

**SECOND AMENDED JOINT POWERS AGREEMENT
ESTABLISHING THE SAN MATEO COUNTY
TELECOMMUNICATIONS AND FRANCHISE NEGOTIATION AUTHORITY
("SAMCAT")**

THIS SECOND AMENDED JOINT POWERS AGREEMENT (hereinafter "this Agreement") by and between those governmental entities who are signatories to this Agreement (hereinafter referred to as the "Member" or "Members" as the context requires), is made in light of the following recitals:

RECITALS:

A. The undersigned are the member entities (the "Members") of that Joint Power Authority ("JPA") formerly known as the San Mateo Cable Television Authority created by Agreement dated June 27, 1989, pursuant to Government Code Section 6500 through Section 6518; and

B. The Members have authority to exercise certain powers relating to telecommunication services and for the negotiation of and renegotiation of franchises with public utilities in their respective communities and desire to establish a telecommunication services and franchise negotiation joint powers authority ("SAMCAT"); and

C. The Members are authorized to contract with each other for the joint exercise of any common power including those relating to telecommunication services, franchise negotiation, renegotiation and local regulation of public utilities pursuant to Government Code Sections 6500 through 6518; and

D. The Members have previously amended the Agreement dated June 27, 1989 by adopting a First Amendment to the Joint Powers Agreement on November 29, 1994, and the First Amended Joint Powers Agreement dated November 26, 1996, are included in this Second Amended Joint Powers Agreement which shall replace and supersede them; and

E. The Members desire to include further changes in this Agreement to allow SAMCAT to have additional authority to negotiate, develop and implement agreements, franchises and procedures with respect to cable television, telecommunication services, public property leases and encroachment agreements related to telecommunications and cellular and fiber optic equipment, public utilities and services, the negotiation and renegotiation of public utility franchises and encroachment agreements, collect data, hold hearings, and regulate cable television (CATV) rates and other matters permitted by the State and Federal regulations for local cable television (CATV) franchising authorities, negotiate and renegotiate franchises of public utilities and regulate such utilities to the extent permissible under state and federal law, all on behalf of the Members.

NOW THEREFORE, the Members, in consideration of the mutual promises and agreements contained herein, **AGREE AS FOLLOWS**:

1. Purpose. The Members are entering into this Agreement for the sole purposes of:
 - a. jointly addressing complaints from customers and potential customers of CATV within the jurisdictions of Members and including, but not limited to, the operation of a common office(s) to receive and address such complaints, the hiring of personnel to receive and address complaints;
 - b. jointly operating or contracting for the operation of public, educational, and/or government access facilities;
 - c. jointly providing research resources, including consultants, model ordinance and franchise provisions, to assist members in negotiating franchises, right-of-way agreements, lease and service agreements. These roles shall not be limited to cable television

franchises, but shall include franchise, right-of-way, lease and service agreements involving cable television, telephone, competitive access providers (CAPs), open video systems (OVS), data, wireless, other telecommunications services, public utility agreements and franchises, encroachment and other matters relating to the use of franchising agency real property, rights of way or structures.

d. jointly collect data, hold hearings, and regulate cable television (CATV), telephone, data, wireless, and other telecommunications services permitted by the State and Federal regulations for local cable television (CATV), telephone, data, wireless and other telecommunications services for the Members of SAMCAT.

e. jointly collect data and hold hearings concerning or relating to public utility use of the public rights of way, real property or structures as permitted by the State law for the Members of SAMCAT.

f. jointly hiring of agent(s) to represent the Members in leasing public property for telecommunications and public utility purposes.

g. jointly developing model ordinances and procedures for right of way management, installation and maintenance of overhead, underground and above ground telecommunications equipment and infrastructure and public utility equipment and infrastructure;

h. jointly studying and developing model agreements and procedures to develop city-owned and city-leased

telecommunications networks including a regional approach to city and government telecommunications networks, and utilities, such as a government owned utility, a government leased utility or provider of fiber service to city, county and school district sites;

The Members reserve to themselves the authority, and it is expressly agreed that SAMCAT shall have no authority, to adopt franchises, to require any franchise provisions, or to administer franchises, except as is provided in 1. a. -g. above.

2. Establishment of the San Mateo County Telecommunications and Franchise Authority. The Members hereby create an agency or entity to be known as the San Mateo County Telecommunications and Franchise Authority ("SAMCAT"). The debts, liabilities, or obligations of SAMCAT shall be the debts, liabilities, or obligations of SAMCAT and not the debts, liabilities, or obligations of the Members.

3. Term. This Agreement shall be effective upon its execution by the Members. This Agreement shall continue in effect until terminated as provided herein.

4. Board of Directors. Each participating Member shall appoint one representative to serve on the Board of Directors. The Board shall elect one of its Members to serve as Chairperson. The Board shall meet as needed, but at least quarterly, and shall operate the programs of SAMCAT, shall review SAMCAT's progress and accomplishments, and shall resolve problems hindering the success of SAMCAT. Decisions of the Board shall be final.

