

RESOLUTION No. 2017-12-04

AUTHORIZING THE MAYOR TO EXECUTE THE LEASE AND NETWORK OPERATION AGREEMENT BETWEEN THE CITY OF FORT MORGAN AND ALLO COMMUNICATIONS FOR THE OPERATION OF THE CITY OF FORT MORGAN FIBER NETWORK

WHEREAS, the City of Fort Morgan, Colorado, is in the process of building a fiber network to provide better municipal services to City residents and businesses, and to facilitate economic benefit throughout the City; and,

WHEREAS, the City still requires further engineering and design work to continue forward with the construction of the City's fiber network; and,

WHEREAS, after extensive research into the variety of opportunities and arrangements to provide communication services to the community, the City has determined it is in the best interest of the City to partner with a private provider for the operation of the City's fiber and delivery of services to the community; and,

WHEREAS, the City has conducted a public selection process to identify and enter into an agreement with a qualified private-sector entity to activate and operate the City's network on a nondiscriminatory basis and to offer the services to City residents and businesses; and,

WHEREAS, Allo Communications, LLC ("Allo") is a service provider and network operator based in Lincoln, Nebraska; and,

WHEREAS, City desires to lease to Allo certain City assets, including dark fiber and access to associated equipment; and

WHEREAS, Allo desires to accept such lease, to activate and operate the City's fiber network on a nondiscriminatory basis, and to provide the services to City residents and businesses; and

WHEREAS, the City and Allo have worked through negotiations for the Lease and Network Operation Agreement attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

SECTION 1: The City Council hereby authorizes the Mayor to execute the **LEASE AND NETWORK OPERATION AGREEMENT** attached hereto as Exhibit A.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 19th day of December 2017, the vote upon roll call being as follows:

Ayes: Mayor Shaver, Councilmembers Anderson, Castoe, Howe, Lindell, Marler and Northrup.

Nays: None.

Absent /Abstain: None.



THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: Ronald Shaver

Ronald Shaver, Mayor

ATTEST:



John Brennan, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN) ss.
CITY OF FORT MORGAN)

CERTIFICATE

I, John Brennan, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 19th day of December, 2017.



John Brennan, City Clerk

LEASE AND NETWORK OPERATION AGREEMENT

THIS LEASE AND NETWORK OPERATION AGREEMENT (“Agreement”) is entered into on _____ between the City of Fort Morgan, located at 710 E. Railroad Ave., Fort Morgan, Colorado 80701 (hereinafter called “City” or “Lessor”) and Allo Communications, LLC, located at 121 S. 13th Street, Suite 100, Lincoln, Nebraska 68508 (hereinafter called “Allo” or “Lessee”). Allo and City individually referred to as a “Party” or collectively as the “Parties”.

RECITALS

1. To provide better municipal services to City residents and businesses, and to facilitate economic benefit throughout the City, the City desires to deploy a new fiber to the premises network throughout the Fort Morgan area, known as the Fort Morgan Fiber Network (“FMFN”).
2. The City desires to structure the FMFN in a manner that effectively enables the provision of gigabit broadband Internet access services and capabilities, (the “Services”) as described herein, in a competitive, open environment.
3. The City has conducted a public selection process to identify and enter into an agreement with a qualified private-sector entity to activate and operate the FMFN on a nondiscriminatory basis and to offer the Services to City residents and businesses.
4. The City has identified and selected Allo as the best candidate to provide such Services, and to that end the City has negotiated this Agreement with Allo.
5. To effect the purposes set forth above, the City desires to lease to Allo certain FMFN assets, including dark fiber and access to associated outside plant equipment.
6. Allo desires to accept such lease, to activate and operate the FMFN on a nondiscriminatory basis, and to provide the Services to City residents and businesses, as further set forth in, and subject to the provisions of, this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Table of Exhibits Made Part of This Agreement

- a. Exhibit A: Plans
- b. Exhibit B: Listed Assets
- c. Exhibit C: Performance Metrics
- d. Exhibit D: Maintenance of Assets

2. Definitions

- a. “Affiliate” means, with respect to any specified Person, any other Person controlling or controlled by or under common control with the specified Person. For the purposes of this definition, “control” means the power to direct management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- b. “Agreement” means this Agreement, any and all Exhibits and Attachments, and any Addenda or written amendments to which the Parties may agree from time to time.
- c. “Assets” means the FMFN and any dark fiber strands and Outside Plant associated with the FMFN and leased to Allo under this Agreement, as specified in Exhibit A.
- d. “Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- e. “Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind relating to a Party’s execution of its obligations under this Agreement, whether imposed by a governmental authority or a private entity.
- f. “Commercially Reasonable” means efforts that are reasonable and in good faith given the circumstances, however, such efforts do not require all or every possible effort, reasonable efforts or best efforts be made.
- g. “Complete” means the date there is multi-service terminal that has completed Light Testing within three hundred fifty (350) feet of each Premises within multi-service terminal area.
- h. “Customer Premises Equipment” (“CPE”) means terminal and associated equipment and inside wiring located at a Premises that is necessary for the receipt of Services, and which is owned and installed by Allo.
- i. “Dark Fiber” means fiber optic cable strands, conduit, and structures without electronic and optronic equipment which has not completed Light Testing or has not been activated.

- j. “Drop” means the fiber cables and network interface unit connecting a given Premises to the FMFN.
- k. “Effective Date” means the date upon which this Agreement has been executed by the Parties.
- l. “FMV” has the meaning set forth Section 3.a.vi.b.ii
- m. “FTTP” means fiber to the premises.
- n. “Gross Revenues” has the meaning set forth in Section 3.a.vi.a.i.
- o. “Initial Term” has the meaning set forth in 4.a.
- p. “Lease” has the meaning set forth in Section 3.a.
- q. “Light Testing” means the process by which Allo ensures that activated fiber is ready for use.
- r. “Municipal Purposes” means City use of the FMFN to support governmental entities and services, which excludes any commercial use of the FMFN by City that directly competes with Allo’s uses of the FMFN.
- s. “Network Operator” means Allo’s role in (i) configuring and activating a community fiber network utilizing the FMFN, and (ii) providing data/ IP transport services to unrelated Service Providers on a nondiscriminatory basis, as further articulated in Section 9.b.
- t. “Non-Essential FTTP Design Services” means services not included in the initial design of the FMFN, as contemplated under Section 8.b, such Non-Essential FTTP Design Services include, but are not limited to, Wi-Fi smart city applications, data center design and public safety consulting.
- u. “Offer Notice” has the meaning set forth in 3.a.iv.
- v. “Optical Network Terminal” / “ONT” means a device that performs interface functions, such as code conversion, protocol conversion, and buffering, required for communications to and from an optical fiber network.
- w. “Outside Plant” means equipment and structure owned by the City that is used to house or support FMFN fiber optic cable, to which Allo is granted an exclusive right to use under this Agreement.

