



## CITY of NOVI CITY COUNCIL

**Agenda Item 4**  
**February 29, 2016**

**SUBJECT:** Consideration to approve Dissolution and Liquidation Agreement relating to Southwestern Oakland Cable Commission (SWOCC), subject to approval by the Cities of Farmington and Farmington Hills.

**SUBMITTING DEPARTMENT:** Neighborhood and Business Relations

**CITY MANAGER APPROVAL:** 

### **BACKGROUND INFORMATION:**

The Cities of Farmington, Farmington Hills, and Novi are parties to a certain "Agreement for Multi-Jurisdictional Administration of a Cable Television Franchise," initially approved in 1983 and amended and restated in 2011. The Multi-Jurisdictional Agreement created the Southwestern Oakland Cable Commission, more commonly known as SWOCC. Among the main purposes of the creation of SWOCC was the three communities' intention to engage in the joint negotiation and administration of the franchise agreements that each community had with Bright House Cable (and its various predecessors dating back to 1983).

On September 14, 2015, the Novi City Council passed a Resolution asking Farmington and Farmington Hills, to consider invoking the cancellation provisions of the Multi-Jurisdictional Agreement, for reasons outlined in the Resolution. Under the Agreement, the three cities can decide to dissolve SWOCC at any time, and there is no period of notice for doing so. The Agreement also includes a separate process for one city to "withdraw" from SWOCC. In that event, the withdrawing city must give notice of its intent to withdraw by January 1st of any year, and such withdrawal would be effective six months later, on July 1 of that year.

In December, all three cities passed a Resolution extending the January 1 date to April 1, in order to give all three cities an opportunity to consider the merits of and process for a voluntary dissolution.

Following the extension, legal counsel for the three communities prepared a draft "Dissolution and Liquidation Agreement" for the purpose of setting forth the terms and conditions of the dissolution in a manner consistent with the Multi-Jurisdictional Agreement. The Dissolution and Liquidation Agreement contains the following general provisions:

- A statement that SWOCC shall be dissolved effective March 31, 2016.
- A general description that March 31 will be the last day of cable production-related operations and the last employment date for any SWOCC employees; that the SWOCC building will be offered for sale at its appraisal value, along with any equipment owned by SWOCC, including the SWOCC van; and that the SWOCC liabilities be paid "up front," leaving only the sale of the building and other assets as the final actions to be taken, with the proceeds to be allocated pursuant to the Multi-Jurisdictional Agreement.
- A description of specific SWOCC liabilities expected to be paid—promissory notes for the building and equipment, employee benefits obligations; heat/electricity/water service to the building; insurance, etc. Payment of these liabilities "up front" will require exhausting all of the current

cash reserves, plus an additional one-time payment by each of the three communities from cable revenues. Novi's share is expected to be \$100,007.66.

- A description of how SWOCC assets will be distributed. The building has been appraised at \$535,000. That will be the initial list price. The amount can be reduced up to 10% by agreement of the three City Managers, but below that, any reduction of the list price will require approval of the SWOCC Board. The SWOCC equipment and van are also to be offered for sale in an appropriate manner determined by the SWOCC Board with the assistance of the three City Managers or their designees. Proceeds of the sale will be distributed in accordance with Article VI.C of the Multi-Jurisdictional Agreement, which states: "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."

The SWOCC Board met and approved the attached draft version by unanimous vote (6-0). The intention for each of the three City Councils to consider the agreement and approve it—subject to the approval of the other two communities—in either February or early March.

**RECOMMENDED ACTION:** Approve Dissolution and Liquidation Agreement relating to Southwestern Oakland Cable Commission (SWOCC), subject to approval by the Cities of Farmington and Farmington Hills.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

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

**STATE OF MICHIGAN**

**COUNTY OF OAKLAND**

**DISSOLUTION AND LIQUIDATION AGREEMENT**

**(Southwestern Oakland Cable Commission)**

This Dissolution and Liquidation Agreement ("Agreement") shall be effective as of the date of the last signature and is entered into by the CITY OF FARMINGTON HILLS, whose address is 31555 W. Eleven Mile Road, Farmington Hills, MI 48336-1165, the CITY OF FARMINGTON, whose address is 23600 Liberty Street, Farmington, MI 48335, and the CITY OF NOVI, whose address is 45175 West Ten Mile Road, Novi, MI 48375-3024, to dissolve and liquidate the Southwestern Oakland Cable Commission (SWOCC).

