



CITY of NOVI CITY COUNCIL

Agenda Item F
September 26, 2011

SUBJECT: Approval of Amendment to Multi-Jurisdictional Agreement for Administration of a Cable Television Franchise — Southwestern Oakland County Cable Commission (SWOCC).

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

The City of Novi entered into an Agreement for Multi-Jurisdictional Administration of a Cable Television Franchise with the Cities of Farmington and Farmington Hills in the 1990s. The cable television administrative commission set up in the agreement is known as the Southwestern Oakland County Cable Commission (SWOCC). The primary purpose of SWOCC is to administer the franchise agreement with Bighthouse. In addition, SWOCC oversees the public and government access facility usage conducted out of SWOCC Studios, located in Farmington but available to all three communities for use.

Over the years, SWOCC has employed a staff of up to 10 full-time members, from an Executive Director to technical positions for the production of cable television shows and various administrative employees. With the recent decline in State Shared Revenue, operational reorganization, and fiscal constraints experienced by all three cities, the number SWOCC staff is considerably reduced.

The SWOCC Board has been discussing further operational and administrative efficiencies and has determined the duties of the existing Executive Director position could be effectively apportioned among the three cities and/or their staff members and an onsite Operations Manager at the SWOCC facility. On September 13, 2011, the SWOCC Board amended its Bylaws to eliminate any specific reference to an Executive Director position, replacing it with a general authorization for the SWOCC Board to hire and/or employ appropriate personnel and contractors. The SWOCC Board determined that this administrative flexibility to reduce or eliminate the position of Executive Director would give the Board greater flexibility in responding to operational and budgetary priorities.

However, the Multi-jurisdictional Agreement between the three entities still specifically refers to an "Executive Director" position, in the existing Article II of the Agreement. Therefore, on September 13, 2011, the SWOCC Board adopted a motion recommending to the three cities a change in the Multi-Jurisdictional Agreement to also remove the reference to the specific position of Executive Director from the Agreement and to replace it with a similar general authority on the part of the Board to hire or contract appropriate and necessary personnel.

The proposed changes in the Multi-Jurisdictional Agreement are redlined in the attached revised Agreement. Also attached are the amendments to the SWOCC Bylaws that the Board adopted subject to the change in the Multi-Jurisdictional Agreement.

RECOMMENDED ACTION: Approval of Amendment to Multi-Jurisdictional Agreement for Administration of a Cable Television Franchise — Southwestern Oakland County Cable Commission (SWOCC).

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

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**AGREEMENT FOR MULTI-JURISDICTIONAL
ADMINISTRATION OF A CABLE TELEVISION FRANCHISE**

The parties to this Agreement, hereafter known as “Municipal Corporations”, consisting of the cities of Farmington, Farmington Hills and Novi, wishing to participate in the joint administration of a cable television franchise between the Municipal Corporations and any and all cable companies, hereafter known as the “Operator”, agree as follows:

I

CABLE TELEVISION ADMINISTRATIVE COMMISSION

- A. The Municipal Corporations hereby establish a cable television administrative commission called the “Southwestern Oakland Cable Commission”, hereafter known as the “SWOCC”.
- B. The purpose of SWOCC hereby established is to foster cooperation among the Municipal Corporations who are members of SWOCC to jointly negotiate and administer cable franchise agreement(s) and other agreements or contracts pertaining to cable service to receive the greatest benefit to the cities and their residents. SWOCC may also work on behalf of the Municipal Corporations to provide access production and programming.
- C. SWOCC shall consist of two (2) members of each Municipal Corporation. Each Municipal Corporation shall select or appoint one (1) representative from its governing body and one (1) representative shall be City Manager or his/her designee of that Municipal Corporation.

Voting shall be by a representative present at a Commission meeting; proxy or in absentia vote shall not be allowed.

