

CABLE TELEVISION FRANCHISE AGREEMENT

BETWEEN THE CITY OF FARMINGTON HILLS, MI

AND

**TIME WARNER ENTERTAINMENT -
ADVANCE/NEWHOUSE PARTNERSHIP**

ORDINANCE NO. C-18-00

AN ORDINANCE OF THE CITY OF FARMINGTON HILLS, GRANTING A FRANCHISE FOR USE OF CITY RIGHTS-OF WAY FOR THE OPERATIONS OF A CABLE TELEVISION SYSTEM TO TIME WARNER ENTERTAINMENT - ADVANCE/NEWHOUSE PARTNERSHIP ("TWEAN") FOR A PERIOD OF FIFTEEN YEARS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is authorized to grant, renew and deny Franchises for the installation, operation and maintenance of Cable Systems and otherwise regulate the provision of Cable Service in the City.

WHEREAS, TWEAN (Grantee) has agreed to comply with the provisions of a new regulatory Ordinance of the City entitled "Franchising and Regulation of Cable Television Systems" (Cable Ordinance) and numbered C-17-00; and

WHEREAS, the City has undertaken an extensive review of cable television service in the City, the record of service, facilities, and the cable-related community needs of the City and Grantee's overall financial, legal and technical qualifications to hold a Franchise; and

WHEREAS, the City has reviewed TWEAN'S performance under the previous

franchise, the quality of TWEAN'S cable service, without regard to the mix or quality of that service, TWEAN'S financial, legal and technical ability to provide cable service in the City and, based on this review and the information available to it at the time, considering other relevant factors, the City has determined that renewing TWEAN'S Franchise under the following conditions will further the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FARMINGTON HILLS, MICHIGAN:

Section 1

That a Franchise for the operation of a Cable System in the City is hereby granted to the Time Warner Entertainment - Advance/Newhouse Partnership subject to the Cable Ordinance and the terms and conditions set forth below:

Definitions.

- 1.1** Capitalized terms in this **Franchise/Ordinance** shall have the meanings ascribed to them herein or in Ordinance No. C-17-00 entitled "Franchising and Regulation of Cable Television Systems" (the "Cable Ordinance" or "Ordinance"), unless otherwise defined herein.
- 1.2** The Southwestern Oakland Cable Commission ("SWOCC"), is an organization created by the cities of Farmington, Farmington Hills and Novi for the joint administration of their respective cable television franchises, as set forth in the "Agreement for Multi-Jurisdictional Administration of a Cable Television Franchise" (Multi-Jurisdictional Agreement"), dated January 10, 1983. SWOCC will administer this Franchise/Ordinance in accordance with the Multi- Jurisdictional Agreement, as amended.

Grant of Authority to Operate.

- 2.1** The City hereby grants to Grantee a nonexclusive Franchise solely for the purpose of engaging in the business of providing Cable Services in the City, and for that purpose, subject to the City's encroachment and construction permitting process for right of way occupants, to erect, install, construct, repair, replace, rebuild, reconstruct, maintain and retain in, on, over, under, upon, across and along any public streets or ways such poles, wires, cable, fiber optics, conductors, ducts, conduit, vaults, manholes, amplifiers, bridgers, line extenders, power supplies, optical devices, optoelectronic equipment, taps, pedestals, appliances, attachments, and other property as may be necessary or appurtenant to the Cable System; and in addition, so to use, operate and provide similar facilities or properties rented or leased from other Persons, including but

not limited to any public utility or other Grantee Franchised or permitted to do business in the City.

- 2.2** Grantee hereby accepts the Franchise, warrants and represents that it has examined all of the provisions of the Cable Ordinance and this Franchise Ordinance, accepts and agrees to be bound by all of the provisions contained in the Cable Ordinance and this Franchise Agreement, subject to the reservation contained herein.
- 2.3** This Agreement and all rights and privileges granted hereunder are subject to the City's police and other powers. Provided, further, that Grantee does not waive its rights to challenge the lawfulness of any particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. This Agreement does not confer rights upon Grantee other than as expressly provided herein. Subject to the foregoing, Grantee shall provide the Cable Services required hereunder throughout the Franchise Term and any holdover term, and shall make any Cable Services it provides over its Cable System available to all entities within the City, subject to the line extension provisions herein.
- 2.4** This Franchise shall be interpreted to convey limited rights and interests only as to those City Rights-of-Way in which the City has an actual interest and only to the extent and for the purposes set out in this Franchise. The Grantee is not granted a right to use easements devoted exclusively to sewer or water or sidewalks owned by City or under City's jurisdiction. The grant of a Franchise is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee any interest in any particular location within the Right-of-Way. The issuance of the Franchise does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to use, perform work on or to regulate the use of and to control the City's Right-of-Way covered by the Franchise, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including by constructing, altering, renewing, paving, widening, grading, blasting or excavating; and to the right to build and install systems and facilities, including telecommunications facilities with or without a Franchise.
- 2.5** The Franchise issued and the franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein. Without limiting the foregoing, the City, among other things, does not waive its right or Grantee's duty to obtain all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with codes, ordinances and regulations governing the construction of the Cable System.

- 2.6 Any Affiliate or joint venture or partner of Grantee involved in the management or operation of the Cable System in the City that would constitute a cable operator of the Cable System is subject to the limitations of, and shall comply with the terms and conditions of the Cable Ordinance and this Agreement. Grantee shall be fully liable for an act or omission of an affiliate that controls Grantee and is responsible in any manner for the management of the Cable System that results in a breach of this Agreement or a violation of the Cable Ordinance, as if the act or omission was Grantee's act or omission.
- 2.7 The provisions of this Agreement shall be liberally construed in favor of the public interest in order to effectuate its purposes.
- 2.8 This Franchise shall have a term of fifteen years, beginning upon the execution and delivery of this Franchise Ordinance by Grantee, and its approval by the City Council.
- 2.9 The authority granted herein, subject to the terms and conditions of this Franchise Agreement and the Cable Ordinance, shall be known as the "Franchise."

