

## RESOLUTION NO. 2020-12-03

### A RESOLUTION CONSENTING TO A TRANSFER OF CONTROL IN THE FRANCHISE HELD BY ALLO COMMUNICATIONS LLC

**WHEREAS**, on July 3, 2018, the City of Fort Morgan, Colorado (the "City"), by and through its City Council ("Council"), granted to ALLO Communications, LLC, a Nebraska limited liability company authorized to do business in Colorado (the "Franchisee"), a franchise to own and operate a cable television system in the City as set forth in Ordinance No. 1217 (the "Ordinance"), and entered into a Cable Franchise Agreement with Franchisee dated July 17, 2018 (the "Franchise Agreement"), pursuant to the Ordinance; and

**WHEREAS**, concurrent with adoption of the Franchise Agreement, the Franchisee made certain representations and commitments to the City as to how certain Franchise matters would be interpreted, pursuant to a "side letter" signed by the Franchisee; and

**WHEREAS**, Franchisee entered into a Membership Unit Purchase Agreement ("Agreement") dated October 1, 2020, pursuant to which SDC Allo Holdings, LLC ("SDC-AH") acquired preferred membership units in Franchisee that will represent approximately 48% of the voting membership of Franchisee when the preferred membership units convert to voting membership units upon receipt of all required regulatory approvals (the "Conversion"); and

**WHEREAS**, ultimately following the Conversion SDC-AH and Nelnet Inc. ("Nelnet") will each have negative control (*i.e.*, the ability to block decisions) of Franchisee; and

**WHEREAS**, other than the change in controlling interest in Franchisee described above, the Franchise Agreement, and all of Franchisee's duties, rights and responsibilities pertaining to the operation of the Franchisee's cable TV system pursuant to the Franchise Agreement will continue unchanged; and

**WHEREAS**, pursuant to Section 11 of the Franchise Agreement, and 47 U.S.C. Sec. 537, as amended, Franchisee has requested that the City approve of the transfer of control of Franchisee as described above; and

**WHEREAS**, Franchisee has requested that the City consent to the changes in controlling interest as described in the FCC Form 394 (Application for Franchise Authority Consent to Transfer of Control of Cable Television Franchise), exhibits and attachments thereto and supplemental information filed with the City ("394 Application"); and

**WHEREAS**, the City has reviewed the 394 Application, and will consent to the change in controlling interest in the Franchisee as described in the 394 Application, subject to the conditions described herein.

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

**Section 1.** The Fort Morgan City Council incorporates the foregoing recitals as its conclusions, facts, determinations and findings.

**Section 2.** The City hereby consents to and approves the transfer of control of Franchisee as described in the 394 Application, and the supporting documentation submitted by Franchisee to the City in connection with Franchisee's request to consent to the change in the controlling interest in Franchisee, all of which are considered material and have been relied upon by the City in the adoption of this Resolution.

**Section 3.** The City and the Franchisee agree and confirm that the Franchise Agreement is currently in full force and effect; that the effective date of the Franchise Agreement was July 17, 2018; and that the Franchise Agreement expires on July 17, 2033, unless sooner terminated as provided in the Franchise Agreement.

**Section 4.** By passage of this Resolution the City makes no representation concerning whether any violations or non-compliance issues exist with respect to the Franchise Agreement or the side letter. Nothing in this Resolution shall be construed by Franchisee as precluding the City from addressing any prior acts of noncompliance of the Franchise Agreement or the side letter by Franchisee.

**Section 5.** The City's consent to the transfer of control of Franchisee as set forth in Section 2 of this Resolution is made and is expressly subject to the following conditions:

- A. The Franchise Agreement shall remain in full force and effect in accordance with its terms, and Franchisee shall comply fully with all of its obligations under the Franchise Agreement and the side letter.
- B. All customer service standards adopted by the City remain in full force and effect, and Franchisee will maintain staffing levels necessary to meet those standards.

**Section 6.** This Resolution is further conditioned upon Franchisee obtaining the approvals related to the transfer of control of Franchisee from the Federal Communications Commission, Colorado Public Utilities Commission, and Nebraska Public Service Commission. Within thirty (30) days after completing the Conversion, Franchisee shall file with the City a written representation that these required approvals of the transfer of control of Franchisee have been obtained and that the Conversion was completed.

**Section 7.** Within thirty (30) days following the adoption of this Resolution,

COUNTY OF MORGAN )        ss.  
CITY OF FORT MORGAN )

**CERTIFICATE**

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 15<sup>th</sup> day of December, 2020.



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John Brennan, City Clerk

Franchisee shall give written notice to the City that it unconditionally agrees with and shall be bound by all terms contained in this Resolution.

**Section 8.** The City Clerk is authorized to execute and deliver this Resolution on behalf of City, along with other documents as may be necessary evidencing the City's consent to the transfer of control of Franchisee as approved by this Resolution, without further action by the City Council.

**Section 9.** This Resolution is effective upon adoption.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 15<sup>th</sup> day of December, 2020, the vote upon roll call being as follows:

Ayes: Mayor Protem Anderson, Councilmembers Deal, Kaper, Lindell, Schossow and Urdiales.

Nays: None.

Absent /Abstain: Mayor Shaver, Absent - Excused



THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

BY: Ronald Shaver  
Ronald Shaver, Mayor

ATTEST:

John Brennan  
John Brennan, City Clerk

APPROVED AS TO FORM:

John Brennan  
City Attorney

12/15/2020  
Date