**RECITATIONS**

1. The Cities of Farmington Hills, Farmington, and Novi (jointly the "Municipal Corporations") entered into an "Agreement for Multi-Jurisdictional Administration of a Cable Television Franchise" in 1983 (the "Multi-Jurisdictional Agreement"). The Multi-Jurisdictional Agreement created the Southwestern Oakland Cable Commission "SWOCC" comprised of two (2) members from each Municipal Corporation ("SWOCC Board"), for the purpose of jointly administering a newly-granted cable television franchise to MetroVision. Under the terms and conditions of the Multi-Jurisdictional Agreement, the Municipal Corporations worked together to negotiate franchise agreements with MetroVision's successors, Time Warner and Bright House; to administer those franchise agreements; and to provide for public cable access and programming for the Municipal Corporations and the public.

2. The Municipal Corporations and Bright House have now entered into three separate Franchises under the Uniform Video Services Local Franchise Act, Act 480 of 2006, which mandated the terms and conditions of those Franchises and has severely limited the rights of the Municipal Corporations with respect to negotiations and administration of video service and cable television franchises. In addition, video service/cable television franchise revenues have been decreasing while alternate options for the public to receive television and video programming have been expanding.

3. With a major purpose for SWOCC's creation having been franchise negotiation and administration that is now regulated and limited by the Uniform Video Services Local Franchise Act, the Municipal Corporations have determined that SWOCC is no longer necessary and have therefore determined to dissolve SWOCC under Article VI.C, of the Multi-Jurisdictional Agreement, which provides:

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 participating Municipal Corporations.

4. For purposes of Article VI.C, of the Multi-Jurisdictional Agreement, the Municipal Corporations have agreed that a successor organization to SWOCC will not be established and that the assets of the Corporation (SWOCC) shall be distributed to the Municipal Corporations.

5. The purpose of this Agreement is to describe and provide for the method of dissolution, the winding up of SWOCC's affairs, the payment and satisfaction of liabilities, and the distribution of assets to the Municipal Corporations upon terms and conditions consistent with the Multi-Jurisdictional Agreement and this Agreement.

**WHEREFORE, IN CONSIDERATION OF THE FOREGOING,** the Municipal Corporations agree as follows:

1. **Dissolution of SWOCC.** Under Article VI.C of the Multi-Jurisdictional Agreement, SWOCC shall be dissolved and liquidated in accordance with this Agreement. The dissolution shall be effective as of **March 31, 2016 ("Dissolution Date")**, with SWOCC's continued existence and the authority of the SWOCC Board and Officers after that date being solely for, and only for so long as necessary to, winding up the affairs of SWOCC as provided in and subject to this Agreement. The City Managers of the Municipal Corporations (or their designees) shall be responsible to make recommendations to the SWOCC Board and/or SWOCC Officers as appropriate during this process.

2. **Winding up of Affairs.** Except as otherwise specifically provided herein, the SWOCC Board is authorized and directed to take such further actions as may be necessary and appropriate to complete the winding up of the affairs of SWOCC in accordance with this Agreement.

The Dissolution Date shall be the last day of SWOCC's cable production related operations and activities and the last employment date for any SWOCC employees. After the Dissolution Date, the Municipal Corporations will assume any further responsibility for the activities previously assigned to SWOCC in Article I of the Multi-Jurisdictional Agreement, including, but not limited to, the provision for any public cable access as to their respective communities. After the Dissolution Date the SWOCC building at 33300 Nine Mile Road, equipment in the building and van may be used for that purpose by the individual Municipal Corporations until the building is sold or otherwise disposed of, with the City Managers (or their designees) authorized and directed to jointly agree on a reasonable and fair schedule or arrangement for sharing use of the building, van and equipment and the scope and extent of such use.

