

ORDINANCE NO 06-2024
CITY OF GRAND RIVERS, KENTUCKY

NON-EXCLUSIVE FRANCHISE

**AN ORDINANCE GRANTING ZITO MIDWEST, LLC A
TEN YEAR NON-EXCLUSIVE CABLE FRANCHISE**

WHEREAS, the City of Grand Rivers solicited bids for a non-exclusive cable system franchise for transmission of media; and

WHEREAS, the City of Grand Rivers has received and accepts the bid from Zito Midwest, LLC for such a cable franchise,

NOW THEREFORE BE IT ORDAINED BY THE CITY OF GRAND RIVERS, KENTUCKY AS FOLLOWS:

SECTION 1: Franchise Agreement: The City of Grand Rivers, Kentucky hereby accepts the attached franchise agreement and authorizes the Mayor to enter into the same on behalf of the city.

SECTION 2: Severability: If any section, paragraph, or provision of this Ordinance shall be determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any remaining sections, paragraphs, or provisions of this Ordinance.

SECTION 3: Enactment: All ordinances, orders, resolutions, motions or parts thereof insofar as some may be in conflict herewith are repealed.

This ordinance shall be published and take effect thereafter.

Date of First Reading of Ordinance:	August 13, 2024
Date of Second Reading of Ordinance:	September 10, 2024
Date of Publication of Ordinance:	
Ordinance published in:	Livingston Ledger
Ordinance Referenced:	Minutes Book , Page

B.T. Moodie, Mayor

ATTEST:

Gayla Smith, City Clerk

Certification

I, Gayla Smith, do hereby certify that I am the duly appointed clerk of the City of Grand Rivers, Kentucky, that the foregoing Ordinance is a true and correct copy of an ordinance duly adopted at a meeting of the City Council on September 10, 2024, that the Ordinance referred to therein is in the form presented to said meeting and in the form executed, and the said ordinance appears as a matter of public record in the Official City Ordinance Book and is still in full force and effect.

IN TESTIMONY WHEREOF, witness my signature on this 22nd day of Nov 2024.

Gayla Smith, City Clerk

AGREEMENT

Made this 20th day of November, 2024

- By and Between -

City of Grand Rivers, a municipal corporation organized and existing
under the laws of the Commonwealth of Kentucky, hereinafter referred to as
"City"

- and -

Zito Midwest, LLC, a limited liability company organized and existing
under the laws of the State of Delaware, with its principal office in Coudersport,
Potter County, Pennsylvania, hereinafter referred to as "Licensee"

WITNESSETH:

In consideration of the terms and conditions hereinafter set forth, the
parties hereto intending to be legally bound, hereby do mutually agree as
follows:

1. DEFINITIONS. When used in this Agreement, unless the context
otherwise requires, the following terms and their derivatives shall have the
meaning herein given (and when not inconsistent with the context, words used in
the present tense include the future, words in the plural number include the

singular and words in the singular number include the plural):

- "Agreement" or "Franchise" refers to this Franchise Agreement entered into by the parties.
- "Broadcast Service" or "Basic Service" shall mean that level of service offered by the Licensee at the lowest monthly rate that includes the over-the-air broadcast channels that can reasonably be received by the citizens of the City.
- "Cable Television System" means a system composed of, without limitation, antenna, cables, fiber optic lines, coaxial cable lines, transmission equipment, wires, towers, wave guides, satellite receiving dishes, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing any coaxial cable, fiber optic, radio, television or other electronic or electrical signals to and from persons, subscribers and locations in the franchise area.
- "CATV" means a cable television system.
- "City Council" means the governing body of the City.
- "Franchise area" means that area within the corporate limits of the City as now or hereafter constituted.
- "Person" shall mean any natural person, company, or entity of any kind.

- "Premium Service" shall mean those cable channels offered to subscribers on a monthly basis for a fee on a per-channel basis.
- "Street" means the surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.
- "Subscriber" means any person or entity receiving and paying for a service offered by Licensee. In the case of multiple family dwellings, multiple dwelling properties (such as mobile home parks, office buildings and other multiple occupant situations), each dwelling unit or office unit shall be treated as a separate subscriber, regardless of how services are shared or billed.

