In October 2023, the City Council voted unanimously to authorize the city manager to negotiate an agreement with an internet service provider to help the city fulfill its community broadband objectives. On January 19, 2024, staff issued RFP No. 05-2024 soliciting proposals for retail broadband services leveraging the city's dark fiber backbone. On March 30, the city received three proposals and after a robust evaluation across multiple dimensions by a cross functional group of staff, ALLO was selected for negotiations. The dimensions that were evaluated for selection included:

- ability to achieve the city's community broadband objectives
- favorability of proposed terms
- agreement to leverage existing city assets
- riskiness of capital sources
- experience with similar deployments
- quality of references
- cost to the city
- timeframe of deployment to end users
- qualifications of the project team

Through the summer and fall of 2024 staff worked with ALLO to negotiate terms of a fiber lease agreement that would meet council's expectations for achieving the city's community broadband objectives and would be financially feasible for both the city and the internet service provider.

Find materials from prior council sessions related to the matter below:

- [October 23, 2023, City Council Decision Making Meeting](#)
- [August 24, 2023, City Council Study Session](#)
- [January 12, 2023, City Council Study Session](#)
- [August 6, 2019, City Council Decision Making Meeting](#)
- [April 23, 2019, City Council Decision Making Meeting](#)
- [June 12, 2018, City Council Decision Making Meeting](#)
- [May 8, 2018, City Council Study Session](#)
- [January 9, 2018, City Council Study Session](#)
- [April 18, 2017, City Council](#)

## ANALYSIS

The Fiber Backbone Lease Agreement between the City of Boulder and ALLO is designed to achieve the City Council's community broadband objectives and to ensure long-term affordable access to fiber-based broadband internet for all Boulder community members and businesses.

### Objective: Citywide Access

- **Expansive Broadband Coverage:** ALLO has committed to achieving extensive fiber-based broadband coverage across Boulder, 80% citywide access by 2028 and reaching 97% by 2030. This build-out includes a phased plan to prioritize equitable deployment ensuring areas with low-income housing have reliable access to high-speed internet on the same timeline.
- **Timely Service Delivery:** ALLO agrees to deliver service within 10 days of a request in areas where they have built the required infrastructure. In newly annexed or developed areas, ALLO will expand broadband service within two years. This proactive expansion approach supports Boulder's vision for comprehensive citywide digital access.

### Objective: Competitive Marketplace

- **Affordable and Transparent Pricing:** To encourage a competitive broadband market, ALLO will provide services at rates that are equal to or lower than other Colorado markets of greater than 10,000 ALLO customers. All rates are to be fully transparent, with no hidden fees or misleading price structures. This means that community members and businesses in Boulder will benefit from fair, predictable pricing that aligns with best practices in the industry.
- **Fostering a more competitive marketplace:** In Boulder today, nearly two-thirds of community members have only one option for wired broadband service. To these community members and those with two options for wired broadband, the addition of ALLO should support more competitive pricing and strong investments in legacy infrastructure.

- **Revenue Generation for the City:** ALLO will provide Boulder with an upfront payment of \$1.5 million and ongoing monthly payments based on the number of residential (\$2.25/subscriber/month) and business (\$9/subscriber/month) customers. Additionally, ALLO will remit 1.5% of the revenue earned from wholesale customers.

#### **Objective: Equitable and Inclusive Access**

- **Discounted Broadband for Low-Income Households:** ALLO will provide a broadband discount of at least \$30 per month for qualifying low-income households in Boulder. Qualifying customers will also be eligible for a 100 Mbps service at a net \$30 price point in year one – competitive with offerings by neighboring municipal internet providers. The discount program ensures that high-speed internet is affordable for all community members, regardless of income, and supports Boulder’s digital equity goals.
- **Community-Based Support:** The agreement includes a commitment from ALLO to provide 1 Gbps internet speeds free of charge to 25 qualifying non-profit community organizations within Boulder. Eligible organizations, selected by a committee with diverse representation, will include non-profits focused on community well-being. This benefit allows these organizations to better serve community members without adding operational costs for internet service.
- **College Student Internet Upgrades:** Recognizing the importance of accessible digital resources for students, ALLO has committed to providing a no-cost service tier upgrade to all higher education students residing in Boulder. This ensures students have access to robust internet speeds that support their academic and personal needs, further promoting equity within the city.

#### **Objective: Future-Oriented Development**

- **High-Speed, Scalable Technology:** ALLO’s fiber optic infrastructure is designed to deliver internet speeds of greater than 1 Gbps, with the flexibility to scale up as higher speeds become standard. This infrastructure supports low-latency, high-speed connectivity that meets current and anticipated future demand for data-intensive applications and smart city initiatives.
- **Sustainable Construction Practices:** ALLO has committed to using sustainable materials and energy-efficient technology in its infrastructure, including bioplastics, recycled fibers, and fiber optic systems that consume less energy than traditional coaxial cables. ALLO also aims to recycle materials from infrastructure construction, maintenance and upgrades, aligning with Boulder’s environmental sustainability objectives and reducing the ecological impact of its operations.

#### **Objective: Net Neutrality**

- **Commitment to an Open and Unrestricted Internet:** ALLO will uphold the principles of net neutrality throughout the term of the agreement. The company is prohibited from favoring or prioritizing certain types of internet traffic over others, ensuring equal access to all applications. This commitment guarantees that all users, businesses, and content providers have unrestricted access to online resources without interference or unfair competition.
- **No Data Caps or Usage Throttling:** The agreement ensures that ALLO will not impose data caps or throttle internet speeds, regardless of data consumption. This

means that Boulder community members and businesses can access the internet freely and without concern over data restrictions, fostering an environment that encourages creativity, innovation, and economic activity.

#### **Objective: Consumer Privacy**

- **High Standards for Data Protection:** The agreement strictly prohibits ALLO from the sale, monetization, or exchange of customer data for commercial purposes. All customer information will be used solely for necessary operational purposes, such as billing, service maintenance, and customer support. This approach to privacy aligns with the Colorado Privacy Act, ensuring that customer data is protected in line with the most rigorous standards.
- **Restrictions on Third-Party Data Access:** To further safeguard consumer privacy, ALLO will apply these privacy standards to any contractors or subcontractors working on its behalf. This means that all customer data handling and storage will be secure and restricted to ALLO's direct operational needs, promoting transparency and consumer trust in the broadband network.

#### **Other Key Benefits for the City**

- **Financial Incentives for Future Projects:** The agreement offers Boulder direct financial benefits, including a \$1.5 million upfront payment, recurring monthly payments based on the number of ALLO accounts, and a share of wholesale revenue. This income supports the city's financial stability and provides funding that could be allocated toward community programs or future technological investments.
- **Enhanced Market Competition and Economic Growth:** Encouraging a competitive broadband market allows Boulder community members and businesses more choice, with ALLO committing to transparent, affordable pricing. This competitive environment drives economic growth, as businesses and entrepreneurs benefit from reliable, high-speed connectivity without excessive costs.
- **Digital Equity and Inclusion:** Through discounted service options for low-income households and free service to selected community organizations, the agreement promotes equal access to the digital world. This support extends to educational inclusivity with upgrades for student internet access, ensuring that cost is not a barrier to connectivity for community members of all backgrounds.
- **Environmentally Sustainable Development:** ALLO's sustainable materials commitment and energy-efficient technology align with Boulder's goals for environmentally responsible development. The fiber network's adaptability to higher speeds also means it will require less frequent upgrades, further reducing environmental impact over time.
- **Secure, Future-Ready Digital Infrastructure:** ALLO's robust privacy standards and commitment to net neutrality build a foundation of security and trust for Boulder's community members. The fiber network's future-oriented design supports high-speed connectivity now and is prepared to scale as community demand and technological advancements require, positioning Boulder as a leader in digital innovation.

The Fiber Backbone Lease Agreement with ALLO sets a strong foundation for Boulder's digital future, combining broad, affordable access with environmental and social benefits. By meeting the City Council's objectives for broadband service, the agreement not only fosters

equity and competition but also strengthens Boulder’s position as a forward-looking, digitally inclusive, and environmentally responsible community.

## **NEXT STEPS**

If council approves and directs the city manager to execute the Fiber Backbone Lease Agreement, staff will complete the agreement with ALLO. We expect network design work to begin shortly after and construction and service delivery starting in 2025. The city will support the construction process through the right-of-way permit and inspection process, as well as amplifying communications and information from ALLO about its progress.

## **ATTACHMENT**

A – Fiber Backbone Lease Agreement



**FIBER BACKBONE LEASE AGREEMENT**

**Between**

**CITY OF BOULDER**

**and**

**ALLO Communications LLC**

Dated \_\_\_\_\_, 2024

This FIBER BACKBONE LEASE AGREEMENT (this “**Agreement**”) is made and entered into to be effective this \_\_\_\_ day of \_\_\_\_\_ 2024, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (the “**City**”), and ALLO Communications LLC, a Nebraska limited liability company (“**ALLO**”). The City and ALLO are also referred to individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

- A. ALLO provides Telecommunications Services and Broadband Services to households, businesses, and other customers;
- B. The City is the owner of underground conduit and fiber optic cable in the Public Right of Way comprising its Fiber optic cable “Backbone”;
- C. The Backbone was designed to support the goal of providing internet bandwidth at speeds of 1 Gbps or more to all Boulder homes and businesses; and,
- D. The Parties desire to enter into this Agreement for the purpose of establishing the rights and responsibilities for the exclusive use of certain City property by ALLO to provide Telecommunications Services and Broadband Services to residential, commercial, nonprofit, and government customers located within Boulder.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **I. DEFINITIONS & INTERPRETATION.**

- A. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

“Acceptance Date” means the date on which the Leased Backbone, or portions thereof, are accepted, as evidenced by the Notice of Acceptance.

“Acceptance Testing” means those tests conducted on the Leased Backbone by ALLO at the outset of the Term to ensure that the Leased Backbone meets the testing standards set forth in Article VII.

“Agreement” means this Fiber Backbone Lease Agreement, which includes this main body and the following exhibits, which are hereby incorporated:

**Exhibit A** – City’s Fiber Backbone (Depiction)

**Exhibit B** – Form of Renewal Amendment

**Exhibit C** – Form of Notice of Acceptance

**Exhibit D** – Construction & Installation Terms & Conditions

**Exhibit E** – Service Level Guarantees

**Exhibit F** – Cable Franchise Agreement

“ALLO’s Broadband Services” means the Broadband Service ALLO will make available to Persons within Boulder upon ALLO’s completion of Last Mile Infrastructure or portions thereof.

“Amendment” means a formal agreement modifying any part of this Agreement between the Parties that is written and signed by the authorized representatives of each Party.

“Boulder” means those geographic areas within the city of Boulder, Colorado, city limits.

“Boulder Person” means a Person, business, organization, or other entity located within Boulder.

“Boulder ALLO Customer” means Boulder Person who is purchasing Broadband Service from ALLO.

“Broadband Service” means Broadband Internet Service provided over a Broadband Network.

“Broadband Internet Service” means a retail service that transmits and receives data from a customer’s property or determined point of presence to substantially all internet endpoints. The term includes any capabilities that are incidental to and enable the operation of the Broadband Internet Service.

“Broadband Network” means the plant (including Fiber), equipment, components, facilities, hardware, and software used to provide Broadband Internet Service at measurable speeds of at least 1 Gbps downstream and 1 Gbps upstream, or at measurable speeds at least equal to the FCC’s definition of high-speed internet access or broadband, whichever is faster, with: (1) sufficiently low latency to enable the use of real-time communications, including voice-over-internet-protocol service; and, (2) either no usage limits or usage limits that are reasonably comparable to those found in urban areas for the same technology.

“Business Day” means Monday through Friday, excluding Saturdays, Sundays, and Boulder public holidays.

“City’s Design and Construction Standards” means the most recent version of the City of Boulder Design and Construction Standards, (currently found here: [Design and Construction Standards and Related Files | City of Boulder \(bouldercolorado.gov\)](https://www.boulderco.gov/design-and-construction-standards))

“City’s Fiber Backbone” means the two conduits, the 432 Fiber strands that run through one conduit, and all Network Elements used by the City to connect and complete the City’s Fiber Backbone. The City’s Fiber Backbone was built by the City between 2020 and 2024, comprising approximately 50 route miles and 432 Fiber strands, as depicted in **Exhibit A**. For the avoidance of doubt,

the term “City’s Fiber Backbone” does not include Last Mile Infrastructure, Drop Cables, or Customer Premises Equipment.

“Community Organization” means a non-profit organization located within Boulder that provides public benefit services directly to Boulder Persons.

“Consumer Price Index” means 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).

“Customer Premises Equipment” or “CPE” means any Telecommunications Service, Broadband Service or data transmission equipment, devices, or apparatuses, including but not limited to routers, modems, set-top boxes, telephones, network interface units, and other related hardware, that are installed at the End User’s premises location and are intended to facilitate the receipt of Broadband Services provided by ALLO.

“Day” means a calendar day regardless of whether it is capitalized.

“Drop Cable” means a flexible (either overhead or underground) cable from the distribution tap port on a feeder cable to a junction on the premises of the End User, where it connects to the End User’s CPE, to the extent allowed by the City.

“Effective Date” means the date of the last signing Party to this Agreement, and is set forth on the cover page and in the opening paragraph hereof.

“E-mail” means an electronic message that is transmitted between two or more computers or electronic terminals. References to “E-mail notice,” “notice by E-mail” or similar phrases herein shall connote only electronic message communication, and not a formal Notice that comports with Article XIV below.

“End User” means a Person, other than another provider of Telecommunications Service or Broadband Service, who purchases a Broadband Service from ALLO.

“Exchanged Fiber” means the 288 Fiber strands ALLO will be providing to the City once ALLO deploys Fiber within the Second Conduit, as further detailed in Article II.B.

“FCC” means the Federal Communications Commission.

“Fiber” means a bundle of individual fiber optic cable strands that transmit information using light pulses that travel through glass fibers inside an insulated casing.

“Fiber Cut” means any incident, accident or other event that results in the underlying Fiber being severed, cut or otherwise disabled thereby disrupting the services being provided over that Fiber.

“Gbps” means gigabits per second.

“Gross Revenue” means all revenue (including cash, credits, or other consideration that is classified as "revenue" under GAAP) arising from, attributable to, or in any way derived directly or indirectly by ALLO or its Permitted Affiliates from the use of the City's Fiber Backbone to provide dark Fiber or lit services to Wholesale Customers; provided, however, that Gross Revenue shall not include: (i) any taxes, fees or assessments collected by the ALLO from such customers for pass-through to a government entity, including any sales taxes, utility taxes, and any franchise fee or similar payments; (ii) unrecovered bad debt; (iii) credits, refunds and deposits paid to applicable customers; or (iv) any revenue arising from, attributable to, or in any way derived directly or indirectly from services provided to customers outside of the corporate limits of Boulder.

“Income-Qualified Boulder Customer” shall mean an Income-Qualified Boulder Person who elects to receive a discounted Broadband Service from ALLO.

“Income-Qualified Boulder Person” shall have the meaning set forth in Article V.E.

“Initial Rent Payment” means the initial, lump sum payment ALLO will make to the City, as further described in Article IV.

“Initial Term” means the initial twenty (20) year Term commencing on the Effective Date.

“Last Mile Infrastructure” means all of ALLO's Fiber, other Network Elements, and connections of necessary infrastructure to provide Broadband Service, beginning at the point of connection to the City's Fiber Backbone, connecting to ALLO central offices or other ALLO infrastructure needed to provide the Broadband Service (i.e., Fiber-to-the-premises infrastructure), and ending at the network interface point for connection to the Customer Premises Equipment of its End Users.

“Leased Backbone” means the Leased Fiber and the Second Conduit.

“Leased Fiber” means the 216 Fiber strands of the City's Fiber Backbone that are leased hereby, as more particularly described in Article II.A.

“Monthly Rent Payment” is the recurring monthly payment to be remitted by ALLO to the City, as further detailed in Article IV.

“Network Element” means a facility or equipment used in the provision of a Telecommunications Service or Broadband Service including features, functions, and capabilities that are provided by means of such a facility or equipment, including subscriber numbers, databases, signaling systems, including information sufficient for billing and collection of such elements, and including facilities used in the transmission, routing, or other provision of a Broadband Service.

“Notice” or “Notify” means providing a Notice in writing with proof of delivery that complies with Article XIV.

“Notice of Acceptance” means ALLO’s written approval that the Leased Backbone, or portions thereof, have passed the Acceptance Testing.

“Permitted Affiliate” means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, ALLO. For purposes of this Agreement, a Permitted Affiliate includes, only, any parent company of ALLO that owns a controlling interest in ALLO, or any subsidiary of ALLO, of which ALLO owns a controlling interest in the subsidiary.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, state, or local government, regardless of whether such entity is operated for profit, or not for profit.

“Public Right of Way” means the areas on, below, or above the present or future streets, avenues, boulevards, alleys, viaducts, bridges, roads, lanes, sidewalks, public easements, general utility easements, other areas dedicated or acquired as a right of way available to the public, and similar dedicated easements within Boulder, and extensions and additions thereto.

“Renewal Term(s)” means any period of time beyond the Initial Term in which this Agreement is effective, in accordance with Article III.B.

“Rent Payment” means the dollar rental payments to be paid by ALLO to the City, as further detailed in Article IV. Rent Payment is inclusive of the Initial Rent Payment and the Monthly Rent Payment.

“Second Conduit” means the empty 2-inch conduit leased pursuant to this Agreement, as more particularly described in Article II.

“Telecommunications Service” has the same meanings as “telecommunications service” and “telecommunications” found in 47 U.S.C. § 153(53), 47 U.S.C. § 153(50) and § 40-15-102(29), C.R.S.

“Term” means the period of time in which this Agreement is in full force and effect, commencing on the Effective Date and ending on termination or expiration of this Agreement. Term includes the Initial Term and any Renewal Term(s).

“Termination Date” means the date on which this Agreement ceases to be effective, whether due to lapse of the Term or the lawful and rightful termination of this Agreement by either Party.

“Transport Services” means lit bandwidth transport services, including broadband transport, virtual private networks, quality of service, and wavelength services.

“Wholesale Customer” means any carrier, service provider, or other customer who purchases dark Fiber or lit services from ALLO or its Permitted Affiliates and combines those services with its own capabilities or functionalities to offer dark Fiber or lit services (whether or not in combination with other capabilities and functionalities) to its own customers or end users or to offer Broadband, Telecommunications, Transport Services, or any reasonably similar communications services (whether or not in combination with other capabilities and functionalities) to other carriers, service providers, or customers who then offer such services to other end users.