- D. Each Commission member shall be entitled to one (1) vote for each item under consideration. Robert's Rules of Order shall be used in conducting meetings of SWOCC.
- E. SWOCC shall elect from its members a Chairman and a Vice Chairman. The Chairman shall be the Chief Executive Officer of SWOCC and shall preside at all meetings of SWOCC. The Chairman shall execute all contracts and obligations of SWOCC along with one other Commissioner of SWOCC. The Vice Chairman shall serve in the absence of the Chairman.
- F. SWOCC shall appoint a Fiscal Officer and Secretary. Persons appointed to the position of Secretary and/or Fiscal Officer may not be members of SWOCC. The Fiscal Officer may be the City Finance Director or Treasurer of one of the Municipal Corporations, or as otherwise appointed by SWOCC. The Secretary shall provide for the recording and maintenance of all records of SWOCC and shall prepare and maintain minutes of the regular and special meetings of SWOCC. The Fiscal Officer shall be responsible for providing a system of accounting and fiscal procedures which are in accordance with this Agreement and State accounting procedures established for governmental accounting. The Fiscal Officer shall be bonded in an amount deemed appropriate by SWOCC. All other duties of the Fiscal Officer shall be set forth in the by-laws.
- G. SWOCC shall meet at such time and place as approved by a majority of SWOCC. In any case, SWOCC shall meet not less than quarterly.
- H. SWOCC may employ staff and designate such responsibilities as it deems appropriate to any individual or entity in furtherance of its purposes. SWOCC may receive funds, disburse funds, purchase equipment, enter into contracts for the purchase or leasing of property or for services, repairs of equipment and other similar purposes which are

required in the administration of the cable franchise and for which funds have been allocated in an approved budget by SWOCC.

- I. SWOCC shall conduct public hearings for renewals of franchise, increases in basic service rates, and for other public purposes as may be determined by SWOCC.
- J. SWOCC shall establish its policy for renewals of the franchise, and for other purposes as may be determined by SWOCC.
- K. SWOCC shall hear and decide appeals regarding public or community access or facility usage.
- L. SWOCC shall review the performance of the Operator and the Operator's compliance with the provisions of the franchise agreements, ordinances or other promises which may be made to the Municipal Corporations by the Operator. SWOCC shall have the authority to review and develop a recommendation on requests for modification of any powers which may be delegated to it.

1. Federal Law.

- M. SWOCC hereby accepts the designation of any powers which may be delegated to it pursuant to the Franchise Ordinance by a Municipal Corporation, or other duties which may be authorized by the legislative bodies of a majority of the Municipal Corporations, and may direct the exercise of such powers in the administration of the cable franchises.
- N. SWOCC shall exercise such powers as are authorized by law and directed by the Municipal Corporations which are consistent with the applicable laws or regulations of the State of Michigan and the United States of America.
- O. SWOCC shall adopt by-laws by a majority vote.
- P. No elected or appointed official of a participating Municipal Corporation with an ownership or financial interest, however direct or indirect, and no employee or officer of

the cable television company granted the franchise shall be eligible to be a representative or alternate representative to SWOCC.

- Q. SWOCC may appoint any standing committees, special committees and/or task forces to make recommendation to SWOCC with respect to any changes in the cable system that may result from new telecommunications technology and any other matters involving the exercise of SWOCC's duties and responsibilities.

SWOCC shall report not less than annually to the Municipal Corporations all actions taken hereunder with respect to regulatory and cable production matters. The process for creating such committees shall be spelled out in SWOCC's by-laws, as may be amended from time to time. Each such committee shall adopt by-laws governing its membership and purpose. Such committee by-laws shall be subject to the approval of SWOCC. Any committees created by SWOCC under this provision may be disbanded by SWOCC upon a finding that the necessity for such committee no longer exists.

H

EXECUTIVE DIRECTOR

~~An Executive Director shall be appointed by SWOCC and shall serve at the pleasure of SWOCC. Duties of the Executive Director shall generally include the implementation of SWOCC decisions, oversight of the franchise agreement(s), acting as liaison between SWOCC and interested committees, organizations and individuals, and providing leadership in the production of access programming. The Executive Director shall attend all meetings of SWOCC, but shall have no vote on any issue up for consideration. The Executive Director shall make such recommendations to SWOCC as he/she may deem appropriate or necessary.~~

III

RESPONSIBILITY OF THE MUNICIPAL CORPORATIONS

- A. Each of the Municipal Corporations agrees to cooperate with SWOCC and its employees and with each other in the following matters:

1. The adoption and amendments to Cable Franchise Ordinances and Rules and Regulations for the subscribers.
2. Granting recognition of and support to the provisions of the franchises, ordinances and agreements of all of the -Municipal Corporations which are party to this Agreement and the implementation of such provisions where possible.
3. Sponsoring legal action necessary and desirable for the enforcement of the cable franchises, including legal action necessitated due to audit procedures, collection of franchise fees, the failure to perform required services, or other circumstances.

IVIII

RECEIPT OF FUNDS

- A. Each Municipal Corporation agrees that SWOCC shall be the Agency to receive the franchise fees established in the franchise agreement between each Municipal Corporation and the cable operator for the purpose of SWOCC activities, administration and programming of the access channels.
- B. SWOCC shall confirm the allocation of these funds ~~after receiving recommendations from the Executive Director~~. SWOCC shall approve an Annual Budget.