3. Controlling Authorities

- 3.1 This Franchise Agreement is subject to and shall be governed by the Cable Ordinance and any amendments thereto which are lawful and consistent with the City Franchise Authority, and all other Applicable Law. In the event of conflict or ambiguity between this Franchise Ordinance and any amendments thereto, the generally applicable Cable Ordinance and any amendments thereto shall control unless preempted by federal law or regulation

4. Reservation of City's Rights.

- 4.1 The City may amend this agreement (1) upon the application of Grantee, when necessary to enable Grantee to take advantage of developments in the field of cable communications that, in the City's opinion, will afford Grantee an opportunity to serve its customers more efficiently, effectively, and economically; or (2) to reflect any expansion of the scope of the Franchise by mutual agreement. Such amendments shall be subject to such conditions as the City determines are appropriate to protect the public interest.
- 4.2 The parties understand and agree that this Franchise Agreement may be amended in any manner necessary to comply with the Cable Ordinance and Applicable Law. If federal or state law is amended to expand City

powers pertaining to cable television, the City reserves the right to adopt and incorporate additional terms, conditions, or regulations that are consistent with such expanded powers.

- 4.3 The City reserves its rights to exercise its governmental powers to determine through its City Council any question of fact relating to the meaning, terms, obligations or other factors of the Franchise, and to exercise any other powers, rights and duties required or authorized by law.

5. Commitments by Grantee.

- 5.1 Grantee agrees to use its good faith efforts, at its own expense, actively and diligently to conduct the prosecution of all applications to the FCC, other governmental regulatory bodies or private parties necessary to permit continuation and extension of its operations in accordance with this Franchise Agreement and the Cable Ordinance. Grantee is not required to extend its system or construct plant within private rights-of-way for which Grantee is unable to secure easements or other rights of access on reasonable terms and conditions after good faith, active and diligent efforts at application for such agreements or rights of access.
- 5.2 Grantee shall not apply for any waivers, exceptions, or declaratory rulings from the Federal Communications Commission or any other Federal or State regulatory agency which would materially affect this Franchise without providing the City and SWOCC with copies of all such applications.

6. Technical Requirements.

Existing System Capacity to Continue.

Grantee shall provide as a minimum standard the capacities and channels that are provided as of the effective date of this Franchise Agreement. Said channels shall meet the technical standards of the upgraded system described herein.

6.1 Description of System

The System shall be maintained at a minimum as a full 750 MHz system. The system has a minimum activated 550 MHz analog capacity and a 200 MHz digital capacity that can be utilized with additions to the headend and any changes the Grantee desires to make to the Subscriber terminal equipment.

6.2 Subscriber Network

The Cable System has a capacity of at least 78 6MHz channels and has been activated and programmed to at least 80% of capacity. The Subscriber system is designed for two way capability so as to permit the implementation of upstream signal carriage without requiring modifications to its design.

6.3 Two Way Cable Services.

The Cable System has the capability throughout the entire system to transmit video, voice and/or data services in two directions simultaneously. Two-way cable services for Subscribers shall be instituted when (I) it is consistent with Federal and State laws, and (II) is economically and technically feasible. It is understood that existing and proposed specific upstream uses for the local government, educational and public access channels will be continued or activated in accordance with this Agreement.

6.4 Plans and Specifications Required.

As construction or reconstruction plans are undertaken, including system upgrades or rebuilds but not line extensions and related activity, Grantee shall submit such a plan at least ninety (90) days before the start of construction or reconstruction, unless such ninety (90) day time period shall be reasonably shortened by City. The plan shall include construction timetables, equipment specifications, and design performance criteria. Grantee shall make reasonable efforts to avoid negative aesthetic impacts in its plan.

6.5 Parental Control.

Grantee shall provide a parental control option, trap or other device to Subscribers requesting the capability of blocking any channel or channels of video programming and its audio track from entering the Subscribers home. The device must be provided at the Subscriber's request and without charge, except as federal law may allow provided, however, that Grantee may require a reasonable deposit for use of any such device.

6.6 Stereo Availability.

All Cable Services, regardless of their sources, that are received with stereo sound or any other secondary audio channel information shall be carried on the Cable System in the full MTS format or comparable.

6.7 Signal Ingress Protection.

Grantee shall, in accordance with FCC technical standards, eliminate interference visible to Subscribers, which interference is caused by, among other things, signal ingress at Grantee's headend, trunk and distribution system or other facilities from either natural sources or from equipment of licensees of the Federal Communications Commission operating in compliance with their authorizations.

6.8 Line Extension Policy.

6.8.1 Mandatory Extension Rule.

The Grantee shall be required to extend energized cable from any existing activated lines of the Cable System to any area immediately adjacent thereto within the Grantee's service area which includes residential property having a density of at least twenty (20) single family residential dwelling units or potential Subscriber units per mile, or prorated portion thereof, and residential, commercial and industrial property where at least fifteen (15) subscriber units per mile, or prorated portion thereof, have signed a minimum two-year written contract guaranteeing their intention to subscribe to Grantee's cable service when it is available. Density per cable mile shall be computed by dividing the number of dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available in such area in accordance with the Grantee's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access, and located within the public streets. The total cable length shall exclude the drop cable necessary to serve individual Subscriber premises. The extension of the distribution system (excluding drops) shall be completed at Grantee's cost within a reasonable time, not to exceed one hundred eighty (180) days after the requirements of this section become operative and all necessary permits are obtained, provided that:

- (1) Each such residential, commercial or industrial unit is, or is anticipated to be, located within a distance of no more than one hundred fifty (150) feet from the anticipated location of such extension, or each such residential, commercial or industrial unit which is in excess of one hundred fifty (150) feet from the anticipated location of such extension agrees to pay and does in fact pay the actual cost of that portion of the extension in excess of one hundred fifty (150) feet in accordance with the provisions of Section 6.10 of this Agreement.