B. Interpretation.

1. Mandatory Language. As used herein, the words “shall,” “must,” “will,” “has a duty to,” “is required to,” and similar terms and phrases of mandate, are terms and phrases of mandate, and refer to imperatives that are required.
2. Permissive Language. As used herein, the words “may,” “can,” “need not,” “should,” and similar phrases are permissive terms, meaning such actions permissible, but not required.
3. “Including,” “Such As,” and “E.g.” As used herein, the word “including” means “including, without limitation,” and the phrase “such as” means “such as, without limitation,” and “e.g.,” means “for example, without limitation.”
4. Headings. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content.
5. Plural v. Singular. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require.

II. **LEASED PREMISES & GRANT OF RIGHTS.**

A. Leased Backbone. The City hereby leases to ALLO on an exclusive basis:

- The Leased Fiber, which is comprised of 216 Fiber strands of the City’s

Fiber Backbone contained in one of the City's 2-inch Fiber conduits;  
and,

- The Second Conduit, which consists of a single two (2) inch empty conduit that runs along the same route, subject to limited gaps (as described immediately below).

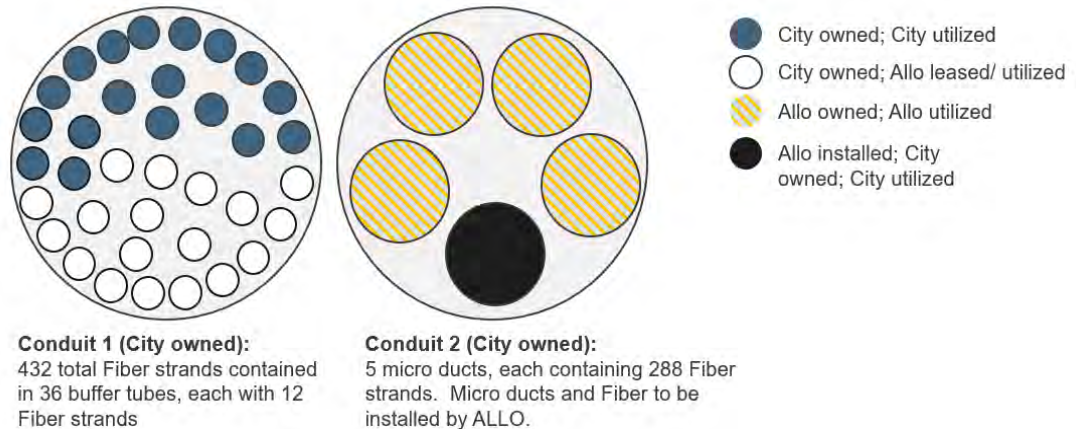
The locations of the City's Fiber Backbone are depicted in **Exhibit A**, City's Fiber Backbone (Depiction), with laterals removed. The City covenants and agrees that during the Term of this Agreement it will not enter into any other lease, license, use or other agreement that permits a Person to use any portion of the Leased Backbone. The limitation in the preceding sentence shall not apply to the City-owned Fiber in the first conduit, or the Exchanged Fiber, subject to the limitations as further described in this Article II.C.4. below.

- B. **Fiber Exchange**. ALLO agrees to install Fiber through the City's Second Conduit. The installation will take the form of five (5) micro ducts, each containing 288 Fiber strands. The City will make the Leased Fiber and Second Conduit immediately available to ALLO, so long as ALLO is willing to make available to the City one (1) micro duct within the Second Conduit, comprising 288 Fiber strands, at no cost to the City (i.e., the "Exchanged Fiber"). The Exchanged Fiber, inclusive of its micro duct, shall be wholly owned by the City upon ALLO's making it available to the City. Accordingly, in addition to the Rent Payments set forth in Article IV, ALLO agrees to provide to the City the Exchanged Fiber, which will contain 288 strands of Fiber in the Second Conduit, at no cost to the City. The Exchanged Fiber will run the same length as the City's Fiber Backbone network depicted in **Exhibit A**, being approximately 50 miles.

Below is a rendering depicting leasing and exchange facilitated by this Agreement:



## Fiber Allocations



*For illustration purposes only*

Note: The Second Conduit does not run along a portion of Arapahoe Ave., 15th St. to Folsom St. (~3,200 ft), and Broadway, Spruce St. to Iris Ave. (~6,700 ft). In addition, the City utilized an old conduit for a portion of the route on Baseline Road, and such route will be made available to ALLO by the City if and when the City is able to ensure it obtains unfettered rights to this conduit. The approximate locations of these gaps are depicted in **Exhibit A-1**, “Second Conduit Gaps.”

ALLO’s use shall only connect its Last Mile Infrastructure to the Leased Backbone using commercially reasonable practices that align with industry standards and reasonably protect and preserve the Leased Backbone.

This grant is conditioned upon ALLO offering Broadband Service to Boulder Persons in accordance with Article V.

This grant is for the duration of the Term. This grant is limited and subject to the terms and conditions of this Agreement.

### C. Reservations & Understandings.

1. Ownership and Title. The City retains all ownership rights and title to the Leased Backbone, the City’s Fiber Backbone, and each device and component thereof. The City’s lease of the Leased Backbone does not imply or confer any ownership interest in or title to real property, the City’s Fiber Backbone, or Public Right of Way. ALLO shall retain all ownership rights and title to the Last Mile Infrastructure and any Customer Premises Equipment provided by ALLO to End Users, and each device and component thereof; provided, however, that upon

installation of the Exchanged Fiber and the accompanying micro duct, containing the Exchanged Fiber, will be owned by the City.

2. Permits and Licenses. The City's lease of the Leased Backbone does not relieve ALLO of any obligations to obtain permits, licenses, or other permissions from any governmental authority, including those permits, licenses, and other permissions of the City required generally by other similarly situated users of Public Rights of Way.
3. Right to Expand & Modify Network. The City may periodically expand and modify the City Fiber Backbone to meet its own needs, as well as those of other service providers. The City agrees to comply with the City's Design and Construction Standards with respect to the expansion and modification of the City Fiber Backbone, and shall design and implement expansions and modifications in a fashion that minimizes service disruption to ALLO's Broadband Service. The City agrees to provide at least thirty (30) days' notice to ALLO of its intention to expand or modify the City Fiber Backbone, and shall make reasonable efforts to coordinate with ALLO when expanding or modifying the City Fiber Backbone to facilitate ALLO's expansion of its Last Mile Infrastructure, including but not limited to the deployment of conduit in a joint trench.
4. Non-Exclusive. While the City's lease of the Leased Backbone to ALLO is exclusive, the City reserves the right to lease, license, sell, transfer, convey, share, or otherwise make use of all those portions of the City's greater Fiber and conduit network which are not part of the Leased Backbone. Nothing in this Agreement limits the City's right to lease, license, sell, transfer, convey, share, or otherwise make use of the rest of the City's Fiber, conduit and similar broadband/internet infrastructure. Subject to the terms and conditions herein, the City may construct, install, operate, maintain, repair, disconnect, replace and remove facilities, cable and other equipment associated with the City's Fiber Backbone. Notwithstanding anything to the contrary contained herein, the City shall not permit the Exchanged Fiber to be used for the provision of Broadband Service or Telecommunications Service to consumer residential or business customers in Boulder. The Parties understand and agree that the restriction in the prior sentence does not prohibit the City from (a) allowing fixed wireless/microcell technology that utilizes the Exchanged Fiber provided the City does so via an arm's-length transaction over a public solicitation, or (b) from using the Exchanged Fiber for public business and public purposes, which the Parties agree include, subject to the conditions described in this section, at least each of the following: (i) the City's provisions of broadband/internet service to City-controlled buildings, facilities, equipment, and City-leased properties, whether or not such service may be used by the public or is restricted solely to City-personnel use; (ii) transportation and travel-related internet/broadband services, such as

street light functionality or support, autonomous vehicles and the prospects of creating an integrated network that relies upon City Fiber for service, including instances where public or private third parties lease or remit payment for such Fiber for the purposes of creating or maintaining autonomous mobility infrastructure or installing; (iii) service to public entities through intra- and inter-governmental partnerships, or similar partnerships with public entities, such as, by way of example and not limitation, Boulder County, the state of Colorado, the University of Colorado, tribal entities, federal governmental bodies, and any other public educational institution, local governmental entity or quasi-governmental entity; and (iv) providing service to any areas, premises, or facilities where, in the event ALLO refuses service, the City elects to provide service. The City agrees to comply with applicable laws concerning procurement and solicitations.

5. Suitability. The City represents that, as of the Effective Date, the City's Fiber Backbone, including the technology incorporated therein, is suitable and functional for the purpose of providing Broadband Service and advanced IP services such as voice and video. Except for such promises that are explicitly and unambiguously set forth herein, the City makes no representations, warranties, or promises, either implied or expressed, that the City's Fiber Backbone meets ALLO's required functional specifications.
6. Subleasing or Licensing by ALLO. ALLO may not sublease, license, sub-license, convey, transfer, trade, or otherwise allow the Leased Backbone to be used by any third party without the prior written permission of the City, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, no such consent shall be required for: (a) a transfer in trust, by mortgage, by other hypothecation; or (b) an assignment or transfer to a corporation, partnership, or other legal entity constituting a Permitted Affiliate.
7. Wholesale Customers of ALLO. In addition to the preceding section, no such consent shall be required for ALLO to use the Leased Backbone to provide wholesale dark Fiber, lit services, Wholesale Customer usage, or any other form of third party use allowed in this Section 7, of the ALLO-owned Fiber provided that: (a) ALLO shall remit to the City a fee in the amount of 1.5% of the Gross Revenue due and owing to ALLO for the provision of dark Fiber or lit services to the Wholesale Customer; or (b) if the Wholesale Customer is a Permitted Affiliate of ALLO, such Permitted Affiliate remains subject to the Monthly Rent Payment terms applicable to ALLO; and (c) that any usage of more than 25% of the total Leased Backbone by a non-Permitted Affiliate is not used for such purposes without the prior written consent of the City, which may be granted or withheld at the City's sole discretion. For avoidance of doubt, nothing in this Agreement prevents the City from declaring a default due to any bankruptcy proceeding or exercising its rights to appear or

contest any actions contemplated in any bankruptcy proceeding, foreclosure proceeding, or other proceeding in which an assignment, assumption, transfer, or conveyance of all or part of the leasehold interests may occur. None of the provisions in this section shall permit any foreign company, nor any domestic company controlled by foreign actors, to take or hold any interest in the Leased Backbone over the City's objection.

Except for Wholesale Customers, which are subject to the 1.5% Gross Revenue fees, as described in the paragraph above, any users of the Leased Backbone or ALLO's owned Fiber in the Second Conduit through ALLO shall be subject to the Monthly Rent Payment fees to the City set forth herein, and no action by ALLO shall attempt to make usage of the Leased Backbone or ALLO's owned Fiber in the Second Conduit in any manner which obviates or reduces the fees that would otherwise accrue to the City under the Monthly Rent Payment clause (above) were the same to be used solely for ALLO's provision of Broadband Service.

8. Legacy & Future Fiber & Conduit. As currently constructed, the City's Fiber Backbone is comprised of one (1) conduit that contains 432 strands of Fiber (of which 216 are leased hereby), and one (1) empty conduit. However, there are also "legacy" segments of Fiber – Fiber which was not part of the 2020-2024 City Fiber Backbone build and for which this Agreement has no effect – and the City anticipates future construction and enhancement of its network. This Agreement has no bearing on either existing legacy segments, future Fiber, conduit, or related components, any of the City's future infrastructure, or any assets of the City not leased herein

### III. TERM.

- A. Initial Term. This Agreement shall commence on the Effective Date of this Agreement, and shall continue for a period of twenty (20) years.
- B. Renewal Terms. This Agreement may be renewed for up to one (1) additional ten (10) year period (the "Renewal Term"). The Renewal Term shall be subject to approval by the Boulder City Council and applicable law. The Renewal Term shall be governed by the same terms and conditions as are in effect at the end of the Initial Term (other than the Initial Rent Payment, which is only due with respect to the Initial Term), unless revisions are mutually agreed to by the Parties in writing that is signed by each Party.
- C. Renewal Process. ALLO shall submit a written request to renew this Agreement no less than six (6) months prior to the expiration of the Initial Term, or any Renewal Term, as applicable. The City shall not unreasonably withhold or condition its approval of such renewal. The decision to grant or deny a renewal request shall be based upon the following standards: (1)

ALLO's material compliance with the requirements of this Agreement; and (2) ALLO's material compliance with applicable federal, state and local laws, rules, and policies relating to the Last Mile Infrastructure and its provision of Broadband Service in the City. If the City has not issued a final decision to grant or deny ALLO's renewal request by the expiration date of the Initial Term or any Renewal Term, ALLO's rights under this Agreement will automatically extend on a month-to-month basis until the City issues a final decision to grant or deny ALLO's renewal request.

#### IV. RENT PAYMENT.

A. Rent Payments. Rent shall take the form of two payments: an Initial Rent Payment and a Monthly Rent Payments.

1. Initial Rent Payment. No later than sixty (60) Days after the later of (a) Effective Date of this Agreement, and (b) the effective date of an ALLO-City CFA (as defined below in Article XVI), ALLO shall pay the City a single, lump-sum Rent Payment in the amount of one million, five hundred thousand dollars and no cents (\$1,500,000.00).
2. Monthly Rent Payments. Throughout the Term, ALLO agrees to pay rent in the amount of two dollars and twenty-five cents (\$2.25) per Boulder ALLO Customer that constitutes a "Residential" customer and nine dollars and no cents (\$9.00) per Boulder ALLO Customer which constitutes a "Non-residential" customer (collectively, the "Monthly Rent Payment"). ALLO shall not be required to include in the Monthly Rent Payment for any accounts of Income-Qualified Boulder Customers but only if the discount ALLO is providing to such customers is not paid or subsidized (in any amount) by the federal or state government via a program designed to support similarly situated Persons (such as through the Affordable Connectivity Program or comparable program). ALLO shall otherwise include such accounts for purposes of calculating its Monthly Rent Payment. With each Monthly Rent Payment, ALLO shall remit monthly report documentation showing the number of accounts upon which it is based, including, but not limited to, an itemization of the different customer accounts that contribute to the payment amount, an itemization of the accounts that are exempt from the rent payments, and any amounts accruing monthly as a portion of the City's 1.5% of "Gross Revenue" payment derived from Wholesale Customer services.
  - a. "Non-residential" Customer. For avoidance of doubt, ALLO's Non-residential customers shall include Boulder ALLO Customers that are not residential customers, excluding any Community Organization (as defined below) that is receiving free Broadband Service from ALLO.

- b. Commencement. ALLO shall commence making Monthly Rent Payments beginning on the first month following connection of its first Boulder ALLO Customer.
  - c. Due Dates. ALLO shall remit each Monthly Rent Payment no later than thirty (30) Days following the end of the month for which that Monthly Rent Payment is due.
  - d. Escalation. Commencing on January 1, 2026, and on each January 1 thereafter during the Term, the Monthly Rent Payment shall adjust upwards. Unless the City consents in a writing appearing on City letterhead to a lower fee for the purpose of directly passing along such savings to the community, the adjustment shall be at the annual percentage increase reflected by the most recently published 12-month rate of Consumer Price Index (CPI), rounded to the nearest cent, or, at the City's sole option and with written notice given to ALLO, an amount lesser than the CPI increase (i.e., unless lower rates are consented to by the City, 2026 Monthly Rent Payment rate = \$2.34 (\$2.25 x 1.04 (assuming a 4% CPI)) and \$9.36 (\$9.00 x 1.04), 2027 Monthly Rent Payment rate = \$2.43 (\$2.34 x 1.04) and \$9.73 (\$9.36 x 1.04), etc.).
- B. Submittal. The Initial Rent Payment and Monthly Rent Payments shall be made payable to the City at:

City of Boulder  
Attention: Innovation & Technology  
PO Box 791  
Boulder, Colorado 80306-0791

Or such other ACH or direct payment methods as the Parties may otherwise agree to from time to time.
- C. Missed and Late Payments.
  - 1. Late Payment Penalty. In the event ALLO fails to remit a Monthly Rent Payment on or by its due date, and ALLO has failed to cure such failure within ten (10) days after receipt of written Notice (E-mail suffices) from the City of its failure to receive such Monthly Rent Payment, ALLO shall pay to the City a "Late Payment Penalty" of five percent (5%) of the amount of any such Monthly Rent Payment that is overdue.
  - 2. Interest on Overdue Rent Payment. Beginning on the sixteenth (16th) Day after a Monthly Rent Payment due date, provided the City has provided ALLO with written Notice (E-mail suffices) of its failure to receive a Monthly Rent Payment when due, such overdue Monthly Rent

Payment shall bear interest from the due date until paid at an interest rate equal to one percent (1%) per month on the past due balance, compounded monthly.

3. Limit. In no event may ALLO fail to make a Monthly Rent Payment, or any balance thereon, later than ninety (90) Days after the due date, provided the City has provided ALLO with written Notice (E-mail suffices) of its failure to receive a Monthly Rent Payment when due.

- D. Cable Franchise Agreement Payment. The Rent Payments described herein are in all respects independent of, and therefore in addition to, the payments required by the ALLO-City CFA. None of the benefits to the City delivered through this Agreement shall be considered as value received pursuant to a cable franchise agreement to be credited against the 5% franchise fee.

## V. SERVICE GUARANTEES.

The City leases the Leased Backbone on the condition that ALLO fulfills certain additional requirements designed to facilitate access to Broadband Internet Service throughout Boulder, promotes economic progress and opportunity within Boulder, and to increase the health, welfare, safety, and happiness of its residents and businesses.

ALLO's fulfillment of each of the following requirements, throughout the Term, is a material benefit of the bargain for the City entering into this Agreement. These conditions and terms include each of the following:

- A. Broadband Network – Boulder-Wide Availability. ALLO will develop its own Last Mile Infrastructure, and will combine such infrastructure with the Leased Backbone, to develop a Broadband Network. The Broadband Network, when fully built-out, will offer low-latency, reliable Broadband Service to Boulder Persons in accordance with the density requirements of the ALLO-City CFA, if any.
- B. Pricing. For all Broadband Service tiers, ALLO's pricing will be at rates that are customary and reasonable for comparable Broadband Service in Colorado. ALLO agrees to maintain rates for Boulder Persons that are at or below those ALLO charges any other ALLO equivalent customer (i.e., residential to residential; comparable business to business) in a Colorado market served by ALLO which has a population in excess of 10,000 (not including any governmental fees, charges, or other expenses that are pass-throughs). ALLO agrees its Broadband Service will have no hidden fees, and that all costs will be published and available to Boulder Persons. ALLO will not use pricing methods that are designed to induce Boulder Persons to become customers only to incur substantial price increases, unexpected or undisclosed add-ons, or any other form of misleading or concealing pricing practice. ALLO agrees not to charge installation costs for its Broadband Service within Boulder except to the extent authorized by any ALLO-City CFA. The City understands and

acknowledges that: (1) ALLO may, from time-to-time, apply reasonable annual rate increases upon Boulder ALLO Customers, so long as such increases maintain the market rate restriction identified earlier in this paragraph; or (2) preserve ALLO's ability to lawfully pass through any governmental fees or governmental charges (including but not limited to those related to, necessitated by, or authorized by virtue of, this Agreement) to Boulder ALLO Customers. The City further acknowledges and agrees that ALLO's current rates for its customers in other municipalities in Colorado as of the Effective Date are customary and reasonable.