5. Powers. SAMCAT shall have the power to:

- a. address complaints from customers and potential customers of cable television (CATV), telephone, data, wireless, other telecommunications services, and public utility service complaints;

- b. operate a common office(s) to receive and address cable television (CATV), telephone, data, wireless, other telecommunications services complaints, and public utility service complaints;
- c. administer channels, frequencies, fibers, spectrum or other telecommunications resources allocated to or contracted for public, educational and/or government uses.
- d. provide research resources, including consultants, model ordinance and franchise provisions, to assist members in negotiating franchises, right-of-way agreements, lease and service agreements involving public utilities, cable television (CATV), telephone, competitive access providers (CAPs), open video systems (OVS), data, wireless, other telecommunications services.
- e. hire employees;
- f. make and enter into contracts to carry out its purposes;
- g. hold or dispose of property in order to carry out its purposes;
- h. incur debts, liabilities or obligations required by the exercise of these powers; provided, however, that such debts, liabilities or obligations shall not constitute responsibilities of the Members;
- i. sue or be sued in its own name;
- j. do all things that are necessary and convenient to carry out these powers and SAMCAT's purposes.
- k. jointly collect data, hold hearings, and regulate cable television (CATV), telephone, data, wireless, and other telecommunications services permitted by the State and Federal

regulations for local cable television (CATV), telephone, data, wireless and other telecommunications services for the Members of SAMCAT.

l. jointly collect data and hold hearings concerning or relating to public utility use of the public rights of way, real property or structures as permitted by the State law for the Members of SAMCAT.

m. jointly hiring of agent(s) to represent the Members in leasing public property for telecommunications purposes.

n. jointly developing model ordinances and procedures for right of way management, installation and maintenance of overhead, underground and above ground telecommunications equipment and infrastructure and public utility equipment and infrastructure;

o. jointly studying and developing model agreements and procedures to develop city-owned and city-leased telecommunications networks including a regional approach to city and government telecommunications networks, and utilities, such as a government owned utility, a government leased utility or provider of fiber service to city, county and school district sites.

These powers shall be exercised in the manner provided in this Agreement and, except as expressly set forth herein, subject only to such restrictions upon the exercise as are imposed upon the Members in the exercise of similar powers.

Nothing in this Agreement shall prohibit the County of San Mateo, if it be a Member, from administering complaint and/or access facilities separate and apart from SAMCAT for those geographical areas designated by the County as not within SAMCAT's responsibilities.

6. **Budget.** The Board of Directors shall adopt an operating budget for SAMCAT before April 1 of each year. The budget shall set forth anticipated expenses, financing sources and proposed service levels necessary to carry out the purposes of this Agreement. Each Member's financial cost shall be paid within 30 days of billing.

The financial responsibility of each Member shall be as follows: A budget covering Administrative Services shall be established annually and all SAMCAT members will be assessed an equal portion of that budget. All other expenses relating to SAMCAT activities shall be paid either by the agency incurring the cost, as a percentage of the subscriber base, divided equally, or other method agreed to by a majority of the total membership of SAMCAT.

A Member shall approve the annual budget within forty-five (45) days of its submittal to the Member. Failure or refusal to so approve the annual budget shall be deemed to be a withdrawal pursuant to Paragraph 9 of this Agreement; provided, however, that if the budget increases a Member's contribution by less than \$3,000.00, the Member shall be deemed to have automatically approved the annual budget.

7. **Treasurer-Auditor and Controller.** A Member shall be designated the depository and have custody of all the money and property of SAMCAT, from whatever source. The same Member shall perform the functions of Auditor or Controller for SAMCAT. No Member shall be required to act pursuant to this section without its consent. The hold harmless provisions of this Agreement shall apply, except where there is willful misconduct on the part of the Treasurer/Auditor and/or Controller.

8. **Personnel.** SAMCAT may request from the Members the services of such personnel to serve SAMCAT ex-officio as may be reasonably necessary to carry out this Agreement and shall have the power to employ professional and technical assistance for the performance of this Agreement, provided that adequate sources of funds are assured for the

payment of such professional and technical services which are not provided by a party hereto. SAMCAT may request, although not require, that Members provide personnel and service to SAMCAT in order to carry out the purposes designated in this Agreement.

9. **Withdrawal.** Any Member may withdraw from this Agreement by filing written notice of intention to do so with the other Members. Termination will take effect on July 1 of any year, provided there is at least six (6) months advance notice. The withdrawal of any party from this Agreement shall in no way affect the rights and obligations of the remaining Members. If a Member withdraws from this Agreement, it is not entitled to the return of any funds contributed to SAMCAT nor to the return in cash or in kind of any materials or supplies contributed. Withdrawing Members still are obligated for all payments due from them for the fiscal year of the withdrawal and all obligations and liabilities incurred during the membership.

