

FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is between the City of Crete, Nebraska, hereinafter referred to as the "Grantor" and ALLO Crete, LLC (the "Grantee")

The Grantor hereby acknowledges that the Grantee possesses the financial, legal, and technical ability to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a Cable System (defined below) on the terms set forth herein.

1. Definitions:

- a. "Cable Act" means the Cable Communications Policy Act of 1984, P. L. 98-549, 47 U.S.C. §521 Supp., as it may be amended and superseded.
- b. "Cable System" or "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- c. "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the Service Area.
- d. "Gross Revenues" means all revenues, as determined in accordance with generally accepted accounting principles, actually received by Grantee from Subscribers residing within the Service Area for Cable Services purchased by such Subscribers. Gross Revenues shall not include (1) 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 sales or utility taxes; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) the revenue from any Subscriber where such revenue has otherwise been included in Grantee's revenue for franchise fee calculation purposes (so as to prevent revenue from being subject to a franchise fee twice); and (5) any exclusion available under applicable state or federal law.
- e. "Service Area" shall mean the Grantee's service area within the geographic boundaries of the Grantor.
- f. "Streets" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, and the public grounds, places or water within the geographic boundaries of Grantor.
- g. "Subscriber" means any person lawfully receiving any Cable Service from the Grantee.

2. **Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise for the use of the Streets within the Service Area for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.
3. **Term.** The Franchise shall be for a term of ten (10) years commencing on the Effective Date of this Franchise as set forth in Section 14 (the “Initial Term”). This Franchise will be automatically extended for an additional term of five (5) years at the end of the Initial Term, unless either party notifies the other in writing of its desire to not exercise this automatic extension at least three (3) year before the expiration of the Initial Term. Notwithstanding the foregoing, in any event, the parties shall comply with the renewal procedures of the Cable Act.
4. **Use of the Streets and Dedicated Easements.**
 - a. Grantee shall have the right to use the Streets within the Service Area for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities whenever practicable.
 - b. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground.
 - c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the Grantor.
 - d. Grantee in the exercise of any right granted to it by the Franchise shall, at no cost to the Grantor, promptly repair or replace any facility or service of the Grantor which Grantee damages, including but not limited to any Street or sewer, electric facility, water main, fire alarm, police communication or traffic control.
 - e. Grantee shall take reasonable efforts to locate new pedestals in close physical proximity to existing utility pedestals when technically and financially feasible.
 - f. Grantor reserves the right to adopt in addition to the provisions contained herein and existing applicable ordinances, such additional regulations as it shall find

necessary in the exercise of its police powers; provided, however, that such regulations are reasonable, not inconsistent with privileges granted herein and consisted with all federal and state laws, rules, regulations and orders.

5. Maintenance of the System.

- a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor.
- b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.
- c. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as they may, from time to time, be amended, regardless of the transmission technology utilized.

6. Service.

- a. The Grantee may provide Cable Service to the residences within the Grantee's operating area in the Service Area. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. Grantee shall provide service to new or existing annexed areas within the Service Area consistent with the provisions set forth in paragraph 6.b. below unless financial feasibility is not supported. When financial feasibility is not supported, Grantee shall provide a cost/benefit analysis supporting the basis for Grantee's denial of providing service to the new or existing annexed areas.
- b. 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 Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and subsection (a) above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees 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 Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees 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 11. In any audit of franchise fees due under this Agreement, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and

information that meets the standards set forth in this section.

7. Insurance/Indemnity.

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Limit (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	
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) business days of receipt of claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liabilities, or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

8. Revocation.

- a. The Grantor may revoke the Franchise in accordance with this section. Prior to revocation of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall be set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reason for such objection and provide any explanation or to cure the alleged noncompliance; provided, however, if the Grantee is diligently pursuing such cure during such sixty (60) day time period and such instance of noncompliance is susceptible of cure but cannot reasonably be cured within such sixty (60) day time period, then such cure period shall be extended for another ninety (90) days so long as Grantee continues to diligently pursue such cure. If Grantee has not cured the breach within the applicable cure period or if the Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
 - b. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript and a certified copy of the findings shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor de novo.
 - c. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets, or abandon the Cable System in place.
- 9. Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other state or federal governmental entity to provide such services using facilities located wholly or partially in the Streets the Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to ensure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate governmental entity.
- 10. Confidentiality.** If Grantee provides any books and records to the Grantor, the Grantor agrees to treat as confidential such books, records or maps that constitute proprietary or confidential information. 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 Grantee's books and records marked confidential to any person.

11. Notices, Miscellaneous.

- a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor or Grantee shall be delivered or sent to:

Grantor: City of Crete, Nebraska
Attn: City Administrator
P.O. Box 86
Crete, NE 68333

Grantee: ALLO Crete, LLC
Attn: Brad Moline, President
330 S 21st St
Lincoln, NE 68510
Brad.Moline@allofiber.com

with a copy to: ALLO Crete, LLC
Attn: Legal Department
121 S 13th St, Suite 100
Lincoln, NE 68508

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
- c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
- d. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.

12. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Franchise, 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, sever 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 Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. In the event of such Force Majeure event, the Grantee shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event.

13. Franchise Fee.

- a. Grantee shall pay to the Grantor annually an amount equal to five (5%) percent of the Gross Revenues for such calendar year, transmitted by electronic funds transfer to a bank account designated by Grantor.
- b. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than ninety (90) days after the end of each calendar year the franchise fees required by this section, together with a financial statement showing total Gross Revenues derived from the Cable System during such year. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder; provided, however, that such review shall take place no later than six (6) months after receipt of the franchise fees for the previous year.

14. Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise. This Franchise shall expire at the end of the Initial Term unless extended in accordance with Section 3 of this Franchise or by the mutual agreement of the parties.

15. Acceptance and Entire Agreement. The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

[Signatures on following page.]

Considered and approved this ___ day of _____, 2023.

City of Crete, Nebraska

Signature: _____

Name/Title: _____

Accepted this ___ day of _____, 2023, subject to applicable federal, state and local law.

ALLO Crete, LLC

Signature: _____

Name/Title: _____

Date: _____