- C. City-Wide Offering. ALLO acknowledges that a significant objective of the City in leasing the Leased Backbone is to encourage competition and increase Broadband Service availability throughout Boulder. Accordingly, ALLO agrees as follows:

1. Last Mile Infrastructure Build-Out Guarantee – 80%. On or by December 31, 2027, or the date thirty-six (36) months after the Effective Date of this Agreement, whichever is later, ALLO shall have sufficiently constructed its Last Mile Infrastructure to make Broadband Service available to eighty percent (80%) of Boulder Persons. This coverage guarantee will be assessed by dividing the number of addresses within Boulder that have Broadband Service available to them through ALLO as of the date above by the total addresses within the City as of the Effective Date, excluding University of Colorado-owned facilities and other non-business and non-residential enterprises or institutions. Notwithstanding the foregoing two sentences, any factor outside of ALLO's control, which concerns the failure by the City to timely issue/approve permits, inspect permit work, or to otherwise create delay, or is caused by a Force Majeure event, the City shall waive this obligation for the period of time it reasonably determines ALLO is making commercially reasonable efforts to comply for those addresses for which the coverage is delayed.
  - a. ALLO agrees that its initial build-out will include a phased approach that builds to lower-income areas (e.g., areas with a high potential for Income-Qualified Boulder Customers) at approximately the same rate as it builds to high-income or more lucrative areas of Boulder. ALLO agrees to work with City staff in good faith to plan the build-out such that this phasing objective is met. See Exhibit E for further details on phasing and the build-out approach.
2. Last-Mile Build-Out Guarantee – 97%. On or by December 31, 2029, or the date sixty (60) months after the Effective Date of this Agreement, whichever is later, ALLO shall have sufficiently constructed its Last Mile Infrastructure to make Broadband Service available to ninety-seven percent (97%) of Boulder Persons. Assessment of the coverage guarantee will occur as set forth in 1. above. Notwithstanding the



foregoing two sentences, any factor outside of ALLO's control, which concerns the failure by the City to timely issue/approve permits, inspect permit work, or to otherwise create delay, or is caused by a Force Majeure event, the City shall waive this obligation for the period of time it reasonably determines ALLO is making commercially reasonable efforts to comply for those addresses for which the coverage is delayed.

3. New Addresses & Annexed Areas. In the event the City annexes any new areas in the City or, if for any reason, there are a significant number of new addresses built within Boulder, ALLO agrees to use commercially reasonable efforts to make Broadband Service available to such areas within two (2) years from the date of construction or availability.
4. Low-Income Residential Community Build-Out Guarantee. On or by December 31, 2029, ALLO will make Broadband Service available for Persons located in Income-Qualified Boulder Persons addresses, as well as at any additional locations ALLO is capable of providing such service to using its Last Mile Infrastructure.
5. Provider of Last Resort. In the event the City identifies areas or addresses within the Boulder city limits as of the Effective Date for which a Broadband Service provider is not available, ALLO agrees, if requested by the City, to serve as a provider of last resort. Upon such request, ALLO agrees to use commercially reasonable efforts to make Broadband Service available to such areas or addresses pursuant to ALLO's standard terms and conditions for service. In the event Broadband Service availability would necessitate substantial expenditure by ALLO, the City may request, and ALLO shall, within thirty (30) days of such request, an itemized listing of the projected costs. Upon ALLO's provision of the same, the City shall have the option to direct ALLO to complete the work, and, upon completion, the Parties shall treat such work as an in-kind donation to the City that will entitle ALLO to, at ALLO's option, either (a) a dollar-for-dollar credit on its Monthly Rent Payment in the amount of the itemized costs to complete the work, or (b) reimbursement for the amount equal to the itemized costs to complete the work.
6. "Available" Defined. For purposes of the Last-Mile Build-Out Guarantees above, "available" means capable of having ALLO Broadband Service delivered within ten (10) Days of the Boulder Person requesting Broadband Service. Broadband Services are "available" only if Boulder Persons requesting service are in an area in which ALLO has legal access to the service the location following ALLO's good faith and reasonable efforts to obtain legal access. Areas for which ALLO cannot obtain legal access shall not be counted for purposes of determining ALLO's coverage guarantees. The Parties anticipate such areas will include less than 2% of the total addresses within Boulder.

- a. Beginning one (1) year after the Effective Date, ALLO agrees to provide a written quarterly report to the City that includes the areas and locations in which it believes it has achieved Broadband Service availability, including the total number of addresses served and the “PONS” served pursuant to the Project Plan (as defined in **Exhibit D**).
  7. **Failed Build-Out.** In the event ALLO fails to meet any of the “buildout guarantees” – see subsections “1,” “2,” and “4” of this subpart “C” above – the Parties agree to confer in good faith to discuss the reasons for such failures. If City staff determine ALLO has proceeded with expedition and that such failures are reasonable in light of circumstances or developments, City staff may authorize one or more limited extensions of time with respect to one or more of the buildout guarantees, not to exceed 180 days in length each. Such an extension shall only be authorized if ALLO confirms, in writing, that the extended buildout guarantee can and will be met on or by the extended time frame, though the City may condition any such extension upon additional conditions, understandings, or contractual clarifications, as the City determines may be prudent. This subpart C.7. is a condition prerequisite for the City’s right to terminate under this Agreement due to a failure by ALLO to meet the build-out guarantees, but is otherwise in all respects non-exclusive to rights and remedies of the City hereunder.
- D. **Service Guarantees.** Throughout the Term, ALLO agrees to offer Broadband Service to all Boulder Persons on commercially reasonable terms customary to the industry. ALLO agrees that this service guarantee ensures that, at a minimum, ALLO will maintain and consistently apply service terms that meet the following minimum requirements:
- See **Exhibit E**, ALLO’s Service Level Guarantees.
- E. **Discounted Service to Income-Qualified Boulder Persons.** Throughout the Term, ALLO agrees to offer a low-cost option for ALLO’s Broadband Services to Income-Qualified Boulder Persons. ALLO commits to participate in the Affordable Connectivity Program (ACP) or any replacement program offered thereafter that seeks to achieve substantially the same benefits with substantially the same eligibility guidelines for the Term of this Agreement. In the event an ACP replacement program becomes available during the Term, ALLO agrees to participate in the program as soon as reasonably possible. In the event the ACP is disbanded and there is no comparable federal replacement program available at any point during the Term, ALLO agrees to offer a low-cost option for Broadband Service to all Income-Qualified Boulder Persons. Such discount – at all times, whether or not the ACP or any comparable program is available – shall be no less than a \$30 per month discount per account for Income-Qualified Boulder Persons or such greater amount of discount as may be provided for under the ACP or any subsequent, federally-available comparable program. ALLO will always offer a Broadband

Service tier level (i.e., minimum speed meeting the definition of “broadband” under federal regulation) of service available for use by Boulder Persons. This \$30 discount represents a minimum benefit; in the event the ACP or any replacement program provides a greater benefit, broader eligibility, or greater general benefit to consumers, ALLO agrees to enroll and provide such benefits to Boulder Persons.

1. Eligibility. Unless otherwise provided for in the rules of the ACP or applicable replacement program, Income-Qualified Boulder Persons mean those individuals who are: (a) located within Boulder; and, (b) are currently receiving financial assistance through a government program, including but not limited to the following:
  - Free and Reduced-Price School Lunch Program or School Breakfast Program, including at U.S. Department of Agriculture (USDA) Community Eligibility Provision schools
  - SNAP
  - Medicaid
  - Federal Housing Assistance, including:
    - Housing Choice Voucher (HCV) Program (Section 8 Vouchers)
    - Project-Based Rental Assistance (PBRA)/Section 202/Section 811
    - Public Housing
    - Affordable Housing Programs for American Indians, Alaska Natives or Native Hawaiians
  - Supplemental Security Income (SSI)
  - The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
  - Veterans Pension or Survivor Benefits
  - Lifeline Support for Affordable Communications program
  
2. Discount Amount. The discount will take the form of a monthly discount for at least one ALLO Broadband Service package. The discount shall be reasonably similar to the discount formerly allowed or required under the ACP or any subsequent replacement program. Upon confirmation of eligibility, such discounted package shall be offered automatically to such Income-Qualified Boulder Customer for so long as such customer remains eligible.
  
3. Certification of Income-Qualified Boulder Persons. The total number of customers receiving this discount shall be capped at 6,481. ALLO will consider the 5,185 addresses (the “Income-Qualified Addresses”) identified by ALLO and the City on the Effective Date as being “pre-qualified” for the low-income discount. ALLO will prospectively market Broadband Service and the discount to these addresses. Additionally, ALLO will utilize a commercially reasonable process to certify additional Income-Qualified Boulder Persons throughout the City and

will provide the discount to additional Boulder ALLO Customers who do not reside in Income-Qualified Addresses. ALLO and the City will adopt a mutually agreeable process to certify the number of Income-Qualified Boulder Customers and Income-Qualified Addresses at least annually. ALLO and the City commit to engaging in good-faith discussions throughout the Term to evaluate the low-income discount process. The Parties agree to evaluate the discount amount to ensure it serves its intended purpose of offering a significant subsidy to Income-Qualified Boulder Customers and is otherwise reasonably comparable in amount to other similarly situated Colorado providers of Broadband Service. The Parties acknowledge and agree that the total number of non-Income-Qualified Addresses receiving the discount is not expected to exceed a number equal to 20% of the number of Income-Qualified Addresses. Should the number of non-Income Qualified Addresses receiving the discount exceed this number, ALLO and the City commit to engaging in good-faith negotiations to amend this section in order to prevent fraudulent or abusive overutilization of the discount.

4. Equivalent Service Levels. ALLO will not, for the selected tier, reduce the speeds, bandwidth, reliability, customer service, installation service, or maintenance response times for Income-Qualified Boulder Customers, will devote equivalent resources to Income-Qualified Boulder Customers, and will otherwise afford Income-Qualified Boulder Customers with the equivalent level of service for such tier as its other residential customers.
  5. Implementation. ALLO will coordinate and work with the City on outreach, marketing, branding, and publication of this discount program. The City shall have full right and authority to advertise and market this benefit to Boulder Persons, subject to ALLO's right to approve the written materials and electronic information to be provided to the City to ensure its accuracy, which approval shall not be unreasonably withheld or delayed. In addition, ALLO shall undertake reasonable efforts to inform Boulder Persons and Boulder ALLO Customers of the opportunity to receive this benefit.
  6. Storefront. ALLO agrees to use best efforts to maintain at least one physical storefront to serve the community that is within walking distance of public transportation and which maintains at least some hours of availability each week that are suitable for workforce members with diverse hours.
- F. Free Student Upgrade. ALLO shall provide all higher education students residing in Boulder the option to upgrade their service level tier at no additional charge. ALLO agrees the upgrade will be consistent with ALLO's other service tier offerings within Boulder. The City acknowledges that ALLO will have the right to apply and oversee its own eligibility process, which may include requiring that students submit proof of their eligibility and, further,

that the upgrade may be limited by ALLO to one active account and location per eligible student, may be restricted to the location at which the student actively resides, and may necessitate annual renewals or proof of eligibility; provided, however, that ALLO agrees that such eligibility process shall be limited to such process as is reasonably necessary for ALLO to avoid fraud or illegitimate claims for the upgrade by non-students. ALLO agrees that the upgrade will be available to students for any tier of service offered by ALLO to Boulder Persons. ALLO agrees to actively promote the upgrade on its primary webpage for Boulder Persons. In the event ALLO decides to change this upgrade at any point in the future, ALLO agrees to ensure such change shall provide a benefit of substantially similar value as that described.

G. ALLO Community Connections. ALLO shall provide at least twenty-five (25) qualifying Community Organizations with Broadband Service at ALLO's standard 1 Gbps upload and download Broadband Service offering. The service shall be provided for no recurring monthly fee and for no construction fee for a period of three (3) years from the date of activation of the service. Participation in the program by any Community Organization shall be subject to reasonable evaluation by the ALLO, as guided by a reasonably diverse advisory committee of Boulder Persons. ALLO and the advisory committee will consider the following factors in selecting the Community Organizations:

1. The proximity of the Broadband Network to the Community Organization within a defined geographic area where ALLO is offering Broadband Services;
2. The reasonable technical requirements and cost considerations;
3. The qualification and good standing as a non-profit organization under certain provisions of the Internal Revenue Code; and
4. Applicable program eligibility requirements, which shall include all of the Community Organization's other data, Telecommunications Services, and video services, if any, will be provided by ALLO at its standard commercial rates.

Following the initial three (3) year service term, the Community Organization may continue to subscribe to some or all of the Services that ALLO offers to similar Boulder Customers at then-current rates for such services. In relation to the ALLO Community Connections program, the City understands and acknowledges that ALLO's design and construction plans will be based on optimal deployment of the Broadband Network for residential and commercial services.

ALLO's adherence to the requirements in this "Community Connections" section will begin three (3) years after the Effective Date and continue throughout the remainder of the Term.

- H. Data Cap & Throttling Prohibition. Throughout the Term, ALLO agrees not to impose data caps, throttling, or other means of limiting usage or service due to a Boulder ALLO Customer's exceeding allowed usage. This restriction shall include a prohibition on charging additional fees, costs, or amounts once data thresholds are exceeded.
- I. Minimum Speed Offerings. Throughout the Term, ALLO agrees to offer Broadband Service that includes at least one service tier of speed to Boulder Persons that meets or exceeds 1 Gbps download and 1 Gbps upload. ALLO agrees to offer this level of service at pricing that is reasonable and customary within the Colorado broadband market. In the event speed tiers exceeding 1 Gbps download and 1 Gbps upload become common or customary within the Colorado broadband market, ALLO agrees to offer at least one (1) service tier that meets those higher speeds of common or customary service.
- J. Net-Neutrality Guarantee. Throughout the Term, ALLO will deliver competitive, unfettered Broadband Internet Service that does not impose caps or usage limits on one use of data over another. ALLO will not discriminate among application providers (e.g., data, voice, video, cloud services) and will ensure all such providers are equally able to provide services.
- K. Consumer Privacy. Throughout the Term, ALLO will prioritize consumer privacy for Boulder ALLO Customers. ALLO shall not sell, commercialize, monetize, or exchange for value the personal information of Boulder ALLO Customers. ALLO's use of Boulder ALLO Customer data shall be restricted to those uses necessary to provide, market, and bill for Broadband Service and other services to Boulder ALLO Customers, as well as those uses necessary to track customer experience and satisfaction, to maintain and repair the Last Mile Infrastructure, and to evaluate and improve its Broadband Network and Broadband Service offerings. ALLO's use of Boulder ALLO Customer data shall in all respects conform with applicable privacy laws, rules, and regulations, as now or hereafter enacted, including the Colorado Privacy Act, § 6-1-1301, *et seq.*, C.R.S., and its implementing regulations (*see* Colorado Privacy Act Rules, 4 CCR 904-3), and, subject to these limitations, ALLO's privacy policy as in effect from time to time. This restriction extends to any contractors and subcontractors of ALLO, whom ALLO agrees to monitor and control for purposes of the same.
- L. Environmental Guarantees. In addition to those environmental and sustainability requirements and guarantees contained elsewhere in law, the Boulder Revised Code, City policy, permitting standards, and the City's Design and Construction Standards, ALLO agrees to use commercially reasonable efforts:
  - 1. to utilize Fiber optic cable technology, or substantially equivalent future energy-approved technology, designed to reduce energy consumption and maximize energy efficiency relative to coaxial cable

technology;

2. to make good faith efforts to utilize sustainable materials, such as utilizing bioplastics and natural fibers, for its construction within Boulder;
3. to, whenever feasible, recycle materials removed from its Last Mile Infrastructure; and
4. to maintain policies and procedures designed to anticipate, assess, mitigate, and avoid social and environmental risks associated with its Last Mile Infrastructure.

## **VI. LIMITATIONS ON USE OF LEASED BACKBONE.**

- A. Use in Accordance with Law. ALLO shall not use the Leased Backbone in violation of any applicable law, rule, ordinance, regulation or order of any governmental authority having jurisdiction unless both: (1) the validity thereof is being contested in good faith and by appropriate proceedings; and (2) the City determines, in the City's reasonable opinion, that continuation of such use while the proceedings are pending does not involve any risk of the forfeiture, or loss of the Leased Backbone or any portion of the City's Fiber Backbone, or any license or permission to operate the same or any portion therein. ALLO's use of the Leased Backbone shall in all respects be in material compliance with applicable laws, rules, regulations and orders of the FCC.
- B. Public Right of Way. ALLO shall not unreasonably interfere with Public Rights of Way, public utility easements, or public service easements without permission.
- C. Interferences. ALLO shall not engage in any activity that unreasonably interferes with the City's rights and obligations to design, construct, operate, monitor, manage, maintain, repair, or modify the City's Fiber Backbone.

## **VII. TESTING & ACCEPTANCE.**

At the outset of the Term, the City agrees to provide a Leased Backbone that is Functionally Operational and in Good Working Order, as defined below in subsection A.3., and the City has confirmed Fiber used in the construction of the City Backbone is G.652.D compliant. To confirm this, the Parties agree to the following testing and acceptance procedures.

- A. Testing. ALLO is responsible for completing any testing of the Leased Backbone which it deems necessary or prudent to evaluate the Leased Backbone. ALLO shall have all responsibility for proofing the Leased Fiber and Second Conduit, and otherwise ensuring it is capable of operating a Broadband Network without additional cost or effort by the City.

