



# City of Grand Island

Tuesday, September 14, 2021

Council Session

## Item I-2

**#2021-235 - Consideration of Approving Cable Television  
Franchise Agreement with ALLO Grand Island, LLC**

Staff Contact: Jerry Janulewicz

## **Council Agenda Memo**

**From:** Jerry Janulewicz, City Administrator

**Meeting:** September 14, 2021

**Subject:** ALLO of Grand Island LLC Franchise Agreement

**Presenter(s):** Stacy Nonhof, Interim City Attorney

### **Background**

ALLO Grand Island LLC is seeking to offer cable television, internet, and telephone services within the City of Grand Island via a fiber cable system located within the public rights-of-way and public utility easements. ALLO Grand Island LLC is a Nebraska limited liability company in good standing with the Nebraska Secretary of State. It is affiliated with a group of limited liability companies that currently offer services or have services planned for the following Nebraska locations: Ashland Lakes, Alliance, Bridgeport, Columbus, Fremont, Gering, Hastings, Imperial, Kearney, Lincoln, Norfolk, North Platte, Ogallala, Scottsbluff, Valentine, and Wayne. They also operate systems in Colorado. A franchise agreement with the City of Grand Island is required to permit ALLO to occupy the City's public rights-of-way and public utility easements.

### **Discussion**

The proposed franchise agreement provides for a non-exclusive right to occupy public rights-of-ways and utility easements for the location of ALLO's facilities and to operate a cable television service within the City of Grand Island. The terms of the proposed agreement are similar to the terms of the current franchise agreement between the City and Charter Communications, as that agreement requires any additional franchise agreement must contain substantially similar terms and conditions which do not provide more favorable terms or conditions than those required of Charter Communications, and the material provisions of any such agreement must be competitively neutral and nondiscriminatory and reasonably comparable to those contained in the Charter Communications franchise agreement.

Like the Charter Communications agreement, the proposed ALLO agreement provides for a 5% franchise fee, the maximum allowed by law, and requires it to provide two government access channels for city programming. As with Charter Communications and other firms attaching to City's utility poles, ALLO will pay an annual utility pole attachment fee at the rate established by the City's fee schedule.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand.  
The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends approval of the Franchise Agreement with ALLO Grand Island LLC.

## **Sample Motion**

Move to approve the resolution.

CABLE TELEVISION FRANCHISE AGREEMENT

FOR THE

CITY OF GRAND ISLAND, NEBRASKA

AND

ALLO GRAND ISLAND, LLC

## AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Grand Island, Nebraska, (hereinafter referred to as the “City”) and ALLO Grand Island, LLC (hereinafter referred to as the “Cable Operator”).

WHEREAS, the City, pursuant to Chapter 9 of the Grand Island City Code, is authorized to grant one (1) or more nonexclusive, revocable, agreements to construct, reconstruct, operate, and maintain a cable communication system within the City; and

WHEREAS, pursuant to Chapter 9 of the Grand Island City Code and in accordance with Section 626 of the Cable Communications Policy Act of 1984, the Cable Operator is agreeable to providing such services to the City and has made application to the City for renewal of its existing agreement; and

WHEREAS, the City finds that the Cable Operator has substantially complied with the material terms of the existing agreement under applicable laws, and that the financial, legal and technical ability of the Cable Operator is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, the City Council wishes to grant to the Cable Operator and the Cable Operator wishes to accept the terms and conditions herein set forth for the use of City owned rights-of-way, of City owned easements, and of rights-of-way and access easements dedicated and accepted for public use by the City in installing and operating a Cable System in the City.

WHEREAS, the City, after public proceedings and due evaluation, has determined that it is in the best interest of the City and its residents to grant a new franchise agreement to the Cable Operator for the term herein provided.

WHEREAS, the City and Cable Operator have complied with all federal and State mandated procedural and substantive requirements pertinent to this franchise grant;

NOW, THEREFORE, IN CONSIDERATION of the renewal of the franchise pursuant to this Agreement, the Cable Operator hereby agrees to comply with the provisions of this Agreement and Chapter 9 of the Grand Island City Code. The City hereby grants a franchise as hereinafter set forth:

### I. DEFINITIONS

The following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

A. “Agreement” shall mean the initial authorization or renewal thereof which authorizes the construction or operation of the Cable System.

B. “Applicable Law” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

C. “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Agreement to be carried on the basic tier in analog and/or digital format. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7).

D. “Cable Act” mean the Cable Communications Policy Act of 1984, as amended, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any amendments thereto and any future cable television legislation.

E. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6).

F. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

(1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) a facility that serves Subscribers without using any public Right-of-Way;

(3) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) an open video system that complies with 47 U.S.C. § 573; or

(5) any facilities of any electric utility used solely for operating its electric utility systems. Cable System as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(7).

G. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television

Channel as defined by the FCC. Cable Channel as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(4).

H. “City” means the City of Grand Island, Nebraska or the lawful successor, transferee, or assignee thereof.

I. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.

J. “Downstream” shall mean signals originating at the Headend or hubs and transmitted to Subscribers.

K. “Drop” means the fiber cables and network interface unit connecting a Subscriber to the System.

L. “FCC” shall mean the Federal Communications Commission or successor governmental entity thereto.

M. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Cable Operator or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Agreement to be incurred by Cable Operator for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Agreement, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code. Franchise Fee defined herein shall be consistent with the definition set forth in 47 U.S.C. § 542(g).

N. “Gross Revenues” means any and all revenue, as determined in accordance with generally accepted accounting principles and Applicable Law, received by Cable Operator from System to provide Cable Services in the Service Area; provided, however, that such phrase shall not include (1) any taxes, fees or assessments collected by the Cable Operator from Subscribers for pass-through to a government agency, including any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under Applicable Law. Notwithstanding anything herein to the contrary, but subject to Applicable Law, gross revenue shall include: 1) all Cable Service fees, 2) Franchise Fees, 3) late fees and returned check fees, 4) Installation and reconnection fees, 5) upgrade and downgrade fees, 6) local, state and national advertising revenue, 7) home shopping commissions, 8) equipment rental fees, and 9) guide revenue. City and Cable Operator acknowledge and agree that Cable Operator will maintain its books and records in accordance with generally accepted accounting principles (GAAP).

