

## ORDINANCE NO. 1217

**AN ORDINANCE OF THE CITY OF FORT MORGAN, COLORADO, GRANTING A  
NON-EXCLUSIVE FRANCHISE TO ALLO COMMUNICATIONS, LLC, AND ITS  
LAWFUL SUCCESSORS, TRANSFEREES AND ASSIGNS, FOR THE RIGHT TO  
MAKE REASONABLE AND LAWFUL USE OF THE RIGHTS-OF-WAY WITHIN THE  
CITY TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR AND  
UPGRADE A CABLE SYSTEM FOR THE PURPOSE OF PROVIDING CABLE  
SERVICES TO CITIZENS WITHIN THE CITY OF FORT MORGAN, COLORADO, AND  
DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, Allo Communications LLC, ("Allo"), is seeking to provide cable services within the corporate boundaries of the City of Fort Morgan ("City"); and,

**WHEREAS**, Allo and the City have been involved in negotiations for several months related to the granting of a new cable franchise agreement to Allo; and,

**WHEREAS**, these negotiations have resulted in a proposed Franchise Agreement that is being presented to the City Council for its consideration and approval (the "Franchise Agreement"), a copy of which is attached hereto as Exhibit 'A,' as well as on file with the City Clerk; and,

**WHEREAS**, the Franchise Agreement includes the following major terms and conditions: (1) a term of fifteen (15) years; (2) a requirement that Allo pay to the City a franchise fee of five percent (5%) of the gross revenues that Allo, an affiliated entity, or any other entity in which Allo has a financial interest derives, directly or indirectly, from the operation of the cable system used to provide cable services within the City; and (3) a requirement that Allo continue to comply with the customer service standards as adopted and subsequently modified by the City, consistent with applicable law; and,

**WHEREAS**, pursuant to notice duly published, public hearing has heretofore been held before the City Council of the City of Fort Morgan and the Council has found and determined, subsequent to said public hearing, that the City's grant of a cable franchise to Allo, in accordance with the terms and conditions of the Franchise Agreement, is in the best interests of the citizens of the City of Fort Morgan, will meet the future cable related needs of the community, and is consistent with the pre-emptive requirements of §541 of the Cable Television Consumer Protection and Competition Act of 1992, as determined by the United States District Court for the District of Colorado in *Qwest Broadband Services, Inc. v. City of Boulder*, 151 F. Supp. 2d 1236 (D. Colorado 2001).

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, THAT:**

### **Section 1. Franchise Agreement.**

Subject to all terms and conditions and obligations contained therein, the City Council hereby authorizes the Mayor to execute the Franchise Agreement by and between Allo Communications, LLC and the City of Fort Morgan, in the form attached hereto as Exhibit A.

### **Section 2. Effective Date.**

This Ordinance and the Franchise Agreement shall both take effect on the 31st day of July, 2018 subject to the Franchise Agreement being fully executed by both the City and Allo, and the publication of this Ordinance as required by law.

### **Section 3. Severability.**

All sections of this Ordinance and the Franchise Agreement attached as Exhibit A shall be severable, and if any section or portion of this Ordinance or the Franchise Agreement is declared or ruled invalid or otherwise invalidated by any Court or agency of competent jurisdiction, such declaration or ruling shall not affect the validity of any other section, and all other sections and provisions of this Ordinance or the Franchise Agreement shall remain in full force and effect. City Council hereby declares that it would have passed this Ordinance and approved the Franchise Agreement and each part thereof irrespective of the fact that any one part be declared unconstitutional or invalid.

### **Section 4. Repeal.**

All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

**INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED  
PUBLISHED on the 3<sup>rd</sup> day of July, 2018.**



CITY OF FORT MORGAN, COLORADO

By:

  
Ronald Shaver, Mayor

ATTESTED AND AUTHENTICATED:

  
John Brennan, City Clerk

*The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.



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John Brennan, City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED  
PUBLISHED on the 17<sup>th</sup> day of July, 2018, publication by title only once in the  
newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to  
take effect five days after final publication as of the Effective Date herein provided.



CITY OF FORT MORGAN, COLORADO

By:

Ronald Shaver  
Ronald Shaver, Mayor

ATTESTED AND AUTHENTICATED:

John Brennan  
John Brennan, City Clerk

Accepted subject to applicable federal, state and local laws this \_\_\_\_ day of  
\_\_\_\_\_, 2018.

ALLO COMMUNICATIONS, LLC

By: B. A. Moline  
Name: Bradley A. Moline  
Title: PRESIDENT

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

CERTIFICATE

I, John Brennan, the duly appointed City Clerk do hereby certify and attest that  
the foregoing Ordinance No. 1217 was, as a proposed Ordinance duly and legally  
presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting  
on the 3<sup>rd</sup> day of July, 2018. Said Ordinance, as proposed, was duly read at length at  
said Regular Meeting, and thereafter the same was, on the 6<sup>th</sup> day of July, 2018,  
published in *The Fort Morgan Times*, a daily newspaper of general circulation published  
and printed in the City of Fort Morgan, Morgan, County, Colorado. Said proposed  
Ordinance was again taken up and read a second time, duly and legally passed,  
approved and adopted at a regular meeting of the City Council held on the 17<sup>th</sup> day of  
July, 2018. Within five (5) days after its final passage, said Ordinance was published in

## **FRANCHISE AGREEMENT**

**This Franchise Agreement** (this “Agreement”) is between the City of Fort Morgan, Colorado hereinafter referred to as the “Grantor” and Allo Communications LLC a Nebraska limited liability company, locally known as Allo Communications, hereinafter referred to as the “Grantee.”

**WHEREAS**, Grantor finds that Grantee has the financial, legal and technical ability of Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

**WHEREAS**, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Agreement with Grantee for the construction and operation of a Cable System on the terms set forth herein.

**NOW, THEREFORE**, the City of Fort Morgan and Allo Communications LLC agree as follows:

### **SECTION 1** **Definition of Terms**

**1.1 Terms.** For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the following meanings when used herein with initial capital letters. Other defined terms are set forth throughout this Agreement, and shall have the meanings ascribed herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

**A.** The following terms shall be defined as set forth in the Section 602 of the Cable Act (47 U.S.C. § 522) -- “Affiliate,” “Cable Operator,” “Cable Service,” “Cable System,” “Channel,” “Franchise” and “Person” -- and “Franchise Fee” shall be as defined in Section 622 of the Cable Act (47 U.S.C. § 542).