1. Timing. ALLO agrees to complete all testing within thirty (30) Days of the Effective Date.
2. Process. Testing or other inspection of the Leased Backbone by ALLO will be conducted by methods and on a schedule proposed by ALLO and agreed upon by both Parties, and such agreement not to be unreasonably withheld, conditioned, or delayed. Testing or other inspection of the Leased Backbone by ALLO shall not interfere with the integrity of or interrupt the operation of other collocated Fiber or conduit which are not part of the Leased Backbone at any time. ALLO shall not complete any splicing to the Leased Fiber or other alteration of the Leased Backbone or its configuration prior to completion of the Notice of Acceptance.
3. Standard. The standard for acceptance of the Leased Backbone shall be whether the Leased Backbone is “Functionally Operational and in Good Working Order.” The Parties agree that the Leased Backbone meets this standard if it satisfies each of the following criteria:
  - a. The measured optical power loss for each existing fusion splice between strands in the Leased Fiber shall not exceed 0.2 dB at 1310 nm or 1550 nm wavelengths as a bi-directional average; and
  - b. The measured optical power attenuation for the fiber strands in the Leased Fiber shall not exceed 0.35 dB/km at the 1310 nm wavelength or 0.25 dB/km at the 1550 nm wavelength; and
  - c. The Second Conduit is continuous between existing access points as documented in the City’s as-built documentation and as demonstrated by manipulation of an existing mule tape or pull string, is readily identifiable at existing access points, and is free of obstructions, kinks, perforations, breaks, or other damage.
4. Resolutions.
  - a. Minor Deficiencies. In the event of minor deficiencies in power loss or other functionality of the Leased Backbone, both Parties will use good faith, commercially reasonable efforts to resolve any problems and/or provide alternatives or changes to produce test results that are acceptable to both Parties.
  - b. Significant Deficiencies – Small Portion of Network. In the event of a significant deficiency affecting a small portion of the Leased Backbone, the City agrees to suspend its ability to collect the Monthly Rent Payment for that portion of the Leased



Backbone until the deficiency is resolved. Thereafter, both Parties will use good faith, commercially reasonable efforts to resolve any problems and, if necessary, the City agrees to either complete construction or repair work necessary to ensure the Leased Backbone with significant deficiencies can pass testing, or lease to ALLO a different portion of Fiber that will pass testing. For purposes of this subsection, significant deficiencies affecting less than ten percent (10%) of the total Leased Backbone shall constitute a “small portion” of the Leased Backbone.

- c. Significant Deficiencies – Substantial Portion of Network. In the event of a significant deficiency affecting a substantial portion of the Leased Backbone, the City agrees to suspend its ability to collect the Monthly Rent Payment for that portion of the Leased Backbone until the deficiency is resolved and ALLO may, in its discretion, either: (i) declare this Agreement terminated without penalty; or (ii) work with the City to use commercially reasonable efforts to resolve any problems and, if necessary, the City agrees to either complete construction work necessary to ensure the Leased Backbone with significant deficiencies can pass testing, or lease to ALLO a different portion of Fiber that will pass testing acceptable to ALLO. For purposes of this subsection, significant deficiencies affecting ten percent (10%) or more of the total Leased Backbone shall constitute a “substantial portion” of the Leased Backbone. If ALLO elects to terminate this Agreement as provided in this subsection and such termination occurs within two (2) years of the Effective Date, the City shall refund the Initial Rent Payment to ALLO within thirty (30) days of the effective date of termination.
- d. Limitations on City’s Resources. Nothing in this section shall require that the City undertake any work to resolve deficiencies which will exceed \$100,000 in combined costs. In the event work would necessitate the City to incur such costs and the City elects not to undertake such work, ALLO shall have the right to terminate this Agreement without penalty. If ALLO elects to terminate this Agreement as provided in this subsection and such termination occurs within two (2) years of the Effective Date, the City shall refund the Initial Rent Payment to ALLO within thirty (30) days of the effective date of termination.

B. Acceptance.

- 1. Notice of Acceptance. If the Leased Backbone is accepted, ALLO will issue a “Notice of Acceptance” in substantially the form contained in **Exhibit C**, Form of Notice of Acceptance. To the extent Notice of

Acceptance is not provided with respect to the entire Leased Backbone, ALLO agrees to ensure each Notice of Acceptance describes, with sufficient detail, the portion of Leased Backbone to which the notice relates. ALLO shall include an Acceptance Date that is dated at or near the time of ALLO's issuance of the Notice of Acceptance. So long as an issued Notice of Acceptance includes only the information left blank in the attached form, and does not contain terms or conditions or otherwise attempt to modify the terms herein, any such issued Notice of Acceptance shall be deemed incorporated into this Agreement upon issuance.

2. Timing. ALLO agrees to issue its Notice of Acceptance (or each Notice of Acceptance, to the extent testing and acceptance occurs in phases), within ten (10) Business Days of testing that demonstrates the tested Fiber is Functionally Operational and in Good Working Order.

## VIII. CONSTRUCTION.

The terms of this Article VIII are applicable to all construction, installation, boring, repair, excavation, and other forms of infrastructure creation and maintenance.

- A. Last Mile Infrastructure. Except as specifically set forth herein, ALLO is responsible for providing all Network Elements necessary or desired by ALLO to enable it to provide Broadband Services in accordance with this Agreement. As the sole owner of its Last Mile Infrastructure, ALLO acknowledges responsibility for the installation and maintenance of the Network Elements comprising its Last Mile Infrastructure. ALLO shall have sole authority and responsibility for permits, inspections and inspection-related cost for its construction activities.
- B. Design and Construction Standards – Public Right of Way. ALLO shall comply with all of the construction, restoration, inspection, and maintenance procedures and requirements set forth in the City's Design and Construction Standards and other City laws pertaining to the use of and work in the Public Right of Way. For all work that requires access to the Public Right of Way, ALLO shall obtain permission via an approved Right of Way Permit. Prior to installing any infrastructure in the Public Right of Way, ALLO agrees to submit applications for permits to perform work in the Public Right of Way that meets the requirements of Chapter 8-5, "Work in the Public Right of Way and Public Easements," B.R.C. 1981, and to adhere to those requirements, terms, and conditions under the Boulder Cable Code, Chapter 11-6, B.R.C. 1981. ALLO acknowledges and agrees to adhere to all permit conditions for entry, use, maintenance, and construction within the Public Right of Way, including paying such fees and adhering to such conditions, regulations, and requirements as may be reasonably imposed by the City in accordance with its ordinary management of the Public Right of Way. ALLO and the City acknowledge

and agree that, subject to the City's reasonable discretion, ongoing review and applicable law, (1) no permit is required for work that is solely outside of the Public Right of Way or applicable easements, and (2) the City may do bulk permits on an area basis exclusively for Drop Cable work where (a) there is no disturbance of hardscape infrastructure (e.g., concrete or asphalt), (b) the work does not involve any lane closures, shoulder closures, traffic controls, construction staging across roadways, or otherwise impact the normal flow of vehicular or pedestrian traffic in a particular area, and (c) other providers would be afforded the same rights under similar circumstances.

- C. Locates & Avoidance of Damaging Other Infrastructure. ALLO shall comply with all applicable laws, regulations, rules, and guidelines designed to locate and prevent damage to underground facilities, including the "Colorado 811 laws," *see, e.g.*, §§ 9-1.5-101, *et seq.*, C.R.S., and rules and requirements of the Colorado Safety Commission promulgated thereunder, to locate underground facilities, notify affected or potentially affected infrastructure owners, and protecting underground infrastructure. ALLO shall be solely responsible for all costs and expenditures associated with this compliance, as well as for any repairs or remediation action necessary to address harm caused by ALLO, its contractors, subcontractors, and agents.
- D. Installation and Acceptance of Fiber in City Conduit. In addition to the City's Design and Construction Standards, ALLO shall install and attach its Last Mile Infrastructure to the Leased Backbone in accordance with **Exhibit D**, Construction & Installation Terms & Conditions.
- E. Attachment to Leased Backbone. Subject to the terms herein, ALLO shall have sole authority and responsibility for designing its Last Mile Infrastructure and completing attachment and integration with the Leased Backbone; provided, however, that the Parties agree that in order to protect and maintain the integrity of the City's Fiber Backbone, the Leased Backbone, and the interconnected facilities and equipment, the City will have the right to monitor installation and connection of ALLO's Last Mile Infrastructure to the Leased Backbone if so desired by the City.
- F. City's Fiber Backbone – As-Built. If requested by ALLO, the City will provide ALLO with the location depictions available to the City for the Leased Backbone via as-built drawings of the City's Fiber Backbone. ALLO relies upon these drawings at its own risk, and the City makes no warranties or guarantees as to the accuracy or completeness of these drawings.
- G. Permits & Permissions. Prior to all construction that implicates the Leased Backbone, the City's Fiber Backbone, or the Public Rights of Way, ALLO shall possess all necessary permits, licenses, inspections, certificates, or authorizations required of any governing body or entity.

- H. Private Property Rights. ALLO shall obtain all rights needed to enter into private property prior to entry on such property.
- I. Hazardous Materials. ALLO shall comply with all applicable laws, regulations and rules governing hazardous materials. ALLO shall be solely and fully responsible for the reporting of all hazardous material releases that are required to be reported to the appropriate agency(ies), when such releases are caused by, or result from, ALLO's activities or by anyone under its direct control or doing work on its behalf. ALLO shall take all necessary precautions to prevent any hazardous materials used by ALLO or by anyone under its direct control or doing work on its behalf, from entering any storm or sewage drain system or from being released within the Public Rights of Way, and shall be solely responsible for any cleanup and/remediation required by any federal, state or local agency.
- J. Recurring Access. Subject to the City's regular permitting and Public Right of Way access terms and conditions, the City shall at all times during the Term provide ALLO and any other party acting on ALLO's behalf with reasonable access to the Leased Backbone for the purposes of construction, installation, repair and maintenance. The City shall promptly cooperate with ALLO's and any third party's request for access and such parties shall reasonably cooperate with any of the City's reasonable physical, technical, and administrative safeguards applicable to the Leased Backbone, as well as all City codes, policies, and regular requirements.

**IX. MAINTENANCE.**

- A. ALLO Maintenance, Repair, Relocation, & Locate Services.
  - 1. Responsibility. For all portions of the City's Fiber Backbone, ALLO shall, at its sole cost, provide repair and maintenance services, and shall serve as the principal responsible entity for the maintenance and repair of the City's Fiber Backbone. This responsibility applies to both conduits and all Fiber contained in the conduits along the City's Fiber Backbone. ALLO's maintenance shall include such maintenance as is ordinary and customary in the Broadband Services industry of a Fiber owner seeking to maximize the useful life, reliability, and service speeds of its Fiber. This responsibility shall not prevent the City from conducting such construction, improvements, and expansion as the City, in its sole discretion, deems necessary or prudent with respect to the Leased Backbone, or from providing maintenance or repair service to the Leased Backbone if ALLO has failed to maintain the Leased Backbone as required by the terms hereof. All maintenance and repair work shall be subject to applicable laws and City right of way access, use, repair, and remediation requirements, and confers ultimate responsibility on ALLO to provide all maintenance, locates, and relocation services necessary or appurtenant to ownership of a Broadband Network, such as completing locates and facilitating any

relocations that are necessary. ALLO agrees to use commercially reasonable means to conduct all maintenance work necessary or customary to maintain the City's Fiber Backbone, including its full capabilities and functionality, fulfill legal requirements governing location, relation, and service to the City's Fiber Backbone, and respond to service outages, slices, breaks, defects, damages, or malfunctioning Fiber, in an expeditious manner. In the event testing or use reveals that any portion of the infrastructure's functionality remains suboptimal, ALLO agrees to undertake such additional repairs, replacement, and testing as is needed to fully restore the functionality to capabilities commensurate with direction from Fiber infrastructure management services partner. ALLO's maintenance responsibilities are further described in **Exhibit D**, Construction & Installation Terms & Conditions.

2. **Standard of Care; Cooperation.** In performing its maintenance services, ALLO shall take workmanlike care and make commercially reasonable efforts to prevent impairment to the signal continuity and performance of the City's Fiber Backbone, the Leased Backbone and the Last Mile Infrastructure. In addition, ALLO shall reasonably cooperate with the City in sharing information and analyzing the disturbances regarding the cable and/or Fiber facilities.
3. **Management Services Firm.** The City intends to contract with a Fiber infrastructure management services partner to coordinate its operations in the areas of maintenance, repair, and relocation. This management services partner will deploy and manage field services resources as needed from a pre-contracted vendor pool of qualified Fiber service providers to complete appropriate scopes of work at the direction of the City. It is anticipated that this management services partner will help the City manage and monitor the City's Fiber Backbone. ALLO agrees to, for so long as the City has a management services partner, to work through or with the City's selected management services partner, and to otherwise adhere to any standard communication, ticketing system, response times, service level terms, work inspection and approval criteria and processes, and notice processes required by that provider and determined in conjunction with the City. In the event the City does not have, or no longer has, a management services partner who serves in this role, ALLO agrees to work with City staff in the same fashion.
  - a. **Management Service Firm Coordination.** For any work on the City's Fiber Backbone, ALLO agrees to communicate with the City's selected management services firm, including adhering to any standard communication, ticketing system, response times, service level terms, work inspection and approval criteria and

processes, and notice processes required by that provider. Notwithstanding the foregoing sentence, ALLO shall not be required to receive prior authorization from the City's management services partner prior to conducting emergency repairs or maintenance to any portion of the Leased Backbone, though ALLO will still need to adhere to all other procedures related to emergency work that are required by applicable law, including notification requirements and Section 8-5-16, B.R.C. 1981. If requested by the City, ALLO agrees to use the communication method facilitated by the management services firm, including prompt notice to the City or its management service firm as soon as practicable.

4. Non-Exclusive – City Right to Repair & Maintain. Although ALLO is charged with repair and maintenance of all of the City's Fiber Backbone, nothing in this Agreement shall (a) require that the City use ALLO for repairs, maintenance, or locate work on those portions of the City's Fiber Backbone which are not part of the Leased Fiber or the Second Conduit; (b) preclude the City from completing such construction, repairs, relocations, and maintenance as the City reasonably believes is required by law, or as the City deems necessary to fulfill service obligations to any third party; (c) prevent the City from utilizing any third party the City deems desirable for purposes of conducting construction, repairs, relocations, or maintenance on the non-Leased Fiber and non-Second Conduit portions of the City's Fiber Backbone; or (d) prevent the City from completing any repairs or maintenance the City deems necessary to resolve a risk to the health, safety or welfare of Boulder Persons, or of any end-users of the City for such Fiber. Furthermore, ALLO agrees that, should ALLO fail to conduct any relocations, construction, locates, or other legally-mandated service on the Leased Fiber or the Second Conduit in accordance with the timing set forth in Exhibit D, the City shall have the right, in accordance with Exhibit D, to provide the same on the Leased Fiber, the Second Conduit, or both.
  
5. Repair of ALLO Damages. Except for damage caused by a third-party utility owner's or excavator's failure to comply with applicable law, including Colorado 811 requirements, or failure to otherwise accurately identify the location of underground infrastructure, ALLO agrees to, at its sole cost and effort, promptly repair all damage caused by ALLO or its contractors to the Leased Backbone or the City's Fiber Backbone or to any existing Fiber optic cable owned by the City. ALLO or its contractor additionally agrees to repair all damage to public and/or private property caused by ALLO or its contractors within thirty (30) days of being provided notice of such damage, unless ALLO is, in good faith, challenging the validity of the claim. If such damage poses a threat to the health, safety or welfare of the public or individuals, the City may cause repairs to be made at ALLO's expense. ALLO shall

reimburse the City within thirty (30) Days of receipt of invoice for the repairs.

6. Locate Services. ALLO's repair and maintenance services shall include locate services; provided that any locate services required for the City's Fiber Backbone during the initial 365 days after the Effective Date shall be paid by the City at a reasonable cost or facilitated by the City (or any third party designated by the City) at its cost.
7. Relocations. To the extent a relocation of the City's Fiber Backbone is necessary, for any reason, ALLO agrees to complete such relocations within any time frames mandated by law or binding agreement affecting the City's Fiber Backbone. Such relocations shall be completed by ALLO at ALLO's sole effort, unless otherwise provided for by the City. The City shall reimburse ALLO for the actual cost of relocating the City's Fiber Backbone, at costs plus 0% (i.e., no markup) so long as such rates are reasonable and customary within the Boulder market. The City shall reimburse ALLO within thirty (30) Days of receipt of invoice for its share of the relocation. ALLO agrees to provide documentation and evidence of its costs if requested by the City. For avoidance of doubt, in the event the City determines that ALLO's costs for any given relocation are not reasonable or customary within the Boulder market, the City may utilize a third party for such services. ALLO understands and acknowledges that the City may require ALLO to relocate portions of the City's Fiber Backbone and/or Last Mile Infrastructure, horizontally or vertically. ALLO shall at the City's direction relocate such facilities not later than ninety (90) days after receiving written notice that the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City facility or Public Right of Way; (b) because the City's Fiber Backbone and/or ALLO's Last Mile Infrastructure is interfering with or adversely affecting proper operation of street lights, traffic signals, governmental communications networks or other City property; or (c) to protect or preserve the public health or safety. In any such case, the City shall use its best efforts (but shall not be required to incur financial costs) to afford ALLO a reasonably equivalent alternate location. If ALLO fails to relocate any such facilities as requested by the City within ninety (90) days after the above-referenced notice, the City shall be entitled to relocate the City's Fiber Backbone and/or ALLO's Last Mile Infrastructure that is directly connected to the City's Fiber Backbone, without further notice to ALLO. The City's relocation of any Last Mile Infrastructure shall be at no cost to the City. For any overhead (e.g., pole mounted) Last Mile Infrastructure, if the poles are no longer in use for the electrical system associated with the network, ALLO shall be responsible for the relocation of the facilities under ground.

Should all or any portion of the City's Fiber Backbone need to be relocated during the Term of this Agreement, the City shall be responsible for the costs associated with the removal and relocation of the City's Fiber Backbone and the Leased Backbone, but ALLO shall be responsible for all costs associated with removal, installation and replacement of the Last Mile Infrastructure and the ALLO-owned Fiber within the Second Conduit. The City will provide at least sixty (60) days' prior written notice to ALLO of the need for ALLO to remove or relocate the Last Mile Infrastructure in connection with any relocation of the City's Fiber Backbone and Leased Backbone. For any overhead (pole mounted) Last Mile Infrastructure, if the poles are no longer in use for the electrical system associated with the network, ALLO shall be responsible for the relocation of the facilities.

8. Costs. ALLO's repair, maintenance, and locate services shall be at no cost to the City; provided that the first year following the Effective Date locate services remain at the City's costs. Such services are deemed a component of the consideration exchanged hereunder, and ALLO agrees to complete such services – for both the City and ALLO's leased infrastructure – without seeking reimbursement or costs from the City.
9. Non-City Fiber Backbone Services. To the extent ALLO wishes to be considered for any repair, maintenance, locate, or other services for portions of the City's Fiber network that are not included as part of the City's Fiber Backbone, ALLO agrees it will need to participate in any procurement or selection process for such services. All services provided by ALLO, if any, for non-City Fiber Backbone work will be subject to a separate written agreement signed by the authorized representatives of the Parties.
10. Enhancements & Replacements. In the event the City determines, in its sole discretion, that any portion of the Fiber used by the City – whether in the Second Conduit or as part of the City's reserved bundles within the Leased Fiber conduit – should be enhanced, replaced, or altered in some way, and where such enhancement, replacement, or alteration, if performed properly and in consideration of ALLO's rights in the Leased Fiber and Second Conduit can be accomplished without affecting ALLO's service, the City shall have the right to conduct such enhancement or replacement work. Such work shall only be performed on the City's assets and used Fiber, though the City shall have the right to reasonable entry and changes into the Second Conduit as needed to impact the Exchanged Fiber.