O. “Headend” shall mean the facility, including antennas and associated electronics which receives, controls, and switches the electronic information transmitted over the Cable System.

P. “Installation” means any connection of the System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

Q. “Normal Business Hours” means those hours during which most similar businesses in City are open to serve Subscribers

R. “Normal Operating Conditions” means those Service conditions which are within the control of Cable Operator. Those conditions which are not within the control of Cable Operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Cable Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein shall be consistent with the definition set forth in 47 C.F.R. § 76.309.

S. “Other Programming Service” means information that a cable operator makes available to all Subscribers generally. Other Programming Services as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522 (14).

T. “PEG” means public, educational and governmental.

U. “Person” is any Person, firm, partnership, association, corporation, company, limited liability entity, excluding the City, or other legal entity.

V. “Service Area” means the present boundaries of the City, and shall include any additions thereto by annexation or other legal means so that it covers both current and future areas subject to exceptions in Article VII hereof.

W. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall be consistent with the definition set forth in 47 C.F.R. § 76.309.

X. “Standard Installation” means any residential or commercial Installation which can be completed using a Drop of one hundred twenty-five (125) feet or less.

Y. “Street” means the surface of and the space above and below any public Street, road, highway, lane, path, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the City. No reference in this Agreement to a “Street” shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of a Cable System, and the



Cable Operator shall be deemed to gain only those rights which the City has the undisputed right and power to give.

Z. “Subscriber” means any Person who receives broadcast programming distributed by a Cable System and does not further distribute it. Subscriber as defined herein shall be consistent with the definition set forth in 47 C.F.R. § 76.5(ee).

AA. “Upstream” shall mean the transmission of signals through a Cable System from Subscribers to the Headend or hubs.

BB. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## II GRANT OF AGREEMENT

A. The City hereby grants to the Cable Operator, subject to the terms and conditions of this Agreement, a nonexclusive agreement which authorizes the Cable Operator to construct, operate and maintain a Cable System and offer Cable Service in, along, among, upon, across, above, over, under, or in any manner connected with Streets within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Street and all extensions thereof and additions thereto, such wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Cable Operator from offering any service over its System that is not prohibited by Applicable Law.

B. This Agreement is a contract negotiated in good faith by the parties and intended by both parties to govern the relationship between the parties; neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Agreement must be made in writing, signed by the Cable Operator and the City. To the extent consistent with the foregoing, this Agreement is subject to and the Cable Operator agrees to comply with the lawful and nondiscriminatory provisions of Grand Island City Code and other ordinances, statutes and regulations now in effect or hereafter made effective. Any conflict between this Agreement and the Multi-Channel Service Providers Regulatory Ordinance codified at Chapter 9 of the City Code as may be amended, shall be resolved in favor of this Agreement. Moreover, the specific terms of this Agreement will govern the parties in all cases where parallel regulation may also exist in Chapter 9 of the City Code. Subject to the foregoing and Applicable Law, the Cable Operator acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce lawful and nondiscriminatory ordinances necessary to the health, safety and welfare of the public and nothing in this Agreement shall be deemed to modify or reduce the City’s lawful police powers.

### III RIGHT OF CITY TO ISSUE AGREEMENT

The Cable Operator acknowledges and accepts the legal right of the City to issue this Agreement on the date of grant thereof. The Cable Operator agrees that this Agreement was granted pursuant to processes and procedures consistent with Applicable Law.

### IV EFFECTIVE DATE OF AGREEMENT

This Agreement shall be effective when approved by the City Council in accordance with Applicable Law and when the Cable Operator files its written acceptance of this Agreement and agreement to be bound by the terms herein with the City Clerk. If such acceptance is not filed within sixty (60) days after adoption by the City Council, this Agreement shall be void and of no force or effect. The grant of this Agreement shall have no effect on the Cable Operator's duty under the prior agreement or any ordinance in effect prior to the effective date of this Agreement to indemnify or insure the City against acts and omissions occurring during the period that the prior agreement was in effect subject to Applicable Law regarding statutes of limitation.

### V TERM

The term of this Agreement shall then be for a period of fifteen (15) years from the date of acceptance by the Cable Operator unless sooner terminated as provided in this Agreement.

### VI AGREEMENT NONEXCLUSIVE

A. This Agreement shall not be construed as any limitation upon the right of the City to grant to other Persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other Streets, alleys, or other public ways or public places. The City specifically reserves the right to grant at any time during the life of this Agreement or renewal thereof, if any, such additional agreements for a wireline provider of Cable Service or Video Programming, to the extent permissible under Applicable Law, which (i) contain substantially similar terms and conditions which do not provide more favorable terms or conditions than those required of Cable Operator herein, and (ii) the material provisions thereof shall be competitively neutral and nondiscriminatory, in accordance with Applicable Law, and shall be reasonably comparable to those contained herein, in order that one wireline operator not be granted an unfair competitive advantage over another wireline operator as determined by City.

B. Notwithstanding any provision to the contrary, if another wireline operator, legally authorized by state or federal law, makes available for purchase by Subscribers or customers Cable Service or its functional equivalent (including Video Programming under 47 U.S.C. § 571(a)(3) or § 573) within the Service Area without a Franchise or other similar lawful authorization granted by the City and the City has the lawful authority to require a franchise from that wireline operator, the City shall within thirty (30) days of a written request from Cable Operator, modify this Franchise to insure that the obligations applicable to Cable Operator are no more burdensome than those imposed on the new competing provider. If the City fails or refuses to make modifications consistent with this requirement, Cable Operator, upon ninety (90) days advance written notice to City, shall have the right to terminate this Franchise and secure a

replacement franchise, license, consent, certificate or other authorization from any appropriate governmental entity or exercise any other rights the Cable Operator may have under state or federal law. Nothing herein shall in any way limit or reduce Cable Operator's right to provide Cable Service in the City under Applicable Laws, nor the City's right to regulate Cable Operator's provision of Cable Service in the City under Applicable Laws.