(2) The Grantee is able to secure all necessary easements or rights-of-way for the purposes of locating its system in the area of such extension, including the location of the trunk, distribution and drop cables, on reasonable terms and conditions after good faith efforts to do so.

(3) Each such residential, commercial or industrial unit is in existence, or is anticipated to be constructed within six (6) months from the date of such extension, provided that Grantee will place conduit in open trench where it exists and where construction will be completed in a period estimated to be longer than six (6) months, but less than twenty-four (24) months, where the area of such extension has been platted with at least twenty (20) single family residential dwelling units per mile as measured in linear trench footage from the nearest technically feasible point of Grantee's activated distribution system to the end of the proposed line extension.

6.8.2 Multiple Dwelling Units.

A multiple dwelling unit shall be considered in establishing the minimum density required for a mandatory line extension where the owner of such multiple dwelling unit has agreed to enter into a service contract with Grantee for the units of such complex or has otherwise requested that Cable Service be furnished directly to the owners or occupants of the units within such complex and, in either such instance, such complex satisfies each of the criteria for extension set forth in this Section, including without limitation Grantee securing all necessary easements or rights-of-way to such complex, as well as within such complex, for purposes of constructing its system. Where such a Cable Service contract has been arranged consistent with the requirements of this Section and Cable Service is to be provided directly to, and all charges for such Cable Service are the responsibility of, the occupants or owners of individual dwelling units within multi-dwelling unit buildings or the owner of the multi-dwelling unit buildings, such units will be counted separately for purposes of mandatory line extension; where Cable Service is to be provided indirectly to such occupants through bulk billing services or other discounted rates, units will be counted based on their equivalency to regular rate paying units (e.g., if Grantee receives one-half the normal service charge for twenty (20) units in a multiple dwelling unit complex, this will be deemed to be the equivalent of ten (10) full paying units, and they will only be counted as ten (10) units for purposes of this determination).

6.8.3 Early Residential Extension.

In any residential area which has fewer Residential Dwelling Units per cable mile than the minimum density per cable mile set forth, the Grantee will in any event extend its Cable System and make cable service available in such area upon request in any case where the developer or Residents of such area agree to pay for its or their portion of the costs incurred in making the extension in accordance with the terms of this subsection. Under such cost sharing plan, the Grantee will contribute an amount equal to the construction costs of such extension per mile, multiplied by a fraction, the numerator of which equals the number of actual potential Subscribers at the time of the request and the denominator of which equals the result of multiplying twenty (20) by the number of miles or fractions thereof in such extension. The developer or Residents of such area requesting cable service will bear the remainder of the total construction costs on a pro rata basis. As used in this subsection, the term "construction costs" will mean the actual turnkey cost to construct the entire extension, including electronics, pole make ready charges, and labor, but excluding the standard house drop.

6.8.4 Voluntary Extension.

Nothing in this Section shall be construed to prevent Grantee from serving areas not covered under this Section upon agreement with developers, property owners or residents.

6.8.5 Service to Commercial, Industrial and Non-Residential Subscribers.

Grantee shall extend service to commercial, industrial, and non-residential Subscribers as follows: Within ninety (90) days following a request for service from any potential commercial, industrial or non-residential Subscriber, Grantee shall provide the potential Subscriber requesting service an estimate of the costs per Subscriber of supplying services to all the potential contiguous Subscribers within an area reasonably defined by Grantee. Grantee shall (i) provide the potential Subscriber requesting service with a written estimate of the costs of providing that Subscriber with service, along with a statement that such costs shall only apply if all (or a specified percentage) of the other potential commercial, industrial or non-residential Subscribers in the service area defined by Grantee also request comparable service. Grantee may require that such Subscriber or Subscribers enter contracts which will

reasonably assure adequate revenues to provide Grantee with recovery of the full costs and expenses of constructing and operating the line extension, including a reasonable return on investment over the first five years of operation. Grantee shall upon request provide SWOCC with one (1) copy of the written cost estimates and any list of names and addresses of potential Subscribers provided to the potential Subscriber requesting service.

6.9 Service Drops.

- 6.9.1** Grantee shall make service available to any Subscriber within the City upon Subscriber's request and at the standard connection charge if the connection requires no more than a one hundred fifty (150) foot aerial or underground drop, measured from the new Subscriber's residence or place of business to Grantee's nearest activated distribution line, and includes one (1) outlet and standard materials.
- 6.9.2** If making service available requires more than a standard drop (such as a wall fish installation), Grantee may, after so informing the Subscriber, charge the Subscriber an additional installation fee in accordance with applicable federal law.
- 6.9.3** Standard drops shall be accomplished, no less than ninety-five percent (95%) of the time measured on a quarterly basis under normal operating conditions, within seven (7) business days of Subscriber's requested installation date; a non-standard drop shall be accomplished within fifteen (15) calendar days of a Subscriber's request and payment in accordance with this Section 6. The ability of Grantee to extend a drop within such time periods is predicated upon the assumptions that a Grantee is able to secure all necessary rights-of-way at the location of the drop upon reasonable terms and conditions, that the schedule or preferences of the Person requesting the installation have not been responsible for delay, and that all applicable fees and charges have been timely paid. Inability to meet any specific installation deadline shall not be deemed noncompliance if in the aggregate Grantee has complied with these standards (95%) of the time measured on a quarterly basis under normal operating conditions.
- 6.9.4** When extensions of Cable System into new areas or post-wiring of multiple dwelling units is required, installation shall be completed within ninety (90) days following satisfaction of each of the conditions set out above, unless otherwise agreed by Grantee and

the Subscriber(s). Grantee shall notify SWOCC in writing whenever installations, measured on a quarterly basis, exceed the periods specified above

6.10 Aerial and underground drops in excess of 150 feet are not to exceed actual installation costs.

With respect to requests for connection requiring an aerial or underground drop line in excess of one hundred and fifty (150) feet from the nearest activated distribution lines, Grantee must extend and make available Cable Service to such Subscribers at a connection fee not to exceed (i) Grantee's standard connection fee, if any, plus the actual installation costs incurred by Grantee for the distance exceeding one hundred fifty (150) feet, or (ii) Grantee's hourly service charge for the entire installation as the case may be. Actual installation costs include reasonable actual labor or hourly service charges (including wages, benefits and payroll taxes) and material costs incurred by Grantee for the additional work beyond one hundred fifty (150) feet, together with a reasonable charge for overhead.