B. City Maintenance.

1. Authorized. The City may occasionally perform network upgrades and routine and extraordinary maintenance and repairs, as well as emergency repairs to correct any failure, interruption or impairment, of



the City's Fiber Backbone including the Leased Backbone. This work may be performed by City contractors. Notwithstanding the foregoing, the City shall provide ALLO with a reasonable opportunity to complete any work related to the City Fiber Backbone that may impact ALLO's Leased Fibers or ALLO's Fiber within the Second Conduit. In the event ALLO has unreasonable delay in providing such service, the City may select an alternative contractor.

2. Notice. The City shall provide ALLO with telephone or E-mail Notice of all non-emergency planned network maintenance at least five (5) Business Days prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting ALLO's traffic. If the City's planned activity is canceled or delayed, the City shall promptly Notify ALLO via telephone call or E-mail and shall comply with the provisions of the previous sentence to reschedule any delayed activity.
3. Standard of Care; Cooperation. In performing any maintenance services, the City shall take workmanlike care and make commercially reasonable efforts to prevent impairment to the signal continuity and performance of the City's Fiber Backbone, the Leased Backbone, and the Last Mile Infrastructure. In addition, the City shall reasonably cooperate with ALLO in sharing information and analyzing the disturbances regarding the cable and/or Fiber facilities. The City agrees to, at its sole cost and effort, promptly repair all damage caused by the City or its contractors to the Leased Backbone or the Last Mile Infrastructure or to any existing Fiber optic cable owned by ALLO located within Boulder. If such damage poses a threat to the health, safety or welfare of the public or individuals, ALLO may cause repairs to be made at the City's expense. The City shall reimburse ALLO within thirty (30) Days of receipt of invoice for the repairs.

## **X. ADDITIONAL TERMS & CONDITIONS.**

- A. Semi-Annual Meetings. The Parties agree to meet at least semi-annually for the purposes of discussing issues pertinent to this Agreement, including the administration and facilitation of this Agreement, the construction and maintenance activities of the Leased Backbone and the City's Fiber Backbone, and the updating of contact information, as needed. As may be occasionally requested by the City, ALLO agrees to appear before the Boulder City Council.
  1. Contract Check-In Meetings. Throughout the Term, at the City's discretion, the Parties agree to meet periodically for the specific purposes of discussing this Agreement, including, but not limited to, ALLO's compliance with the Service Guarantees and the Monthly Rent Payment. The initial intent is to meet on a recurring six-month basis. The Parties anticipate establishing a recurring set of documentation ALLO will provide to the City at such meetings that includes reports, documentation or other methods to verify compliance and the accuracy

of accounts for purposes of the Monthly Rent Payment. ALLO agrees to, upon request by the City, provide additional documents, records, or any other materials ALLO regularly maintains which relate to or concern compliance with this Agreement or the payments hereunder. Subject to the Colorado Open Records Act, any confidential information that is provided as part of this process, and which is clearly marked as confidential, shall be protected as such by the City. In the event of an audit, whether conducted by the City or any third party, ALLO agrees to provide such information as may be reasonably required by the auditor to verify accuracy concerning the account calculations and the Monthly Rent Payment derived therefrom.

- B. Casualty Event. If all or any portion of the City's Fiber Backbone or the Leased Backbone are made inoperable and beyond feasible repair due to a casualty or other Force Majeure event (see Article XVII.H.) through no fault of ALLO, either Party shall be entitled to terminate this Agreement with respect to the applicable portions of the Leased Backbone affected by such casualty or other event. In such event, (1) both Parties shall be entitled to seek to recover the economic value of their respective interests in the City's Fiber Backbone and the Leased Backbone, (a) under any insurance policy carried by either Party or any third party; or (b) in either joint or separate actions, from any third party that may be legally responsible for causing such casualty; and, (2) if either Party elects to terminate this Agreement as provided in this subsection and such termination occurs within two (2) years of the Effective Date, the City shall refund the Initial Rent Payment to ALLO within thirty (30) days of the effective date of termination.
- C. Degradation Risk. ALLO understands and acknowledges that the functional operation and good working order of the Leased Backbone can be impacted over time by normal wear and tear as well as other developments beyond the control of the City. The City shall have no responsibility for such ordinary wear and tear and ALLO shall not bring a claim against the City or seek compensation or damages from the City for such wear and tear. However, the City shall at all times make commercially reasonable efforts to ensure the Leased Backbone is Functionally Operational and in Good Working Order and suitable for ALLO's use.
- D. No Liens, Mortgages or Encumbrances. ALLO shall not allow the Leased Backbone or the City's Fiber Backbone to become subject to any lien, mortgage, or encumbrance of any kind whatsoever as a result of any act or omission of ALLO. ALLO agrees that it will not cause or permit any claims in the nature of mechanic's liens for materials or labor placed or used under the terms of this Agreement to be filed or served upon the City with respect to the Leased Backbone or the City's Fiber Backbone. If any lien, mortgage, or encumbrance is filed, ALLO shall (1) attempt in good faith to resolve the matter quickly; and (2) indemnify and hold harmless the City from any and all costs to remove such lien, mortgage or encumbrance, including but not limited to reasonable attorneys' fees through appeal. Notwithstanding the foregoing, ALLO shall

have the right to pledge, encumber, transfer in trust, mortgage, or assign its contract rights under this Agreement as collateral security for any indebtedness.

- E. Qualifications. ALLO or its applicable Permitted Affiliates shall, at all times during the Term remain duly authorized, licensed or otherwise qualified to offer Broadband Service as required by applicable local, state or federal laws, rules, and regulations.
- F. Assumption of Risk. ALLO assumes the risks and accepts all liability and damage that may occur as a result of ALLO, its agents or contractors' work on or use of the Leased Backbone. ALLO acknowledges that it uses the Leased Backbone at its own risk.
- G. No Effect on City's Authority. Nothing in this Agreement shall be construed to supersede any existing or future powers or authority of the City to regulate or control Public Right of Way or Broadband Services or other utilities that operate within the City pursuant to its regular police power. The intent of this provision is to ensure this Agreement in no way preempts or supersedes the City's ordinary and customary powers. The City reserves the right to exercise its police powers and nothing in this Agreement shall be construed as a waiver of said police power.
- H. Taxes. ALLO shall be solely responsible for payments of all sales, use, property, gross receipts, excise, access, and other local, state, and federal taxes, fees, charges, or surcharges, however designated, that are imposed by any government entity on ALLO's business and operations in Boulder.
- I. Subcontractors. ALLO and the City each shall require all of its subcontractors or other third-party agents who perform work on or around the Leased Backbone on its behalf to act in accordance with the terms and conditions of this Agreement. ALLO agrees it is responsible for all acts, errors of its subcontractors and any third parties acting as its agent.
- J. Condemnation. In the event any portion of the Leased Backbone becomes the subject of a condemnation proceeding by any governmental agency or other party having the power of eminent domain for public purpose or use, then and in such event, it is agreed that ALLO shall be entitled to independently pursue an award for its interest in such proceedings and the parties hereto agree to have any such condemnation awards specifically allocated between ALLO's interest and the City's interest. In the event ALLO's interest in such proceeding cannot be severed from the City's interest, ALLO shall be entitled to receive its proportionate share of the award for its interest in the Leased Backbone. Upon its receipt of a formal notice of condemnation or taking, the City shall notify ALLO immediately of such condemnation proceeding filed against the Leased Backbone. Further, the City shall also notify ALLO as soon as practicable if it becomes aware of circumstances out of which a condemnation or taking is likely to arise.

**XI. WARRANTIES & REPRESENTATIONS.**

A. City's Warranties & Representations. The City represents, warrants and covenants as follows:

1. The City is duly organized and validly exists under the laws of the state of Colorado and has full power and authority to execute, deliver and perform the terms of this Agreement.
2. The City has obtained and will maintain all rights, licenses, governmental regulatory approvals, authorizations, rights-of-way, and other agreements and permissions necessary for the use of the City Fiber Backbone including such rights, licenses, authorizations, rights-of-way, and other agreements, easements, or permissions necessary for the maintenance of the City's Fiber Backbone.

B. ALLO's Warranties & Representations. ALLO represents, warrants and covenants as follows:

1. ALLO is duly organized, validly exists, and is in good standing under the laws of the state of Nebraska and has full power and authority to execute, deliver and perform the terms of this Agreement.
2. ALLO has or will use its commercially reasonable best efforts to obtain and maintain all rights, licenses, governmental regulatory approvals, authorizations, rights-of-way, and other agreements and permissions necessary for the use of the Leased Backbone, as well as any other such rights, licenses, authorizations, rights-of-way, and other agreements, easements, or permissions necessary for its operation as a Broadband Service provider, and for the installation of the Last Mile Infrastructure and the use of the Leased Backbone.
3. ALLO covenants that its use of the Leased Backbone shall at all times be in compliance with applicable law and that ALLO has received and is in compliance with all applicable regulatory authorizations.
4. ALLO shall be responsible for and shall pay all taxes or fees, including, but not limited to, franchise fees imposed by any other governmental agency or authority as a result of ALLO's operation or use of the Leased Backbone pursuant to this Agreement.

**XII. INSURANCE.**

A. Limits. ALLO shall procure and maintain in force during the Term of this Agreement, at its own cost, the following minimum coverages, either through primary insurance coverage or through a combination of primary and excess insurance coverage, and provide the City with proof of such policies upon request:

1. Workers' Compensation and Employers' Liability: state of Colorado: Statutory
2. General Liability:
  - a. General Aggregate Limit: \$2,000,000
  - b. Each Occurrence Limit: \$1,000,000
3. Automobile Liability:  
Bodily Injury & Property Damage Combined Single Limit: \$1,000,000
4. Third-Party Fidelity Including Employee Dishonesty While on City Premises:  
Each Loss: \$1,000,000
5. Technology Services Errors and Omissions, Technology Products, Network Security Liability and Privacy Liability.
  - a. Per Loss: \$3,000,000
  - b. Aggregate: \$3,000,000
6. Umbrella/Excess:  
Limits of at least \$2,000,000 Per Occurrence

B. Additional Insurance Requirements.

1. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per-occurrence basis.
2. Where commercially available, ALLO shall name the "City of Boulder, its elected and appointed officials, directors, officers, employees, agents and volunteers" as additional insureds as their interest may appear (except for Workers' Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability.
3. The Certificate Holder shall be identified as: City of Boulder, P.O. Box 791, Boulder, Colorado 80306.
4. All policies of insurance shall be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the City.
5. A Separation of Insureds Clause must be included in general liability policies. ALLO shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At its own expense, ALLO will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a

new certificate of insurance showing such coverage is in force.

6. ALLO's insurance carrier shall possess a minimum AM. Best's Insurance Guide rating of A- VI.
7. ALLO, or ALLO's insurance broker, shall Notify the City of any cancellation of coverage of any insurance within ten (10) Days of receipt of the insurer's notification to that effect. ALLO shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.
8. The City and ALLO shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
9. ALLO and its insurers shall waive subrogation in favor of Additional Insured parties.
10. ALLO shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
11. General Liability coverage shall include a waiver of subrogation.

### **XIII. INDEMNIFICATION.**

#### **A. By ALLO.**

1. To the fullest extent permitted by law, ALLO shall indemnify, defend, and hold harmless the City, its directors, officers, employees, elected and appointed officials and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing from and against all losses, claims, damages, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, losses, expenses, and costs (including but not limited to reasonable attorney's fees and costs of defense), bodily and other personal injuries, sickness, disease or death, damage to or destruction of tangible property, and other damages, of any kind or nature suffered or incurred by the City directly or indirectly arising out of or resulting from performance of the ALLO's obligations under this Agreement, provided that such claim, damage, obligation, demand, assessment, fine, penalty, loss, expense or cost is caused by (a) the negligent or intentional act or omission of ALLO or its representatives, employees, agents, subcontractors, or other parties for which ALLO may be legally responsible in the performance of ALLO's obligations under this Agreement; or (b) any material breach in a representation, warranty, covenant or obligation of ALLO contained

in this Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article XIII. ALLO's obligation to indemnify the City as set forth in the Agreement shall survive the termination or expiration of this Agreement.

2. In order for the City to assert its rights to be indemnified, defended, or held harmless pursuant to subsection 1 hereof, the City must: (a) promptly notify ALLO of any claim or legal proceeding which gives rise to such right; (b) afford ALLO the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding; provided, however, that (i) the City shall be entitled to participate in the defense of such claim or proceeding, and in connection therewith to employ counsel at its own expense, and (ii) without the prior written consent of the City, which shall not be unreasonably withheld or delayed, ALLO shall not consent to the entry of any judgment or enter into any settlement that, pursuant to or as a result of such judgment or settlement, would impose financial costs upon the City or impose injunctive or other equitable relief against the City; and (c) fully cooperate with the reasonable requests of ALLO, at ALLO's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding.

#### **XIV. NOTICES.**

Any Notice provided pursuant to this Agreement shall be in writing to the Parties at the addresses set forth below and shall be deemed given (1) if by hand delivery, upon receipt thereof; (2) three (3) Days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested; or (3) one (1) Day after deposit with a nationally recognized overnight courier, specifying overnight priority delivery.

Any Notice provided pursuant to this Agreement shall be in writing to the Parties at the following addresses:

**For ALLO:**  
ALLO Communications LLC  
Brad Moline  
President & CEO  
330 S 21<sup>st</sup> St  
Lincoln, NE 68510  
Legal@allofiber.com

With a copy to:  
ALLO Communications LLC  
c/o Legal Department  
121 S 13<sup>th</sup> St, Suite 100  
Lincoln, NE 68508

**For the City:**

City Manager  
City of Boulder  
1777 Broadway  
Boulder, Colorado 80302  
CMOAdmin@bouldercolorado.gov

With a copy to:

Boulder City Attorney's Office  
Attn: City Attorney  
P.O. Box 791  
Boulder, Colorado 80306  
CAOAdmin@bouldercolorado.gov

Either Party may change its address for the purposes of this Agreement at any time by giving written Notice of such change to the other Party.

**XV. DEFAULTS & TERMINATION.**

A. Events of Default. Each of the following events shall constitute an event of default:

1. The failure of ALLO to pay the Rent Payment when due, subject to Article IV.
2. If either Party fails to observe or perform its obligations under this Agreement and does not cure such failure within thirty (30) Days from its receipt of written Notice of breach without, however, limiting any other rights available to the Parties pursuant to any other provision of this Agreement. If the default may not be reasonably cured within such thirty (30) Day period, either Party may request the other Party to grant an extension of the time to cure not to exceed ninety (90) Days, consent to such extension not to be unreasonably withheld.
3. The failure of ALLO to carry and maintain insurance in compliance with all provisions of this Agreement, and, if such insurance is canceled or reduced through no fault of ALLO, ALLO's failure to retain a replacement policy that comports with this section within thirty (30) Days.
4. The filing of a petition for bankruptcy by ALLO, the general assignment of all or a substantial portion of ALLO's assets, or all of the Leased Backbone or any interest therein, or all of the revenue or income to be derived by ALLO by virtue of its use of the Leased Backbone, for the benefit of creditors.
5. ALLO ceases to have any of the licenses, agreement, certificates, concessions, permits, rights or privileges required for the conduct of its business and operations which loss is not remedied by the obtaining of



a replacement license, agreement, certificate, concession, permit, right or privilege within sixty (60) Days of the loss thereof, if such loss would have a material adverse effect upon the ability of ALLO to operate, maintain, or administer a Broadband Service or to otherwise perform its obligations hereunder.

B. Termination.

1. Termination Process. The non-defaulting Party shall have the right to terminate this Agreement upon the occurrence of any event of default and, if applicable from the list of “Events of Default” above, the lapsing of any cure period for such default, by giving written Notice to the defaulting Party of termination. For purposes of this Agreement, the Termination Date for such terminations shall be the date of the non-defaulting Party’s Notice.
2. Removal & Disconnection Upon Termination. Upon termination of this Agreement, *for any reason*, and whether by the City or ALLO, ALLO agrees to cease using the Leased Backbone.

Within ninety (90) Days of the Termination Date, ALLO, at its sole option, shall either remove attachments to the Leased Backbone as set forth in subsection a. below, or, if the City so consents, sell Last Mile Infrastructure to the City pursuant to subsection b. below. The terms for each shall be as follows:

- a. Removal. At ALLO’s sole cost and expense, disconnect all Last Mile Infrastructure, including all connections, materials, facilities, improvements, and equipment, attached to the Leased Backbone, and remove all of the same that is located within the Leased Backbone. At the end of ninety (90) Day removal period all connections, materials, facilities, improvements, and equipment that remain within the Leased Backbone shall, at the City’s election become the property of the City, to be removed, disposed of, or re-used, as the City sees fit, and with all rights of ALLO to the same forfeited, and at ALLO’s sole cost and expense. Nothing in this subsection a. shall require that the City take ownership or rights over ALLO’s forfeited connections, materials, facilities, improvements, or equipment, or any portion thereof.
- b. Sale. If the City so consents, and if the Parties are otherwise able to formalize an agreement in a signed contract on mutually agreeable terms, ALLO agrees to sell all of the Last Mile Infrastructure to the City.
- c. Rights of First Refusal. If at any time during the Term: (i) ALLO receives a bona fide offer from an unrelated third party (i.e., a

party not affiliated with either the City or ALLO) to purchase all, but not less than all, of the Last Mile Infrastructure in a single asset purchase that does not include assets outside Boulder, which offer ALLO desires to accept and which will result in the purchaser becoming an assignee under this Agreement, subject to all responsibilities to the City hereto; or (ii) the City receives a bona fide offer from an unrelated third party (i.e., a party not affiliated with either the City or ALLO) to purchase all, but not less than all, of the Leased Backbone or all of the City's Fiber Backbone, which offer the City desires to accept, then ALLO or the City (as applicable, the "Offeror") shall promptly deliver to the other Party (the "Offeree") written notice (the "First Refusal Notice") of such offer identifying the amount of such offer, and all other material terms and conditions of such offer, including the proposed closing date of the proposed transaction. The Offeree shall have ninety (90) days from the date of receipt of the First Refusal Notice to notify the Offeror in writing that the Offeree desires to purchase the offered assets at the amount and on the terms and conditions specified in the First Refusal Notice. If the Offeree does not notify the Offeror that it agrees to purchase the offered assets within such ninety (90) day period, at the amount and on the terms and conditions specified in the First Refusal Notice, the Offeror may sell the offered property to the party identified in the First Refusal Notice on terms and conditions which are not more favorable to such other party than those set forth in the First Refusal Notice. If such third-party sale is not consummated on the offered terms, the Offeror must first re-offer the offered property to the Offeree in writing before modifying the terms in any material respect or entering into another sale transaction with any third party.