## VII SERVICE AREA AND LINE EXTENSIONS

A. Cable Operator shall use commercially reasonable best efforts to extend the System to pass every residence within the Service Area no later than the fourth (4<sup>th</sup>) anniversary date of the Effective Date of this Agreement. Commercially reasonable best efforts shall take into consideration customer demand, competitive offerings from other providers, System extension costs, weather conditions, and other potential unforeseen issues outside of Cable Operator's control that adversely affect the ability to extend the System within such timeframe.

## VIII SYSTEM

A. System. Cable Operator shall operate and maintain for the term of this Agreement a System providing a minimum of 550 MHz.

B. Public, Educational and Governmental Access.

(1) Cable Operator shall provide two (2) PEG Access Channels on the Basic Service Tier. The Cable Operator will provide downstream transmission of such Access Channels on its Cable System at no charge to the City. The PEG Access Channels shall be carried on the Basic Service tier in compliance with all applicable FCC rules. All PEG Access Channels shall meet FCC technical standards commensurate with those which apply to the Cable System's commercial channels, provided that the Cable Operator shall not be responsible for the production quality of PEG access programming.

(2) The Cable Operator shall not interfere with the ability of competing cable operators or other providers of multichannel video programming designated by the City to obtain or transmit to their own subscribers the content of any of the programming on the PEG Channels.

(3) The Cable Operator shall provide all necessary technical equipment and support to provide a high-quality return feed of cable signals from the City's PEG Origination Facilities at City Hall to the Cable System headend. The Cable Operator shall own, maintain, and repair or replace any Cable Operator-owned headend or hub-site audio or video signal processing equipment. The City shall own, maintain, and repair or replace its studio and modulators and demodulators. The demarcation point between the Cable Operator's equipment and the City's shall be at the output of the City's modulators.

(4) The City shall manage the use of the PEG Access Channels.

(5) Except as otherwise provided by Applicable Law as it may be in effect from time-to-time, any costs to the Cable Operator associated with the provision of support for public, educational or governmental access pursuant to this Agreement shall not be treated by the Cable Operator, or considered in any way by the Cable Operator, as a Franchise Fee.

(6) Except as expressly permitted by federal law, the Cable Operator shall not exercise any editorial control over the content of programming on the PEG Channels.

(7) Within ninety (90) days of acceptance of this Agreement, the Cable Operator shall initiate a forty cents (\$.40) per Subscriber, per month PEG capital fee, which shall be paid to the City quarterly in the same manner as Franchise Fees, throughout the life of this Agreement, solely to fund PEG access related capital expenditures (hereinafter "Access Fee"). Except as otherwise provided by Applicable Law as it may be in effect from time-to-time, the Access Fee payments by the Cable Operator to City in support of PEG access programming shall not be deemed "Franchise Fees" within the meaning of the Cable Act provided that the City utilizes the Access Fee solely for PEG access-related capital expenditures.

C. Undergrounding requirements. The Cable Operator shall at all times comply with the City Code regarding undergrounding requirements; provided however, the Cable Operator may construct or upgrade its facilities aerially where existing utility(ies) are aerial and shall convert such facilities to underground when the existing utility(ies) are being converted on a schedule consistent with that of the other utilities. If public funds are available to any company, excluding the City or its affiliates, using such Street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Cable Operator.

## IX TECHNICAL STANDARDS

A. The Cable System shall at all times operate so that, at a minimum and in accordance with Applicable Law, it complies with the technical specifications promulgated by the FCC relating to Cable Communications Systems pursuant to the FCC's rules and regulations and found in Title 47, Section 76.01 to 76.617, (as they may be amended from time to time), which regulations are expressly incorporated herein by reference.

B. Cable Operator shall perform all System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Agreement.

C. Written records of all System test results performed by or for Cable Operator shall be maintained, and shall be available for City inspection upon request.

D. Technical Tests. The City may perform technical tests of the Cable System by qualified Persons with proper equipment during reasonable times and in a manner which does

not unreasonably interfere with the Normal Operating Conditions of the Cable Operator or the Cable System in order to determine whether or not the Cable Operator is in compliance with FCC Technical Specifications. Such tests may be undertaken only after giving the Cable Operator reasonable notice thereof, and providing a representative of the Cable Operator, an opportunity to be present during such tests. In the event that such testing demonstrates that the Cable Operator has substantially failed to comply with the material provisions of the FCC Technical Specifications, the reasonable costs of such tests shall be borne by the Cable Operator. In the event that such testing demonstrates that the Cable Operator has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the City. Except in emergency circumstances, the City agrees that such testing shall be undertaken no more than one (1) time per calendar year, and that the results thereof shall be made available to the Cable Operator.

E. Notice of shutdown. At least twelve (12) hours before any planned shutdown, the Cable Operator shall give notice to affected Subscribers when possible, of maintenance or major equipment change-outs which require loss of Cable Service to twenty-five (25) or more customers.

## X SYSTEM DESIGN AND CAPACITY

A. Buried Drops. A Cable Operator must bury new Drops within a reasonable time period, subject to weather conditions. In the event the ground is frozen, a Cable Operator will be permitted to delay burial until the ground is suitable for burial which in no event must be later than June 1st.

B. All Drops shall comply with the National Electrical Code and the National Electrical Safety Code in effect at the time the Drop is performed, as they relate to cable television Drop installation.

C. Local Office.

(1) For a minimum period of eight (8) years after the effective date of this Agreement, Cable Operator shall maintain a location in the City for receiving Subscriber inquiries, bill payments, and equipment transfers. The location must be staffed by a Person capable of receiving inquiries and bill payments and the location shall be open hours that are at the sole discretion of the Cable Operator that are economic and business logical. At such time as the Cable Operator may close the local office in the City (following completion of the first eight (8) years of this Franchise), Cable Operator shall maintain a drop box within the Service Area for receiving Subscriber payments. Subject to the foregoing, in the event another wireline multichannel video program distributor ("MVPD") provides video service in the City and does not have an existing franchise or contractual obligation to maintain a local office in the City, Cable Operator may elect to

forego or cease operation of a local office or substantially reduce its functions in its sole discretion.

