

# **City of Scottsbluff, Nebraska**

**Monday, October 5, 2020**

**Regular Meeting**

## **Item Reports1**

**Council to discuss and consider action on the settlement Agreement between Scotts Bluff County, Allo Communications, and the Cities of Scottsbluff and Gering for wrongfully remitted franchise fee payments and authorize the Mayor to sign the Agreement.**

**Staff Contact: Rick Kuckkahn, Interim City Manager**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made and entered into by and between the County of Scotts Bluff, a body politic and corporate in Nebraska ("County"), Allo Communications, LLC, a Nebraska limited liability company ("Allo"), the City of Scottsbluff, Nebraska, a municipal corporation ("Scottsbluff") and the City of Gering, Nebraska, a municipal corporation ("Gering"). This Agreement is effective as of the date of the last-dated signature below ("Effective Date"). When referred to collectively herein, the County, Allo, Scottsbluff and Gering shall be known as the "Parties".

### **RECITALS:**

**WHEREAS**, on or about January 1, 2010, Allo, as successor to Allo Twin Cities, LLC, a Nebraska limited liability company, entered into a Franchise Agreement to provide cable television services within the County, Scottsbluff and Gering; and

**WHEREAS**, under the Franchise Agreement, Allo agreed to pay certain franchise fees to the County, Scottsbluff and Gering for the services provided within their respective jurisdictions; and

**WHEREAS**, it was discovered that Allo had been making all of the franchise fee payments to the County and that Scottsbluff and Gering were not receiving any franchise payments; and

**WHEREAS**, In the first quarter of 2019 Allo began making franchise fee payments to Scottsbluff and Gering, as well, on or about April 20, 2020, filed a claim with the County for return of the wrongfully remitted franchise fee payments to the County in the approximate amount of \$413,425.00; and

**WHEREAS**, the Parties have now entered into an agreement to settle the dispute about wrongfully remitted franchise fee payments and any and all claims by and amongst themselves for the franchise fee payments under the Franchise Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions:

### **AGREEMENT**

1. Recitals. The Parties acknowledge the foregoing "WHEREAS" clauses are true and correct, and are incorporated herein as material parts to this Agreement.

2. Payments by the County to Allo. The County agrees to make payments to Allo in the total amount of \$388,425.00. The payments to Allo will be made in five equal annual installments of \$77,685.00 starting on the \_\_\_\_ day of \_\_\_\_\_, 2020, and continuing on the same day of each year from 2021 through 2024.

3. Allo Agrees to Make Payments to Gering and Scottsbluff. Allo, for good and valuable consideration, agrees to contribute \$25,000.00 toward this settlement. Allo agrees to make annual payment to Scottsbluff in the amount of \$63,618.00 and make annual payment to Gering in the amount of \$19,068.00, with both annual payments to be made within ten (10) days after receipt of the annual payment by the County, referred to in paragraph 2 herein. The total amount payable to Gering and Scottsbluff is \$413,425.00. Both annual payments will begin on the \_\_\_\_ day of \_\_\_\_\_, 2020 and continue on the same date of each year from 2021 through 2024.

4. Allo Agrees to Release the County. For and in consideration of the amounts paid to Allo pursuant to this Agreement, Allo, its heirs, executors, administrators, successors and assigns, releases the County from any and every claim, demand, right or cause of action of any kind relating to the remittance of franchise fees payments under the Franchise Agreement as set forth herein. In addition, Allo agrees to withdraw the Political Subdivision Tort Claim filed with the Scotts Bluff County Clerk on or about April 20, 2020 after receipt of the first payment as set forth in paragraph 2. herein.

5. Scottsbluff and Gering Release. In consideration of the sums paid by Allo to Scottsbluff and Gering, Scottsbluff and Gering agree to release Allo from any and every claim, demand, right or cause of action of any kind relating to the remittance of franchise fee payments under the Franchise Agreement set forth herein. In addition, Allo agrees to provide the County with a receipt for payments made by the County upon receipt as well as receipts showing that payments have been made to Scottsbluff and Gering pursuant to this Agreement. The receipts will be provided without request and within seventy two (72) hours of when the payments are made.

6. Settlement of All and Any Disputes. The Parties agree, pursuant to this Agreement, they have fully and finally settled any and all disputes and issues amongst themselves. In consideration of the promises and obligations in this Agreement, the Parties knowingly, voluntarily, irrevocably, and unconditionally fully release each other as well as their respective insurers, officers, directors, employees, agents, elected officials and attorneys of and from any and all claims, demands, actions, suits, causes of action, costs, expenses, attorneys fees, damages, judgments, orders and liabilities of any kind or nature in law, equity or otherwise whether now known or unknown, suspected or unsuspected, which the Parties may now hold or own or hold or own in the future or have at any time heretofore owned or held against each other arising out of payments of the franchise fee.

7. Default in Payments. The Parties agree that in the event the County or Allo fail or refuse to make the payments as set forth in this Agreement, Allo, Scottsbluff or Gering shall be entitled to any remedy available to them under law, including filing of an action to enforcement this Agreement in

Scotts Bluff County District Court to collect any payments not made under this Agreement.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective insurers, legal representatives, successors and assigns.

9. Construction. This Agreement has been drafted jointly by the parties and their respective attorneys and the terms, conditions and provisions of this Agreement shall be construed only according to their fair import and shall not be construed for or against any of the Parties hereto. The warranties and representations contained in this Agreement shall survive the execution of this Agreement.

10. Benefit of Counsel. The Parties explicitly acknowledge that they have been represented by their respective attorneys in connection with the preparation of this Agreement, they have reviewed the terms and provisions of this Agreement with their respective attorneys, and they knowingly and voluntarily, without duress, execute this Agreement. The parties further agree that they are each responsible for their own attorneys fees and costs incurred as a result of the dispute over the fees under the Franchise Fee Agreement.

11. Headings. The headings in this Agreement are for convenience only and do not affect its interpretation.

12. Governing Law. The laws of the State of Nebraska shall govern the validity, construction, interpretation, and effect of this Agreement, regardless of any applicable law regarding the conflict of laws or the interpretation of contracts.

13. Authorized Signature. By signing below, each party represents and warrants that they are competent and authorized to sign on behalf of their respective entities, or that the person who is signing on behalf of any particular entity is so authorized to execute this Agreement on that entity's behalf.

14. Counterparts. This Agreement may be executed in multiple counterparts and any signature transmitted by facsimile or electronic format via electronic mail shall be effective as an original.

[SIGNATURE PAGE TO FOLLOW]

ALLO COMMUNICATIONS, LLC,  
a Nebraska limited liability company,

By \_\_\_\_\_  
Authorized Member

COUNTY OF SCOTTS BLUFF,  
a body politic and corporate in Nebraska,

By   
Chairperson of Board of Commissioners

CITY OF SCOTTSBLUFF, NEBRASKA,  
a municipal corporation,

By \_\_\_\_\_  
Mayor

ATTEST:

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

CITY OF GERING, NEBRASKA,  
a municipal corporation,

By \_\_\_\_\_  
Mayor

ATTEST:

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