- d. Nothing in this Article XV shall require that the City undertake any action or incur any cost or expenditure to remove any of the Last Mile Infrastructure. The City shall not be liable to ALLO for any costs or reimbursements associated with the removal described in this section.

C. Additional Terms.

1. Cumulative. The rights and remedies provided by law and under this Agreement are cumulative and not exclusive of any other remedy available to that Party under this Agreement.
2. General Limitation of Liability. **FOR AVOIDANCE OF DOUBT, NEITHER THE CITY NOR ALLO SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF**

USE, LOSS OF BUSINESS, OR LOSS OF PROFIT, AND REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, AND REGARDLESS WHETHER A PARTY WAS ADVISED, HAD REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY OF LIABILITY. THE CITY SHALL NOT BE LIABLE FOR THE ACTS, OMISSIONS OR DELAYS CAUSED BY THIRD-PARTY VENDORS. UNLESS OTHERWISE PROVIDED FOR IN THIS AGREEMENT. THE PARTIES AGREE THIS LIMITATION OF LIABILITY PRECLUDES DAMAGES AGAINST THE CITY, OR ANY OTHER FORM OF REMUNERATION FROM THE CITY, FOR LOSS OF REVENUE OR PROFITS DUE TO THE LEASED BACKBONE NOT WORKING, "GOING DOWN," OR OTHERWISE BEING UNABLE TO DELIVER BROADBAND OR INTERNET SERVICE.

D. Disclaimers for Certain Events.

For avoidance of doubt, the Parties agree as to the following:

1. Delays. Neither the City nor ALLO shall be liable to the other in any manner for any delays and/or lack of completion of construction for reasons beyond the reasonable control of such Party.
2. Third-Party Damage. The City is not liable to ALLO for damage caused to the Leased Backbone or the City's Fiber Backbone by independent third parties that were not engaged or authorized by the City to perform work on the Leased Backbone or the City's Fiber Backbone that are engaged in construction or other business operations which damage the Leased Backbone or the City's Fiber Backbone. The City will respond and repair any damage to the City's Fiber Backbone, or give ALLO the option to repair, caused by such a third party as if it were an emergency repair.
3. Electrical Outages. The City is not responsible for ALLO's inability to use the Leased Backbone due to an electrical power outage beyond the City's control.

**XVI. CABLE FRANCHISE AGREEMENT.**

- A. Background. As part of its proposal, ALLO indicated its intent to pursue a cable franchise agreement (a "CFA") with the City. ALLO understands and agrees that this will necessitate formal application to the City, adherence to the CFA process, public comment, and consideration by the Boulder City Council, all in conformance with Chapter 11-6, "Boulder Cable Code," B.R.C. 1981, and, as applicable, the Cable Communications Policy Act of 1984,

including, specifically, Subchapter V-A (“Cable Communications”) and its Parts I through V, 47 U.S.C § 521 - § 573.

- B. CFA Process. The CFA process may result in an executed CFA (the “ALLO-City CFA”) on terms that are mutually agreeable to the Parties, and which are substantially similar to the City’s other CFAs. Nothing in this Agreement constitutes a guarantee, warranty, promise, or commitment by the City, nor the Boulder City Council, to enter into a CFA with ALLO. The City, as well as the Boulder City Council, reserve all discretion, independence, and authority, and preserves all rights to process, evaluate, and receive public input on ALLO’s application for a CFA. ALLO agrees and understands that any CFA must proceed through the regular CFA process and is contingent upon it (and, to some extent, the City) complying with all requirements and conditions precedent to obtaining a CFA, along with the consent of the Boulder City Council, all in accordance with the standards and timing associated with the Boulder City Council’s ordinary review and approval of any CFA. Nothing in this Agreement alters, modifies, reduces, or changes the regular CFA approval process, including those standards of approval required or allowed by that process. ALLO agrees to commence the CFA process by submitting application to the City no later than thirty (30) Days after the Effective Date. Thereafter, ALLO agrees to prosecute the application and participate in the CFA process in a manner that minimizes undue delay.
- C. Implications of CFA. Once the ALLO-City CFA is fully executed by all Parties, the ALLO-City CFA shall be deemed automatically appended to this Agreement as **Exhibit F**, Cable Franchise Agreement.
- D. Limited Controlling Provisions. As set forth in the Conflicts & Order of Precedence (*see* subsection XVII.B.) the terms in this Agreement control over the terms of any CFA to the extent they are more restrictive of ALLO or more protective of the City. Notwithstanding the prior sentence, upon the Parties’ entry into the ALLO-City CFA, the Parties agree that, for only so long as the ALLO-City CFA remains effective, its terms shall control with respect to the following:
1. Public Right of Way Access. The City agrees it is reasonable and administratively prudent for both Parties to allow access and use of the Public Right of Way to be governed by the CFA for so long as it remains in effect, and, therefore, agrees to allow those terms to govern so that ALLO may benefit from any less-restrictive reviews, rights, or processes otherwise afforded under a CFA.

The intent of allowing “Limited Controlling Provisions” as set forth in this subsection XVI.D. is to ensure the most protective terms for the City, and the more restrictive terms of this Agreement apply and control except for those above limited instances for which the Parties agree that the ALLO-City CFA terms apply and control.

- E. Independence of Agreements. A primary intent of the Parties entering into both a CFA and this Agreement is to preserve the independence of either document in the event of termination of the other. To that end, the Parties agree as follows:
1. Effect of Termination of the ALLO-City CFA on this Agreement. In the event the ALLO-City CFA terminates, for any reason, such termination shall not affect the rights and responsibilities hereunder unless this Agreement also terminates. ALLO acknowledges that termination of the ALLO-City CFA may require that it cease providing any services which require a CFA by law but that, because this Agreement, in-and-of-itself, contemplates that Broadband Service can continue notwithstanding the termination of the CFA, ALLO's responsibilities hereunder will continue. In the event that the ALLO-City CFA terminates, the Parties agree to negotiate in good faith to execute an agreement enabling ALLO to maintain its access to Public Right of Way on terms materially consistent with those found in this Agreement, subject to applicable law.
  2. Effect of Termination of this Agreement on ALLO-City CFA. In the event this Agreement terminates, for any reason, such termination shall not affect the rights and responsibilities of the Parties under the CFA unless the ALLO-City CFA also terminates. ALLO acknowledges that termination of this Agreement will result in a loss of its access to the Leased Backbone and, accordingly, ALLO would be responsible for obtaining new or alternative means of transmission to connect its Last Mile Infrastructure.
  3. ALLO's Right to Terminate. The City understands that obtaining a CFA is critical to ALLO's business model in Boulder. Accordingly, in the event the CFA process fails, or an ALLO-City CFA fails to materialize for any reason, ALLO shall have the right to terminate this Agreement, without penalty or recourse, and with each Party to bear its own costs and fees associated with the response, solicitation, this Agreement, and any efforts or costs associated with any draft CFA.

## **XVII. ADMINISTRATIVE.**

- A. Recitals Incorporated. The Recitals contained herein are hereby incorporated and deemed a part of this Agreement.
- B. Conflicts & Order of Precedence. In the event of any conflict among the terms and conditions that comprise this Agreement, the order of precedence to resolve such conflict shall be as follows:
1. Any duly executed Amendment, along with any executed Renewal Amendment;

2. This Agreement's main body;
3. **Exhibit D** – Construction & Installation Terms & Conditions;
4. **Exhibit F** – Cable Franchise Agreement (if duly executed);
5. **Exhibit C** – Form of Notice of Acceptance, along with any executed Notice of Acceptance;
6. **Exhibit A** – City's Fiber Backbone (Depiction);
7. **Exhibit B** – Form of Renewal Amendment;
8. **Exhibit E** – Service Level Guarantees.

While this Agreement is identified as having a higher order of precedence than any ALLO-City CFA, the Parties agree that, as between the two documents, those terms which are either (a) more restrictive of ALLO; or (b) more protective of the City, shall control. The limited exception to this principle is as set forth in Article XVI.

- C. **Construction Against Drafter.** The Parties intend this Agreement be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.
- D. **Relationship of the Parties.** Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties, or constitute any Party being an agent of the other Party for any purpose.
- E. **Publication & Coordination.** In the event ALLO desires to use the City of Boulder's trade or brand names, or to make other reference to or use of the intellectual property owned or controlled by the City while advertising or promoting its services, ALLO agrees to obtain prior written permission from the City for such usage and to provide the City with an opportunity to review and approve the usage and accompanying content prior to publication.
  1. **Recognition.** The Parties agree that ALLO will recognize the City's contribution and service to Boulder Persons by including language on its primary Boulder webpage, along with any other prominent marketing materials created by ALLO designed specifically to target Boulder Persons. With respect to the webpage, the Parties agree that the precise language and nature may be changed as mutually agreed by the Parties, but that it will initially read as follows: a header that reads: "Part of the Boulder Connect Program," followed by text that reads, "Boulder Connect broadband provided by ALLO is supported by certain guarantees and commitments made by ALLO to the City of Boulder. Learn more about the City of Boulder's efforts to promote broadband

availability at *[add link here]*.” The Parties may mutually agree to alter webpage language and content without amending this Agreement.

- F. Dispute Resolution. The Parties shall attempt to resolve any controversy claim, problem, or dispute arising out of, or related to, this Agreement through good faith consultation conducted in the ordinary course of business. In the event that a dispute is not resolved by the project managers of the Parties, either Party may upon Notice to the other request that the matter be referred to senior representatives within each respective Party’s organization. Senior representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within thirty (30) Days. Should the Parties be unable to settle the dispute through good faith negotiations, both Parties are free to pursue resolution of their claim through adjudication in the court below. Compliance with this subsection is a pre-requisite to filing of a suit.
- G. No Multi-Fiscal Year Obligation. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multiple fiscal year direct or indirect debt or obligation within the meaning of TABOR and notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City’s current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Any failure of a City Council annually to appropriate adequate monies to finance the City’s obligations under this Agreement shall give ALLO an option to either terminate this Agreement or continue this Agreement whilst accepting all risks, pitfalls and expenses associated with the City’s non-performance of any City functions for which funding is not available. Notice shall be given promptly to ALLO of any failure to appropriate such adequate monies. This clause is supreme to all other clauses, sections, provisions, conditions, requirements, or terms of this Agreement.
- H. Force Majeure. No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, epidemics, pandemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing Party’s reasonable control (collectively, “Force Majeure”). In such event, however, the delayed Party must promptly provide the other Party Notice of the Force Majeure. Neither Party shall be excused from liability for delays or non-performance caused by events or conditions within its control nor for delays or non-performance which it could have foreseen and avoided, prevented or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays or non-performance

caused in whole or in part by the Party itself.

- I. Agreement Subject to Law. In all respects, this Agreement is subject to applicable law. Nothing herein modifies or changes any law, regulation, rule, ordinance, policy, or other form of legal requirement normally applicable to Broadband Services. By this Agreement, the City does not waive or relinquish any authority to uphold and enforce its laws, including, specifically, those requirements in the Boulder Revised Code 1981.
- J. Modifications to Address Discriminatory Treatment or Favoritism. In the event any court having jurisdiction finds that the City, by virtue of this Agreement or the practices and processes hereunder, is (1) treating other providers in a discriminatory manner; or (2) granting to itself or ALLO any undue or unreasonable preference or advantage, the Parties agree to negotiate in good faith an Amendment to this Agreement that accomplishes the same objective in a manner that is legally permissible for the City, as determined by the City. In the event the Parties are unable to come to a resolution, or if at any time – with or without the above court finding – the City determines, in its sole discretion, that there is sufficient uncertainty on this issue that a court order is prudent, desirable, or necessary to avoid treating ALLO more favorably than other providers, the City may request that a court examine this issue and determine what modifications would be necessary to avoid or resolve the alleged disparity in treatment (a) without substantially prejudicing the rights of either Party; and (b) without depriving either Party of a material benefit of the bargain under this Agreement. If ALLO agrees to such proposed modifications, they shall be memorialized in an Amendment to this Agreement. If such modifications are not agreed to by ALLO, but continue to be required by the City, it may elect to terminate this Agreement. If ALLO terminates this Agreement as provided in this subsection and such termination occurs within two (2) years of the Effective Date, the City shall refund the Initial Rent Payment to ALLO within thirty (30) Days of the effective date of termination.
- K. Authority. Each Party warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind each Party to its terms.
- L. Assignment. Neither Party may assign or otherwise transfer this Agreement, or its duties and obligations contained in this Agreement without the prior Notice to and written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Except as otherwise provided, this Agreement shall inure to the benefit of and be binding upon the Parties and each Party's respective successors and assigns. Notwithstanding the foregoing two sentences, no such consent shall be required for: (1) a transfer in trust, by mortgage, by other hypothecation; or (2) an assignment or transfer to a corporation, partnership, or other legal entity that is a Permitted Affiliate.



- M. No Foreign Interest. In the event this Agreement is ever assigned to any non-U.S. corporation or non-U.S. entity, or any such non-U.S. entity otherwise becomes the lessee or otherwise develops a controlling interest in any corporation or entity that is the lessee – whether by assignment, merger, acquisition, bankruptcy, divestiture, or any other means, whatsoever – the City shall have the option, in its sole discretion, to immediately terminate this Agreement without penalty.
- N. No Third-Party Beneficiaries. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and ALLO. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the City and ALLO that any person or entity other than the City or ALLO receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
- O. Immunity. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of §§ 24-10-101, *et seq.*, C.R.S., as now or hereafter amended.
- P. Waiver. The waiver of any breach of a term, provision, or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.
- Q. Entire Agreement. This Agreement embodies the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior agreements, representations, and understandings, whether oral or written, relating to the subject matter of this Agreement.
- R. Governing Law; Venue; Changes in Law. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the state of Colorado and venue shall be in Boulder County, Colorado.
- S. Survival. Any and all provisions of this Agreement that, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.
- T. Amendment. No Amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties.

- U. Severability. The terms of this Agreement are severable. Should any term or provision of this Agreement be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision of this Agreement.
- V. Effective. This Agreement shall not be effective, valid or enforceable unless and until it is signed by all Parties below. The “Effective Date” of this Agreement shall be on the date of the last signing Party (the City), and the City is authorized to affix such date to the title page hereto on the date of signature.
- W. Electronic Signatures. This Agreement may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, electronic signature shall include facsimile versions of an original signature, electronically scanned and transmitted versions of an original signature, and digital or digitally generated signatures.

**IN WITNESS WHEREOF**, the Parties to this Agreement have caused it to be executed by each Party’s authorized officers as of the Effective Date. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

***[SIGNATURE PAGES FOLLOW]***

**ALLO Communications LLC**

**By:** \_\_\_\_\_  
**Name:** Bradley A. Moline  
**Title:** President & CEO

**CITY OF BOULDER,  
a Colorado home municipality**

**By:** \_\_\_\_\_  
Nuria Rivera-Vandermyde,  
City Manager

**ATTEST:**

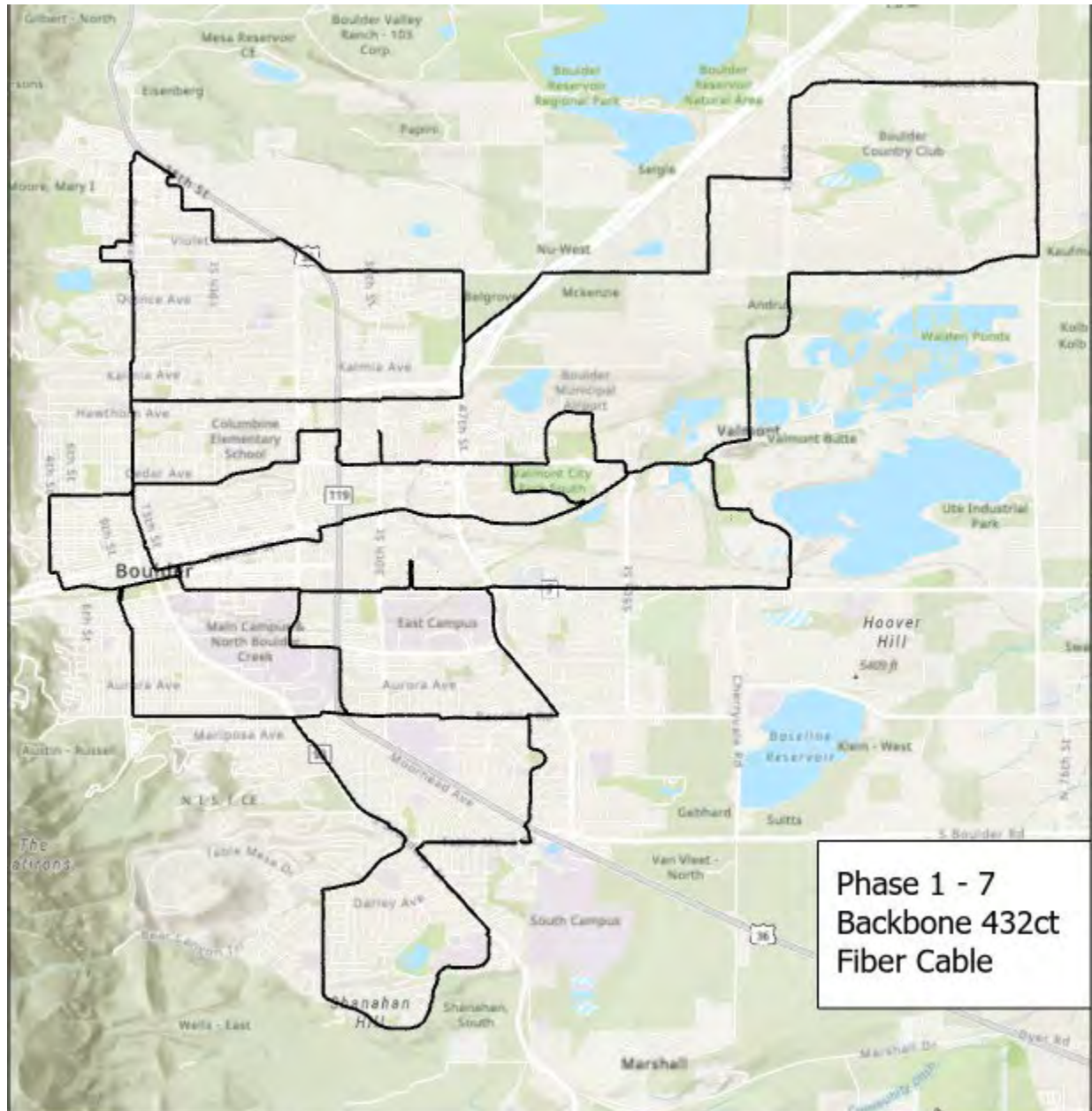
\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