(2) Payments at Cable Operator's drop box location shall be deemed received on the date such payments are picked up by the Cable Operator if deposited no later than 3 PM of that day. Payments deposited later than 3 PM may be considered to be received in the following business day's processing.

#### D. Additional Construction Codes.

(1) The Cable Operator shall at all times comply with:

(a) National Electrical Safety Code (National Bureau of Standards);

(b) National Electrical Code (National Bureau of Fire Underwriters);  
and

(c) Applicable FCC or other federal, state and local regulations, including such construction, installation, and maintenance operational standards as may be adopted by the City from time to time and good and accepted industry practices as they pertain to the cable television industry.

### XI GENERAL PROVISIONS

The following provisions shall be applicable to the Cable System throughout the life of this Agreement.

A. Emergency Alert Capabilities. The Cable Operator shall continue to provide the existing Emergency Alert System ("EAS"). However, if the EAS is not tested at regular intervals by the appropriate civil defense authority, the Cable Operator shall not be liable if such EAS does not perform at required levels. In the case of any emergency or disaster, the Cable Operator shall, upon request of the City, make available its facilities and personnel to the City to provide technical assistance with the operation of the EAS during the emergency or disaster period. The EAS shall comply with FCC Standards.

B. Parental Control Devices. The Cable Operator shall provide Subscribers the ability to lock out such Channels as they may desire and provide equipment to lock out such Channels.

C. Employee Identification. The Cable Operator shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, the Cable Operator shall use its best efforts to clearly identify all personnel, vehicles, and other major equipment that are operating under the authority of the Cable Operator.

D. Complimentary Cable Television Service. Except as provided herein, Cable Operator shall provide throughout the term of this Agreement, one complementary Basic Cable Television Service and expanded basic level of Cable Television Service or the future equivalent of such tiers of Service ("Complementary Service"), without charge to governmental and educational buildings designated by the City's City Administrator, not to exceed 41 such designated buildings. The governmental or educational entity receiving the Complementary Service shall be responsible for installation and equipment fees at the Cable Operator's rates charged to residential customers within the Service Area. Notwithstanding the foregoing, City acknowledges and agrees that Cable Operator's obligations in this Section shall at all times be subject to Applicable Law. Upon 30 days prior written notice to City, Cable Operator may apply as an offset to the Franchise Fees the costs incurred by Cable Operator to provide Complementary Service.

At any time throughout the term of this Agreement, City may provide written direction to Cable Operator to terminate the provision of Complementary Service. Within ten (10) calendar days following the mailing of such notice, Cable Operator shall terminate the Complementary Services and shall not be permitted to offset against the Franchise Fee the costs incurred for Complementary Services provided by Cable Operator following the date of termination.

E. Reporting. In addition to the other reporting requirements provided herein the Cable Operator shall, upon request, submit reports to the City in a mutually agreed upon format consistent with the Cable Operator's existing Systems, and demonstrate the Cable Operator's compliance with the terms and provisions of this Agreement.

F. Annexation by Municipality. It is understood that the annexation by the City of areas in the unincorporated part of the City and which are being served by the Cable Operator shall be governed by the provisions of this Agreement. The City shall promptly provide written notice to the Cable Operator of this annexation of any territory. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days written notice from the City, subject to the provisions of this Agreement. Cable Operator shall within ninety (90) days after receipt of the annexation notice, pay the City franchise fees on revenue received from the operation of the System to provide Cable Services in any area annexed by the City if the City has provided a written annexation notice

## XII SUBSCRIBER RIGHTS AND COMPLAINTS

A. The Cable Operator shall comply with the standards and requirements for customer service set forth in Attachment A throughout the term of this Agreement.

B. Subscriber Contracts. Annually, Cable Operator shall provide the City with any standard form residential Subscriber contract utilized by Cable Operator. A list of Cable Operator's current Subscriber rates and charges for Cable Service shall be provided to the City and shall be available for public inspection.

C. Refund Policy. Cable Operator shall maintain a refund policy consistent with 47 U.S.C. §76.309(c)(3). If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, the Cable Operator shall, upon request by the Subscriber within sixty (60) days of such interruption or discontinuation, credit such Subscriber pro rata for such interruption or discontinuation.

D. Late Fees. Cable Operator shall comply with all Applicable Laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Cable Operator imposes upon a Subscriber for late payment of a bill.

E. Disputes. All Subscribers and members of the general public may direct complaints, regarding Cable Operator's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or commission of the City.

F. Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), Cable Operator shall prepare and maintain written records of all written complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Cable Operator. Upon request, Cable Operator shall provide City with a summary of such complaints.

### XIII EQUAL OPPORTUNITY

The Cable Operator shall comply with Applicable Law regarding equal employment opportunity and the provision of Cable Service in the City.

### XIV AGREEMENT RENEWAL

The City and the Cable Operator agree that renewal of this Agreement shall be governed by the requirements of the Cable Act, 47 U.S.C. Section 546, as may from time to time be amended.

### XV FRANCHISE FEE

A. The Cable Operator shall pay, as a Franchise Fee, to the City five percent (5%) of the Cable Operator's annual Gross Revenues collected during the period of its operation under this Agreement in the City. Each payment shall be accompanied by a brief report, certified as true and correct by a financial representative of the Cable Operator, showing the basis for the computation in form and substance substantially the same as Attachment B attached hereto.

B. The Cable Operator shall file with the City, forty-five (45) days after the last day of each quarter, a revenue statement showing the Gross Revenues received by it during the preceding quarter. The Cable Operator shall pay on a quarterly basis (by the 45th day after the end of each quarter) the Franchise Fee to the City for the preceding quarter.



C. The City shall have the right to audit and copy the Cable Operator's revenue records with respect to the Cable System within the City and all relevant records, and to recompute any amounts determined to be payable under this Agreement. If the results of the audit by the City show a discrepancy of more than five percent (5%) in the Franchise Fee that were to be paid to the City, the Cable Operator shall assume all reasonable document out-of-pocket costs of such audit, and pay same upon demand by the City, costs not to exceed Seven Thousand Five Hundred Dollars (\$7,500). This cost reimbursement shall only be permitted, if applicable, two (2) times during the fifteen (15) year franchise term.