2. City hereby grants to Licensee a non-exclusive franchise co-extensive with the corporate limits of said City, to engage in the business of transmitting, retransmitting and distributing voice, video, and data signals to subscribers for hire by means of a coaxial or fiber optic cable system or otherwise, together with the accompanying right and privilege to use and occupy the streets, ways, alleys and other property of the City for the purpose of installing, constructing, maintaining and operating upon, through, along, under, over and across such streets, alleys, highways, sidewalks, bridges, tunnels,

public ways and public places such wires, cable, fiber, crossarms, guys and apparatus (hereinafter referred to as "Facilities") as may be reasonably necessary for Licensee to carry out its business, subject, nevertheless, to the terms and conditions set forth.

While Licensee recognizes that this franchise is non-exclusive, City agrees not to grant an additional franchise to another multi-channel video provider on terms or conditions more favorable or less burdensome with this franchise.

3. The poles and posts used for Licensee's distribution system shall be those erected by it and/or those erected and maintained by other persons, firms or corporations at the time maintaining poles or posts within City limits, when and where practicable, providing mutually satisfactory contractual arrangements can be entered into with said companies. City shall not be responsible for obtaining any pole line agreements with the various utility companies maintaining poles within City limits.

4. Licensee's transmission and distribution system, poles, wires, and appurtenances shall be located, erected, and maintained so that none of it shall endanger or interfere with the life of any person or remove or obstruct the free use of the streets, alleys, bridges or other public property.

Construction and maintenance of the transmission distribution system, including house connections, shall be in accordance with provisions of the

National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code, the National Board of Fire Underwriters and such reasonable applicable ordinances and regulations of City affecting electrical installations which may be presently in effect or may be enacted by City.

5. In the maintenance and operation of its television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction or addition to its facilities, Licensee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places made by Licensee in the course of its operation shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings. Any opening made in the streets, alleys, and sidewalks or any other public places shall be replaced promptly to same condition or better than existing at the time of said opening.

6. Licensee shall maintain its attachments in a manner that will not interfere with the use of said poles by the City.

7. Upon continuing and completing timely and satisfactory performance by Licensee of each and every term of the Agreement consistent with the requirements of the Cable Communications Policy Act of 1984 ("Cable Act") as implemented by the Federal Communications Commission, the permission herein granted shall continue for a term of ten (10) years, and at the

expiration of said ten (10) years this permission may be renewed consistent with the renewal provisions of the Cable Act, 47 USC Section 546.

8. Licensee's distribution system shall conform to the requirements of the Federal Communications Commission, particularly with respect to freedom from spurious radiation. In addition, Licensee will comply with all FCC regulations now or hereafter put in force including the filing of all compliance certificates. The provisions of Section 76.31 of the regulations of the FCC, and any amendments thereto that may be hereafter enacted, are specifically incorporated by reference herein. Licensee shall abide by all rules and regulations of any State or Federal Regulatory Agency which has or may hereafter acquire jurisdiction pertaining to the services contemplated by this contract. In the event that control of the services herein provided is assumed by any State or Federal regulatory agency, Licensee shall be subject to such control. Any term of this contract in conflict with any regulation promulgated by such regulatory agency shall be deemed to be subordinate to and subject to the regulation of the Federal or State agency without impairment of any other term of this Agreement.

9. Installation and maintenance of equipment shall be such that standard NTCS color signals shall be transmitted to any subscriber's color receiver. The antenna, receiving and distribution equipment shall be installed and maintained so as to provide pictures on subscribers' receivers throughout

the system essentially of the same quality as those received at the antenna site.

Licensee shall maintain service in accordance with the technical standards of the Federal Communications Commission.

Licensee shall continue to maintain a toll-free telephone number where all subscriber complaints regarding the quality of service, cable equipment, malfunctions, and similar matters pertaining to the cable television service will be resolved, without charge, normally within twenty-four (24) hours from receipt of complaint thereof, except that this shall not apply to customer-caused damages. Service outages on weekends will be repaired within 24 hours and all other service calls on the weekends will be made within 24 hours of the next business day. Repair of customer-caused damage shall be billed to the subscriber. Service shall be prompt in the event of malfunctions under the control of Licensee, and emergency service will be provided for holidays and weekends.