6.11 Underground installation not to exceed standard installation if Subscriber provided trenching and conduit.

In the event that a Subscriber independently provides for his or her own trenching and conduit (including any necessary boring, backfilling, replacing and/or replanting), which trenching and conduit must comply with the City's and Grantee's construction standards, the installation charge shall be the same as for a standard installation, if such an installation is standardized, or at reasonable rate and charges; provided, however, that the Subscriber agrees, in writing and in a form acceptable to Grantee, SWOCC and the City, to hold Grantee, SWOCC and the City harmless for any injury, loss or damage caused by or related to the work so undertaken by the Subscriber, and that Grantee shall not be responsible for any service problems caused as a result of the work performed by the Subscriber. In such case the installation by Grantee will consist of a standard service drop.

7. Services to be Provided Subscribers, SWOCC, Local Governments and Educational Institutions.

7.1 Standard Service Drops are Required at Each Public Facility.

A standard service drop shall be provided at no cost from the Subscriber network to the following locations:

- All public and accredited private school buildings;

- All local government buildings;
- All police and fire stations and other public safety operations;
- Oakland Community College;
- SWOCC's offices and studio; and other municipal facilities, as they develop within the City.

Each installation shall include one outlet and one converter (if needed) with the most complete (highest) basic Cable Service tier containing over-the-air local broadcast stations and all public, educational and governmental access channels required to be carried on basic, together with the immediately subsequent tier of programming (if any) containing basic satellite services (such as CNN, Discovery, the Learning Channel, ESPN) but excluding any subsequent or higher tier of programming, including a la carte services, premium and any pay-per-view or per-event programming. Such Cable Service shall be provided without charge and at no monthly service charge for the first connection or drop and with additional outlets to be provided to any such facilities at the request of the City Manager or SWOCC at the cost of labor and materials. Any necessary converters will be provided by the Grantee at its published charges for converters. Grantee shall have a period of up to six (6) months from written notification by the City within which to provide basic Cable Service to any such facility not already being served by the Grantee.

7.2 Six Access Channels Required on Subscribers Network.

Grantee shall provide six (6) downstream access channels as follows:

1. One government access channel for Farmington Hills (8)
2. One government access channel for Farmington (15)
3. One government access channel for Novi (13)
4. One educational access joint-use channel for Farmington School District and Novi School District. (10)
5. One educational access joint-use channel for the Clarenceville School District, Walled Lake School District and Northville School District , South Lyon School District, and Oakland Community College. (20)
6. One public access channel (12)

7.2.1 SWOCC, acting in its role as administrator of the Franchise Agreement shall have the right to exchange channels, set forth herein. On six months notice to Grantee, SWOCC may exchange one government access channel for two digitally compressed government access channels and/or one educational access channel for two digitally compressed educational channels upon satisfaction of the following conditions:

- (1) Grantee provides digitally compressed channels which offer at least as many services as are available by analog channels on the system;
- (2) Digital decompression terminal devices are installed in the homes of at least 50% of the Grantee's Subscribers, and are used to receive Grantee's services; and
- (3) SWOCC provides six months notice to Grantee.

As used in this section, a "digitally compressed channel" shall mean a data stream capable of delivering video programming on a basis comparable to the delivery of other digitally compressed video programming.

7.2.2 Analog and digitally compressed government access channels and educational access channels which have been activated under the terms of this Franchise may be exchanged, on a one-to-one basis for each other with the consent of the affected governmental and educational authorities acting through SWOCC.

7.3 Grantee Shall Assure High Technical Quality of Access Channels.

All access channels shall be transmitted to the Subscribers on the Basic Service tier, except for access channels provided in digital format. The technical quality of all access channels apart from the technical quality of the programming supplied to it, shall be at least equal to the same technical quality as the channels used by Grantee to transmit commercial television broadcast stations and satellite channels.

7.4 P.E.G. Support. Each year during the Franchise Term, as support for public, educational and government access, the Grantee shall pay to City on a quarterly basis, one (1%) per cent of Gross Revenues. Provided, however, such payment shall be submitted to SWOCC unless the City advises the Grantee that its relationship with SWOCC has terminated and in such case the payment shall be submitted to the City. The P.E.G. support contribution shall be computed upon Gross revenues without

imputation of the Franchise Fee.

7.5 Realignment of Access Channels Requires Ninety (90) Day Notice and Payment of All Costs.

In the event Grantee realigns the channel designation for public, educational and governmental access channel programming, it shall provide ninety (90) days advance notice to SWOCC of such realignment and pay the reasonable costs incurred by SWOCC or its member cities resulting therefrom, including, but not limited to, technical costs, logo modifications, stationery, promotion and advertising, not to exceed \$5,000 per channel.

7.6 Leased Access Channels Required.

Grantee agrees to comply fully with Section 612 of the Cable Act, 47 U.S.C § 532 and subsequent amendments, regarding the number, use and administration of leased access channel capacity designated for commercial use by Persons unaffiliated with the Grantee.

7.7 Interconnection with Other Municipalities.

Grantee shall maintain its fiber-based link operating between the SWOCC system and the Grantee's other operations in Livonia and Redford, as well as exercising reasonable efforts to maintain another fiber link that connects the Grantee's headend with the Cable System in Southfield.

Grantee shall use all reasonable efforts to establish a link with the Oakland Intermediate School District, via the company's optic fiber, so that programming originating there can be carried on an undelayed basis in the allocated joint-use educational access channels.