D. In the event that any Franchise Fee payment is not received by the City on or before the applicable due date, the City shall send a written notice to Cable Operator informing the Cable Operator of the past due payment. If Cable Operator fails to remit payment within ten (10) days of receipt of said written notice from City, the Cable Operator shall remit a late payment surcharge of one percent (1.0%) per month of the total amount of the Franchise Fee payment due. The City shall not be entitled to any additional interest or liquidated damages unless the Cable Operator, thirty (30) days following receipt of the above referenced written notice from City has not remitted the applicable Franchise Fee payment and late payment surcharge to the City. Thereafter, the City shall be entitled to any and all available enforcement remedies under the Agreement and Applicable Law. In the event this Agreement is revoked or otherwise terminated prior to its expiration date, the Cable Operator shall file with the City, within ninety (90) days of the date of revocation or termination, a revenue statement showing the Gross Revenues received by it since the end of the previous year and shall make adjustments at that time for the Franchise Fee due up to the date of revocation or termination.

E. No acceptance of any payment by the City shall be construed as a release, waiver or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a tax, fee or for the performance of any other obligation of the Cable Operator.

F. In the event federal law is amended to allow Franchise Fees in excess of five percent (5%) of Gross Revenues, the City shall be entitled to raise said Franchise Fees payable by the Cable Operator up to the maximum allowed by federal law, subject to the Cable Operator's prior written agreement.

G. The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State of Nebraska, or the United States, including without limitation sales and other taxes, business license fees or other payments.

## XVI REGULATION, RATES, AND CHARGES

A. Regulatory Authority. The City may exercise, continue to exercise, assign or delegate appropriate regulatory authority under the provisions of this Agreement or Applicable Law. Regulation may be exercised through any duly designated consortium, duly established

state body, or other entity created or appointed to advise or support the City or to handle its regulatory responsibilities subject to Applicable Law.

B. The City and the Cable Operator acknowledge that any rates and charges relating to the provision of Cable Service and equipment under this Agreement shall be governed by Applicable Laws and the rules and regulations of the FCC (as amended). The City and Cable Operator do not waive any right they may have under Applicable Law.. The City and the Cable Operator, in evaluating and resolving any matters which arise concerning rates and charges, will adhere to Applicable Laws and FCC rules and regulations.

## XVII CONSTRUCTION PROVISIONS

The Cable Operator shall at all times comply with the City Code regarding right-of-way use.

## XVIII INSURANCE AND BONDS OR OTHER SURETY PROVISIONS

### A. Insurance Requirements.

(1) Cable Operator shall maintain in full force and effect, at its own cost and expenses, during the term of this Agreement, comprehensive general liability insurance in the amount of Two Million and No/100 Dollars (\$2,000,000.00) combined single limit for bodily injury, death and property damage. City, and their capacity as such, City's officers, agents and employees, shall be named as an additional insured on the policy and Cable Operator shall file a Certificate of Insurance with the City Clerk. The Cable Operator shall furnish the City with current certificates of insurance evidencing such coverage.

(2) Each policy of insurance (including the certificates of insurance evidencing such coverage) shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for non-payment of premium, or otherwise, and whether at the request of Cable Operator or for other reasons, except after thirty (30) calendar days advanced written notice from the insurer to the City Clerk, which may be provided electronically or by US mail.

B. Bonds and Other Surety. At all times hereunder until the Cable Operator has liquidated all of its obligations under the Agreement to the City, the Cable Operator shall furnish a bond or other surety in the amount of Twenty-Five Thousand Dollars (\$25,000), conditioned upon the faithful performance by the Cable Operator of its material obligations under this Agreement. The City may, from year to year and in its sole discretion, reduce the amount of any such bond or other surety. The bond or other surety shall insure the faithful performance by the Cable Operator of all the provisions of this Agreement, and compliance with all orders, permits and directions of the City and the payment by Cable Operator of any claim, penalties, damages, liens and taxes due the City related thereto or which arise by reason of the construction, operation or maintenance of the Cable System. Any failure by Cable Operator to provide the bond or other surety as required herein shall constitute a breach of this Agreement

## XIX PERFORMANCE GUARANTEE ESCROW; AND LIQUIDATED DAMAGES

A. In the event that the City has reason to believe that the Cable Operator has defaulted in the performance of any material provision of this Agreement, except as excused by force majeure, the City shall notify the Cable Operator in writing, by certified mail, of the provision or provisions of which the City believes Cable Operator to be in default and the details relating thereto (“Alleged Default Notice”).

B. Cable Operator shall have thirty (30) days from receipt of the notice described in paragraph (A) above to (a) respond to the City contesting the assertion of non-compliance, or (b) to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. In such case the City shall establish a reasonable deadline when such cure shall be completed having considered the reasonable input of the Cable Operator.

C. In the event that Cable Operator fails to respond to the notice described in paragraph A above pursuant to the procedures set forth in paragraph B above, the City shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly or specially scheduled meeting of the City. The City shall notify the Cable Operator in writing via certified mail, of the time and place of such meeting at least fourteen (14) days prior to such meeting and provide the Cable Operator with an opportunity to be heard.

D. Subject to the notice and cure requirements of this section, the City shall be authorized to withdraw from the bond or other surety the following penalties:

(1) For failure to provide data, documents, reports or information or to participate with the City during a System review, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150.00) per day.

(2) For failure to comply with any material provisions of this Agreement for which a penalty is not otherwise specifically provided, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150.00) per day.

(3) For failure to test, analyze and report on the performance of the System following a request by the City, the penalty shall be One Hundred and No/100 Dollars (\$100.00) per day.