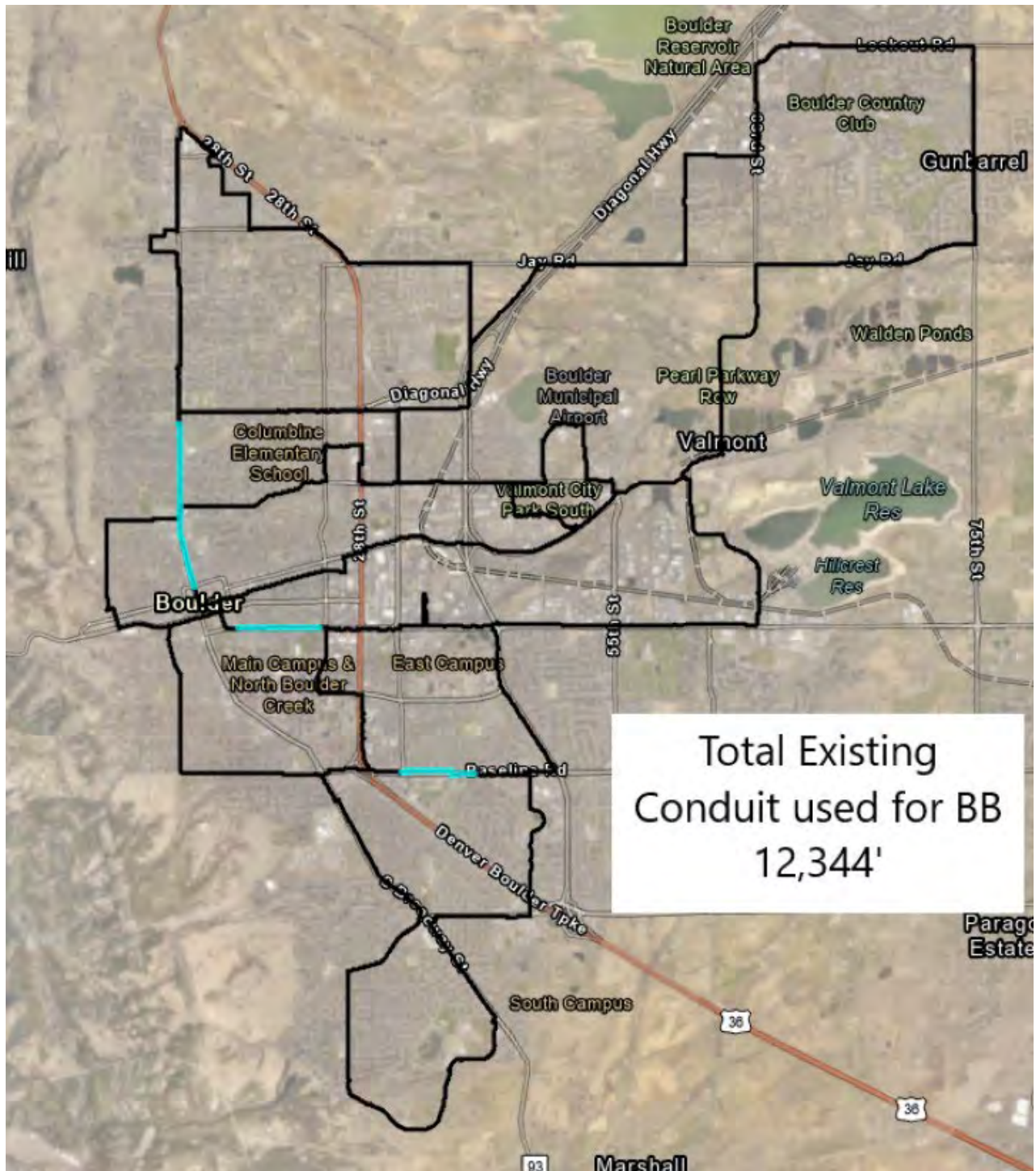
\_\_\_\_\_  
City Attorney's Office

## Exhibit A - CITY'S FIBER BACKBONE (DEPICTION)

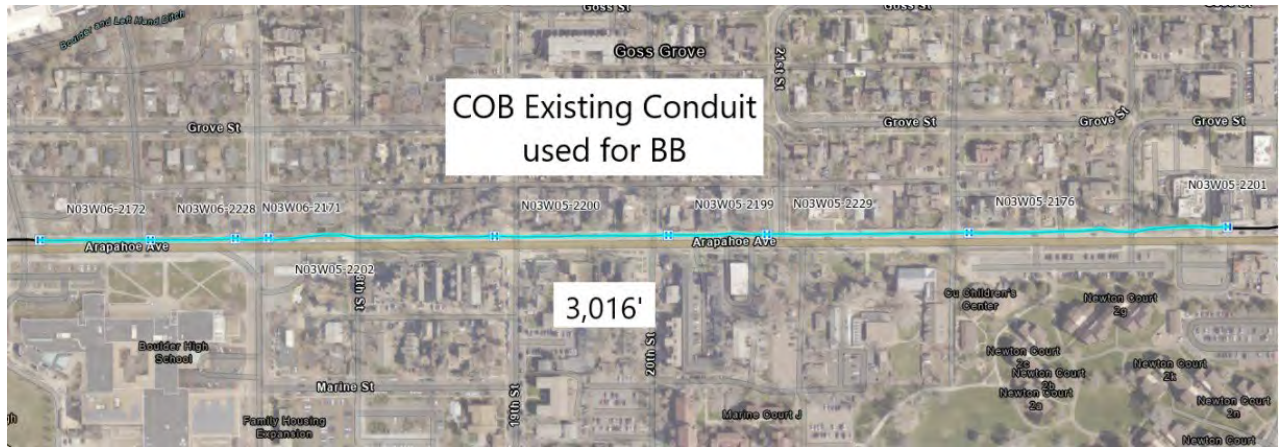
The City's Fiber Backbone that comprises the Leased Fiber and Second Conduit (save for removals in Article II):

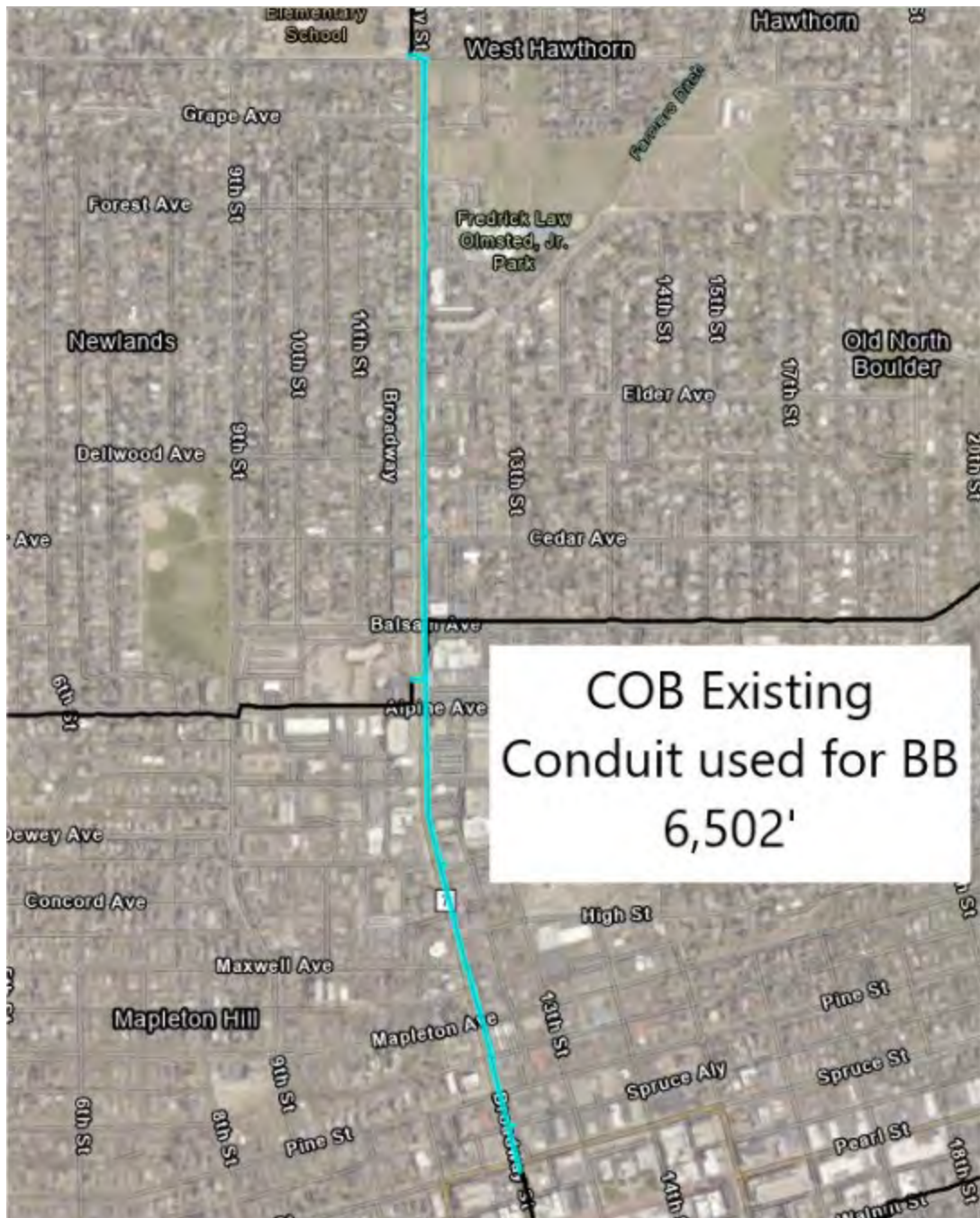


## Exhibit A-1 – SECOND CONDUIT GAPS













**Exhibit B - FORM OF RENEWAL AMENDMENT**

**RENEWAL AMENDMENT TO THE [DATE]  
FIBER BACKBONE LEASE AGREEMENT BETWEEN  
ALLO AND THE CITY OF BOULDER**

This Renewal Amendment to the Fiber Backbone Lease Agreement (this “Renewal Amendment”) is made to be effective of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between ALLO Communications LLC, a Nebraska limited liability company, (“ALLO”), and the City of Boulder, a Colorado home rule municipality (the “City”). The City and ALLO may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

A. The Parties entered a Fiber Backbone Lease Agreement dated \_\_\_\_\_, 2024, (the “Agreement”), pursuant to which ALLO leases Fiber optic cable along the City’s Fiber Backbone.

B. Article III of the Agreement defines the “Term.” The Term of the Agreement includes both the Initial Term and any Renewal Terms. The Initial Term is set to expire on \_\_\_\_\_, 2044.

C. In accordance with Article III, the Parties, by mutual agreement, may extend the Term for up to ten (10) years.

D. By this Renewal Amendment, the Parties desire to extend the Term by a Renewal Term.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the promises and obligations set forth below, the Parties agree to amend the Agreement as follows:

1. The Recitals above are hereby incorporated into this Renewal Amendment.
2. The Parties agree to add a Renewal Term to the Term of the Agreement. By this Renewal Amendment, the Term is hereby extended for an additional ten (10) year period, meaning the Agreement will now expire on \_\_\_\_\_, 20\_\_.
3. [If the City and ALLO agree to different Monthly Rent Payments for the Renewal Term; otherwise deleted]: The Parties agree that the Monthly Rent Payment due for this additional extension shall be in the amount of \_\_\_\_\_ (\$\_\_\_\_\_ U.S. Dollars) per subscriber account.
4. Except as amended herein, the Agreement shall remain in full force and effect pursuant to its current terms and conditions.

**IN WITNESS WHEREOF**, the Parties hereto have caused it to be executed by each Party's authorized officer as of the Effective Date.

**ALLO Communications LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF BOULDER,  
a Colorado home rule municipality**

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

\_\_\_\_\_,  
City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney's Office

**Exhibit C - FORM OF NOTICE OF ACCEPTANCE**

**FIBER BACKBONE LEASE AGREEMENT**

**Notice of Acceptance**

This Notice of Acceptance (this “Acceptance”) is issued pursuant to Article VII of the Fiber Backbone Lease Agreement between ALLO and the City of Boulder dated \_\_\_\_\_ 2024.

In accordance with Article VII, Testing & Acceptance, ALLO hereby confirms as follows:

A. ALLO completed testing on the following portions of the Leased Backbone:

[Describe tested portion of Leased Backbone]

B. ALLO has confirmed that the above-described portions of Leased Backbone are accepted by ALLO.

The date of this Acceptance, which shall serve as the Acceptance Date for purposes of the Agreement, is as follows: \_\_\_\_\_ 20\_\_.

**ALLO Communications LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **Exhibit D - CONSTRUCTION & INSTALLATION TERMS & CONDITIONS**

This **Exhibit D** shall govern the construction and installation processes, terms, and conditions.

### **A. Design.**

1. Acceptance of the City's Fiber Backbone. ALLO has had the opportunity to receive the City's as-built and design plans for the Broadband Network. ALLO has conducted physical inspections on a variety of parts of the City's Fiber Backbone, verifying locations and technology fitness in the process, including all Acceptance Testing ALLO deemed necessary or prudent to verify the capabilities of the City's Fiber Backbone. ALLO accepts the City's Fiber Backbone as it is currently constituted and represents that it is feasible to design its Last Mile Infrastructure and meet the requirements of this Agreement utilizing the existing City Fiber Backbone. ALLO issued a Notice of Acceptance, attached to this Agreement as **Exhibit C**.
2. Design - Generally. Except for the limitations, constraints, obligations, and explicit City promises made herein, ALLO shall have all authority and duty surrounding the design of its Broadband Network. Such design, and all Network Elements incorporated into the Broadband Network, shall ensure the Last Mile Infrastructure can support Broadband Internet Service within Boulder.
  - a. Central Offices. The City understands that ALLO will need to build two central office facilities that, while not necessitating a large footprint, will need to be located along the Leased Backbone to provide redundancy, allow ALLO to respond to network issues quickly, and the locations for which may impact overall project phasing. ALLO understands identification of suitable locations for these central offices is ultimately ALLO's responsibility, but the City agrees to work with ALLO within reason to help ALLO identify suitable locations. In the event City property is identified, the City may execute a long-term lease agreement for such central office facilities on commercially reasonable terms and at a market rate that the city manager determines to be commensurate with the locations identified. The authorization for any such long-term lease (or leases) shall be subject to Boulder City Council approval.
3. GIS Design. ALLO will collaborate with utility professionals, including engaging local (non-City) utility experts to produce a GIS design that accounts for right of way permits/real property constraints, existing utility infrastructure, and which is based upon quality GIS information. The GIS design will be finalized with input from local utility experts and the ALLO construction team, resulting in a final comprehensive design for the defined area. ALLO's design will utilize redundant connections where feasible for all infrastructure that the City deems critical.
4. City Reviews. Any review or approval of ALLO's (a) design, plans, or as-builts; or (b) technical specifications; or (c) project approach, phasing, or construction plans

or processes, shall not constitute a representation, warranty, guarantee, or assertion by the City as to any elements of the design's functionality, safety, or the location of utilities or property rights. ALLO is responsible for ensuring its design comports with law and all utility and property rights.

B. Project Team & Construction Planning.

1. Project Team. Throughout the construction phase of the project, each Party shall maintain a Project Team that is comprised of representatives with backgrounds that are necessary or beneficial to the advancement of the project.
2. Identification. The Project Team members for the Parties are as follows:
  - a. The Project Team members for the City are:
    - Mark Garcia ([garciam2@bouldercolorado.gov](mailto:garciam2@bouldercolorado.gov))
    - Mike Giansanti ([giansantim@bouldercolorado.gov](mailto:giansantim@bouldercolorado.gov))
    - Such other staff as may be determined by the City
  - b. The Project Team members for ALLO are:
    - Todd Heyne ([todd.heyne@allofiber.com](mailto:todd.heyne@allofiber.com))
    - Al Schroeder ([al.schroeder@allofiber.com](mailto:al.schroeder@allofiber.com))
    - John Surber ([john.surber@allofiber.com](mailto:john.surber@allofiber.com))
    - Robert Beiersdorf ([bob.beiersdorf@allofiber.com](mailto:bob.beiersdorf@allofiber.com))
    - Andrew Vinton ([andrew.vinton@allofiber.com](mailto:andrew.vinton@allofiber.com))
    - Such other staff as may be determined by ALLO

The Parties may replace these team members at their discretion, but agree to otherwise keep team members with similar backgrounds and roles involved with the Project Team throughout the construction cycle.

3. Project Team Duties. The Project Teams will undertake the following:
  - a. Project Plan. The Project Teams shall initially meet for the purposes of ALLO preparing a construction project plan (the "Project Plan") that, as ALLO deems appropriate, incorporates the City's thoughts and input. The Project Plan will map out the complete lifecycle of the project, including work phasing/sequencing, timing of permitting applications, and target deadlines for geographic areas to receive Broadband Service. The Project Plan shall include a Gantt chart (or similar charting) that shows the entire planned cycle of the project. The Project Plan shall accommodate and be consistent with the requirements of this Agreement. The Project Plan will be of sufficient detail concerning the probable placement of Last Mile Infrastructure that the City can use to conduct any planning or coordination required of it in anticipation of the work schedule. Once ALLO is satisfied with the Project Plan, ALLO will provide a PDF copy to the City. ALLO agrees to finalize the Project Plan, and provide a copy of the same to the City's Project Team, no later than sixty (60) Days after the Effective Date of this Agreement.