7.8 Institutional Network.

Grantee shall, at no cost to SWOCC or the City, operate an Institutional Network ("I-Net"). The I-Net shall be used for government, educational and public purposes on a non-commercial, not-for-profit basis. Grantee shall provide such I-Net capacity pursuant to the following conditions:

7.8.1 Grantee shall provide a dedicated hybrid fiber/coax return path from the following sites to grantee's headend:

- A. Novi City Hall
- B. Farmington City Hall

- C. Farmington Hills City Hall
- D. SWOCC Offices (Four (4) Standard (6MHz) Channels each direction)
- E. William Costick Activities Center
- F. Farmington School District (North Farmington High School)
- G. Novi School District (Novi High School Tech Center)
- H. Clarenceville School District (Clarenceville High School)
- I. Walled Lake School District (Hickory Woods Elementary School)
- J. Northville School District (Thornton Creek Elementary School)
- K. Oakland Community College (Orchard Ridge Campus)

The return path will include a backbone fiber and coaxial cable with the coaxial portion not to exceed one mile in length from each location.

7.8.2 The Grantee agrees to provide the modulators, demodulators, two way amplifiers, processing equipment and switching equipment in order to originate programming on one channel (unless otherwise specified) from each of the locations set forth in 7.8.1 above. The Grantee shall have no responsibility for end user or customer premise equipment.

7.8.3 Grantee shall configure the I-Net to allow City designated educational users and government institutions to communicate directly and privately with other City designated educational and governmental users listed in section 7.8.1 by means of, but not limited to, voice, data and video; provided however, that user shall be responsible for all end-user or customer premise equipment. Grantee shall ensure that I-Net communications not intended for distribution on the Subscriber network shall be prevented from transmission on such Subscriber network. However, Grantee shall also interconnect the I-Net to the Subscriber network and make possible, at the option of the transmitting party, the carriage of specific I-Net programs on public, governmental or educational access channels on the Subscriber network.

7.8.4 Grantee shall designate and coordinate the channel and frequency assignments for the I-Net.

7.8.5 Grantee shall interconnect the I-Net with any other Cable Systems or operators within the City (or adjacent to the City, provided that cable operators in such adjacent cities have comparable requirements), at the request of SWOCC and with the consent of such other systems, provided, however, that Grantee shall not be required to pay for the costs of such interconnections.

7.8.6 Grantee agrees to provide maintenance and repair services at no

charge, covering the entire institutional network transmission system. Each user of the I-Net shall be responsible for end user or customer premise equipment. Routine I-Net testing and reporting will be regularly conducted by the Grantee in a manner similar to the Subscriber network testing. If any portion of the I-Net should fail for any reason, including technical reasons, then Grantee shall respond within two hours in order to restore service as soon as possible after receiving notification of such failure except for those failure beyond the control of the Grantee. There shall be no channel time use charges, maintenance charges, repair service charges or other such ongoing charges levied by Grantee for any use of the I-Net.

7.8.7 Grantee agrees to install standby power that can maintain the operation for a minimum of four hours to all parts of the institutional network.

7.8.8 Grantee agrees to provide a satellite reception service for the local governments, the educational communications, and other institutional network users. Upon request of SWOCC, Grantee will connect its system to receive a specified service and, using Grantee's addressable scrambling signal delivery arrangement, supply that service to the designated end user locations, via the institutional or home subscriber networks.

7.9 Emergency Messages.

Within six (6) months of the effective date of this Franchise, Grantee agrees to equip the Cable System with an Emergency Alert System with the capability to provide an all channel override of both audio and video signals on all programmed channels for the purposes of making public announcements during times of emergency. This capability shall be facilitated through the use of the dial-up telephone system, using a suitable secure access code, or, alternatively, via a dedicated telephone line by the City's police/public safety department. A routine testing program providing for at least quarterly activation of the system shall be developed by the City and Grantee.

7.10. Outside Revenue For SWOCC.

Parties agree that the City/SWOCC may utilize access equipment or studios and facilities for revenue generation to augment support for public, educational or governmental access such as telethons or similar types of broadcasts. Provided, however, public, educational, and governmental channels shall not be used for commercial purposes and shall not carry commercial advertising. Grantee shall require no compensation for such use nor shall any revenue generated be credited toward any of Grantees obligations under this Agreement.

7.11 PEG Responsibilities.

Except for those obligations specifically set forth in this Section 7, the Grantee shall have no responsibility or obligations for administering, operating or programming any of the public, educational or governmental access channels required herein.

8. Franchise Fees.

- 8.1** Each year during the Franchise term, as compensation for use of Public Rights-of Way to provide Cable Service, the Grantee shall pay to the City, on a quarterly basis, a Franchise fee equal to five percent (5%) of Gross Revenues: provided, however, that Grantee will pay forty (40%) per cent of the Franchise fee on a quarterly basis to SWOCC unless the cities advise the Grantee that its relationship with SWOCC has terminated.
- 8.2** Nothing contained in the Franchise shall be construed to limit the authority of Grantee to make payments in support of the use of community programming, such as its own local origination programming, and public, educational or governmental access channel programming. No payment for support for public, educational and government channels shall be considered in the calculation of Franchise fees payable to the City.
- 8.3** At the time of the grant of this Franchise, the provision of internet access service is considered a cable service and revenues derived from that access service are included in Gross Revenues. In the event applicable law determines internet access service is not a cable service and franchise fees are no longer payable, City shall not be required to refund any Franchise fees previously received from Grantee.

9. Insurance, Letter of Credit.

9.1 Insurance.

Grantee shall maintain at all times liability insurance as required in Cable Ordinance and shall file with the City Attorney's office Certificates of Insurance evidencing the required coverage. The insurance required herein shall include contractual liability insurance applicable to Grantee's obligation under the cable ordinance.

Grantee also shall maintain at all times the capability to pay any amount which may be deducted from insurance claim payments pursuant to the terms of the Grantee's insurance policy.