IV

ANNUAL AUDIT

- A. SWOCC shall cause an annual audit to be made of its operations by an independent certified public accounting firm of its choice for the purpose of verifying the correctness of all account procedures employed, the distribution of funds made, the allocation of costs and the report submitted to the Municipal Corporations.

- B. The expense of such audit shall be part of the cost of the administration of SWOCC.
Copies of the audit in its entirety shall be furnished to all Municipal Corporations.

VI

CABLECAST POLICIES

SWOCC shall adopt and promulgate specific rules and regulations governing cablecast policies for public and community access consistent with the applicable regulations of the Federal Communications Commission or of any franchises or ordinances. . Each Municipal Corporation shall develop its own policies and procedures for government access on its respective access channel.

VII

CANCELLATION OF THE AGREEMENT

- A. Any Municipal Corporation may withdraw from this Agreement at any time; provided, however, that any withdrawal shall be effective only on June 30th of any given year and shall be preceded by written notice of withdrawal delivered to SWOCC by registered or certified mail not later than January 1st of the year the cancellation is to be effective.
- B. In the event that any Municipal Corporation desires to withdraw from this Agreement, the provisions of this Agreement relative to auditing, distribution and expenditure of funds shall continue in effect until the final settlement has been made of all monies collected for the purpose of the administration of local access cable television for the withdrawing Municipal Corporation prior to the effective date of such withdrawal.
- C. SWOCC may be dissolved by two-thirds (2/3) of the parties to this Agreement, and in such event, SWOCC shall liquidate or transfer the assets of SWOCC to any successor organization. In the case where a successor organization is not established, the assets of

the Corporation shall be distributed to the Municipal Corporations in proportion to each Municipal Corporation's population to the population of all the participating Municipal Corporations.

VIII

AMENDMENTS

Upon recommendation of SWOOC, this Agreement may be amended by action by the governing bodies of all Municipal Corporations which are party hereto.

IXVIII

SEVERABILITY

In the event any part or portion of this Agreement shall be found contrary to law and, thereby, held to be null and void, all other provisions of this Agreement shall remain in full force and effect, and shall not be otherwise affected by any such ruling, finding or decision.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date indicated by signing this Agreement, and shall become effective upon the execution by the legislative bodies of the cities of Farmington, Farmington Hills and Novi and the filing of this Agreement with the Clerk of the County of Oakland, Michigan. This Agreement may be signed in counterparts.

[SIGNATURES BEGIN ON THE NEXT PAGE]

Attest:

CITY OF FARMINGTON

City Clerk

By: _____
Chief Executive Officer

Dated: _____

Attest:

CITY OF FARMINGTON HILLS

City Clerk

By:- _____
Chief Executive Officer

Dated: _____

Attest:

CITY OF NOVI

City Clerk

By: _____
Chief Executive Officer

Dated _____

Approved as to form:

City Attorney, Farmington

City Attorney, Farmington Hills

City Attorney, Novi

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BYLAWS
OF
THE SOUTHWESTERN OAKLAND CABLE COMMISSION
OF THE CITIES OF
FARMINGTON, NOVI AND FARMINGTON HILLS

ARTICLE I

Name and Official Office

Section 1. Name. The official name of this public body is the Southwestern Oakland Cable Commission (herein referred to as "SWOCC"). SWOCC has been established by the cities of Farmington, Novi and Farmington Hills, all Michigan Municipal Corporations, for the purpose of administering cable television franchises granted by the three Municipal Corporations to any and all cable companies. The operation of SWOCC is governed by that Multi-Jurisdictional Agreement approved by the three Municipal Corporations on _____, as amended.

Section 2. Official Office. SWOCC's official office is located at 33300 Nine Mile Road, Farmington, Michigan. This office may be changed from time to time by the Commission as deemed necessary.

Section 3. Other Offices. SWOCC may establish additional offices as it deems necessary, or as required by the operation of SWOCC from time to time.

ARTICLE II

Purpose and Responsibilities

Section 1. Purpose. The purpose of SWOCC hereby established is to foster cooperation among the Municipal Corporations who are members of SWOCC to jointly negotiate and administer cable franchise agreements and other agreements or contracts pertaining to cable service to receive the greatest benefit to the Municipal Corporations and their residents. SWOCC may also work on behalf of the Municipal Corporations to provide access production and programming.