The SWOCC building shall be offered for sale and sold in an arms-length, cash transaction as soon as practicable. The equipment owned by SWOCC, and the SWOCC van, will also be sold in appropriate arms-length, cash transactions or discarded. Proceeds from such sales shall first be applied to any remaining SWOCC liabilities, with the balance, if any distributed to the Municipal Corporations as set forth in the Article VI.C, of the Multi-Jurisdictional Agreement.

All known SWOCC liabilities, including the payoff of the mortgage and notes for the building, are to be satisfied on or before the Dissolution Date. After applying SWOCC's existing fund balance and current cash to those liabilities, the Municipal Corporations will each make an

additional payment calculated as described in the attached "SWOCC Cash Flow Analysis, Calculation of Contributions from Communities document ("Calculation of Contributions"). The intention is to pay any known or expected liabilities "up front," leaving only the sale of the building and other assets and distribution of the proceeds thereof as the final action to be taken.

No formal certificate of dissolution is required to be filed with any other governmental entity or agency. There are no tax implications for the parties to address.

**3. Payment and/or Satisfaction of SWOCC Liabilities.** The Municipal Corporations have caused the preparation of the attached Calculation of Contributions. It describes, as best as currently possible, the assets and liabilities of SWOCC, its fund equity, and its expected revenues and expenditures as of the Dissolution Date.

The SWOCC fund equity and cash will first be used to satisfy any and all liabilities, including but not limited to SWOCC employee salaries, wages, benefits, and potential unemployment compensation, supplies, professional fees, contractual services, utilities, insurance, and building and equipment maintenance through the Dissolution Date. Any remaining SWOCC fund equity and cash will then be used for payment of amounts owed to the City of Farmington Hills pursuant to mortgage and promissory notes for the building and equipment, with such amounts to be paid off on or before the Dissolution Date. The Municipal Corporations recognize that the payoff of the mortgage and notes represents an accelerated payment (a final payment would not otherwise be due until February, 2017).

The Municipal Corporations recognize that the current SWOCC fund equity and cash is not sufficient to satisfy all of the liabilities described in the preceding paragraph and in the Calculation of the Contributions. Therefore, on or before Dissolution Date, the Municipal Corporations agree that they will each contribute the additional amounts set forth in the Calculation of Contributions.

The Calculation of Contributions includes an amount (\$20,000) as a SWOCC liability that the Municipal Corporations intend to be used to provide for heat, electricity, and water service to the building, as well as maintenance and insurance for the building and grounds, pending its sale and disposition. The Municipal Corporations agree that such amount is a reasonable approximation of the cost of those activities during a period of time while the building is being marketed and sold and the SWOCC-owned equipment is being disposed of. If the \$20,000 is insufficient to pay for those costs, the Municipal Corporations agree to make an additional contribution to cover the estimated deficiency in accordance with the percentages on the attached Calculation of Contributions.

The building and equipment will continue to be insured by SWOCC, along with the contents, pending its sale and disposition. The City of Farmington, which served as the Fiscal Officer of SWOCC, will continue to be administratively responsible for the preparation of checks for issuance to pay bills of and for SWOCC liabilities after the Dissolution Date, until the building is sold and the remaining proceeds/assets are distributed.

**4. Distribution of SWOCC Assets.** The SWOCC building has been appraised in the amount of \$535,000.00, and shall be initially listed for sale at no less than that price. If necessary, the list price may be reduced by up to 10% upon agreement by the three City

Managers or their designees, and any reduction of the list price below \$481,500.00 shall be subject to approval by the SWOCC Board. The sale shall be on an as-is, cash basis in exchange for a warranty deed that is subject to existing or recorded building and use restrictions, easements, road right-of-way, and zoning and other ordinances, with the purchaser to have the immediate right to possession after closing and to be responsible for all closing costs and the cost of any owner's policy of title insurance it desires. The SWOCC Board will secure the services of a real estate broker on commercially reasonable and competitive terms and conditions, to list, market and sell the building, and shall authorize the SWOCC Chairperson and the SWOCC Vice-Chairperson or Secretary to sign all documents necessary to the listing and sale. Any sale of the building, reduction in the list price, or amendment of the terms and conditions of sale described in this paragraph shall require the written approval of the three (3) City Managers.