9.2 Letter of Credit.

Grantee shall maintain with SWOCC, in a form acceptable to the City Attorney, a Letter of Credit, as described in the Cable Ordinance, in the amount of fifty thousand dollars (\$50,000). Grantee shall structure the Letter of Credit in such a manner so that if SWOCC or the City at any time draws upon the Letter of Credit, the amount of available credit shall automatically increase to the extent necessary to replenish that portion of the available credit exhausted by the honoring of the SWOCC/City draft. The intent of this Subsection is to make available to SWOCC/City at all times a Letter of Credit in the amount of \$50,000.

The Letter of Credit shall be used to ensure the faithful performance of all provisions of the Franchise and the Cable Ordinances and shall be attached to and made a part of this Franchise Agreement.

10. Rates.

Grantee acknowledges that, subject to the provisions of applicable law, the City, acting through SWOCC, may regulate the Grantee's rates for Cable Service. Grantee shall maintain a copy of its current rate schedule on file with the City and SWOCC as required by the Cable Ordinance.

11. Bond.

The amount of any construction bond required pursuant to the Cable Ordinance shall be in the amount of the estimated cost of the improvement to be installed in the Public Right of Way.

12. Liquidated Damages.

- 12.1** Grantee understands and agrees that failure to comply with any time and performance requirements as stipulated in this Franchise Agreement or the Cable Ordinance will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the parties hereby agree to the liquidated damages specified below. The following amounts may be chargeable to the Letter of Credit for the following concerns:
- a. Failure to complete system construction or reconstruction in accordance with this Franchise Agreement, unless City, by resolution, specifically approves the delay; the Grantee shall pay Five Hundred Dollars (\$500.00) per day for each day, or part thereof, the delinquency continues.
 - b. Failure to provide, upon written request, material data, documents, reports or information in accordance with the provisions of this Agreement; Grantee shall pay Fifty Dollars (\$50.00) per day for each day, or part thereof, that each violation occurs or continues;
 - c. Failure to test, analyze and report on the performance of the system as required herein and in the Cable Ordinance; Grantee shall pay One Hundred Dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues;
 - d. Failure to provide in a continuing manner the services set forth in this Franchise Agreement and the Cable Ordinance, unless City specifically approves a delay or change or the City has agreed to a modification of Grantee's obligations, Grantee shall pay Five Hundred Dollars (\$500.00) per day for each day, or part thereof, that each noncompliance continues;
 - e. Thirty (30) days following adoption of a resolution by SWOCC determining a failure of Grantee to comply with operation, maintenance or technical standards, Grantee shall pay five hundred dollars (\$500.00) per day for each day, or part thereof, that such

noncompliance continues; and

- f. For breach of any consumer service standard, as set forth in the Cable Ordinance, Grantee shall pay One Hundred Dollars (\$100.00) per day for each day or part thereof, that such noncompliance continues. A breach shall be interpreted to mean that SWOCC has evidence of repetitive failure to comply with the service standards.
- g. Failure to pay any Franchise Fees, taxes, liens, or other fees, Five Hundred Dollars (\$500.00) per day each day or part thereof, that each violation occurs or continues.
- h. Failure of Grantee to pay the City any amounts due and owing to the City by reason of the indemnity provision of the Cable Ordinance; failure of Grantee to pay any liquidated damages due and owing; failure to make any payment required by an agreement within the time fixed therein; Grantee shall pay Five Hundred Dollars (\$500.00) per day for each day, or part thereof, such noncompliance occurs.
- i. Failure to pay any damages, claims, costs or expenses which City has been compelled to pay or incur by the reason of any material act or default by Grantee; Grantee shall pay Five Hundred (\$500.00) dollars per day for each day, or part thereof, that such noncompliance occurs.
- j. Failure to comply with any material provisions of this Franchise Agreement or Cable Ordinance which the City reasonably determines can be remedied by an expenditure of an amount from the Letter of Credit or other instrument, Grantee shall pay Five Hundred (\$500.00) Dollars per day for each day, or part thereof, that such noncompliance occurs.

12.2 If the City concludes that the Grantee is in fact liable for liquidated damages pursuant to this Section, the procedures established in of the Cable Ordinance shall be followed.

13. Termination, Revocation, Cancellation.

In addition to all other rights and powers retained by the City, the City reserves the right to terminate, revoke or cancel this Franchise and all rights and privileges of Grantee in the event of a material breach of the terms and conditions of this Franchise Agreement, all as provided in the Cable Ordinance.

14. Continuity of Service Mandatory.

14.1 It shall be the right of all Subscribers to continue receiving service insofar as their financial and other obligations to Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew this Franchise, Grantee shall act so as to insure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances.

Grantee shall ensure that all Subscribers receive continuous uninterrupted service. At the City's request, Grantee shall operate its Cable System for a temporary period (the "transition period"), following the revocation or termination of its Franchise or any transfer as necessary to maintain service to Subscribers, and shall cooperate with the City to assure an orderly transition from Grantee to another grantee. The transition period shall be no longer than the reasonable period required to select another grantee and to build a replacement Cable System, if necessary, and shall not be longer than thirty six (36) months, unless extended by the City for good cause. During the transition period Grantee will continue to be obligated to comply with the terms and conditions of the Cable Ordinance, this Franchise Agreement, and all Applicable Law.

14.2 In the event Grantee fails to operate the system for four (4) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City and the City or a permanent operator is selected. If the City operates the Cable System in accordance with this section, Grantee shall reimburse the City for all costs, expenditures and damages incurred by the City in excess of the revenues derived from the operation of the Cable System.

15. Purchase of CATV System by City.

15.1 Rights to Purchase.

In the event Grantee forfeits or City revokes this Franchise for cause, or when the renewal of the Franchise has been denied, City shall have the right, directly or as an intermediary to purchase the Cable System.

15.2 Franchise Valuation.

Under circumstances where Grantee forfeits the Franchise, when renewal of the Franchise has been denied by the City, the City may purchase the system for its fair market value, determined on the basis of the system as a going concern, with no value allocated to the franchise itself.