Section 2. Powers and Responsibilities. SWOCC's powers and responsibilities are set forth in the Multi-Jurisdictional Agreement, as amended. These powers and responsibilities shall be exercised to effectuate an efficient and effective cable system on behalf of the three Municipal Corporations, and to maintain a proper liaison with any cable franchisees.

Section 3. Performance Reviews. SWOCC shall review the performance of any Cable Operators granted franchises by the Municipal Corporations. SWOCC has the authority to review and develop recommendations regarding the operator's compliance with the 2000 Franchise Agreement and franchise ordinance between the Cable Operator and each Municipal Corporation.

ARTICLE III

Membership of SWOCC

Section 1. Membership. SWOCC shall consist of two members of each of the Municipal Corporations, as set forth in detail in the Multi-Jurisdictional Agreement, as amended. Each Commissioner shall have an alternate who has been appointed by their respective City Council. Said alternate may vote in the respective Commissioner's absence.

Section 2. Replacement and Vacancies. Replacement Commissioners shall be appointed in the same manner as original appointments.

Section 3. Conflict of Interest. Any Commissioner who has a direct interest in any matter before SWOCC shall disclose his/her interest prior to SWOCC's consideration of the matter, which disclosure shall become a part of the official record of SWOCC's proceedings. Said Commissioner shall abstain from all discussion, consideration or action relating to said matter, and shall remove him-/herself from the dais during all activity related to such matter.

ARTICLE IV

Officers and Staff

Section 1. Officers. SWOCC shall designate a Chairperson Vice-Chairperson, Secretary and Fiscal Officer.

Section 2. Chairperson. The Chairperson shall be Chief Executive Officer of SWOCC and shall preside at all SWOCC meetings. The Chairperson shall execute all contracts and obligations, along with one other Commissioner or the Executive Director.

Section 3. Vice-Chairperson. The Vice-Chairperson shall serve in the absence of the Chairperson.

Section 4. Secretary. The Secretary shall be designated by SWOCC and shall record and maintain the minutes and other public records of SWOCC. The Secretary need not be a member of the SWOCC and shall serve at the pleasure SWOCC.

Section 5. Fiscal Officer. The Fiscal Officer shall be designated by SWOCC and shall design a system of accounting to include all fiscal procedures and maintain financial records. The Fiscal Officer need not be a member of SWOCC and shall serve at the pleasure of SWOCC. The Fiscal Officer shall perform the following functions in accordance with generally accepted practices:

A. Keeping all monies received pursuant to the Multi-Jurisdictional Agreement in a manner provided by law in a segregated and separate bank account.

B. Keeping of records showing the amount of all fees paid by any Cable Operator(s), together with all increments, additions and investment interest earned thereon.

C. Investing of fees received from any Cable Operator to the extent practical. All monies received and the interest earned thereon shall be reinvested. The investments as made by the Fiscal Officer shall be subject to approval of SWOCC and as limited by SWOCC.

D. Issuing a monthly financial report to SWOCC, in accordance with the financial reporting requirements of that Municipal Corporation unit which has been appointed by SWOCC to handle the financial matters of SWOCC. The expenses of financial administration shall be part of the cost of SWOCC.

Section 6. Election of Officers. The Chairperson and Vice-Chairperson shall be elected at the annual meeting of SWOCC from among the members of SWOCC and shall hold office for one year, or until successors are elected.

Section 7. Vacancies. Should the offices of Chairperson or Vice-Chairperson become vacant, SWOCC shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office. In the event that neither the Chairperson nor the Vice-Chairperson are present at a duly scheduled meeting, then the Commissioners present may select a temporary Chairperson to preside over the business of said meeting.

Section 8. ~~Executive Director~~Employment of Staff and Assignments of Responsibilities. SWOCC shall ~~establish the position of Executive Director who shall employ such staff, contract with such individual or entities, and assign to any member such duties and responsibilities as it deems necessary and appropriate implement the decisions of SWOCC with regard to the financing and general administration of SWOCC, human resources services, operations and facilities management; and regulatory and community relations. SWOCC may, in its discretion, specifically employ an operations manager to conduct day-to-day operations and may assign to member communities certain responsibilities, to implement the decisions of SWOCC, to oversee any franchises, and to provide leadership in the production of access programming.~~ The Executive Director shall be appointed by SWOCC, and shall serve at its pleasure. The Executive Director shall attend all meetings of SWOCC, but shall have no vote on any matter before SWOCC. The Executive Director shall make such recommendations to SWOCC as he/she feels are in the best interests of SWOCC.