There is a significant amount of equipment in the building. On or before the Dissolution Date, each Municipal Corporation shall be entitled to take possession of any and all equipment that it owns. SWOCC shall be considered the owner of any such equipment not taken by the Dissolution Date. For any equipment owned by SWOCC, the SWOCC Board shall, with the assistance of the three City Managers or their designees, secure the services of an entity (e.g., an auctioneer) to sell the equipment at an appropriate value. To the extent not sold at auction, the equipment and furniture may be discarded or disposed of at the discretion of the SWOCC Board, with the review and recommendations of the three (3) City Managers or their designees.

The van shall be sold in the same manner as the other equipment, with the three (3) City Managers or their designees to review and approve the method of sale and an acceptable price.

The proceeds of the sale of the building, equipment, furniture, and van (which together represent all of the salable assets of SWOCC) shall be distributed pursuant to Article VI.C of the Multi-Jurisdictional Agreement.

For all actions required of the SWOCC Board, it shall schedule special meetings as necessary to the prompt and efficient discharge of those obligations and shall authorize its Chairperson and the SWOCC Vice-Chairperson or Secretary to sign all documents necessary to the implementation of that action.

5. **Indemnification.** Notwithstanding the satisfaction of any liabilities and the distribution of the assets of SWOCC to the Municipal Corporations pursuant to this Dissolution Agreement, the Municipal Corporations agree to indemnify and hold each other harmless from and against any amount in excess of each member's *pro rata* share, determined in the same manner as provided in Article VI.C of the Multi-Jurisdictional Agreement, of any liability, claim, obligation, or expense asserted against SWOCC or any other Municipal Corporation and paid by any of them.

6. **Agreement Modification or Amendment.** Any modification or amendment to this Dissolution Agreement must be in writing and agreed to by the Municipal Corporations.

7. **Approvals.** The Municipal Corporations have taken all actions and secured all approvals necessary to authorize this Agreement, and hereby authorize and direct their respective City Managers to take the actions necessary to implement this Agreement. The

persons signing this Dissolution Agreement on behalf of each party have legal authority to sign this Agreement and bind the parties to the terms and conditions contained herein.

8. **No Third Party Beneficiaries.** This Dissolution Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation and/or any other right in favor of any other person or entity other than the Municipal Corporations.

9. **Entire Agreement.** This Dissolution Agreement contains the entire agreement between the Municipal Corporations relating to dissolution and liquidation. Any prior agreements, promises, negotiations, and representations not expressly set forth in this Dissolution Agreement are of no force or effect.

**CITY OF FARMINGTON HILLS**

\_\_\_\_\_  
By: Kenneth Massey  
Its: Mayor

\_\_\_\_\_  
By: Pam Smith  
Its: City Clerk

ACKNOWLEDGEMENT

The foregoing Dissolution and Liquidation Agreement was acknowledged before me by, Kenneth Massey, Mayor, and Pam Smith, City Clerk, of the City of Farmington Hills, on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_

**CITY OF FARMINGTON**

\_\_\_\_\_  
By: Bill Galvin  
Its: Mayor

\_\_\_\_\_  
By: Sue Halberstadt

Its: City Clerk

ACKNOWLEDGEMENT

The foregoing Dissolution and Liquidation Agreement was acknowledged before me by Bill Galvin, Mayor, and Sue Halberstadt, City Clerk, of the City of Farmington, on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My Commission Expires:\_\_\_\_\_