**B.** “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community as determined by the Grantor, including the Grantor and its designees, of Access Channels as set forth in this Agreement, and as permitted under Applicable Law including:

(1) Public Access means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

(2) Educational Access means Access where schools are the primary users having editorial control over programming and services.

(3) "Government Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

C. "Access Channel" means a downstream signaling path provided by the Cable System to deliver Access programming to all Subscribers in the Service Area.

D. "Applicable Law" means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

E. "Cable Act" means the Cable Communications Policy Act of 1984, as amended (47 U.S.C. §§ 521, et seq.).

F. "City Council" means the governing body of the Grantor.

G. "Designated Access Provider" means the entity or entities designated now or in the future by the Grantor to manage or co-manage Access Channels and facilities. The Grantor may be a Designated Access Provider.

H. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.

I. "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

J. "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee (or any Affiliate of the Grantee who is a Cable Operator providing Cable Services over the Cable System in the Service Area) from the operation of the Cable System to provide Cable Services in the Service Area, including but not limited to (1) late fees, (2) installation and reconnection fees, (3) upgrade and downgrade fees, (4) converter and remote control rental fees, (5) parental control device rental fees, (6) advertising revenue with no deduction or offset for internal commissions earned by employees of Grantee or its Affiliates or any entity in which Grantee has a financial interest, (7) home shopping commissions, and (8) interactive guides. Notwithstanding the foregoing, "Gross Revenue" shall not include (A) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, Franchise Fee, or any sales or utility taxes, (B) unrecovered bad debt, (C) credits, refunds and deposits paid to Subscribers and (D) any exclusions available under Applicable Law.

The parties acknowledge that the Grantee may need to allocate Gross Revenue between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes), when these two types of services are bundled together in a discounted package offered to Subscribers. The Grantee shall make such allocation in accordance with generally accepted accounting principles, but in no event shall the Grantee allocate Gross Revenue between Cable Services and non-Cable Services where

such services are bundled together in a discounted package offered to Subscribers for the purpose of evading its Franchise Fee obligations under this Agreement.

K. "PEG" means Public, Educational and Government Access.

L. "School" means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

M. "Service Area" means the geographic boundaries of the Franchise Area, and shall include any additions thereto by annexation or other legal means.

N. "Standard Installation" means any Cable Service installation that can be completed using a drop of one hundred fifty (150) feet or less.

O. "State" means the State of Colorado.

P. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

Q. "Subscriber" means any Person lawfully receiving Cable Service from the Grantee.

## SECTION 2 Grant of Franchise

### 2.1 Grant.

A. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to use, erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during the term of this Agreement, any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. This Agreement shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Agreement.

B. No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within Grantor that may be required by the ordinances and laws of Grantor;

(2) Any permit, agreement, or authorization of general applicability required by Grantor for users of the Streets in connection with operations on or in the Streets or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits of general applicability for occupying any other property of Grantor or private entities to which access is not specifically granted by this Agreement including, without limitation, permits for placing devices on poles, in conduits or in or on other structures.

C. The Grantee is a Cable Operator of a Cable System, parts of which are owned by Grantor and controlled by the Grantor and parts of which are leased to the Grantee and controlled by the Grantee. The obligations to provide Cable Service and to maintain the Cable System as described in this Agreement, including without limitation, Grantee's obligation to make Cable Service available throughout the City and Grantee's obligation to maintain the Cable System, refer to the entirety of the Cable System and all terms, conditions and obligations under which Grantee has obtained its interests in the Cable System.

**2.2 Term.** The Agreement and the rights, privileges and authority hereby granted shall be for an initial term of fifteen (15) years, commencing on the Effective Date of this Franchise as set forth in Section 15.10.

**2.3 Police Powers and Conflicts with Agreement.** Notwithstanding any provision to the contrary herein, this Agreement, the Grantor and the Grantee are subject to and shall be governed by Applicable Law, including but not limited to the Cable Act. The Grantee shall at all times during the term of this Agreement be subject to all lawful exercise of the Grantor's police power, and the Grantor's right to adopt and enforce generally applicable ordinances and regulations necessary to the safety, health, and welfare of the public; provided, however, that such hereinafter enacted ordinances and regulations shall be reasonable and not materially modify the terms of this Agreement. In the event of a conflict between a provision of this Agreement and a provision of Grantor police power reflected in a generally applicable local ordinance, rule or regulation, local law shall be controlling, provided, however, such local law has not been preempted by any federal or state laws, rules, regulations or orders. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of Grantor's police powers, shall be resolved in favor of the latter.

**2.4 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the Streets or be allowed to operate in the Service Area without a Franchise.

### SECTION 3 Franchise Renewal

**3.1 Procedures for Renewal.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of this Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act (47 U.S.C. § 546), or any such successor statute. Notwithstanding anything to the contrary set forth herein, the parties agree that at any time during the term of the then current Agreement, while affording the public adequate

notice and opportunity for comment, the parties may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. The parties consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act (47 U.S.C. § 546).

## **SECTION 4** **Indemnification and Insurance**

**4.1 Indemnification.** The Grantee shall indemnify, hold harmless and defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property to the extent caused by the negligence of the Grantee in the construction or operation of the Cable System or in any way connected with the Grantee's operations, including the actions of its subcontractors, employees and agents, and in the event of a determination of liability, the Grantee shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of the Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System (including the actions of its subcontractors, employees and agents), provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) business days of receipt of a claim or action pursuant to this section. The indemnification obligations of the Grantee set forth in this Agreement are not limited in any way by the amount or type of damages or compensation payable by or for the Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement or the terms, applicability or limitations of any insurance held by the Grantee, provided, however, that the Grantee's obligations to indemnify pursuant to this section shall be reduced by any amounts paid by any third parties directly or indirectly to the indemnified parties related to the same claims, including insurance proceeds. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any Access Channels.

**4.2 Insurance.**

A. The Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts set forth below, for the duration of this Agreement and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Agreement.