(4) Subject to applicable federal and state law, in the event the City determines that Cable Operator is in default of any provision of the Agreement and the Cable Operator has not cured such default in accordance with the terms of this Agreement, the City may: Foreclose on all or any part of any security provided under this Agreement, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the City reasonably determines is necessary to remedy the default; or

(5) Draw against the bond or other surety all penalties due it, as provided for under this Agreement; or

(6) Commence an action at law for monetary damages or seek other equitable relief; or

(7) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

(8) See termination in accordance with Section XXI.

E. The Cable Operator shall not be relieved of any of its obligations to comply promptly with any provision of the Agreement by reason of any failure of the City to enforce prompt compliance.

## XX TERMINATION

A. In addition to all other rights and powers retained by the City under this Agreement, the City reserves the right to terminate this Agreement, and the Cable Operator's rights hereunder, in the event the Cable Operator shall default in the performance of any material term, covenant or agreement of this Agreement. By way of example, and not limitation, the City shall have the right to terminate this Agreement if the Cable Operator shall fail to cure any material default under this Agreement as provided in Section XX.

B. Before the City may terminate this Agreement and the Cable Operator's rights hereunder, the City shall conduct a public hearing, at which time the Cable Operator shall be given an opportunity to attend and present evidence and argument in opposition to the forfeiture or termination of this Agreement. The Cable Operator shall be provided with not less than thirty (30) days notice prior to such public hearing.

C. Any such declaration of forfeiture or termination shall be subject to judicial review as provided by law.

D. Nothing herein contained shall limit or restrict any legal rights that the City or the Cable Operator may have arising from a default in the performance of the terms, conditions and covenants of this Agreement by the Cable Operator.

## XXI REMOVAL OF CABLE SYSTEM

A. In the event of termination or forfeiture of the Agreement or abandonment of the System, the City may require the Cable Operator to remove all or any portion of its System from all rights-of-way and public property within the City; provided, however, that the Cable Operator will not be required to remove those portions of its System so as long as Cable Operator is providing any service not prohibited by Applicable Law.

B. If the Cable Operator does not require all or any portion of the System required to provide any services not prohibited by Applicable Law, and has failed to commence removal of its System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written demand for removal is given, or if the Cable Operator has failed to complete such removal within twelve (12) months after written demand for removal is given, the City may apply funds secured by the Agreement toward removal.

## XXII TRANSFER OF OWNERSHIP OR CONTROL

Cable Operator's right, title or interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered, without the prior written consent of the City, such consent not to be unreasonably withheld. No such consent shall be required, however, if the sale, transfer, assignment or encumbrance is to an affiliate of Cable Operator, when said affiliate is a wholly owned subsidiary. Additionally, no such consent shall be required, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Cable Operator in this Agreement or Cable System in order to secure indebtedness.

## XXIII PERIODIC REEVALUATION AND RENEGOTIATIONS

A. Since the field of cable communications is rapidly evolving and many technological, regulatory, financial, marketing, legal, competitive, and other changes are likely to occur during the life of this Agreement, a degree of flexibility is needed in order to achieve and maintain a Cable System that adequately serves the public interest. To this end, and subject to Applicable Law, this Agreement may be amended by mutual written agreement of the City and Cable Operator.

B. The City may evaluate the Cable Operator's Cable Service and operations no more than once every five (5) years during the term of this Agreement.

C. The City and the Cable Operator may meet at other times to discuss and negotiate changes to this Agreement which are mutually agreed upon by both parties.

D. During any review and evaluation session, the Cable Operator shall cooperate with the City and shall provide such reasonable information and upon such terms and conditions as the parties shall mutually agree upon.

## XXIV RIGHTS OF INDIVIDUALS

As previously set forth, the Cable Operator shall not deny Service, deny access nor otherwise discriminate against Subscribers, Channel users or any Person on the basis of race, creed, color, religion, national origin, sex, ancestry, age or marital status. The Cable Operator shall comply with all Applicable Laws relating to non-discrimination and privacy. Liability for obscenity, defamation or invasion of privacy on any PEG Channels shall rest with the Person, group of Persons or any organization utilizing said PEG Channels, and no indemnification or liability of the Cable Operator is hereby intended or provided herein. The Cable Operator shall

comply with all the privacy provisions pursuant to 47 USC §551 of the Cable Act or other Applicable Laws or regulations.

## XXV COOPERATION

The parties recognize that it is in their mutual best interests for the Cable System to be operated as efficiently as possible. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Agreement.

## XXVI WAIVER

The failure of the City at any time to require performance by the Cable Operator of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof or the failure of the City to require or enforce prompt compliance be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision. Nothing herein shall be deemed to waive or modify any statute of limitation or any lawful defense which is available to Cable Operator.

## XXVII BOOKS AND RECORDS

A. Throughout the term of this Franchise, the Cable Operator agrees that the City, upon reasonable prior written notice to the Cable Operator, may review such of the Cable Operator's books and records regarding the operation of the Cable System and the provision of Cable Service in the City which are reasonably necessary to monitor and enforce Cable Operator's compliance with the provisions of this Agreement. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Cable Operator for a minimum period required by Applicable Laws. The Cable Operator shall not deny the City access to any of the Cable Operator's records on the basis that the Cable Operator's records are under the control of any parent corporation, affiliated entity or a third party. The Cable Operator agrees that the City may upon ten (10) days written request review and copy such of its books and records, during Normal Business Hours and on a non-disruptive basis in a location not more than twenty (20) miles from the City. The Cable Operator shall maintain sufficient books and records of customer service, customer complaints and billing and maintain other books and records in Grand Island to monitor compliance with the terms hereof.

B. Confidential Information. Cable Operator may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to Section XXVIII A of this Agreement, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records. Alternatively, confidential or proprietary information may be disclosed pursuant to a reasonable mutually agreeable non-disclosure agreement which shall substantially in the same form as attached as Attachment D, subject to modification as specifically required under Applicable Law. The intent of the parties is to work cooperatively to ensure that all books

and records reasonably necessary for City's monitoring and enforcement of franchise obligations are provided to City. To the extent that Cable Operator does provide books or records directly to the City, City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by Applicable Law and Attachment D. Cable Operator shall be responsible for clearly and conspicuously identifying any confidential or proprietary information so as to prevent inadvertent disclosure.