~~The Executive Director shall be responsible for administering the day to day operations of SWOCC, including, but not limited to: staffing, payroll, general accounting, video production, facility maintenance and scheduling, purchasing and all items required for SWOCC. Specifically, the Executive Director shall be responsible for the following:~~

A. ~~Handling all personnel issues, including new hires and terminations.~~

B. ~~Approval of vendor contracts and making of purchases as approved in the budget or following approval of SWOCC.~~

C. ~~Preparing an annual budget for SWOCC to review and approve.~~

~~D. Preparation of an annual production report to SWOCC.~~

~~E. Responding to requests for qualifications, requests for proposals, and if such qualifications/proposals are accepted by the board, to enter into contracts with third parties to perform the services required under such contracts. (Amended by resolution 11/04/10).~~

ARTICLE V

Meeting and Voting Procedure

Section 1. Meetings. SWOCC meetings shall be scheduled at least quarterly. SWOCC shall report to each of the Municipal Corporations not less often than annually.

Section 2. Annual Meeting. The annual meeting of SWOCC shall take place at the first meeting of each calendar year.

Section 3. Notice. Notice of any meeting of SWOCC, including public hearings, shall be given in accordance with the Open Meetings Act (“OMA”) 1976 PA 267.

Section 4. Quorum. A quorum shall be established if a majority of members of SWOCC then in office are present for the transaction of the business matters for that meeting. An alternate may be included in establishing a quorum only if the Commissioner is not present.

Section 5. Special Meetings and Notice. The Chairperson or acting Chairperson may call for a special meeting. Written notice shall be posted as well as sent or delivered to other Commissioners at least 18 hours prior to any special meeting. Such notice must specify: subject, location, date and time.

Section 6. Public Hearings. SWOCC shall conduct public hearings as necessary under the Cable Franchise and Cable Ordinances. SWOCC shall give notice to the public of its proposed budget prior to its adoption each year.

Section 7. Voting Procedure. Each of the Commissioners, or their alternates, shall have one vote for each matter before SWOCC. Votes shall be cast by the Commissioner who is present, or in his absence, the alternate who is present. No vote by proxy or in absentia shall be allowed. If a quorum is present, then a motion or resolution shall be approved by a simple majority.

Section 9. Robert’s Rules. Unless otherwise specified in these bylaws, the conduct of SWOCC meetings shall be in accordance with Robert’s Rules of Order.

ARTICLE VI

Committees

Section I. Purpose. Advisory or Support Committees may be created by and members appointed by resolution of SWOCC to make recommendations resulting from new telecommunications technology, or study such other matters as SWOCC may feel appropriate. Each such advisory

committee created pursuant to this section shall adopt bylaws governing its membership and purpose, which shall be subject to the approval of SWOCC. Such advisory committees may be disbanded by SWOCC upon a finding that the purpose for such committee no longer exists.

Section 2. Public Access Promotion Committee. SWOCC shall create a Public Access Promotion Committee. The purpose of the Public Access Promotion Committee is to promote public access within the Municipal Corporations on issues related to public access. The Access Promotion Group shall be comprised of two members from each Municipal Corporation, plus (1) additional for each 22,000 persons above the first 22,000 within each corporate limit as determined by the most recent federal census.

Appointments to the Access Promotion Committee shall be made by the governing body of each respective Municipal Corporation. Each Committee Member shall be entitled to one vote on each item considered. Robert's Rules of Order shall be used in conducting meetings. SWOCC shall establish bylaws for the Committee, which shall set forth its specific purpose as an advisory group.

ARTICLE VII

Records

Section 1. Commission Records. SWOCC maintains the CATV underlying documentation for SWOCC at its official office.

Section 2. Meeting Minutes. Written records shall be kept of all public meetings and be made available to the public as set forth in the Freedom of Information Act ("FOIA") 1976 PA 442. Copies of draft minutes of SWOCC meetings shall be made available to the public upon written request. Such draft minutes shall be available to the public according to the time frame set forth under the Open Meetings Act, and shall be clearly marked with the word "Draft" on each page constituting the minutes.

ARTICLE VIII

AMENDMENTS

These Bylaws may be altered, amended or repealed by majority vote of the Commissioners then in office, at any regular or special meeting called for that purpose.

I hereby certify that the above bylaws were adopted on the 19th day of January, 2005.

Jerry Ellis, Chairperson

Caren Collins Fifer, Executive Director