Workers' Compensation

Statutory Limits

Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

B. The Grantor shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverages.

C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

D. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 4.2 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

**4.3 Letter of Credit.** Except as expressly provided herein or as required by a generally Applicable Law, the Grantee shall not be required to obtain or maintain a bond, letter of credit or other surety as a condition of this Agreement. The Grantor acknowledges that the legal, technical and financial qualifications of the Grantee are sufficient as of the Effective Date to afford compliance with the terms of this Agreement and the enforcement thereof. The Grantee and the Grantor recognize that the costs associated with bonds, letters of credit and other surety may ultimately be borne by Subscribers in the form of increased rates for Cable Service. In order to minimize such costs, the Grantor agrees to only require a letter of credit if there is a change in the Grantee's legal, financial or technical qualifications that would materially impair or prohibit its ability to comply with the terms of this Agreement or within fourteen (14) days of receipt of a notice from Grantor of an alleged violation of this Agreement, in which case the Letter of Credit shall remain in place until the issues that caused the need for the issuance have been resolved. The Grantor further agrees that in no event shall it require a letter of credit in an amount greater than five thousand dollars (\$5,000). In the event that a letter of credit is required in the future, the Grantor agrees to give the Grantee at least sixty (60) days' prior written notice thereof stating the exact reason for the requirement. The letter of credit may only be drawn upon by the Grantee in the event, following any notice and opportunity to cure periods provided in this Agreement or under Applicable Law:

A. The Grantee fails to pay the Grantor any amounts due under the terms of this Agreement;

B. The Grantee fails to reimburse costs borne by the Grantor to correct violations of this Agreement not corrected by the Grantee; or

C. The Grantee fails to pay any monetary remedies or damages assessed by a court of law against the Grantee and awarded to Grantor for a violation of this Agreement.

The Grantor shall give the Grantee written notice of any withdrawal under this Section 4.3 at the time of such withdrawal.

## SECTION 5 Service Obligations

**5.1 No Discrimination.** The Grantee shall not deny Cable Service, access to Cable Service, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. The Grantee shall comply at all times with all Applicable Laws relating to nondiscrimination. Subject to Section 6 and the Grantee's rights under Section 625 of the Cable Act (47 U.S.C. § 545), all residential structures in the Service Area shall have the same availability of Cable Services from the Grantee's Cable System under non-discriminatory rates, terms and conditions.

**5.2 Privacy.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Section 631 of the Cable Act (47 U.S.C. § 551).

**5.3 Service to Government Buildings.** Grantee shall at no cost, provide one outlet of Basic and Expanded Basic Service to Fort Morgan City Hall and other buildings owned or leased by Grantor, such as public safety buildings, libraries, schools. Upon request by Grantor, Grantee shall additionally provide one outlet of Basic and Expanded Basic Service to all future government buildings, so long as the buildings are located within one hundred fifty (150) feet of the nearest tap on Grantee's Cable System within the Service Area. Grantee shall, upon request by Grantor, extend Basic and Expanded Basic Service to any such buildings that are beyond one hundred fifty (150) feet of the nearest tap on Grantee's Cable System; provided, however that Grantor shall pay the difference between Grantee's actual costs associated with installing a one hundred fifty (150) foot drop and Grantee's actual cost of installing the longer drop. The Cable Service described in this Section 5.4 may only be used for: (i) lawful, non-commercial purposes, and located in areas such that the Cable Service will primarily be viewed only by Grantor employees and elected officials and persons present for Grantor business; or (ii) lawful, non-commercial educational purposes.

## SECTION 6 Service Availability

### **6.1 Service Area.**

A. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within the Service Area. Subject to this subsection 6.1A and Grantee's rights under 47 U.S.C. § 545, all residential structures in the Service Area shall have the same availability of Cable Services from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantor acknowledges that Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit. Cable Service offered to Subscribers

pursuant to this Agreement shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.

B. Density Requirements for the Provision of Cable Services: Subject to Standard Installation charges, Grantee shall make Cable Service available to all residential dwelling units and businesses within the Service Area where the Fort Morgan Fiber Network, as defined in that Lease and Network Operation Agreement dated December 20, 2017 ("Lease"), passes such residential units or businesses. Nothing herein shall require Grantee to provide Cable Service to any Person who fails to abide by Grantee's terms and conditions of Cable Service. Nothing herein shall be construed to limit Grantee's ability to offer or provide bulk rate discounts or promotions where applicable, to the extent permitted under Applicable Law.

C. Where Grantee is serving the area, but the requested service installation is not a Standard Installation, the cost of such installation beyond the cost of the Standard Installation will be paid by the recipient. For underground installations, Grantee shall charge the recipient no more than its actual cost. Such cost estimates shall be submitted to the recipient in writing before installation is begun.

D. No Discrimination in the Availability of Cable Service: Grantee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides or on the basis of race, color, religion, national origin, sex, age, or disability. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.

**6.2 Subscriber Charges for Extensions of the Cable System.** No potential Subscriber shall be refused Cable Service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to the Street in that area if the potential Subscribers are willing to share the capital costs of extending the Cable System and pay any applicable non-Standard Installation charges associated with providing Cable Service. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard or non-Standard Installation charges to extend the Cable System from the tap to the residence. Such cost estimates shall be submitted to and accepted by the potential Subscriber(s) in writing before any Cable System extension or installation is required. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any annexed area which is not contiguous to the present Service Area of the Grantee, if the Grantee does not, at the time of annexation, have the legal authority to locate its Cable System in the areas necessary to reach such annexed parts of the Service Area. At such time as the Grantee has the legal authority to access the newly annexed areas, Cable Service shall be made available in accordance with the density requirements of this Section 6.

**6.3 Limitations.** Nothing herein shall require the Grantee to provide Cable Service to any Person who fails to abide by the Grantee's terms and conditions of Cable Service. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions where applicable, to the extent permitted under Applicable Law. Nothing herein shall require Grantee to assume obligations that are the responsibility of Grantor pursuant to the Lease.

The Grantor acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit. Cable Service offered to Subscribers pursuant to this Agreement shall be conditioned upon the Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.