## XXVIII CUMULATIVE RIGHTS

The rights and remedies reserved to the City and Cable Operator by this Agreement are cumulative and shall be in addition to and not in derogation of any other legal or equitable rights or remedies which the City and Cable Operator may have with respect to the subject matter of this Agreement, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

## XXIX COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

The Cable Operator, its contractors, employees, and agents shall comply with all Applicable Laws, rules, and regulations. Except as otherwise provided for herein, the Cable Operator and the City shall be entitled to all rights and be bound by all changes in local, state, and federal law which occur subsequent to the effective date of this Agreement. In addition to the inherent powers of the City to regulate and control the Cable Operator under this Agreement, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers, subject to Section II.B. herein.

## XXX NOTICES

Every notice or response to be served upon the City or the Cable Operator shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid.

The notices or responses to the City shall be addressed as follows:

The City of Grand Island, Nebraska  
Attention: City Administrator's Office  
100 East First Street, Box 1968  
Grand Island, NE 68802

The notices or responses to the Cable Operator shall be addressed as follows:

ALLO Grand Island, LLC  
Attn: Brad Moline, President  
330 S. 21<sup>st</sup> Street

Lincoln, Nebraska 68510

With a non-binding courtesy copy to:

ALLO Grand Island, LLC

Attn: Legal Department

121 S. 13<sup>th</sup> Street, Suite 100

Lincoln, Nebraska 68508

The City and the Cable Operator may designate such other address or addresses from time to time by giving notice to the other.

### XXXI CAPTIONS

The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

### XXXII INDEMNIFICATION

Cable Operator hereby agrees to indemnify and hold the City, including its agents, elected and appointed officials and employees, harmless from any claims, actions, liabilities or damages resulting from the actions of Cable Operator in constructing, operating or maintaining the Cable System or arising from the existence of the Cable System in the City. City agrees to give the Cable Operator written notice of its obligation to indemnify City within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Cable Operator shall not be obligated to indemnify City for any damages, liability or claims resulting from the willful misconduct or negligence of City or for the City's use of the Cable System.

### XXXIII GOVERNMENTAL IMMUNITY

The City is relying on, and does not waive, or intend to waive, by any provision of this Agreement, any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, employees or agents under Applicable Law.

### XXXIV FORCE MAJEURE

Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism or other similar catastrophes; national emergencies; insurrection; strike or organized work slowdown; riots or wars.

### XXXV TIME IS OF THE ESSENCE

Whenever this Agreement sets forth any time for any act to be performed by either of the parties, such time shall be deemed to be of the essence of this Agreement.



## XXXVI CONSTRUCTION OF AGREEMENT

Except as otherwise provided for herein, this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Nebraska (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC and any other Applicable Laws, rules, regulations, legislation, or orders (as such now exist, are later amended or subsequently adopted).

## XXXVII NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or principal agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

## XXXVIII ENTIRE AGREEMENT

This Agreement and all attachments represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof: and supersede all prior oral negotiations between the parties. This Agreement can be amended, supplemented, modified, or changed only by an agreement in writing which makes specific reference to this Agreement or to the appropriate attachment and which is signed on behalf of both parties.

## XXXIX ACTIONS OF THE CABLE OPERATOR

In any action by the City or the Cable Operator mandated or permitted under the terms hereof, it shall (unless specified otherwise in this Agreement) act in a reasonable, expeditious, and timely manner.

## XL SEVERABILITY

If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, unconstitutional or unenforceable, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

**CITY OF GRAND ISLAND, NE**

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City Clerk

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Mayor

**ALLO GRAND ISLAND, LLC**

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Bradley A. Moline, President

**ATTACHMENT A. CUSTOMER SERVICE STANDARDS**

A. Cable System office hours and telephone availability.

(i) The Cable Operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(ii) Trained company representatives will be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(iii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(iv) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(v) The Cable Operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(vi) Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.

(vii) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

B. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(i) After the two (2) year anniversary date of this Agreement, Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the Cable Operator, the Cable Operator will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The

Cable Operator must begin actions to correct other Service problems the next business day after notification of the Service problem.

(iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The Cable Operator may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the Subscriber.)

(iv) The Cable Operator may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

(v) If a Cable Operator representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

C. Communications between the Cable Operator and Subscribers

(i.) Notifications to Subscribers.

(1) The Cable Operator shall provide written information on each of the following areas at the time of Installation of Cable Service on its website::

a. Products and Cable Services offered;

b. Prices and options for programming services and

conditions of subscription to programming and other services;

c. Installation and service maintenance policies;

d. Instructions on how to use the Cable Service;

e. Channel positions of programming carried on the Cable System; and

f. Billing and complaint, procedures, including the address and telephone number of the City's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Cable Operator, including the address of the responsible officer of the City.

(2) Customers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Cable Operator. In addition, the Cable Operator shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by Section (C)(i)1(a)-(f) of this Attachment A.

(3) In addition to the requirement of subparagraph (2) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Cable Operator shall give thirty (30) days' written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Cable Operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(4) To the extent Cable Operator is required to provide notice of Service and rate changes to Subscribers, the Cable Operator may provide such notice using any reasonable written means at its sole discretion.

(5) Notwithstanding any other provision of this section, Cable Operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or

charge of any kind imposed by any federal agency, state, or City on the transaction between the Cable Operator and the Subscriber.

D. Billing.

(i.) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii.) In case of a billing dispute, the Cable Operator must respond to a written complaint from a Subscriber within thirty (30) days.

E. Refunds. Refund checks will be issued promptly, but no later than either:

(i.) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii.) The return of the equipment supplied by the Cable Operator if service is

terminated.

F. Credits. Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

## ATTACHMENT B. FRANCHISE FEE PAYMENT WORKSHEET

### **TRADE SECRET – CONFIDENTIAL**

	Month/Year	Month/Year	Month/Year	Total
Cable Service Revenue				
Installation Charge				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Other Revenue				
Equipment rental				
REVENUE				
Fee Calculated				

Fee Factor: 5%

## ATTACHMENT C

Reserved.