- x. “Person” means an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, a government or any government department or government agency or any other entity.
- y. “Premises” means a residence, commercial building, multi-dwelling unit or buildable lot that can be feasibly and reasonably served from the FMFN.
- z. “Prorated Lease Payments” has the meaning set forth in Section 3.b.i.
- aa. “Qualified Valuation Expert” means an expert that has (i) reasonable experience in the telecommunications industry; and (ii) provided valuation services in transactions similar to those contemplated by this Agreement.
- bb. “Renewal Terms” has the meaning set forth in Section 4.a.
- cc. “Renewal Term 1” has the meaning set forth in Section 4.a.
- dd. “Renewal Term 2” has the meaning set forth in Section 4.a
- ee. “Route” means the physical path traversed by the FMFN, as set forth in applicable maps and related documents that are made a part of this Agreement.
- ff. “Service” means any retail or wholesale communications service offered and provided using the FMFN and the Assets, whether by Allo or another Service Provider, including but not limited to broadband Internet access service, Voice Service, and Video Service.
- gg. “Service Provider” means a provider of retail Services, to which Allo provides data transport services using Assets.
- hh. “Subscriber” means a business, governmental or residential customer of retail Services provided by a Service Provider or provided by Allo.
- ii. “Term” means the Initial Term and any Renewal Terms, as provided in Section 4 of this Agreement.
- jj. “TFG” has the meaning set forth in Section 3.a.vi.c.iii.
- kk. “Total Cost” means the actual, direct cost paid by the City to third-parties for the materials, design, and construction of the FMFN as demonstrated by City’s invoices from such third-parties.

- ll. “Transfer Notice” has the meaning set forth in Section 3.a.v.
- mm. “Video Service” means a multichannel video programming delivery service, as such term is defined under federal law and interpreted by the Federal Communications Commission, or its substantial equivalent.
- nn. “Voice Service” means interconnected service, as such term is interpreted by the Federal Communications Commission, or its substantial equivalent.
- oo. “Fort Morgan Fiber Network” / “FMFN” means the fiber-to-the-premises network owned and installed by the City of Fort Morgan as contemplated herein and reflected in Exhibit A, including, but not limited to Dark Fiber, conduit, strands, pedestals, terminals, equipment owned by the City, attachment points, backbone extensions, private property access, building entrances, and any other property interest including any fee, easement, or any franchise rights directly related to or attached to the infrastructure identified in Exhibit A. FMFN excludes all equipment owned by Allo or equipment installed by Allo, any conduit owned by the City which is not utilized for fiber, and any portion of what is known as the Beanpole Fiber Backbone including the following which are part of the Beanpole Fiber Backbone: the fiber, strands, pedestals, terminals, equipment owned by the City, attachment points and backbone extensions attached to the Beanpole Fiber Backbone and installed before December 31, 2016. The FMFN may include expanded service areas that are constructed after the initial build of the FMFN as contemplated by Exhibit A upon mutual agreement of the Parties.

3. Lease; Lease Payments.

- a. **Grant of Lease.** Upon the Effective Date, the City grants to Allo for the Term the exclusive right to use the FMFN and the Assets for the purposes described in this Agreement, as it may be amended from time to time, for the purposes set forth in this Agreement (“Lease”). It is the intent of the Parties for this Agreement to be a conveyance of a leasehold interest in real property from City to Allo for the duration of the Term.
 - i. **Allo’s Use.** Allo shall have the exclusive right to use the FMFN to operate a fiber network capable of providing the Services in any manner that complies with applicable law, provided, the City shall have the right to use the FMFN for Municipal Purposes.
 - ii. **Title.** Legal title in the Assets and the FMFN is, and shall continue to be, held by the City, subject to this Lease and, except as otherwise stated herein, nothing in this Agreement shall convey any legal title to real or personal property, nor shall it create any security interest for Allo or any other person’s benefit.
 - iii. **Sale or Abandonment of Assets.** Subject to Sections 3.a.iii and 3.a.iv, in

the event the City sells, assigns, otherwise transfers title in, or abandons the Assets prior to the expiration of the Term, Allo's right to use the Assets during the Term shall not be affected, and shall explicitly be made subject to and conditioned upon the continuation of the Lease (including Allo payment obligations of under this Lease).

- iv. **City Sale - Allo Right of First Refusal.** Beginning on the Effective Date, if any Person seeks to purchase the FMFN and the City is seeking to sell the FMFN, City shall give Allo written notice of the offer and all material terms ("Offer Notice"), which will trigger Allo's right of first refusal to purchase the FMFN and all Assets. To exercise the right of first refusal, Allo shall give the City written notice no later than thirty (30) business days after the day Allo receives the Offer Notice stating that Allo will agree to match the terms of the Offer Notice.

If an Offer Notice is presented during in the first five years following the Effective Date, and notwithstanding the terms of any such Offer Notice, Allo shall have the right purchase the FMFN and all Assets by paying the lesser of (i) the total purchase price stated in the Offer Notice; or (ii) three million dollars (\$3,000,000.00), no later than thirty (30) business days after the day Allo receives the Offer Notice.

- v. **Allo Sale – City Right of First Refusal.** If a majority of the voting stock of Allo is subject to a sale, or if Allo is selling or transferring its interest in the FMFN and Allo has received a bonafide offer to purchase such Allo voting stock interests or FMFN interests, Allo shall give the City written notice of such offer ("Transfer Notice"), which will trigger the right of the City to purchase Allo's interests in the FMFN pursuant to this Section. To exercise the right of first refusal, the City shall provide Allo its written offer no later than thirty (30) business days of the date of the Transfer Notice, stating that City will agree to match the terms of the Transfer Notice such rights will expire. Such written offer may be contingent upon the City obtaining financing or issuing bonds in a timeframe not to exceed six (6) months from the written offer tendered by the City to Allo. In the event of a sale of the majority of the voting stock of Allo triggers the City's right of first refusal in this Section, the offer contained in Transfer Notice shall be determined by a Qualified Valuation Expert pursuant to the terms of Section 3.a.vi.c.
- vi. **Option to Purchase.** Upon written notice no later than three (3) years prior to the end of (a) the Initial Term, or (b) written notice no later than three (3) years prior to the end of any Renewal Term thereafter ("each, a "Purchase Option Notice") the City shall have the right to purchase Allo's interests in the FMFN for a purchase price equal to the greater of Valuation Formula 1 or Valuation Formula 2 below. Notwithstanding the date on which the Purchase Option Notice is received by Allo, the closing date of the purchase

shall be no earlier than the final day of the Initial Term or the Renewal Term, as applicable.

