

**VILLAGE OF WATERLOO  
RESOLUTION NO. 12-08-20-01**

**WHEREAS**, the Board of Trustees of the Village of Waterloo entered into a Franchise Agreement with Zito Media on February 26, 1996; and

**WHEREAS**, the Board of Trustees of the Village of Waterloo extended the franchise agreement in 2006 for an additional 15 years; and

**WHEREAS**, the agreement with Zito Media expires on February 26, 2021; and

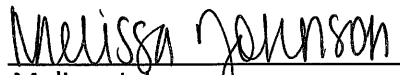
**WHEREAS**, the Zito Media has presented a franchise agreement renewal for a length of 10 years.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF WATERLOO, NEBRASKA, AS FOLLOWS:**

**THAT**, the franchise agreement renewal with Zito Media, attached hereto as Exhibit "A", is hereby adopted.

PASSED AND APPROVED this 8 day of December, 2020.

ATTEST:

  
Melissa Johnson  
Clerk



  
Travis Harlow  
Chairperson

AGREEMENT

Made this 8 day of December, 2020

- By and Between -

VILLAGE OF WATERLOO, a municipal corporation organized and existing under the laws of the State of Nebraska, hereinafter referred to as "VILLAGE"

- 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):

- a. "Agreement" or "Franchise" refers to this Franchise Agreement entered into by the parties.

- b. "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 VILLAGE.
- c. "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.
- d. "CATV" means a cable television system.
- e. "Franchise area" means that area within the corporate limits of the VILLAGE as now or hereafter constituted.
- f. "Gross Subscriber Revenues" means the annual gross revenues of LICENSEE from all sources of operations of the System within the VILLAGE including, but not limited to, Basic Service monthly fees, pay television fees, installation and reconnection fees. This term does not include any sales, excise or other taxes collected by LICENSEE on behalf of the State, VILLAGE or other governmental unit.
- g. "Person" shall mean any natural person, company, or entity of any kind.
- h. "Premium Service" shall mean those cable channels offered to subscribers on a monthly basis for a fee on a per-channel basis.

- i. "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.
- j. "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.
- k. "VILLAGE Council" means the governing body of the VILLAGE.

2. VILLAGE hereby grants to LICENSEE a non-exclusive franchise co-extensive with the corporate limits of said VILLAGE, 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 VILLAGE 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, VILLAGE 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 VILLAGE limits, when and where practicable, providing mutually satisfactory contractual arrangements can be entered into with said companies. VILLAGE shall not be responsible for obtaining any pole line agreements with the various utility companies maintaining poles within VILLAGE 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 VILLAGE affecting electrical installations which may be presently in effect or may be enacted by VILLAGE.

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 VILLAGE.

7. LICENSEE shall provide internet connectivity service to all City owned or public buildings and schools. Public Buildings shall not include hospitals or nursing homes that charge for care or residency.

8. 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.

9. 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.

10. 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.

11. LICENSEE shall indemnify, protect, and save harmless VILLAGE 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 VILLAGE 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 One Million Dollars (\$1,000,000.00) 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 VILLAGE shall be named insured therein and said



policies of insurance shall be further subject to the approval of the VILLAGE'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 VILLAGE 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 VILLAGE 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 VILLAGE in defending itself or in asserting its rights under this Agreement, but if VILLAGE is asserting its rights against LICENSEE, such expenses shall be paid only if the VILLAGE 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 VILLAGE's Attorney or his assistants or any employees of VILLAGE.

12. As compensation for the franchise granted herein and in consideration of the permission to use the streets and public ways of VILLAGE for the construction, maintenance, and reconstruction and operation of a cable television system in the community, LICENSEE shall pay to VILLAGE five percent (5%) of its annual gross subscriber revenues.

Payments of the annual franchise fees shall be made semi-annually, by March 31 and September 30 of each year and shall be accompanied by a certified financial report as to gross annual receipts which shall be used for the purpose of verifying the franchise fee payment. VILLAGE, at its own expense and upon fifteen (15) business days written notice, may cause the books and records of the LICENSEE to be audited, for the purpose of determining the correctness of the annual payments to the VILLAGE and shall have the right to have the books and records certified by a certified public accountant for said purposes. If a discrepancy is found in an amount to exceed ten percent (10%) of the annual fee due to the VILLAGE, LICENSEE shall reimburse all auditing and related costs to the VILLAGE.

13. All notice, or reports required to be given in writing under this franchise shall be deemed to be given when delivered personally to the person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to which notice is being given, as follows:

If to VILLAGE: Village Clerk  
PO Box 127  
Waterloo NE 68069

If to LICENSEE: Zito Media  
102 South Main Street  
Coudersport PA 16915

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

14. 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 VILLAGE, VILLAGE 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 VILLAGE and shall restore the said areas to their original condition. In the event of the failure of the LICENSEE to promptly take such action, VILLAGE shall have the right to do so at the cost of LICENSEE.

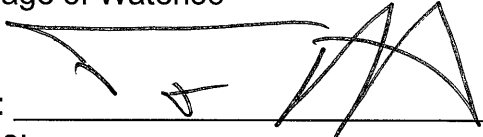
15. If any section, sentence, clause or phrase of this Agreement shall be held to be invalid or illegal, the invalidity or illegality thereof shall not affect the validity or legality of any other section, sentence, clause or phrase of this Agreement.

16. This Agreement constitutes the understanding between the parties and shall be binding upon the parties hereto, their respective assigns, transferees, and successors.

17. This Agreement is made under and by virtue of an enabling ordinance of VILLAGE, adopted at a public meeting thereof held on the 8 day of December 2020.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have affixed their signatures this 8 day of December 2020.

Village of Waterloo

By:   
Title: \_\_\_\_\_

Attest: Melissa Johnson

Zito Midwest, LLC

By: Michael J. Bigas  
Title: Co-President

Attest: Julie Fetuzzy