**CITY OF NOVI**

\_\_\_\_\_  
By: Robert J. Gatt  
Its: Mayor

\_\_\_\_\_  
By: Maryanne Cornelius  
Its: City Clerk

ACKNOWLEDGEMENT

The foregoing Dissolution and Liquidation Agreement was acknowledged before me by Robert J. Gatt, Mayor, and Maryanne Cornelius, City Clerk, of the City of Novi, on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My Commission Expires:\_\_\_\_\_





DESCRIPTION	BUDGET	11/30/2015	12/31/2015	1/31/2016	2/29/2016	3/31/2016	4/30/2016	5/31/2016	6/30/2016	7/31/2016	8/31/2016	9/30/2016	10/31/2016	11/30/2016	12/31/2016	1/31/2017	2/28/2017	3/31/2017	4/30/2017	5/31/2017	6/30/2017	7/31/2017	8/31/2017	9/30/2017	10/31/2017	11/30/2017	12/31/2017	1/31/2018	2/28/2018	3/31/2018
PRINCIPAL, RENOVATION	154,950.00	-	-	-	154,950.00	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
INTEREST, BUILDINGS	2,063.00	-	-	-	2,063.00	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
INTEREST, RENOVATION	12,644.00	-	-	-	12,644.00	-	-	-	-	-	-	-	-	-	-	6,446.00	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL Expenditures	1,049,482.00	194,117.98	40,691.69	63,509.25	276,484.69	90,983.25	36,401.98	14,481.00	10,586.00	11,536.00	11,111.00	450.00	600.00	1,160.00	1,200.00	1,050.00	168,494.00	900.00	600.00	450.00	450.00	1,400.00	975.00	450.00	600.00	900.00	900.00	1,050.00	900.00	1,050.00
BEG. FUND BALANCE	461,868.43	412,418.28	414,226.59	350,717.33	74,232.64	4,499.39	4,499.39	(31,902.59)	(46,383.59)	(56,969.59)	(68,505.59)	(79,616.59)	(80,066.59)	(80,666.59)	(81,826.59)	(83,026.59)	(84,076.59)	(252,570.59)	(253,470.59)	(254,070.59)	(254,520.59)	(254,970.59)	(256,370.59)	(257,345.59)	(257,795.59)	(258,395.59)	(259,295.59)	(260,195.59)	(261,245.59)	(262,145.59)
+ NET OF REVENUES & EXPENDITURES	(49,450.15)	1,808.31	(63,509.25)	(276,484.69)	(69,733.25)	(36,401.98)	(14,481.00)	(10,586.00)	(11,536.00)	(11,111.00)	(450.00)	(600.00)	(1,160.00)	(1,200.00)	(1,050.00)	(168,494.00)	(900.00)	(600.00)	(450.00)	(450.00)	(1,400.00)	(975.00)	(450.00)	(600.00)	(900.00)	(900.00)	(1,050.00)	(900.00)	(1,050.00)	
= ENDING FUND BALANCE	412,418.28	414,226.59	350,717.33	74,232.64	4,499.39	(31,902.59)	(46,383.59)	(56,969.59)	(68,505.59)	(79,616.59)	(80,066.59)	(80,666.59)	(81,826.59)	(83,026.59)	(84,076.59)	(252,570.59)	(253,470.59)	(254,070.59)	(254,520.59)	(254,970.59)	(256,370.59)	(257,345.59)	(257,795.59)	(258,395.59)	(259,295.59)	(260,195.59)	(261,245.59)	(262,145.59)	(263,195.59)	
+ LIABILITIES	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00
= TOTAL LIABILITIES AND FUND BALANCE	414,218.28	416,026.59	352,517.33	76,032.64	6,299.39	(30,102.59)	(44,583.59)	(55,169.59)	(66,705.59)	(77,816.59)	(78,266.59)	(78,866.59)	(80,026.59)	(81,226.59)	(82,276.59)	(250,770.59)	(251,670.59)	(252,270.59)	(252,720.59)	(253,170.59)	(254,570.59)	(255,545.59)	(255,995.59)	(256,595.59)	(257,495.59)	(258,395.59)	(259,445.59)	(260,345.59)	(261,395.59)	