**6.4 New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give the Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. If the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the Grantee.

**6.5 Annexation.** The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its Affiliates. Such annexed area will be subject to the provisions of this Agreement upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify the Grantee in writing of all new street address assignments or changes within the Service Area. The Grantee shall within ninety (90) days after receipt of the annexation notice, pay to the Grantor the Franchise Fee on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow the Grantee to change its billing system; provided that if the Grantor is required to incur costs to provide the addresses in a specific format required by the Grantee, such costs shall be reimbursed by the Grantee within thirty (30) days of receipt of an invoice describing those costs. If the annexation notice does not include the addresses that will be moved into the Service Area, the Grantee shall pay the Franchise Fee within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 15.5 with a copy to the Director of Government Relations. The Franchise Fees shall be paid from the effective date of the annexation. In any audit of the Franchise Fee due under this Agreement, the Grantee shall not be liable for the Franchise Fee on annexed areas unless and until the Grantee has received notification and information that meets the standards set forth in this section. The Grantor shall additionally promptly provide written notice to the Grantee of its annexation of any territory which is not being provided Cable Service by the Grantee or its Affiliates, and after such notice, the Grantee shall provide Cable Service to these areas if required by Section 6.1B.

## SECTION 7 Construction and Technical Standards

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code and all other construction requirements of generally Applicable Law.

**7.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

**7.4 Cable System Design.** As of the Effective Date, the Cable System in the Service Area (i) has a minimum 750 MHz of bandwidth capacity, and utilizes a hybrid fiber-coaxial architecture; or (ii) is comprised of a fiber optic system capable of carrying a minimum of one hundred (100) high definition channels.

**7.5 Technical Requirements.** The Grantee shall comply with all applicable FCC rules and regulations applicable to the Cable System, including without limitation FCC Rules and Regulations, Part 76, Subpart K (Technical Standards), as may be amended from time to time. The Grantee shall take prompt corrective action if it finds that any facilities or equipment on the Cable System do not meet FCC technical standards.

**7.6 Performance Monitoring.**

A. The Grantee shall, at the Grantee's sole expense, test the Cable System consistent with the FCC regulations and all other tests, as required by generally Applicable Law, reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement.

B. The Grantee shall maintain written records of all results of its Cable System tests, performed by or for the Grantee, for the period required by the FCC. Copies of such test results will be provided to the Grantor upon request.

C. As of the Effective Date, the FCC semi-annual testing is conducted in January/February and July/August of each year. If the Grantor contacts the Grantee at least sixty (60) days prior to the next FCC semi-annual test period (i.e., before November 1 and May 1 respectively of each year), the Grantee shall provide the Grantor with no less than thirty (30) days prior written notice of the actual date(s) for FCC compliance testing, and representatives of the Grantor may witness such technical performance tests; provided, however, that such representatives shall not interfere with the testing. If the required FCC testing periods are changed during the term of this Agreement, the parties shall negotiate in good faith to amend the dates in this subsection to achieve the same result with respect to the parties' respective notice obligations.

D. The Grantee will comply with industry standards with respect to testing drops and related passive equipment during installations to assure that the drop and passive equipment can pass the full Cable System capacity.

E. The results of any tests required to be filed by the Grantee with the FCC shall upon request of the Grantor also be filed with the Grantor within ten (10) days of such request.

**7.7 Emergency Use.** The Grantee shall comply with the Emergency Alert System (“EAS”) requirements of the FCC and State Applicable Law, including all testing requirements. If such requirements include the Grantor’s activation of the EAS, then Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee’s Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor’s use of the EAS is subject to a heightened standard of care given the purpose of the EAS and as such, the Grantor shall exercise all necessary attention, caution and prudence to ensure that the EAS is only used properly, lawfully and as required to alert citizens of emergencies.

## SECTION 8 Conditions on Street Occupancy

**8.1 General Conditions.** Where the Grantee is able to obtain the right at commercially reasonable rates to utilize existing poles, conduits and other facilities from the owners thereof, the Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

**8.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those portions of the Service Area where telephone and electric services are both already underground or being placed underground at the time of Cable System construction, and in accordance with Applicable Law. In areas where either telephone or electric utility facilities are installed aerially at the time of Cable System construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are placed underground by the facilities owner, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, the Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities; provided however that nothing herein shall require reimbursement to the Grantee or shall affect the Grantee’s undergrounding obligation if the funds which are utilized for the reimbursement of other entities are restricted and preclude reimbursement to the Grantee.

**8.3 Construction Codes and Permits.** The Grantee shall obtain all permits required by Applicable Law before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantee shall adhere to all building and zoning codes of general applicability currently or hereafter governing construction, operation, maintenance, removal, abandonment, or relocation of the Cable System in the Service Area.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. Weather permitting, new underground cable drops shall be promptly buried in accordance with industry standards or as mutually agreed upon between the Grantee and the applicable Subscriber. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public, and in accordance with Applicable Law. Any poles or other fixtures placed in any Street by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such Street. The Grantee shall obtain authorization from the applicable private property owner prior to commencing work on private property that is not a Street, and all such work shall comply with Applicable Law.

**8.5 Restoration of Streets.** The Grantee shall, at its own expense, restore any damage or disturbance caused to the Streets as a result of its operation, construction, maintenance, removal, abandonment, or relocation of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

**8.6 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

**8.7 Tree Trimming.** The Grantee or its designee shall have the authority, subject to Applicable Law, to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

**8.8 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of the Grantee when lawfully required by the Grantor pursuant to its police powers. The Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Streets are responsible for the costs related to the relocation of their facilities.

**8.9 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this section, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**8.10 Locating Facilities.** Prior to doing any work in the Streets, the Grantee shall give appropriate notices in compliance with C.R.S. Section 9-1.5-101, et seq., as such may be amended from time to time.