a. Valuation Formula 1:

- i. Five (5) times the Gross Revenues of the contract year that had the highest annual Gross Revenue in the three (3) contract years immediately preceding the closing. For the purposes of this Section, Gross Revenues shall mean all revenues Allo derives from its use of the FMFN.

b. Valuation Formula 2:

- i. Within thirty (30) days following receipt by Allo of the City's Purchase Option Notice (the "Initial Period"), the City and Allo shall reasonably cooperate to agree on a purchase price for Allo's interests in the FMFN.
- ii. If, the parties are unable to agree to a purchase price during Initial Purchase Period the parties will use their best efforts to agree on a Qualified Valuation Expert to determine the fair market value ("FMV") of the FMFN within thirty (30) days of expiration of the Initial Period ("Secondary Period"). In the event no agreement is reached within the Secondary Period, then the City and Allo shall proceed to determine the FMV of the FMFN as provided in subsection (iii) below.
- iii. In the event the City and Allo fail to agree on a Qualified Valuation Expert pursuant to Subsection (ii) above, within fifteen (15) days following the expiration of the Secondary Period (the "Extension Period"), the City and Allo shall each select a Qualified Valuation Expert to determine the FMV of the FMFN. The City and Allo agree that the FMV of the FMFN shall be the average of the valuation determinations provided by the two Qualified Valuation Experts. In the event the City and Allo determine to proceed as provided in this subsection, then each party shall bear the cost and expense of their selected Qualified Valuation Expert.
- iv. Each Qualified Valuation Expert shall be required to deliver its respective valuation report to the City and Allo within ninety (90) days following the expiration of the Initial Period, Secondary Period or the Extension Period, as applicable.

- v. Each party shall reasonably cooperate with the Qualified Valuation Expert(s) and provide the Qualified Valuation Expert(s) access to books, records, and any other relevant information that the valuation expert deems relevant and necessary to the valuation process.
- vi. Except as provided in Subsection (iii) above, all costs and expenses of the valuation expert shall be borne solely by the City.
- vii. Upon completion of the valuation, each Qualified Valuation Expert shall send a written report of the valuation (“Valuation Report”) to each party.
- viii. After receiving a copy of the Valuation Report(s), the parties will work in good faith to negotiate and execute all documents required to consummate the transaction.

c. Appraisal Valuation. Allo and the City agree that any Qualified Valuation Expert undertaking an appraisal pursuant to this Section shall value Allo’s Subscribers, Drops and Equipment in accordance with the 3.b.vi.i – 3.b.vi.iii below.

- i. Subscribers. The value of Allo’s Subscribers shall be equal to the number of residential Subscribers multiplied by the average annual revenue per Allo residential Subscriber in the City multiplied by three (3); plus the number of commercial Subscribers multiplied by the average annual revenue per Allo commercial Subscriber in the City multiplied by ten (10).

The following formula shall have the same meaning as the formula stated above:

$$\begin{aligned} & (\text{Number of residential Subscribers in the City} \times \text{average annual revenue per Allo residential Subscriber in the City} \times 3) \\ & + \\ & (\text{Number of commercial Subscribers in the City} \times \text{the average annual revenue per Allo commercial Subscriber in the City} \times 10) \end{aligned}$$

- ii. Drops. The value of Allo’s Drops shall be equal to the remaining capitalized costs of each Drop based on a twenty-five (25) year useful life, or the most current Technology

Forecasting Group (“TFG”) recommended useful life, whichever is greater.

- iii. Equipment. The value of Allo’s CPE and any other Allo equipment purchased shall equal to the remaining capitalized costs of each piece of equipment, based on a ten (10) year useful life, or the most current TFG recommended useful life, whichever is greater.

In the event City exercises its right to purchase Allo’s interest in the FMFN pursuant to this Section, City waives Allo’s obligation to pay Lease Payments for the remaining Initial Term or Renewal Term, as applicable. If City’s Purchase Option Notice to Allo is received prior to the end of a given month, Allo’s Lease Payment for that month will be prorated based on the date of the Purchase Option Notice. The total sum of Lease Payments waived pursuant to this section shall be reserved as a credit towards the purchase price at the closing date of the purchase.

From the date of the Purchase Option Notice until the closing date of the purchase, Allo shall use Commercially Reasonable efforts to continue its operations in the City consistent with its past business practices and management practices prior to the Purchase Option Notice.

b. Lease Payment; Reporting.

- i. **Lease Payment.** Allo shall pay the City an amount per month that ensures Total Cost recovery to the City over the period of the Initial Term (“Lease Payment”). The parties will agree on a Lease Payment calculated as follows, the Total Cost divided by 20 divided by 12. In no event will the Lease Payment exceed twenty one thousand dollars (\$21,000.00) per month. If Lease Payments exceed twenty one thousand dollars (\$21,000.00) per month, Allo shall have the option to terminate this Agreement at any time upon written notice to the City. Allo and the City agree the Parties will execute an amendment stating a Lease Payment once the amount of the Lease Payment is ascertained.

Commencing twelve (12) months following the date that fifty percent (50%) of the FMFN has completed Light Testing, Allo shall Lease Payments to the City in accordance with this Section. To the extent such date falls after the first day of a given month, the Lease Payment to City shall be prorated on a daily basis, based on a thirty (30) day month for such fractional month.

If Allo is using the FMFN but completion of the FMFN has not been achieved after twenty-four (24) months from the first date of use, Allo will pay a Prorated Lease Payment, calculated monthly until the FMFN is completed. The Prorated Lease Payment will equal to the number of

Premises that have passed Light Testing divided by the total number of Premises in the City.

The Lease Payment may be adjusted in writing agreed upon by both Parties in the event that the FMFN is expanded to include additional service areas not included in the initial FMFN as reflected in Exhibit A. In the alternative, the Parties may negotiate a separate lease agreement for the use of the expanded FMFN.