Under circumstances where the Franchise has been revoked for cause by the City, the acquisition shall be at an equitable price in accordance with 47 U.S.C. § 547. Equitable price shall mean Fair Market Value adjusted downward for the harm to the City or Subscribers, if any, resulting from a Grantee's breach of its Franchise Agreement or violation of the Cable Ordinance and as further adjusted to account for other equitable factors that may be considered consistent with 47 U.S.C. § 547

15.3 Date of Valuation.

The date of valuation shall be no earlier than the day franchise renewal denial or termination.

15.4 Transfer to City.

Upon exercise of this option and the payment of the above sum by the City, Grantee shall immediately transfer to the City possession and title to all facilities and property, real and personal, used or useful in the operation of the Cable System, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above; and Grantee shall execute such warranty deeds or other instruments of conveyance to City as shall be necessary for this purpose.

15.5 Arbitration of Value and Costs.

1. In the event City and Grantee cannot agree upon the value of Cable System, either may give notice of demand to the other for arbitration.
2. Arbitration shall commence and proceed according to rules of American Arbitration Association as follows:
 - a. The parties shall, within fifteen (15) days of giving and receiving notice of demand for arbitration, appoint one arbitrator each who is experienced and knowledgeable in the valuation of cable television property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within another fifteen (15) days.

- b. Within thirty (30) days after appointment of all arbitrators and upon ten (10) days written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.
- c. The hearing shall be recorded and transcribed at the request of either party. All hearing proceedings shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the City Attorney.
- d. Within thirty (30) days after the close of the hearing, the board shall prepare findings and the decision agreed upon by a majority of the board, which shall be filed with the City and served by mail upon the Grantee.
- e. The decision of the board shall be final and binding upon the parties and may be enforced by any court of competent jurisdiction.
- f. Either party may seek judicial relief in the following circumstances:
 - i. a party fails to select an arbitrator;
 - ii. the arbitrators fail to select a third arbitrator;
 - iii. specified time limits have been exceeded;
 - iv. the board has not proceeded expeditiously; and
 - v. based upon the record the board committed fraud, or exceeded its authority.
- g. In the event a court of competent jurisdiction determines the board has committed fraud, exceeded its authority or abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.
- h. Costs of arbitration shall be born equally unless the board finds the offer of the City or the demand of Grantee was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be born by one party.

16. Performance Evaluation Sessions.

1. SWOCC may hold a performance valuation session at any time during the term of the Franchise upon 120 days notice to Grantee. All such evaluation sessions shall be open to the public. Topics which may be discussed include but are not limited to:
 1. Compliance with the financial commitments required under the Franchise Agreement;
 2. Compliance with requirements regarding system characteristics are technical performance and testing requirements.
 3. Compliance with construction terms, standards and schedules;
 4. A description of the changes made or contemplated to the mix and quality of programming in the broad categories of video programming or other services on the system. Nothing in this paragraph, however, shall imply any City or SWOCC regulatory authority or power of censorship over the content of programming on the Grantee's channels, the public and educational access channels of the leased channels;
 5. Compliance with the Grantee's privacy protection policies;
 6. Service interruptions;
 7. Significant and representative Subscriber and user complaints and the action taken by the Grantee in response thereto;
 8. Relevant developments in the legal and regulatory arenas; and
 9. Service rate structures;
 10. Franchise fees;
 11. Liquidated damages;
 12. Free or discounted services;
 13. Application of new technologies;
 14. System performance;

15. Services provided;
 16. Access channels;
 17. Privacy;
 18. Judicial and FCC rulings;
 19. Line extension policies;
 20. Grantee, SWOCC, or City rules;
 21. Other events which SWOCC, the Cities, or the Grantee may find significant.
2. Ninety days prior to each performance evaluation session, Grantee shall, upon request, submit to SWOCC a written report, in reasonable detail, covering the significant events related to Grantee's performance or nonperformance of the terms and conditions of its Franchise Agreement and the Cable Ordinance with respect to issues raised by SWOCC in its notice.
 3. Within sixty days after receipt of Grantee's report, SWOCC may request additional reasonable and appropriate information on specific topics which the Grantee shall supply within sixty days of such request. SWOCC may review the Grantee's performance to determine whether Grantee has complied with the terms and conditions of the Franchise Agreement and shall, following completion of any such review, keep the Grantee's report on file. Nothing in this Section shall affect SWOCC's or the Cities remedies provided elsewhere in the Ordinance and this Agreement.
 4. Within sixty days after the conclusion of any evaluation session, SWOCC may prepare a report with respect to the adequacy of system performance and quality of service. If inadequacies are found which result in the apparent violation of any of the material provisions of the Cable Ordinance or this Franchise Agreement, Grantee shall have a minimum of thirty (30) days to respond and propose a plan for implementing any improvement or correction.

17. Failure of SWOCC or the City to Enforce a Franchise, No Waiver of the Terms Thereof.

Grantee shall not be excused from complying with any of the terms and conditions of this Franchise Agreement or the provisions of the Cable Ordinance by any failure of SWOCC or the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

18. Representations and Warranties.

18.1 Grantee hereby warrants, represents, acknowledges, and agrees that as of the effective date of this Agreement:

- a. Grantee is qualified to do business as a foreign partnership in Michigan.;
- b. Grantee has the requisite power and authority under applicable law and TWEAN'S partnership agreement or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the effective date of this Agreement, to enter into and legally bind the Grantee to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;
- c. Grantee is financially able to perform all commitments made in this agreement.
- d. Grantee upon accepting this Franchise, does so relying upon its own investigation and understanding of the power and authority of the City to grant the Franchise;
- e. Grantee has carefully read the terms and conditions of this Franchise and the Cable Ordinance and is willing to and does accept all of the risks of the meaning of such terms and conditions;
- f. To the best of its knowledge, there is no action or proceedings pending or threatened against Grantee which questions its performance under this Agreement;
- g. Insofar as the legal capacity of Grantee to carry out any obligation pursuant to this Agreement is concerned, the execution of, and performance pursuant to, this Agreement will not result in the breach or violation of any provision of the partnership agreement, by-laws of the Grantee or of any statute, regulation, agreement, judgment, or decree

to which it is subject;

- h. None of the officers, directors, general partners, or managers of the Grantee has any ownership interests that would be violation of Section 613 of the Communications Act of 1934, 47 U.S.C. 533, and amendments thereto; and
- i. Grantee enters into this Franchise Agreement willingly and without coercion, undue influence, or duress, has not misrepresented or omitted material facts, has not entered into this Agreement with the intent to act contrary to its provisions, and represents and warrants that, so long as it operates the Cable System, it will be bound by the terms and conditions of this Agreement and the Cable Ordinance subject to applicable state and federal law.