**8.11 Grantor's Rights.** Nothing in this Agreement shall be construed to prevent the Grantor from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Streets; constructing, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

**8.12 Relocation Delays.** Provided Grantee receives notice as provided by Applicable Law, if Grantee's relocation effort so delays construction of a public project causing the Grantor to be liable for delay damages, or causes any increase in the cost of the project to Grantor, Grantee shall reimburse Grantor for those damages or cost increases directly attributable to the delay created by Grantee. Within thirty (30) days of receipt of an itemized list of those damages, and/or costs, Grantee shall pay Grantor. In the event Grantee should dispute the amount of damages and/or costs attributable to Grantee, the matter shall be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer's decision, the matter shall be submitted to the City Manager or his designee for determination, whose decision shall not be appealable to the City Council, provided, however that Grantee may appeal Grantor's final decision pursuant to C.R.C.P. 106.

**8.13 Discontinuing Use/Abandonment of Cable System Facilities.** Whenever the Grantee intends to discontinue using any facility within the Streets, the Grantee shall submit for the Grantor's approval a complete description of the facility and the date on which the Grantee intends to discontinue using the facility. The Grantee may remove the facility or request that the Grantor permit it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the Grantor may require the Grantee to remove the facility from the Streets or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Grantor may require the Grantee to perform a combination of modification and removal of the facility. The Grantee shall complete such removal or modification in accordance with a schedule set by the Grantor. Until such time as the Grantee removes or modifies the facility as directed by the Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, the Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and the Grantee shall retain all liability for such facility. If the Grantee abandons its facilities, the Grantor may choose to use such facilities for any purpose whatsoever including but not limited to Access purposes.

**8.14 Inspection of Construction and Facilities.** The Grantor may inspect any of the Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice, or, in case of emergency as reasonably determined by the Grantor, upon demand without prior notice. In accordance with Applicable Law, if a dangerous condition is found to exist, the Grantor may take any legally permissible action.

**8.15 Stop Work.** On notice from the Grantor that any work is being performed contrary to the provisions of this Agreement, or in violation of the terms of any Applicable Law or permit granted pursuant to any Applicable Law, the work may immediately be stopped by the Grantor. The stop work order shall:

- A. be in writing;
- B. be given to the Person doing the work;
- C. be sent to the Grantee by overnight delivery at the address given herein;
- D. indicate the nature of the alleged violation or unsafe condition; and
- E. establish conditions under which work may be resumed consistent with Applicable Law.

**8.16 Work of Contractors and Subcontractors.** The Grantee's contractors and subcontractors shall be licensed and bonded in accordance with Applicable Law. Work undertaken by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Agreement and Applicable Law. It is the Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on the Grantee's behalf are familiar with the requirements of this Agreement and the Applicable Laws governing the work performed by them.

## SECTION 9 Customer Service and Rates

**9.1 Customer Service Standards and Consumer Protection.** The Grantee shall comply with the Customer Service Standards promulgated by the Federal Communications Commission, as may be amended from time to time. The Grantor reserves all rights under Applicable Law to adopt additional customer service standards that apply to franchised Cable Operators in the City of Fort Morgan, and the Grantee reserves all rights to challenge any such customer service standard that it believes is inconsistent with its contractual rights under this Agreement or Applicable Law, and all rights pursuant to Applicable Law to pass through the costs of complying with any such customer service standard to Subscribers.

A. **Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

B. **Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local

telephone number. The Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, Channel lineup or other substantive service changes.

C. Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to the Grantee's rights under Section 15.1 of this Agreement.

**9.2 Rate Regulation.** Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC or other Applicable Law.

## SECTION 10 Franchise Fee

**10.1 Amount of Fee.** The Grantee shall pay to the Grantor an annual Franchise Fee in an amount equal to five percent (5%) of the annual Gross Revenue. The Grantee may, but is not required, to pass through to Subscribers the Franchise Fee as a line item on Subscriber bills or otherwise as the Grantee chooses, consistent with Applicable Law. The Grantee shall not deduct from the Franchise Fee any items listed under Section 622(g)(2) of the Cable Act (47 U.S.C. 542(g)(2)).

**10.2 Payment of Franchise Fee.** Payment of the Franchise Fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the Franchise Fee to be paid to the Grantor pursuant to the Agreement shall commence the Effective Date of the Agreement. In the event that a Franchise Fee payment or other sum due is not received by the Grantor on or before the date due, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the lower of (A) the maximum rate permitted under State law, (B) eight percent (8%) and (C) that established by the State Bank Commissioner pursuant to C.R.S. 39-21-110.5 in effect as of the due date (which is the prime rate of interest as reported by the Wall Street Journal on July 1<sup>st</sup> of the previous calendar year, plus three percent (3%), rounded to the nearest full percent). All payments of the Franchise Fee shall be accompanied by a report showing the basis for the computation, certified as accurate by an authorized financial officer of the Grantee. All payments of Franchise Fees shall be accompanied by a report showing the basis for the computation, certified as accurate by an authorized financial officer of Grantee.

**10.3 Accord and Satisfaction.** No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a Franchise Fee under this Agreement.

**10.4 Limitation on Recovery.** The period of limitation for recovery of any Franchise Fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

**10.5 Review.** All amounts paid by the Grantee to the Grantor under this Agreement shall be subject to review and recomputation by the Grantor. If such review indicates an underpayment of Franchise Fees of five percent (5%) or more, then the Grantee will reimburse the cost of such review up to a maximum of four thousand dollars (\$4,000) per audit year; provided, however, that such review will be conducted no more frequently than once every three (3) years.

## **SECTION 11** **Transfer of Franchise Agreement**

**11.1 Franchise Transfer or Change of Control.** The Agreement granted hereunder shall not be assigned, sold, or transferred other than by operation of law or to an Affiliate of the Grantee, nor shall control of the Agreement or of the Grantee be assumed by another party who is not an Affiliate of the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Agreement or Cable System to secure indebtedness.

**11.2 Notification and Application to Grantor.** In accordance with federal law, the Grantee and the transferee shall make a written request of the Grantor for its consent to any actual or proposed (a) assignment, sale or transfer of this Agreement other than by operation of law or to an Affiliate of the Grantee, or (b) change of control of this Agreement or of the Grantee to another party who is not an Affiliate of the Grantee. Such request shall be accompanied by all information required by federal law and by Grantor pursuant to this Agreement. Within thirty (30) days of receiving such a written request, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee, or any other information permitted by federal law. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given, unless the Grantor and the Grantee have agreed to an extension of time.