- ii. **Payment Terms.** Lease payments described in this Section and not subject to a good faith dispute, and of any other fees or charges under the Agreement, shall be due within 30 days of Allo's receipt of a City invoice. In the event that any payment not subject to a good faith dispute required by this Agreement is not actually received by the City on or before such date, interest on such payment shall accrue from such date at a rate equal to the prevailing prime rate of interest for commercial loans as published in the "Money Rates" section of the *Wall Street Journal* or as published by a comparable rate source to be determined by the City should rate not be published by the *Wall Street Journal*, provided, in no case to exceed six percent (6%). Such interest shall be compounded.

All payments shall be made to the City of Fort Morgan via ACH electronic funds transfer.

In the event there is a good faith dispute relating to the payment of any amount due under this Agreement ("Dispute"), the Party claiming the Dispute will notify the other Party of the Dispute in writing, then Parties will meet to discuss the Dispute and attempt to resolve it in good faith. If the Dispute is not resolved within fourteen calendar (14) calendar days of the date of the Dispute notice, then the Dispute will be escalated to senior members of the Parties' respective organizations. If the Dispute remains unresolved for an additional fourteen (14) calendar day period after the Dispute has been escalated to the senior members of the respective organizations, then the Dispute will be subject to mediation. The parties shall mutually agree on a qualified mediator, no later than fourteen calendar (14) days after a Party submits a written request for mediation to the other Party. Mediation shall take place in either Lincoln, Nebraska or Denver, Colorado. Arrangements reached in mediation shall be enforceable as settlement agreements in any court have jurisdiction thereof. If no arrangement is reached during mediation, the Dispute shall be subject to the Dispute Section 28 of this Agreement. For as long as the Dispute unresolved, it shall not be considered a breach of this Agreement.

iii. **Reporting.** On an annual basis, Allo shall provide to City a written report including at least the following information:

- A. The total number of Subscribers activated by Allo or a contracted Service Provider during the previous year;
- B. The total number of Subscribers deactivated by Allo or a contracted Service Provider during the previous year;
- C. The net Subscriber count, as of the last day of each year;
- D. Any other information that the City may reasonably require.

4. **Term and Termination.**

- a. **Term; Term Renewal.** This Agreement is effective on the Effective Date, but will the Initial Term will not commence until Allo makes its first Lease Payment pursuant to Section 3.b.i above. This Agreement shall continue for a term of twenty (20) years from the date upon which Lease Payments become due pursuant to section 3.b.i. above, (“Initial Term”), unless terminated sooner under the provisions of Section 4.b of this Agreement or by operation of Section 3.a of this Agreement. The Parties may renew this Agreement for one (1) additional ten (10) year extension (“Renewal Term 1”), and then a second additional ten (10) year extension after Renewal Term 1 (“Renewal Term 2”). Renewal Term 1 and Renewal Term 2 will be collectively referred to as a “Renewal Terms”. If Allo submits its written request to renew this Agreement no less than six months prior to the expiration of the Initial Term, or any Renewal Term, as applicable, City shall not withhold its approval of such renewal unreasonably subject to the purchase options expressed in 3.a. above. The decision to grant or deny a renewal request shall be based upon the following standards:
 - i. Allo’s compliance with the requirements of this Agreement;
 - ii. Allo’s compliance with applicable federal, state and local laws, rules and policies.

If written approval from the City is not received by the expiration date of the Initial Term or any Renewal Term, Allo’s rights under this Agreement will automatically extend for an additional Renewal Term of 10 years.

- b. **Termination.** Either Party may terminate this Agreement in the event of a material breach of this Agreement by the other Party, consistent with and subject to the procedures and remedies for breach set forth in Section 5.

- c. **Effect of Termination.** In the event of termination of this Agreement, Allo shall immediately relinquish and quit all claims of right to use the Assets as set forth in this Agreement. All other rights and obligations of the Parties set forth under this Agreement shall cease immediately, except for rights and obligations specifically designated to survive termination, as set forth in this Section. After the effective date of termination, there shall be a six (6) month transition period in which Allo and the City will cooperate in good faith to wind down Allo's activities on the FMFN ("Termination Transition Period"). Further, during the Termination Transition Period, the Parties agree as follows:
 - i. **Purchase of Equipment.** Allo shall not remove or deactivate any equipment during the Termination Transition Period for any reason, and during such period, City shall rent the equipment from Allo at the then fair market rate not to exceed the Lease Payments. In addition, the City shall have the option to purchase such equipment from Allo at a price equal to the formula found in Section 3.a.vi.c.iii by providing Allo written notice of its intent to purchase equipment no later than thirty (30) days prior to the expiration of the Termination Transition Period. If the City fails to provide notice of its intent to purchase equipment, Allo, in its sole and absolute discretion, shall have the right to dispose of the equipment in any manner upon the expiration of the Termination Transition Period.
 - ii. **Drops and Subscribers.** No later than thirty (30) days prior to expiration of the Termination Transition Period, the City shall be required to purchase Allo's Subscribers and Drops for a purchase price equal to the formula set forth in Sections 3.a.vi.c.i and 3.a.vi.c.ii, as applicable.
 - iii. **Lease Payments.** Upon the effective date of termination, Allo's obligation to pay Lease Payments to the City shall terminate. Allo shall have the right to receive all revenues generated from Subscribers and any commercial activities using the FMFN until the Termination Transition Period expires.

5. Default.

- a. **Default.** A Default under this Agreement shall occur if (a) a Party materially breaches this Agreement, (b) such breach is not excused by any provision of this Agreement, and (c) such breach continues un-remedied for a period of sixty (60) days following receipt of written notice from the non-breaching Party. If the breach by its nature cannot be cured within sixty (60) days and the breaching Party within that time has commenced its cure, there shall be no Default as long as the Party diligently continues such cure to completion.
- b. **Default Rights.** Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this Agreement, to terminate this Agreement. Unless otherwise stated in this Agreement, nothing

in this Agreement shall preclude either Party from also pursuing other available remedies, including damages, injunctive relief, and costs (including reasonable attorneys' fees).

c. **Additional Termination Rights.** Notwithstanding 5.a above, the City's failure to complete the FMFN in accordance with the table below will also be deemed a material breach under this Agreement. If City has not met the FMFN Completion Percentage milestones below by the specified date, Allo shall have the right to terminate this Agreement immediately on such date.

Date	FMFN Completion Percentage
January 1, 2019	25% Complete
January 1, 2020	85% Complete

6. **Agreement Contingency.** In the event this Agreement is not executed on or before January 15, 2018, Allo may elect to withdraw from negotiations and the Agreement without penalty or liability to the City.