- i. The City acknowledges the economic implications phasing and timing of building out in certain areas over others may have on ALLO. Nonetheless, ALLO agrees to work with the City in creating a phased approach to construction that ensures certain high-need areas of the community and critical facilities are serviced during early-build-out. While the Parties agree this will necessitate further discussions, ALLO agrees to phase its work in a manner that promotes at least some of these communities and facilities receiving Broadband Service early in the construction cycle and otherwise balances out phasing so that high-need or lower-income communities and facilities are included in early phasing.
  - ii. Once the Project Plan is finalized, ALLO agrees to complete construction in accordance with the phasing and timing of the Project Plan. Notwithstanding the foregoing, the City acknowledges and agrees that ALLO may make reasonable modifications to the Project Plan in response to issues such as permitting, weather, and other factors that may be difficult to predict.
  - iii. To promote transparency, ALLO agrees to provide information on its webpage concerning the timing, phasing, and planning for ALLO's Last Mile Infrastructure build-out, including, but not limited to, a map that clearly shows the public where ALLO's Broadband Service is available within Boulder.
- b. Weekly Meetings. The Project Teams will meet weekly unless the Parties mutually agree to forgo any week's meeting. For each meeting, ALLO will update the City on build-out developments for the prior two weeks. The Project Teams will also discuss problems encountered, solutions to those problems, upcoming activities, and additional topics that either ALLO or the City want to address. During these meetings, ALLO will communicate with the City about any operational, technical, permitting, or geotechnical challenges encountered that may result in delays in the timing of completing the work.
- c. Monthly Status Reports. ALLO will submit to the City a written monthly status report. The report need not be long or detailed, but it must, at a minimum, address the following in separately numbered sections:
  - i. New Areas Served – A listing of new geographic areas which ALLO believes are capable of being served with Broadband Service, along with the estimated total number of new addresses for which ALLO's Broadband Services has been made available;
  - ii. Upcoming Areas Served – A listing of geographic areas for which ALLO has received all permits, completed all necessary prerequisites, and is planning to commence construction within both (A) the subsequent month; and (B) the subsequent three (3) months, along with the estimated total number of new addresses for



which ALLO's Broadband Services are projected to be made available for each (one-month and three-month look-forward);

- iii. Claims, Permitting, Licensing or Legal Concerns – Any claims, difficulties, permitting or licensing issues, or any other issues of legal significance, whether to the project or the City obligations hereunder, for which ALLO wants to ensure the City is aware, including any City-caused delays;
- iv. Timing – A brief statement affirming that the project is on schedule according to the Project Plan or, if not, an approximation of how catch-up will be obtained including any planned acceleration; and,
- v. Miscellaneous – Anything else ALLO wishes to report.

The delivery of the written monthly status reports does not replace the Notice provisions under this Agreement, and ALLO must still effectuate formal Notice in conformance with that provision as required under this Agreement.

#### C. Permits & Right of Way Access.

1. Right of Way Permitting. ALLO understands and agrees that the City must treat ALLO the same as all other similarly situated persons and entities requesting permits for similar work or otherwise seeking to construct a similar project in the right of way. ALLO agrees that the City will process all permits and right of way construction activities in accordance with its normal permitting, inspection, and right of way processes and procedures. ALLO will adhere to all permit conditions. The City's Project Team shall have no responsibility to communicate with the City's right of way or utility personnel concerning any issues surrounding ALLO's construction, planning, permitting, or access. ALLO does not and cannot expect City staff to advocate for changes in the policies or practices or to communicate with City right of way or utility personnel on behalf of ALLO or in support of the project.
  - a. ALLO understands and agrees that the City's project manager does not have authority to issue permits or to otherwise circumvent or impede the normal permitting review and issuance process. Accordingly, any confirmation by the City's project manager that construction can commence or is otherwise authorized by the City remains subject to ALLO obtaining a right of way permit and otherwise meeting all review, inspection, approval, and acceptance requirements associated with the City's right of way permit process.
  - b. ALLO understands its work will be subject to the Boulder Revised Code 1981 and has had the opportunity to review the City's code. The City strongly encourages ALLO to review all B.R.C. 1981 provisions contained in Title 8, Chapter 5, "Work in the Public Right-of-Way and Public Easements," and Title 11, Chapter 6, "Boulder Cable Code," B.R.C. 1981.

- c. Where feasible, ALLO agrees to work with the City to complete its construction in a way that coincides with the City's Transportation Management Plan. The City acknowledges there is some uncertainty with respect to such plan, but the Parties will, nonetheless, make their best efforts to coordinate such that right of way work (including any potential joint trenching) can occur in a manner that is consistent with the plan.
2. Recurring City Concerns. The City has provided ALLO with a list of recurring, common issues the City encounters in permitting. ALLO agrees to work in good faith and with diligence to try to account for these recurring issues at the time of applying for permits. ALLO understands it is solely responsible for all ditch crossing needs. ALLO understands it will need to produce traffic control plans and phasing that are not inordinately disruptive to vehicle, bike, or pedestrian mobility or safety.
3. Permits. ALLO shall be responsible for obtaining all permits, licenses, permissions and approvals necessary to complete its work. ALLO is responsible for complying with any requirements set forth by governing permitting authorities. This includes the submission of completed permit application and required submittals and attachments, as well as the creation and submittal of traffic control plans.
4. Permit Fees. ALLO will pay all permit fees, including those of the City.
5. Unique Permits. If any work requires ALLO obtain permits with Boulder County, Colorado, or any railroad or ditch authorities, ALLO will build in reasonably appropriate lead times for such permits.
6. City Staffing. Nothing in this Agreement shall require that the City prosecute permit applications within a specific timeframe, retain additional resources needed to facilitate ALLO's potential influx of applications, or otherwise act upon ALLO permits in a timeframe that is different from its normal permit processing.

D. Construction Requirements.

1. Construction Approach. The Broadband Network construction design will utilize a reasonable, safe build interval. Once applicable agreements are approved by the Parties, ALLO's proven construction management processes will be utilized to produce a safe and orderly build while minimizing construction hassles to the residents and businesses of Boulder.
2. Responsibility. Any plan of action, method of work, or construction procedure by ALLO shall be at its sole risk and responsibility.
3. Construction & Maintenance Standard - General. ALLO agrees that all its telecommunications equipment and infrastructure shall be constructed, installed, maintained and operated in accordance with good engineering practice in the

telecommunications industry to assure, as far as reasonably possible, uniformity in the quality of service provided and the safety of persons and property.

4. Equipment. All equipment, supplies, and materials integrated into the Last Mile Infrastructure shall be of sufficient number, kind, and quality to ensure that Broadband Service is capable to all Boulder Persons if they request service and wish to become a Boulder ALLO Customer.
5. Design and Construction Standards. The Parties have reviewed the City's Design and Construction Standards. The Parties agree that the following sections are applicable to ALLO's work and, therefore, ALLO agrees to comply with the same:

Section 4.06 – Separation of Utilities

Section 4.07 – Undergrounding of Utilities

Section 9.21 – Telecommunication or Cable System Standards

These sections may not be the only sections from the City's Design and Construction Standards which are applicable.

6. Equity Promotion. ALLO will endeavor to advance the City's equity goals with who completes the work, i.e., a diverse workforce and/or opportunities for minority- or women-owned Business Enterprises to perform a portion of the work.
7. Community Engagement. ALLO will publicize and communicate with the public about its forthcoming and ongoing construction activities, responsiveness to community concerns about construction site location, and its strict observance of City regulations on hours of activity. ALLO should minimize disruption to pedestrian, bicycle, and vehicle traffic and communities. ALLO is expected to engage closely with the City's community engagement team prior to project phases being constructed.
8. Hours of Activity. Work activity shall be performed in the Public Right of Way or public easements between the hours of 7 a.m. and 5 p.m. unless the City otherwise approves a variance. ALLO understands that the City may grant variances that allow certain work activities to occur outside of these hours. Such variances are subject to law and approval will be based upon the factors identified in Section 8-5-17, B.R.C. The Parties agree that these variances may be granted on an area basis, provided that: (a) ALLO agrees to submit by e-mail requests for variances in the form of a memorandum that describes the specific areas in which work is anticipated to be completed, the nature of the work, the precise nature of the variance requested and the type of work for which it is requested, and agrees to limit noise to the greatest extent possible outside of ordinary work hours; and (b) ALLO understands any variance granted shall be revocable in the sole discretion of the City. ALLO and the City acknowledge and agree that, subject to the City's reasonable discretion, ongoing review and applicable law, the Parties intend for variances to be granted promptly and on an ongoing basis.

9. Interior Activities. ALLO shall be responsible for coordinating all interior site access and lateral fiber termination within any facilities, including any Boulder ALLO Customer. For City facilities, if requested by ALLO, the City will provide site contacts for coordination and access to site surveys. ALLO shall perform site surveys prior to placement of any lateral conduits, vaults or Fiber on City property.
10. Notice of Construction Activities. Construction communication will begin at a time reasonably believed, but no less than seventy-two (72) hours in advance, to provide sufficient notice to affected property owners prior to construction starting in a service area. Direct mail, door hangers, websites, yard signs, yard darts, and other communication may be used to inform the public about construction in the area. The goal is to make the project as hassle-free for City staff as possible.
11. Timeliness. ALLO shall make commercially reasonable efforts to complete the work by the agreed-upon deadlines without compromising the quality of work.
12. Safety. During all construction activities ALLO will prioritize the safety of the public and its workers. ALLO will conduct all construction in a safe, efficient, and workmanlike manner.
  - a. ALLO will adhere strictly to all requirements in Occupational Safety and Health Administration regulations on workplace safety and well-secured work sites with clear signage that safely diverts pedestrian, bicycle, and vehicle traffic.
  - b. ALLO will adhere to all applicable standards and requirements contained in the most recent version of the National Electric Safety Code.
13. Coordination with Other Entities. ALLO will be responsible for all coordination with other entities that may be required for its work, including other utilities or facilities that may be affected by its work. Without limiting any more stringent requirements contained herein or which may be required by law, ALLO shall (a) economically minimize construction expenditures by coordinating construction with other entities, such as the joint use of trenches for cable, where joint construction is both safe, cost effective, and in the best interest of all parties; (b) take reasonable action to protect service to the public, such as identifying the location of underground facilities that may be affected by construction work for other entities; (c) maintain a database or some other form of quickly accessible information at its facilities sufficient to allow facility location coordination and participation in a program on a statewide basis to minimize service interruptions caused by accidental cutting of cables; and, (d) engage in coordination with electric power utilities in the area prior to constructing new plant or a major rebuild of existing plant that may be impacted by inductive interference from the electric power systems.
14. Roadway or Other Utility Projects. In the event the City or any governmental entity (e.g., CDOT) has roadwork or utility construction activity planned, and where any ALLO construction can be completed in conjunction with such

construction activity, the City may request that ALLO adjust its planning to coincide with the public roadway work. Upon such request, ALLO agrees to work in good faith to assess whether its work can be completed in conjunction with the roadway or utility work and to re-organize its scheduled activities in response, if practicable. ALLO further agrees to conduct any surveyor staking necessary to identify its existing or proposed infrastructure to support the project.

15. Technical Details. In addition to those requirements, standards, conditions, and processes contained in applicable law or identified elsewhere herein, ALLO agrees to the following:

- a. Conventional Boring. Construction will utilize conventional directional boring. All boring shall be done in accordance with the City's Design and Construction Standards. Underground boring will be used for underground placement, thereby minimizing surface restoration issues. If, for any reason, ALLO determines boring is not feasible, appropriate, or cost effective for a given location, ALLO may, by written request to the City, request limited exception to use alternative means for installing the infrastructure. Such limited exception will be granted in the City's sole discretion and must be memorialized in a writing appearing on City letterhead that is issued by the City. ALLO must ensure any design plans or as-built drawings are updated to reflect the distinct infrastructure, and that the City has a copy of the same. ALLO shall resolve any surface disturbances caused by ALLO, whether through boring or some other means of installation, as required by the B.R.C. 1981 and the City's Design and Construction Standards. For avoidance of doubt, this subsection 15.a., and the City's project manager's authority hereunder, remains subject to all laws, rules, regulations, ordinances, design standards, and requirements, including those independent requirements of permitting. The City acknowledges and agrees that no vertical profile plan-set and no pre-potholing for Subsurface Utility Engineering Quality Level B (as defined by the American Society of Civil Engineers) shall be required unless specifically requested by the City in writing.
  - i. Any directional boring shall consist of boring, tracking and pull back by means of directional bore at 30" minimum depth (18"-24" if the shallower depth would avoid encountering rock), locating existing pipelines and utilities, digging, restoring and compaction of bore pits, removal and disposal of excess bore fluids, spoils and/or excess bore pit materials, surface restoration to pre-construction conditions, site clean-up and other items needed to complete the work except as called out separately in other bid items. ALLO and the City acknowledge and agree that, subject to the City's reasonable discretion, ongoing review and applicable law, the Parties intend for variances to be granted promptly and on an ongoing basis.

- ii. Limited overhead cabling may be permitted by the City in accordance with City code and other requirements for alleys or other areas where boring is not feasible, not to exceed ten percent (10%) of the overall Last Mile Infrastructure network build.
- b. Handholes.
  - i. Use of Existing. ALLO agrees to, whenever possible, utilize existing handholes into the Leased Backbone to avoid the need for additional cutting and splicing. Any and all access to the Leased Backbone outside of existing access points will be performed in consultation with the city and with the City's authorization.
  - ii. Locations. ALLO shall avoid placing handholes in hardscape, sidewalks, bike and multi-use paths wherever possible based on industry standards. Handholes shall be considered in hardscape where placement in the softscape is impractical, and only after submittal review and approval from the City on a case-by-case basis. All restoration shall be completed per sections 02200 EXCAVATION AND TRENCHING and 02520 SIDEWALK CURB AND GUTTER AND MISCELLANEOUS CONCRETE of the City's Design and Construction Standards.
- c. Protection of Existing Infrastructure & Soft Dig Verification. ALLO will conduct soft digs and visually verify locations of existing City-owned utilities within proposed pathways prior to directional boring. Existing City utilities found and verified shall be documented with GPS locations and redlines included on final construction as-builts with size, type, owner, depth and offset measurements. This work shall be a project requirement and submitted as part of the project deliverables in an effort to comply with 811 requirements for subsurface utility locating. Once all marked utility locations are physically identified, ALLO will adjust running lines as needed to keep minimum vertical and horizontal separation from existing utilities per the City's Design and Construction Standards, Section 4.06.
- d. Parallel Separations. Parallel separations between utility mains and services shall be in accordance with the Design & Construction Standards.
- e. Trenching Standards. All trenching shall be conducted in accordance with the City's Design and Construction Standards. ALLO understands that revisions to the standards are currently being undertaken but that it will, nonetheless, adhere to such standards once they are formally adopted. The City agrees to provide ALLO with a written copy of such standards promptly after they are published and available to the public.
- f. Open Cut & Trenching. ALLO shall ensure all open cut and trenching activities include the removal and disposal of spoil and/or surplus trench excavation material, dewatering; sheeting, shoring and or bracing; bedding; backfilling and compaction of job excavated material or placement and compaction of flowable fill or imported granular backfill (if preapproved by the City), surface restoration to pre-construction conditions, site clean-up,

and other items as needed to complete the work except as called out separately in other bid items.

- g. Inadvertent Fiber Cuts. In the event that an unplanned Fiber Cut occurs to any City Fiber, including the City's Fiber Backbone, and ALLO is the at-fault party, ALLO agrees to, at its sole cost and expense, diligently and expeditiously repair or replace the cut line. Any repair or replacement of a Fiber Cut line shall not diminish the operational abilities or capacity of the Fiber.
  - h. Fiber Splicing. ALLO will be responsible for providing all labor, material, and equipment necessary to open panels or cases as well as performing any necessary splicing. All splices shall be of one optical Fiber strand in any cable in accordance with splice loss threshold. ALLO shall apply splice heat shrink and shall stow the spliced Fiber in a Fiber organizer. After each splice, ALLO agrees to test all lines to assess functionality. Any re-splicing necessary due to splicing resulting in an impermissible reduction in the splice loss threshold shall be re-done at ALLO's own expense. ALLO agrees to address any deficiencies remaining in the line prior to leaving the site or, if they cannot be addressed, to Notify the City by E-mail to report the issue and address the deficiencies within a reasonable time thereafter.
  - i. Fiber Testing. For any connection to the City's Fiber Backbone, ALLO will conduct OTDR and Power Meter Testing for each single-mode field splice in one direction. The splice loss of each field splice shall not exceed 0.2 dB at 1310 and/or 1550 nanometers. Power Meter testing will consist of using an Optical Power Meter to test the end-to-end attenuation:  $\text{Attenuation (dB)} = \text{Pref-Ptest loss at 1310 and 1550 nanometers}$  and documenting results. ALLO shall provide all testing documentation to the City.
16. ALLO's Provision of As-Builts. After the completion of all project construction ALLO will, no later than sixty (60) Days following completion of construction activity, provide the City with copies of its final construction as-builts and construction drawings. All copies will utilize a GIS-based format compliant with ESRI ArcGIS. The City will advise ALLO on the exact format of data and shapefiles to be delivered in as-builts.
- a. Additional Requests. In the event all initial build-out of the Last Mile Infrastructure is not completed on or by the completion deadlines set forth herein, ALLO shall, if requested by the City, but no more than once per six-month period, provide copies of as-built documentation and construction drawings on those portions of the infrastructure for which it has completed construction.
17. Communication of Ongoing Work. The Parties agree that communication and coordination of their respective work on the City's Fiber Backbone is important. To further this, the Parties agree to identify a long-standing system that is agreeable to both Parties of sharing when either Party will be entering handholes, conducting significant work on the City's Fiber Backbone, and to provide the other Party with the opportunity to be present during such work when feasible and practicable.

## **Exhibit E – SERVICE LEVEL GUARANTEES**

1. Upon implementation of the Last Mile Infrastructure, in the event ALLO suffers a network outage outside of (a) events defined as Force Majeure; (b) scheduled network maintenance; (c) emergency network maintenance; (d) a network outage resulting from the City's non-performance of its obligations under this Agreement; or (e) a network outage resulting from the negligent acts or omissions of the City or its agents or employees; then ALLO will adhere to the following credit schedule:
  - i. 98.0% to 98.9% ALLO's network uptime, measured monthly: 2% of monthly fees paid by an individual customer for the month in which the outage occurred, credited to a customer's account.
  - ii. 97.0% to 97.9% ALLO's network uptime, measured monthly: 4% of monthly fees paid by an individual customer for the month in which the outage occurred, credited to a customer's account.
  - iii. 96.0% to 96.9% ALLO's network uptime, measured monthly: 6% of monthly fees paid by an individual customer for the month in which the outage occurred, credited to a customer's account.
  - iv. Below 96% ALLO's network uptime, measured monthly: 8% of monthly fees paid returned to customers for the month in which the outage occurred credited, to a customer's account.

ALLO shall have the right to compensate customers for outages through application of credits to the affected customers' accounts, provided, however, that bill credits shall be automatically applied to affected Boulder ALLO Customers, without need of those customers complaining or notifying ALLO.
2. ALLO will strive to answer eighty percent (80%) inbound customer phone calls within ninety (90) seconds and all inbound E-mails during regular business hours within one (1) Business Day.



**Exhibit F – CABLE FRANCHISE AGREEMENT**