**11.3** In seeking Grantor's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

A. has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

B. has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee;

C. has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System or the provision of Cable Services;

D. is financially solvent, by submitting financial data including financial data consistent with that required by FCC regulations; and

E. has the financial, legal and technical capability to maintain and operate the Cable System and comply with this Franchise for the remaining term hereof.

Subject to Applicable Law, Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be reasonably related to the qualifications of the prospective controlling party or transferee to comply with this Agreement, the impact of the transfer or change of control on Subscribers, and to the resolution of any outstanding and unresolved issues of noncompliance with this Agreement by Grantee.

**11.4** Within thirty (30) days after the closing of any transfer or sale, if approved or deemed granted by Grantor, Grantee shall file with Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Agreement. In the event of a change in control, in which Grantee is not replaced by another entity, Grantee will continue to be bound by all of the provisions of the Agreement, and will not be required to file an additional written acceptance.

## SECTION 12 Records, Reports and Maps

**12.1 Reports Required.** The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

**12.2 Records Required.** The Grantee shall at all times maintain:

A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.

B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

C. All financial and accounting records necessary to demonstrate compliance with this Agreement, including, without limitation, all records necessary to conduct the Franchise Fee review described in Section 10.5.

**12.3 Inspection of Records.** The Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of the Grantee's records maintained by the Grantee as is reasonably necessary to ensure the Grantee's compliance with the Agreement. Such notice shall specifically reference the subsection of the Agreement that is under review so that the Grantee may

organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Agreement compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act (47 U.S.C. § 551). The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent the Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Agreement, or for any other reason, it shall advise the Grantee in advance so that the Grantee may take appropriate steps to protect its interests. If the Grantee requests that the Grantor continue to oppose such release, then until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of the Grantee's books and records marked confidential, as set forth above, to any Person, and the Grantee shall reimburse the Grantor for all reasonable costs and attorneys' fees incurred in any legal proceedings related to same. If the Grantee does not request that the Grantor oppose such release, then the Grantor shall make an independent judgment with respect to such release, and the Grantee shall not be liable for any costs related to same.

## SECTION 13 Public Education and Government (PEG) Access

### **13.1 PEG Access.**

A. Grantee shall provide two (2) Access Channels for use by the Grantor for Access programming. One of the Access Channels shall be a high definition (HD) Channel, for which the Grantor may provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the Access Channel. The Grantor may, in its discretion, permit the Access Channels to be shared by multiple Designated Access Providers.

(1) The Grantor or its Designated Access Provider shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Agreement, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(2) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility or functionality.

B. If either Access Channel is not "fully utilized" at any time during the term of this Agreement, the Grantee may temporarily use such Access Channel within sixty (60) days after submitting a written notice of such use to the Grantor. Each Access Channel shall be considered fully utilized if unduplicated programming is delivered over it more than forty two (42) hours per week on average over a six (6) month period. Programming may be repeated on either Access Channel, but may be counted toward the total average hours only with respect to the original

showing plus one repeat per day to be considered “unduplicated.” As an example, a rebroadcast of a City Council meeting twice per day shall be considered unduplicated for purposes of this Section. Character-generated programming may be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) hours per day.

C. If either Access Channel is being used by the Grantee in accordance with subsection 13.1B, and the Grantor has determined in good faith that the Designated Access Providers have the ability to fully utilize such Access Channel again, then the Grantor shall request return of the Access Channel by delivering written notice of same to the Grantee. In such event, the Access Channel shall be returned to the Grantor for Access programming within ninety (90) days after receipt by the Grantee of such written notice.

D. Except as specifically otherwise provided in this Agreement, all equipment necessary to produce any Access Channel programming shall be at the Grantor's or a Designated Access Provider's cost.

**13.2 Fee and/or Grant for PEG Capital.** Within sixty (60) days of Grantor's written request, Grantee shall provide to Grantor up to fifty (50) cents per month per Subscriber for PEG related capital expenditures (the “PEG Fee”), or such other PEG related expenditures as may be permitted by any future change in Applicable Law. Each PEG Fee payment shall be due and payable no later than forty-five (45) days following the end of the quarter from when the PEG Fee takes effect.

**13.3 Relocation of the Access Channels.** The Grantee shall provide the Grantor and all Subscribers with as much prior written notice of any relocation of an Access Channel as reasonably possible, but in no event less than thirty (30) days. In the event of a relocation of an Access Channel, the Grantor and the Grantee shall cooperate in good faith to develop an efficient and effective plan for remarketing the Access Channel, which may include guide messages, cross-channel promotions, bill messages and similar in-kind marketing resources if the Grantee is able to make such resources available and the Grantor and the Grantee agree that such marketing would be efficient and effective. The types of in-kind marketing resources provided shall be similar to the type of marketing resources utilized on the Cable System at that point in time.

**13.4 Technical Quality:**

A. Grantee shall maintain all Access Channels and return lines in compliance with FCC regulations regarding signal quality. With respect to signal quality, Grantee shall not be required to carry an Access Channel in a higher quality format than that delivered to Grantee, but Grantee shall distribute the Access Channel in accordance with FCC technical standards.

B. If Grantee makes changes to its Cable System that necessitate modifications to Access signal transmission facilities and equipment (including but not limited to the upstream paths), Grantee shall provide reasonable advance notice of such changes to Grantor and its Designated Access Provider(s) and shall provide, at Grantee's expense, any additional or modified headend facilities necessary to implement such modifications within a reasonable period of time prior to the date that the Cable System changes are to be made, so that Access signal transmission facilities and equipment may be used and operated as intended and without interruption, including,

among other things, so that transmissions of live and taped communications can be cablecast efficiently to Subscribers. By way of example, and not limitation, should Grantee cease delivery of all signals in an analog format to Subscribers, it will provide the signal transmission and/or conversion equipment necessary at the headend so that Access signals can be transmitted from Grantee's headend and on to Grantee's subscribers in the appropriate digital format. Any equipment acquired by Grantor or any Designated Access Provider necessary for use at Grantor or Designated Access Provider's location in order to make the access programming operational in the appropriate digital format, shall, at the request of Grantor or Designated Access Provider, be installed by Grantee within a reasonable period of time, at Grantee's cost. Where Grantee employs digital signal compression techniques, the PEG Channels shall be compressed no greater than the average compression of the local broadcast Channels.