7. **City's Obligations.**

a. **FMFN Network Construction and Maintenance.**

- i. The City will finance, develop engineering plans (with Allo's assistance as described below), contract for construction, implement, and maintain the physical plant of a FMFN passing every feasible Premises in the area of the City of Fort Morgan as reflected in Exhibit A (which may include areas that may be annexed by Fort Morgan in the future upon mutual agreement of the Parties), of which the Assets leased to Allo under this Agreement shall be a part of the FMFN.
- ii. The City shall be responsible for acquiring and maintaining throughout the Term, at its expense, all applicable Authorizations relating to the construction and maintenance of the Assets and the FMFN.

8. **FMFN Construction.**

- a. **Determination of Scope.** The scope and timing of FMFN construction shall be determined by the City, in cooperation with Allo.
- b. **Design.** Except with respect to Non-Essential Design Services, Allo shall perform all work required to design the FMFN at no cost to the City. Allo shall reasonably cooperate with the City in all aspects of the design process. The design of the Non-Essential Design Services shall be performed pursuant to a separate statement of work executed by the Parties at a cost not to exceed Allo's cost plus a ten percent (10%) markup.

- c. **Maintenance and Repair.** The City shall be responsible for its portion of physical Maintenance relating to the FMFN, including Assets, as further described in Exhibit D. Allo shall pay City twenty-five cents (\$0.25) per Allo Subscriber per month into a fund to be administered by the City and used exclusively to fund FMFN maintenance. In Allo's sole and absolute discretion, and in accordance with applicable laws, Allo shall have the right to charge Subscribers and Service Providers for payments required by this Section in the form of a Maintenance Surcharge added to the Allo Subscriber's bill or Service Provider's bill.
- d. **Access to FMFN by Allo.** City shall provide Allo with access to FMFN plant and enclosure facilities for installation, customer connections, maintenance and troubleshooting of Allo services and equipment, and for splicing purposes. City shall allow Allo personnel or its agents reasonable direct ingress and egress to City property within which FMFN and any Assets have been placed, including fiber plant and enclosure facilities, and shall permit Allo personnel or its agents to access such property at such times as may be required to install, test and repair Allo's equipment. Allo personnel and its agents shall, while on such property, comply with all industry standard rules, regulations, and procedures, and other requirements communicated to Allo by City including security requirements and, where required by government regulations as disclosed by City.
- e. **Light Testing.** Upon request, Allo will provide City with periodic reporting on Light Testing progress.

9. Allo Operational Service Obligations.

- a. **General.** Throughout the Term of this Agreement, and as described more specifically in this Section, Allo will operate in two roles:
 - i. As Network Operator of FMFN, using Assets to configure and activate a community fiber network, and provide data/IP transport services to unrelated Service Providers on a wholesale basis; and
 - ii. As a Service Provider, providing retail Services to residences, businesses, and governmental entities connected to the FMFN.
- b. **Network Operator.** As Network Operator of the FMFN, and as may be more fully described elsewhere in this Agreement, Allo shall, at its expense:
 - i. Procure, install, configure, operate, monitor, maintain, and upgrade, as needed all equipment necessary to activate or "light" the FMFN, excluding the City's maintenance and repair obligations as outlined in Exhibit D. All such equipment shall remain the property of Allo during the Term and following contract.
 - ii. Locate and exclusively operate any plants connected to the FMFN.

- iii. Offer and provide data transport services to qualified Service Providers;
- iv. Maintain, repair and upgrade as needed all of Allo's equipment, including cabling to and between such equipment inside enclosures;
- v. For business, government and residential connections to the FMFN, be responsible for and maintain cabling Allo installs to provide Service to Subscribers from Premises to the FMFN;
- vi. Execute all necessary splicing tasks between equipment and cabling owned by Allo, and the FMFN;
- vii. Perform all locating services for the underground portion of the FMFN at no charge to City.
- viii. Acquire and maintain, at its expense, all applicable Authorizations relating to the installation and use of Assets and FMFN, if such Authorizations are not provided under this Agreement.

c. **Premises Construction, Installation and Equipment.** As Network Operator, Allo shall procure, install, configure, monitor, maintain, and upgrade as needed any and all Customer Premises Equipment (including an ONT) as necessary to connect the Premises to the FMFN, enabling the provision of retail Services by Allo or an unaffiliated Service Provider. Allo may pass on such cost to the customer or to a Service Provider in unusually high cost scenarios, such scenarios determined in Allo's sole and absolute discretion.

- i. **Business, Residential and Governmental Locations.** Allo will be responsible for any and all wiring and construction necessary to connect Premises to the FMFN.
- ii. **Ownership.** Any connection and Customer Premises Equipment used to receive, route, or process a Service (such as a set-top box or in-home router) leased or sold by Allo remains the property of Allo or the purchasing customer, as applicable under Allo's Terms of Use with Allo's Customer.

d. **Authorizations.** Allo shall also obtain and maintain at its expense throughout the Term, and make copies available to the City upon request, all necessary Authorizations relating to its activities under this Agreement.

e. **FTTP Service Provider.**

- i. **Retail Gigabit Broadband Internet Access Service.** Allo shall offer residential and business broadband Internet access Service via the FMFN, including an initial speed tier of up to 1 gigabit per second (“Gbps”), to all businesses and residences passed within three hundred fifty feet (350’) by the FMFN, as long as such delivery to businesses and residences passed within three hundred fifty feet (350’) is Commercially Reasonable for Allo.
- ii. **Voice and Video Services.** Allo shall make Voice and Video Services available.
- iii. **Relating to Other Agreements.** Any agreements or Authorizations necessary for provision of additional Services, in particular including any franchise agreement, shall be executed separately from and shall in no way encumber this Agreement.
- f. **Performance Metrics and Standards.** Allo shall meet the performance metrics and standards set forth in Exhibit D.
- g. **Allo Service Fees.** Fees charged for Services shall be determined by Allo according to industry standard practices, provided, Allo’s fees for Services will be reasonably comparable to fees for substantially similar communities serviced by Allo.

10. Allo Customer Service Obligations.

- a. **Subscriber Relationship.** As a Service Provider, Allo, and not the City, shall be responsible for all aspects of the customer relationship involving Subscribers to retail Services provided by Allo, as set forth in this subsection.
 - i. **Subscriber Customer Support.** Allo and not the City, shall be responsible for receiving, servicing, and resolving directly all requests for support from Allo’s Subscribers, including but not limited to technical, billing, and sales and marketing inquiries. Under no circumstances shall Allo direct any Subscriber to contact the City for customer support.
 - ii. **Billing and Collections.** Allo shall be responsible for all invoicing, billing and collection activities relating to its Subscribers.
 - iii. **Sales and Marketing.** Allo shall be responsible for any and all sales and marketing activities relating to Allo’s Services, including but not limited to pricing of services, description of services, and promotional activities.