## ATTACHMENT D. NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made as of , 2021 between ALLO Grand Island, LLC (“ALLO”)

WHEREAS, ALLO holds a cable television franchise (“Agreement”) issued by Recipient which requires that ALLO make available certain of its books and records to verify ALLO’s compliance with the terms and provisions of the Agreement; and

WHEREAS, ALLO is making available for inspection by Recipient certain Confidential Material (as defined below) for the sole and exclusive purpose of permitting Recipient to perform an audit of the payments required under the Agreement and to compile a written report based on the audit findings (the “Purpose”); and

WHEREAS, as a condition to making the Confidential Material available, the parties desire to protect the confidential nature of the Confidential Material in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and of the promises contained in this Agreement, ALLO and Recipient hereby agree as follows:

1. Confidential Material. For purposes of this Agreement, the term Confidential Material shall include all business, financial, technical and other information concerning ALLO’s business, provided in writing or in any other form or media; provided, however, that “Confidential Material” shall not include any information that (a) becomes generally available to the public other than as a result of disclosure, directly or indirectly, by Recipient or its Representatives (as defined below), or (b) was available to Recipient on a non-confidential basis prior to disclosure by ALLO, (c) is lawfully obtained from a third party under no obligation of confidentiality, (d) is developed by the Recipient or is generally disclosed by ALLO to third parties without an obligation of confidentiality. This Agreement imposes no obligation on Recipient with respect to any portion of the Confidential Material disclosed by ALLO, unless such portion is marked “CONFIDENTIAL” prior to submitting such information to Recipient.
2. Restriction on Use and Disclosure. Consistent with Section of the Agreement, ALLO shall provide all books and records requested by the City or City’s agent in the following manner: 1) a mutually acceptable physical location within the City; or 2) via mail or electronic communication acceptable to the City and Cable Operator. Recipient and its Representatives may make such notes with respect to the Confidential Material (“Notes”) as may be necessary for the Purpose, and all such Notes shall be treated as Confidential Material hereunder. Recipient shall use the Confidential Material solely in furtherance of the Purpose, and shall not disclose the Confidential Material or any portion thereof to any person except those of its employees, consultants and advisors who need to know such information in furtherance of the Purpose (the persons to whom such disclosure is permitted being collectively referred to as “Representatives”). Recipient agrees that, before disclosing the Confidential Material or any portion thereof to any Representatives, Recipient will inform the Representatives of the



confidential nature of the Confidential Material and of the Representatives' duty to treat the Confidential Material in accordance with this Agreement. Without in any way limiting the foregoing, Recipient shall take all steps necessary to prevent disclosure of the Confidential Material under any open records law, including, without limitation, by exercising its discretion not to disclose Confidential Material in response to an open records act request, and taking all necessary actions to defend against such request. If Recipient or any of its Representatives becomes legally compelled to disclose any of the Confidential Material, the compelled party shall provide ALLO with prompt notice of such requirement prior to disclosure so that Recipient may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the compelled party shall furnish only that portion of the Confidential Material which it is legally required to furnish and shall use its best efforts to assure that confidential treatment will be accorded such Confidential Material. Recipient shall have the right to draft a written report to fulfill the Purpose of the review and Recipient agrees that in drafting said report cause any such audit report to be treated confidentially to the full extent permitted by law. Information shall, to the extent feasible, be provided in an aggregate form and Recipient shall use its best efforts not to communicate confidential information in the report unless necessary to communicate a finding of the audit/review.

3. Equitable Remedies. Recipient acknowledges that, in the event of a breach or threatened breach of this Agreement, there is a substantial likelihood of material, irreparable injury to ALLO, and that money damages would not be a sufficient remedy for any such breach or prospective breach by Recipient or its Representatives. Recipient therefore agrees that ALLO shall be entitled to specific performance of Recipient's agreements herein, and to injunctive relief to terminate or prevent any breach or prospective breach of this Agreement. No bond or other security shall be necessary with respect to such relief. ALLO shall be entitled to receive from Recipient reimbursement of ALLO's costs and expenses (including attorneys' fees) incurred in connection with any breach or threatened breach by Recipient or its Representatives, but such reimbursement may only be ordered by a court of competent jurisdiction.

5. Miscellaneous. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, with respect to such matters. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other exercise of any right, power or privilege hereunder. If any part or any provision of this Agreement shall be deemed to be invalid or unenforceable in any respect, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining provisions of this Agreement. No amendment to this Agreement shall be valid unless it is made in writing and signed by both parties. This Agreement shall inure to the benefit of, and be binding upon, the parties, their successors and permitted assigns. This Agreement shall be governed by laws of the State of Nebraska without regard to the choice of law provisions thereto

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on its behalf as of the date set forth above

ALLO Grand Island, LLC

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

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

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

CITY OF GRAND ISLAND, NE

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

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

Title\_\_\_\_\_

RESOLUTION 2021-235

WHEREAS, ALLO Grand Island LLC (“ALLO”) desires to offer within the city of Grand Island cable television, internet, and telephone services via fiber cable and associated facilities located in the public rights-of-way and public utility easements; and

WHEREAS, a franchise agreement between ALLO and the City of Grand Island is required to permit and authorize installation of the fiber cable television equipment; and

WHEREAS, City Administration and ALLO engaged in negotiating a proposed non-exclusive fifteen-year franchise agreement for installation and operation of the fiber cable television system within the City of Grand Island; and

WHEREAS, the proposed franchise agreement is substantially similar to the current franchise agreement whereby Charter Communications/Spectrum occupies the public rights-of-ways and public utility easements and offers cable television, internet, and telephone services; and

WHEREAS, the proposed franchise agreement with ALLO provides for the City to receive a franchise fee in the amount of 5% of the gross revenue ALLO derives from cable television services provided in Grand Island; and

WHEREAS, City Administration recommends that the proposed franchise agreement be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA that the Franchise Agreement for the City of Grand Island and ALLO Grand Island LLC should be and is hereby approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, September 14, 2021.

\_\_\_\_\_  
Roger G. Steele, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
September 13, 2021	☐ City Attorney