### **13.5 Return Lines.**

A. The Grantee shall, at no cost to the Grantor, install and maintain the Cable System return lines from the locations listed below to the Cable System headend, so long as Access programming is originating from such locations:

110 Main Street, Fort Morgan, CO 80701  
920 Barlow Road, Fort Morgan, CO 80701  
715 West Platte Avenue, Fort Morgan, CO 80701

B. In the event that the Grantor determines during the term of this Agreement that a return line listed under subsection 13.3A needs to be relocated, or that an additional return line is required from a location other than listed under subsection 13.3A (each, a "New Return Line"), the Grantor may elect to have the Grantee construct and maintain such New Return Line between the relocated or new Access location and the Cable System headend. If such New Return Line is to be provided by the Grantee, the Grantee shall select the materials and technology to be used for the New Return Line, provided that the New Return Line shall be able to send video programming signals from the Access location to the Cable System headend in the same format in which such signals are uploaded to the New Return Line and that such New Return Line is in compliance with all applicable FCC regulations. Weather permitting, the Grantee shall complete any New Return Line requested pursuant to this subsection within one hundred twenty (120) days of receiving a written request for same from the Grantor or as otherwise agreed upon by the Grantee and the Grantor. All costs associated with the construction, maintenance and transport of any New Return Line, including applicable equipment, shall be the responsibility of the Grantor, subject to the Grantor's ability to offset any related capital costs.

C. In the event that the Grantor determines during the term of this Agreement that a return line listed under subsection 13.3A needs to be upgraded to support digital transmissions (each, an "Upgraded Return Line"), the Grantor shall provide written notice of same to the Grantee. The Grantee shall select the materials and technology to be used for the Upgraded Return Line, provided that the Upgraded Return Line shall be able to send video programming signals from the Access location to the Cable System headend in the same format in which such signals are uploaded to the Upgraded Return Line and that such Upgraded Return Line is in compliance with all applicable FCC regulations. Weather permitting, the Grantee shall complete any Upgraded

Return Line requested pursuant to this subsection within one hundred twenty (120) days of receiving a written request for same from the Grantor or as otherwise agreed upon by the Grantee and the Grantor. All costs associated with the construction, maintenance and transport of any Upgraded Return Line, including applicable equipment, shall be the responsibility of the Grantor, subject to the Grantor's ability to offset any related capital costs.

**13.6 Technical Quality.** The Grantee shall maintain the Access Channel and return lines, including any New Return Line and Upgraded Return Line, in compliance with FCC regulations regarding signal quality. With respect to signal quality, the Grantee shall not be required to carry the Access Channel in a higher quality format than that delivered to the Grantee, but the Grantee shall distribute the Access Channel in accordance with FCC technical standards.

## SECTION 14 Enforcement or Revocation

**14.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Agreement, the Grantor shall first informally discuss the matter with the Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

**14.2 The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice to (A) respond to the Grantor, contesting the assertion of noncompliance, (B) to cure such default, or (C) if, 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 Grantor of the steps being taken and the projected date that they will be completed. If (i) the Grantee fails to respond to the Violation Notice received from the Grantor, (ii) the Grantee responds to the Grantor, contesting the assertion of the noncompliance, but the Grantor disagrees with the Grantee's response, or (iii) if the default is not remedied within the thirty (30) day cure period set forth above, the Grantor may pursue any remedies available to it under this Agreement or under Applicable Law. The Grantee reserves all legal and equitable rights under Applicable Law to challenge or appeal any action or decision by the Grantor with respect to an alleged violation of this Agreement, and if the standard of review is not otherwise established by Applicable Law, the standard of review of the Grantor's action or decision shall be *de novo*.

**14.3 Alternative Remedies.** No provision of this Agreement shall be deemed to bar the right of the Grantor to seek or obtain judicial relief from a violation of any provision of the Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Grantor to recover monetary damages for such violations by the Grantee, or to seek and obtain judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **14.4 Revocation.**

A. Prior to revocation or termination of the Agreement, the Grantor shall give written notice to the Grantee of its intent to revoke the Agreement on the basis of a pattern of

noncompliance by the Grantee, upon one or more instances of substantial noncompliance with a material provision of the Agreement, or if the Grantee has committed fraud upon the Grantor. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from the Grantee, it may then seek to revoke the Agreement at a public hearing. The Grantee shall be given at least sixty (60) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Agreement.

B. The hearing shall be conducted as a quasi-judicial proceeding, similar to other quasi-judicial proceedings regularly undertaken by Colorado municipalities. At the hearing, the City Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses. The City staff may present its position and shall also be permitted to present evidence and question witnesses, after which the City Council shall determine whether or not the Agreement shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to a court of competent jurisdiction pursuant to C.R.C.P. 106. The Grantee may continue to operate the Cable System until all legal appeals have been exhausted.

C. Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation.

## SECTION 15 Miscellaneous Provisions

**15.1 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**15.2 Minor Violations.** Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Agreement for violations of the Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

**15.3 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely

manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**15.4 Equal Protection.** The Grantee acknowledges and agrees that the Grantor reserves the right to grant one (1) or more additional Franchises or other similar lawful authorization to provide Cable Services within the Service Area. If the Grantor grants such an additional Franchise or other similar lawful authorization containing material terms and conditions that differ from the Grantee's material obligations under this Agreement, then the Grantor agrees that the obligations in this Agreement will, pursuant to the process set forth in this section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: the Franchise Fee; Gross Revenue definition; insurance; Cable System build-out requirements; security instruments; Access Channels; customer service standards; required reports and related record keeping; level playing field (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require word for word identical Franchise provisions so long as the regulatory and financial burdens on each entity are materially equivalent.

A. The modification process of this Agreement as provided for in this section shall only be initiated by written notice by the Grantee to the Grantor regarding specified obligations. The Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive Franchise which are materially different from the Grantee's obligations under this Agreement; (2) identifying the Agreement terms and conditions for which the Grantee is seeking amendments; (3) providing text for any proposed Agreement amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent.