- iv. **Bad Debts.** Allo shall be responsible for any and all bad debts associated with its Subscribers.

11. **Allo Community Engagement.** In furtherance of the mission of expanding fiber optic deployment and use in Fort Morgan, the Parties agree to undertake certain activities designed to engage and educate the public as to construction timelines and phases, and the benefits and capabilities of the FMFN. Such activities shall include, but shall not be limited to, the following:

- a. **Education.** In furtherance of its mission to expand fiber optic deployment and use in Fort Morgan, the City will work with Allo to educate residents and businesses about construction phases.
- b. **Economic Development.** In furtherance of its mission to expand economic activity in Fort Morgan, Allo will work the City to develop, expand and attract businesses to Fort Morgan.

12. **Relocation.**

- a. **Emergency Relocations.** Upon prior reasonable notice to Allo, City shall have the right at any time to remove or relocate any pole, wire, cable, or structure that presents an imminent danger to life or property at City's sole discretion, provided that City shall restore such pole, wire, cable or structure as soon as Commercially Reasonable and bear all costs associated with such removal or relocation.
- b. **Relocation for City's Convenience.** City shall have the right, with at least ninety (90) days' notice to Allo, to remove or relocate any pole, wire, cable, or structure at City's sole discretion and for City's convenience, provided, City will be responsible for both City and Allo's costs of any such relocation.
- c. **Minimizing Interruptions.** During any planned relocation, City will use Commercially Reasonable efforts, in cooperation with Allo, to minimize (a) any material interruption to Allo's enjoyment of the Agreement; (b) any material interfering with the FMFN; and (c) any material interference on Allo's ability to carry traffic on the FMFN with the equipment used on the FMFN before the relocation.

13. **Use of Subcontractors.** Either Party may subcontract for testing, maintenance, repair, restoration, relocation, or any other operational and technical services it is obligated to provide pursuant to this Agreement. Both Parties will remain responsible for the

obligations under this Agreement delegated to its respective contractors.

14. Indemnification; Indemnification Procedures. To the extent allowed by Colorado Law and subject to the Colorado Governmental Immunity Act, each Party, on behalf of itself and its affiliates, directors, officers, employees, agents, successors, and assigns (“Indemnitor”) agrees to indemnify, defend, protect and hold the other Party and its directors, officers, directors, employees, agents, successors, and assigns (“Indemnitee”) harmless from and against any claims, suits, actions or damages brought or asserted by a third party of any kind or character (collectively “Claims”) and from and against any liability, losses, fines, judgments, costs and expenses (including reasonable attorney, accountant and expert fees) arising out of any Claims incurred by any Indemnitee (a) because of the death of any person, or any injuries or damage received or sustained by any persons or property, which in whole or in part arises on account of the negligent acts or omissions or willful misconduct of the Indemnitor in the performance or non-performance of its obligations or exercise of its rights under this Agreement, including any material violation by Indemnitor of any law or permit applicable thereto; (b) under the Workers’ Compensation laws asserted by any other person providing goods or services for or on behalf of any of the foregoing in connection with this Agreement; or (c) arising out of, caused by, related to, or based upon, a contractual or other relationship between such claiming Party and the Indemnitor, as it relates to the use of Assets or FMFN.

The Indemnitor shall defend the Indemnitee in any proceeding alleging the third party claims listed above, at Indemnitor’s sole cost and expense. The Indemnitor will have the option to select and provide legal counsel for that defense. If Indemnitee wants additional counsel of its choosing, the costs and expenses of the additional counsel will be Indemnitee’s responsibility, and Indemnitor will have no obligation to pay additional counsel. Indemnitor’s counsel will lead, direct and manage the litigation, and will ensure Indemnitee’s additional counsel receives adequate information to monitor the litigation.

15. Warranties and Disclaimers.

a. Representations and Warranties. By execution of this Agreement, each Party represents and warrants to the other that: (a) the Party is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization; (b) the Party has full right and authority to enter into and perform this Agreement in accordance with its terms (in the case of the City, it’s Opt-Out Vote pursuant to Colorado Senate Bill 05-152 provides the City with authority to enter into and perform in accordance with its terms); (c) the Party’s execution, delivery, and performance of this Agreement will not conflict with, violate or result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or any arbitrator, applicable to such Party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such Party, (iii) any material agreement to which it is a Party, or (iv) any instrument to which such Party is or may be bound or to which any of its material properties or assets is subject; (d) the Party’s execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate

action; (e) that the signatories for such Party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement; (g) the Party has not received any currently effective notice of any material default; and (h) the Party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing.

b. Warranty Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE CITY AND ALLO MAKE NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF ITS FIBERS OR ASSETS, OR ANY SERVICE PROVIDED OR DESCRIBED IN THIS AGREEMENT, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

16. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION AS APPLICABLE, ECONOMIC LOSS OR LOST BUSINESS OR PROFITS, INTERRUPTIONS OF SERVICE, OR ANY DELAY, ERROR OR LOSS OF DATA OR INFORMATION, ARISING IN ANY MANNER OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT AND A PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY), ALL CLAIMS FOR WHICH ARE HEREBY SPECIFICALLY WAIVED. Allo's maximum aggregate liability under this Agreement shall not exceed three million dollars (\$3,000,000.00). Nothing contained within this Agreement is intended to be a waiver of the City's immunity pursuant to the Colorado Governmental Immunity Act.

17. Confidentiality.

a. Non-Disclosure of this Agreement. Neither Party may disclose the existence of or terms of this Agreement to the public until both Parties agree upon a time and manner for a formal publicity statement. All sharing of information concerning this Agreement shall be only with those individuals deemed necessary to carry out the terms of this Agreement, except as required for disclosures required by law, or to incorporate requirements of this agreement into its own agreements with Customers and Service Providers.

b. Confidential Information. If either Party provides or has provided confidential or

proprietary information (“Confidential Information”) designated as such to the other Party, the receiving Party shall hold such information in confidence and shall afford it the same care and protection that it affords to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party, except as otherwise provided below. All Confidential Information, unless otherwise specified in writing, shall remain the property of the disclosing Party and shall be used by the receiving Party only for the intended purposes set forth in this Agreement. Except as otherwise required by law, after the receiving Party’s need for Confidential Information has expired, or upon the reasonable request of the disclosing Party, or promptly following the termination or expiration of this Agreement, the receiving Party shall destroy or return to the disclosing Party all Confidential Information, including all copies of such information, and all notes, summaries, or other writing reflecting Confidential Information. The receiving Party shall not reproduce Confidential Information, except to the extent reasonably necessary to perform under this Agreement, or as otherwise may be permitted in writing by the disclosing Party.