10. Licensee shall indemnify, protect, and save harmless City from and against any losses and physical damages to property and bodily injury or death to persons, including payments made under any Workmen's Compensation Law which may arise out of or be caused by the erection, maintenance, presence, use or removal of said attachments on poles or of Licensee's own poles within the City or by any act of the Licensee, its agents or employees. Licensee shall carry public liability insurance to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result directly or indirectly from or by reason of loss, injury, or damage.

The amounts of such insurance against liability due to physical damages to property or bodily injury or death shall not be less than Five Hundred Thousand Dollars (\$500,000.00) as to any one accident and not less than Five Hundred Thousand Dollars (\$500,000.00) as to any one person. Licensee shall also carry such insurance as it deems necessary to protect it from all claims under Workmen's Compensation Laws in effect and that may be applicable to Licensee. In all of said policies of insurance, the City shall be named insured therein and said policies of insurance shall be further subject to the approval of the City's attorney as to form, content, and sufficiency.

By its acceptance of this Franchise Agreement, Licensee specifically agrees that it will pay all damages and penalties which City may legally be required to pay as a result of damages arising out of the installation, operation, or maintenance of the cable system authorized herein whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, or which arise by virtue of Licensee's acts or omissions under this Agreement or which arise by virtue of this Agreement. However, nothing herein contained shall be construed to relieve City from any and all liability due to its own negligence.

By its acceptance of this Franchise Agreement, Licensee specifically agrees that it will pay all expenses incurred by City in defending itself or in asserting its rights under this Agreement, but if City is asserting its rights against Licensee, such expenses shall be paid only if the City is successful. These expenses shall include out-of-pocket expenses, such as reasonable attorney fees, and shall also include the reasonable value of any services rendered by

City Attorney or his assistants or any employees of City.

11. If Licensee shall fail to comply with any of the provisions of this Agreement or default in any of its obligations, except for causes brought about by acts of God, and shall fail to correct same within sixty (60) days after written notice from City, City shall have the right to revoke this license and all rights of Licensee hereunder. Provided, however, that in the event the correction cannot be made within sixty (60) days, this right of termination shall not be effective so long as Licensee is diligently and continuously proceeding with the corrective action.

Upon termination, Licensee shall promptly remove all of its posts, poles, television transmission and distribution system and other fixtures and attachments from the streets, lanes, sidewalks, highways, alleys, bridges, and other public places in City and shall restore the said areas to their original condition. In the event of the failure of the Licensee to promptly take such action, City shall have the right to do so at the cost of Licensee.

12. If any section, sentence, clause or phrase of this Agreement shall be held to be invalid or illegal, the invalidity or illegality thereof shall not affect the validity or legality of any other section, sentence, clause or phrase of this Agreement.

13. This Agreement constitutes the understanding between the parties

and shall be binding upon the parties hereto, their respective assigns, transferees, and successors.

14. This Agreement is made under and by virtue of an enabling ordinance of City, adopted at a public meeting thereof held on the 28th day of November 20th 2022.

IN WITNESS WHEREOF, the parties hereto by their duly authorized
representatives have affixed their signatures this 22nd day of November 2024.

City of Grand Rivers

By: [Signature]
Title: Mayor

Attest:
[Signature]
Blake J. Smith City Clerk

Zito Midwest, LLC

By: _____
Title: Co-President

Attest:

Subscribed and sworn before me this 22nd day of
November, 2024 600054417N expiration 11/8/2024
Blake J. Smith
Mayor of Smith

IN WITNESS WHEREOF, the parties hereto by their duly authorized
representatives have affixed their signatures this 25th day of November 20
24.

City of Grand Rivers

By: BT Moore
Title: Mayor

Attest:
Angela J. Smith City Clerk

Zito Midwest, LLC

By: Michael S. Bugar
Title: Co-President

Attest:

Janet Young

Subscribed and sworn before me this 28th day of
November, 2024 & 669844741 expiration 11/8/2024
Angela J. Smith
Mayor of Smith