B. Upon receipt of the Grantee's written notice as provided in subsection 15.4A, the Grantor and the Grantee agree that they will use best efforts in good faith to negotiate the Grantee's proposed Agreement modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Grantor and the Grantee reach agreement on the Agreement modifications pursuant to such negotiations, then the Grantor shall amend this Agreement to include the modifications.

C. If the parties fail to reach agreement in the negotiations as provided for in subsection 15.4B, the Grantee may, at its option, elect to replace this Agreement by opting into the Franchise or other similar lawful authorization that the Grantor grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If the Grantee so elects, the Grantor shall immediately commence proceedings to replace this Agreement with the Franchise issued to the other Cable Services provider.

D. Nothing in this section shall be deemed a waiver of any remedies available to the Grantee under Applicable Law, including but not limited to Section 625 of the Cable Act (47 U.S.C. § 545).

E. Should the Grantee seek an amendment to this Agreement or a replacement Franchise pursuant to this section, while the parties shall pursue the adoption of such amendments or replacement Franchise pursuant to subsections 15.4A through D, any such amendments or replacement Franchise shall not become effective unless and until the new entrant makes Cable Services available for purchase by Subscribers or customers under its agreement with the Grantor.

**15.5 Notices.** Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this Agreement shall be in writing and shall be deemed to be sufficiently given upon delivery to the Person at the respective addresses set forth below by hand delivery, by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. The Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or Channel positions using any reasonable written means.

If to Grantor:

City of Fort Morgan  
c/o City Manager  
110 Main Street  
Fort Morgan, CO 80701  
Email: [jeff.wells@cityoffortmorgan.com](mailto:jeff.wells@cityoffortmorgan.com)

With a copy to:

City of Fort Morgan  
c/o City Attorney  
100 Main Street  
Fort Morgan, CO 80701  
Email: [jason.meyers@cityoffortmorgan.com](mailto:jason.meyers@cityoffortmorgan.com)

If to Grantee:

ALLO Communications LLC  
Attn: Brad Moline, President  
330 S. 21st Street  
Lincoln, Nebraska 68510  
Email: [bmoline@allophone.net](mailto:bmoline@allophone.net)

With a copy to:

Nelnet, Inc.  
Attn: General Counsel  
121 S. 13th Street, Suite 100  
Lincoln, Nebraska 68508  
Email: [bill.munn@nelnet.net](mailto:bill.munn@nelnet.net)

**15.6 Public Notice.** Minimum public notice of (A) any public hearings relating to this Agreement or (B) any grant of a Franchise by the Grantor to any other Person(s) to provide Cable Services utilizing any system or technology requiring use of the Streets, shall be as provided by Applicable Law unless a longer period is otherwise specifically set forth in this Agreement. Grantor shall provide written notice to the Grantee within thirty (30) days of Grantor's receipt from any other Person(s) of an application or request for a Franchise(s) to provide Cable Services utilizing any system or technology requiring use of the Streets.

**15.7 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

**15.8 Entire Agreement.** This Agreement and any Exhibits hereto constitute the entire agreement between the Grantor and the Grantee and supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

**15.9 Administration of Agreement.** This Agreement is a contract and 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 Grantor and the Grantee.

**15.10 Effective Date.** The Agreement granted herein will take effect and be in full force from such date of acceptance by the Grantee recorded on the signature page of this Agreement (the "Effective Date"). This Agreement shall expire on 7/17, 2033 unless extended by mutual agreement of the parties.

**15.11 Publication Costs.** This Agreement shall be published in accordance with Applicable Law. The Grantee shall reimburse the Grantor for all costs incurred in publishing this Agreement and any notices or ordinances in connection with its adoption if such publication is required by Applicable Law.

**15.12 Venue and Jurisdiction.** The parties agree that any action arising out of this Agreement will be brought in the district court of Morgan County or federal courts located in the State of Colorado, irrevocably submit to the exclusive jurisdiction of any such court and waive any objection that such party may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agree not to plead or claim the same.

[Signature page follows.]

Considered and approved this 17<sup>th</sup> day of July, 2018.

GRANTOR:

City of Fort Morgan, Colorado

Signature: Ronald Shaver

Name/Title: Ronald Shaver, Mayor

Accepted this 17 day of July, 2018.

GRANTEE:

Allo Communications LLC

Signature: Ronald Shaver

Name/Title: President

REVIEWED BY CITY ATTORNEY  
John J. Payne



Mayor Ron Shaver  
City of Fort Morgan, Colorado  
110 Main Street  
Fort Morgan, Colorado 80701

*Re: City of Fort Morgan, Colorado and Allo Communications, LLC  
Cable Television Franchise*

Dear Mayor Shaver:

In connection with the cable television franchise that the City will be considering for Allo Communications, LLC, a Nebraska limited liability company ("Allo"), there are two items in addition to those covered in the franchise agreement that we wish to address in this side letter.

When Allo sells bundled packages to subscribers of cable and non-cable service, we allocate a portion of the revenues received to cable gross revenues, in order to calculate the franchise fees due under the franchise. With respect to this allocation, Allo has provided specific examples of how it allocates revenues bundled packages in an email message to the City Attorney and the City's outside legal counsel on June 8, 2018. It is Allo's intent to continue to allocate revenue from its bundled packages in the same manner as it relates to calculation of franchise fees. To the extent that Allo changes its future allocations for purposes of calculating franchise fees it will provide the City with a description of the new allocation methods at least thirty (30) days in advance and will allocate revenues consistent with applicable law.

In connection with Section 5.3 of the franchise, which obligates Allo to provide at no cost one outlet of cable service to buildings owned or leased by the City of Fort Morgan, if Allo's content costs increase to the point that providing free service to public buildings becomes commercially impracticable, we understand that the City will entertain a request from Allo to modify the franchise in accordance with 47 U.S.C. § 545.

If this letter reflects the City's understanding, please sign where indicated below and return a signed copy of this letter to me.

ALLO COMMUNICATIONS, LLC

By:

Brad Moline, President

Read and approved this 13<sup>th</sup> day of July, 2018 by Ron Shaver, Mayor, City of Fort Morgan, Colorado.

CITY OF FORT MORGAN, COLORADO

By:

Ron Shaver, Mayor

REVIEWED By CITY ATTORNEY