- c. **Exceptions.** The foregoing provisions of this section shall not apply to (i) any required disclosures to any government authority, (ii) disclosures required under the Freedom of Information Act and/or applicable state or local government open records laws, (iii) any Confidential Information or any provisions of this Agreement which becomes publicly available, other than through the Party claiming this exception, or is required to be disclosed by law, (iv) Confidential Information that is independently developed by the receiving Party without breach of any obligation of confidentiality; (v) Confidential Information that becomes available to the Party claiming this exception without restriction from an unrelated third Party, or becomes relevant to the settlement of any dispute or enforcement or defense of either Party’s rights under this Agreement, provided that appropriate protective measures shall be taken to preserve the confidentiality of such Confidential Information to the extent permissible in accordance with such settlement or enforcement process; (vi) disclosures of this Agreement to any proposed permitted assignee provided that each such proposed assignee agrees to be bound by confidentiality obligations no less stringent than those set forth herein; or (vii) disclosures by either Party of the general physical route of the FMFN or Assets for marketing and sales-related purposes.
- d. **Survival.** The confidentiality provisions in this section shall survive expiration or termination of this Agreement.

18. **Intellectual Property.** Nothing in this Agreement shall be construed as a grant of any right or license under any copyrights, inventions, patents, trade secrets or other intellectual property now or later owned or controlled by Allo or the City, and nothing in this Agreement shall be construed as granting any right, title or interest in the other Party’s trademarks, trade names, servicemarks or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks of the other Party without

prior written permission.

19. **Taxes.** Each Party shall be responsible for paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement.
20. **Insurance.** During the term of this Agreement, each Party shall maintain a policy of comprehensive liability insurance or other coverage compliant with the Colorado Governmental Immunity Act, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of Colorado, covering use and activity contemplated by this Agreement with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate with Five Million Dollars (\$5,000,000.00) umbrella coverage. Each Party shall name the other Party, including its officers, employees, and agents, as Additional Insureds for the said purpose and use of this Agreement. Each Party shall also maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of Colorado where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to either Party upon the other Party's request.
21. **Assignment.** This Agreement will not be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. However, Allo shall have the right to assign this Agreement or delegate any obligation of this Agreement to any Affiliate of Allo. This Agreement shall be binding on and inure to the benefit of the Parties and their respective permitted successors and assigns. In the case of any assignment, sale, transfer or disposition requiring the other Party's consent or as permitted under this Agreement, the assignee, purchaser or transferee shall execute and deliver a written agreement reasonably acceptable to the non-assigning Party in which the assignee, purchaser or transferee agrees to be bound by all of the terms and conditions of this Agreement to the extent of the rights and obligations assigned, sold or transferred.
22. **Audit Rights.** Upon reasonable prior written notice to the other Party, and no more than once in a contract year, in coordination with a Party's management, the other Party may perform or arrange to have audits performed to verify a Party's compliance with this Agreement. All audits will be performed at the auditing Party's sole expense and during the other Party's normal business hours.
23. **Relationship of the Parties.** This Agreement is not intended to create, nor shall it be construed to create, any partnership, joint venture, or employment relationship between the City and Allo, and neither Party shall be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing. Each Party covenants that it shall not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be expressly authorized in writing by the other Party. The City and Allo, in performing any of their obligations, shall be independent contractors or independent Parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions of this Agreement.

24. Severability. If any provision of this Agreement is or becomes invalid or unenforceable under applicable law, that provision or part will be deemed removed without affecting in any way the remainder of this Agreement.

25. Force Majeure.

- a. **Force Majeure Events.** Notwithstanding any other provision of this Agreement, neither Party shall be responsible to the other Party, or for any loss or damage, resulting from any event or circumstance beyond the reasonable control of the Party, including but not limited to an earthquake, hurricane, fire, flood, lightning, sinkhole or other forces of nature, acts of war, terrorism (including cyberterrorism), or civil unrest, strikes, lockouts or other labor unrest, or legal order, government action or application of laws, regulations or codes (“Force Majeure Event”).
- b. **Response to Force Majeure Events.** A Party whose performance is impacted by a Force Majeure Event shall provide reasonable notice to the other Party and shall make Commercially Reasonable efforts to minimize the impact of the Force Majeure Event on its performance.
- c. **Suspension Pending Force Majeure.** The deadline by when a Party must perform an obligation under this Agreement, shall be postponed by the period of time by which the Party’s ability to perform that obligation is materially prevented or interfered with by a Force Majeure Event.

26. Eminent Domain. Should any portion of the Assets, or any other interest belonging to the City or to Allo with respect to this Agreement be acquired by condemnation, eminent domain, nationalization or expropriation (each of which, a “Taking”) by any government authority or other person possessing such power, then each Party will be excused from performance of its obligations to the extent of the Taking, as provided in this Section. In the proceeding for any Taking or an involuntary discontinuance of the use of the Assets in anticipation of an imminent Taking, the interests of City and Allo in the affected portion will be severed. The City and Allo each may claim and receive the portion of the total award attributable to its interest in the Assets, and the City and Allo each may claim damages payable on account of the Taking and the relocation or re-routing expenses relating to the Assets.

27. Notices. All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by facsimile transmission with confirmation of delivery, electronic mail with confirmation of delivery receipt, or sent by overnight commercial delivery service or certified mail, return receipt requested. Notice shall be deemed to have been given on the date of the transmission and receipt of facsimile or electronic mail transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt when addressed as follows:

If to Allo:

Allo Communications, LLC
c/o Brad Moline, President
121 S. 13th St., Ste 100
Lincoln, NE 68508

With a copy to:

Allo Communications, LLC
c/o General Counsel
121 S. 13th St., Ste 100
Lincoln, NE 68508

If to City:

City of Fort Morgan
c/o City Manager
P.O. Box 100
Fort Morgan, CO 80701

With a copy to:

City of Fort Morgan
c/o City Attorney
P.O. Box 100
Fort Morgan, CO 80701

28. **Dispute Resolution; Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without regard to any conflicts of law provisions. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT. Venue for any dispute arising from this Agreement shall be located in Morgan County District Court or Federal District Court in Denver, Colorado.
29. **Headings.** Headings and captions of this Agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Agreement's terms or be used to interpret or assist in the construction of this Agreement.
30. **Waiver.** The waiver or failure of either Party to exercise in any respect any right provided for in this Agreement will not be deemed a waiver of any further right under this Agreement.
31. **Counterparts.** This Agreement may be executed in any number of counterparts. Each

counterpart will be deemed an original, but all counterparts together will constitute the same instrument.