18.2 Grantee by acceptance of this Franchise acknowledges that it has not been induced to enter into this Franchise by any understanding or promise or other statement whether oral or written by or on behalf of SWOCC and the City or by any other Person concerning any term or condition of this Franchise not expressed herein or in the Cable Ordinance.

18.3 The rights and remedies of the parties pursuant to this Agreement are cumulative, except as otherwise provided in this Agreement, and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of this Agreement. A waiver of any right or remedy by a party at one time shall not affect the exercise of said right or remedy or any other right or other remedy by such party at any other time.

18.4 In the event that, after the effective date of this Agreement, any court, agency, commission, legislative body, or other authority of competent jurisdiction; (i) declares this Agreement invalid, in whole or in part, or (ii) requires Grantee either to: (a) perform any act which is inconsistent with any provision of this Agreement or (b) cease performing any act required by any provision of this Agreement, the City shall reasonably determine whether said declaration or requirement has a material and adverse effect on the Agreement. When Grantee intends to exercise its rights pursuant to such declaration, Grantee shall so notify the City of said declaration or requirement. If the City determines that said declaration or requirement does have a material and adverse effect on the Agreement, Grantee shall then enter into good faith negotiations with the City to amend this Agreement to eliminate any inconsistency or conflict between said declaration or requirement and the provisions of this Agreement and to meet the original intent of the parties as the circumstances warrant and

unless prohibited by law.

18.5 The headings contained in the Cable Ordinance and this Agreement are to facilitate reference only, and do not form a part of the Ordinance or this Agreement, and shall not in any way affect the construction or interpretation hereof.

19. Miscellaneous Provisions.

19.1 Filing Requirements.

When not otherwise prescribed herein, all matters herein required to be filed with the City and or SWOCC shall be filed with City Manager and with SWOCC.

19.2 No Person, Firm, or Corporation in Service Area of Grantee Shall be Arbitrarily Refused Service.

Subject to the line extension and other requirements of this Agreement, no person, firm or corporation in the Cable Service area of Grantee shall be arbitrarily refused Cable Service; provided, however, that Grantee shall not be required to provide Cable Service to any Subscriber who does not pay the applicable connection fee or monthly Cable Service charge.

19.3 Requirements Pertaining to Parties Giving Notice.

All notices which SWOCC or the City may give to Grantee or which Grantee may give to SWOCC or the City shall be given in writing and may be given by first class mail, postage prepaid addressed to Grantee's most recent address on file with SWOCC and the City, and addressed to SWOCC at its headquarters and to the City at the City Hall. Such notices, when sent by mail, shall be deemed given one day after deposit in the U.S. Mail.

20. Force Majeure.

With respect to any provisions of this Franchise Agreement, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon the Grantee, such violation or noncompliance shall be excused where such violation or noncompliance is the result Force Majeure as defined in the Cable Ordinance.

21. Time is of the Essence.

Time shall be deemed of the essence and any failure of Grantee to perform within the time allotted, or within a reasonable time if a period is not specified, shall always be sufficient grounds for SWOCC and/or the City to invoke liquidated damages or revocation of this Franchise.

22. Acceptance and Effective Date of Franchise.

22.1 This Franchise shall not become effective unless and until all provisions required in this Section are done and completed. All of such provisions being hereby declared to be conditions precedent to the effectiveness of the Franchise granted hereunder. In the event any of such provisions are not done and completed in the time and manner required, this Franchise shall be null and void.

22.2 The Grantee shall file with the City Manager, the City Clerk, and SWOCC its written acceptance of this Franchise, together with the Letter of Credit, construction bond and insurance policies, if required. Such acceptance shall be acknowledged by the Grantee before a Notary Public, and shall in form and content be satisfactory to and approved by the City Attorney.

23. Validity.

Both parties waive any claim or defense that any provision of the Franchise Ordinance or any provision of the Cable Ordinance as it existed on the date the Franchise Ordinance was signed, is unenforceable or otherwise invalid or void.

24. Severability.

If any Section or provision of this Franchise Ordinance or any ordinance, law, or document incorporated herein by reference is held by a Court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other Section or provision hereof, except that the parties shall in good faith renegotiate that Section or provision. Both the City and Grantee agree to be bound by all terms and conditions of this Franchise except as may be finally determined to be unenforceable by a Court of competent and appropriate jurisdiction with proper venue over this Franchise.

25. Miscellaneous.

This Ordinance constituting the Franchise Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 2. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

Section 3. Repealer.

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect. Ordinance No. C-7-82 is specifically repealed.

Section 4. Effective Date.

The provisions of this ordinance are hereby ordered to take effect following publication in the manner prescribed by the Charter of the City of Farmington Hills.

Section 5. Adoption.

This ordinance is hereby declared to have been adopted by the City Council of the City of Farmington Hills at a meeting thereof, duly called and held on the ___ day of _____, 2000, and ordered to be given publication in the manner prescribed by the Charter of the City of Farmington Hills.

AYES:

NAYS:

ABSENTS:

ABSENTIONS:

PASSED AND APPROVED this ____ day of _____, 2000.

CITY OF FARMINGTON HILLS

By: _____
Mayor

By: _____
City Clerk

Accepted By:

TIME WARNER ENTERTAINMENT-
ADVANCE/NEWHOUSE PARTNERSHIP

By: _____