32. **Compliance with Laws.** Each Party will comply with all federal, state and local laws and regulations during the Term of this Agreement.
33. **Entire Agreement.** This is the entire and exclusive statement of the Agreement between the Parties including all duly executed exhibits, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the Services or any other provision of this Agreement but is not intended to grant or alter the terms of any Franchise Agreement that may be required or pursued by the Parties.

ALLO COMMUNICATIONS, LLC

By: 

Brad Moline

Title: President

CITY OF FORT MORGAN

By: 

Ronald Shaver

Title: Mayor

Date: _____

Date: _____

REVIEWED BY CITY ATTORNEY

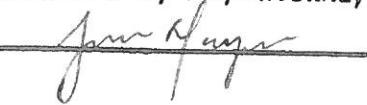


EXHIBIT A

PLANS

[Insert]

EXHIBIT D

CITY MAINTENANCE OF ASSETS

1. Maintenance.

- a. **Scheduled Maintenance.** Routine maintenance and repair of the Assets (“Scheduled Maintenance”) will be performed by or under the direction of the City as necessary to keep the Assets in good operating condition, at Allo’s reasonable request or at the City’s reasonable discretion, all at City’s expense. Scheduled Maintenance will commence upon the Effective Date, and includes: (i) inspection of the FMFN and other Assets on a regularly scheduled basis, which shall be no less than once each calendar quarter; (ii) appropriate routine preventative maintenance on the Assets, minimally in accordance with industry standards; (iii) maintenance of an inventory of spare cable and other equipment, together with maintenance equipment, at strategic locations to facilitate timely restoration along the Route; and (v) non-routine maintenance, repair and replacement of the FMFN and other Assets arising out of City’s or City’s agent(s)’s fault, negligence, or misconduct.
- b. **Unscheduled Maintenance.** Non-routine maintenance and repair of the FMFN and other Assets which is not included as Scheduled Maintenance (“Unscheduled Maintenance”) will be performed by or under the direction of City and at the City’s expense. Unscheduled Maintenance will commence upon the Effective Date, as provided in the Agreement. Unscheduled Maintenance shall consist of Unscheduled Maintenance in response to: (i) notification by Allo or any third party of any failure, interruption or impairment in the operation of the Assets, or any event imminently likely to cause the failure, interruption or impairment in the operation of the Assets; or (ii) any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the Assets, each to the extent same is not included in the definition of Scheduled Maintenance.

If known to Allo, Allo shall promptly report the need for Unscheduled Maintenance to the City in accordance with escalation procedures provided in Section 3 below. The City will log the time of any Allo report, verify the problem and dispatch personnel to take corrective action.

Upon request, Allo will provide emergency fiber restoration services (fiber replacement and splicing) to the City, at Allo’s cost of service, plus a ten percent (10%) markup.

2. **Response.** The City’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. The City will have its first maintenance employee (or contracted agent) at the site requiring emergency Unscheduled Maintenance activity within four (4) hours after the time the City becomes aware of an event requiring Unscheduled Maintenance due to an emergency situation.

3. Cooperation and Coordination.

- a. **Escalation List.** The Parties each shall use the escalation list of the other Party, as updated from time to time by the applicable Party pursuant to the escalation list or other notice provision, to report and seek immediate initial redress of exceptions noted in the performance of a Party in meeting maintenance service objectives and regarding all other aspects applicable to FMFN operations. The notice list numbers are 24 hour, 7 day per week emergency notification numbers. The Escalation List will be mutually agreed upon by the parties throughout the Term of the Agreement.
- b. **Performance.** In performing its services under this Exhibit, the City will take workmanlike care to prevent impairment to the signal continuity and performance of the Assets. The precautions to be taken by City will include prompt notifications to Allo. In addition, the City will reasonably cooperate with Allo in sharing information and analyzing the disturbances regarding the Assets. In the event that any Scheduled Maintenance or Unscheduled Maintenance requires a traffic roll or reconfiguration involving Assets, then Allo shall, at City's request, make such personnel of Allo available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with the City in performing such maintenance as required of the City under this Agreement.
- c. **Notification.** The City will use Commercially Reasonable efforts to notify Allo at least ten (10) days prior to the date of any Scheduled Maintenance that may result in an outage or degradation in the use of Assets, and as soon as possible, but in no event later than eight (8) hours after becoming aware of the need for Unscheduled Maintenance. Allo may be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this right or the exercise thereof does not interfere with the City's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, the City will use Commercially Reasonable efforts to notify Allo at the City's earliest opportunity, but in no event less than forty-eight (48) hours after cancellation, and will comply with the above-provisions for any re-scheduled activity.

4. Facilities.

- a. **Condition of Assets.** The City will maintain the FMFN and the Assets in a manner which will permit Allo's use and operation, in accordance with the terms and conditions of the Agreement, including the Performance Metrics
- b. **Unscheduled Maintenance Communication.** The City will maintain sufficient capability to teleconference with Allo during Unscheduled Maintenance in emergency situations in order to provide regular communications during the repair process.

- c. **Scheduled Maintenance Timing.** It is the City's intention, and the City represents and warrants, that maintenance work performed by City on the Assets will not normally result in interruptions or defects. Scheduled Maintenance which is reasonably expected to produce any signal discontinuity or jeopardize Allo's use of the FMFN and other Assets in any material respect generally will be scheduled after midnight and before 5:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for Scheduled Maintenance weekends as mutually agreed by Allo and the City. The City's intent is to avoid major system work on the first and last weekends of the month and high-traffic holidays.
5. **Restoration.** The City will respond to any interruption of service or a failure of the Assets as quickly as possible, but in no event later than two (2) hours after the City becomes actually aware of the failure or interruption, in accordance with the procedures set forth herein. The City shall address the problem by working diligently with Allo to enable restored service as soon as technically practical and Commercially Reasonable, in accordance with the procedures set forth herein. In order to accomplish such objective, Allo acknowledges that such repairs may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Unscheduled Maintenance, the City will commence its planning for permanent repair, and thereafter promptly notify Allo of such plans, and shall use all Commercially Reasonable efforts to implement such permanent repair as soon as possible thereafter.

APPENDIX 1

MAP OF RING 1

APPENDIX 2

MAP OF RING 2