10. **Termination and Disposition of Property.** This Agreement shall be deemed terminated when only one Member continues to participate, or when all participating Members choose to terminate it. Upon termination, all assets shall be distributed to the Members still active at the time of termination or to the one Member continuing to participate. If there is more than one member at the time of termination, the assets shall be distributed in proportion to those Members' financial participation during the prior fiscal year.

11. **New Members.** After the effective date of this Agreement, additional governmental entities may become Members of SAMCAT upon application and approval of the Board of Directors. Approval by the Board of additional Members shall be conditioned upon the following:

- a. The new Members reimburse SAMCAT for the expenses of SAMCAT resulting from the addition of the new Member, including, but not limited to, reasonable attorneys' fees, consultants' fees, accountants' fees, engineering fees

and all other such reasonable out-of-pocket expenses as may be incurred.

b. The elected governing body of the new Member adopt such resolutions and ordinances as shall be appropriate to permit SAMCAT to operate in a manner that is consistent with the existing operation of SAMCAT.

c. The new Member comply with such other conditions as may be determined appropriate by the Board of Directors, before such new Member is admitted as a Member of SAMCAT.

d. The new Member execute a counterpart of this agreement creating SAMCAT.

12. Amendment. This Agreement may be amended from time to time by a two-thirds majority vote of the Members, acting pursuant to vote of their respective City Councils or governing boards.

13. Insurance and Hold Harmless. SAMCAT is responsible for all insurance for its operations. Whenever possible at reasonable cost, SAMCAT shall name each of its members as additional insureds. No Member will be liable for claims because of its participation. SAMCAT, at its sole expense, shall defend and indemnify Members against any and all claims, judgments, losses, demands and costs in any way arising out of the operations of this Agreement.

14. Miscellaneous.

a. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

b. This Agreement is made in the State of California under the Constitution and laws of the State and is to be so construed.

c. To preserve a reasonable degree of flexibility, parts of this Agreement are stated in general terms. It is understood that there will be operating memoranda

executed and amended from time to time that will further define the rights and obligations of the Parties and which will be consistent with this Agreement and particularly the purposes and powers of SAMCAT.

15. Severability. Should any party term, or provision of this Agreement be by any agency of competent jurisdiction decided to be illegal or in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereby by their duly authorized representatives,
have affixed their hands on the _____ day of _____, 2002.

ATTEST:

TOWN OF ATHERTON

ATHERTON TOWN CLERK

MAYOR

ATTEST:

CITY OF BELMONT

BELMONT CITY CLERK

MAYOR

ATTEST:

CITY OF BRISBANE

BRISBANE CITY CLERK

MAYOR

ATTEST:

CITY OF BURLINGAME

BURLINGAME CITY CLERK

MAYOR

ATTEST:

CITY OF DALY CITY

DALY CITY CLERK

MAYOR

ATTEST:

CITY OF FOSTER CITY

**FOSTER CITY
CITY CLERK**

MAYOR

ATTEST:

TOWN OF HILLSBOROUGH

HILLSBOROUGH TOWN CLERK

MAYOR

ATTEST:

CITY OF MILLBRAE

MILLBRAE CITY CLERK

MAYOR

ATTEST:

CITY OF PACIFICA

PACIFICA CITY CLERK

MAYOR

ATTEST:

TOWN OF PORTOLA VALLEY

PORTOLA VALLEY TOWN CLERK

MAYOR

ATTEST:

CITY OF REDWOOD CITY

**REDWOOD CITY
CITY CLERK**

MAYOR

ATTEST:

CITY OF SAN BRUNO

SAN BRUNO CITY CLERK

MAYOR

ATTEST:

CITY OF SAN CARLOS

SAN CARLOS CITY CLERK

MAYOR

ATTEST:

CITY OF SAN MATEO

SAN MATEO CITY CLERK

MAYOR

ATTEST:

CITY OF SOUTH SAN FRANCISCO

**SOUTH SAN FRANCISCO
CITY CLERK**

MAYOR

ATTEST:

TOWN OF WOODSIDE

WOODSIDE TOWN CLERK

MAYOR

ATTEST:

COUNTY OF SAN MATEO

SAN MATEO COUNTY CLERK

**JERRY HILL, PRESIDENT
BOARD OF SUPERVISORS
COUNTY OF SAN MATEO**

RESOLUTION NO. _____ (2002)

APPROVING AND AUTHORIZING EXECUTION OF THIRD AMENDED JOINT POWERS AGREEMENT BETWEEN CITY OF _____ AND OTHER AGENCIES WITHIN THE COUNTY OF SAN MATEO FOR THE PURPOSE OF ESTABLISHING A JOINT TELECOMMUNICATIONS REGULATOR AND PUBLIC UTILITY FRANCHISE NEGOTIATION STRUCTURE

RESOLVED, by the Council of the City of _____, California; and it does hereby FIND, DETERMINE AND ORDER, that:

1. The public interest and convenience require that the agreement, cited in the title above, be executed.
2. Said agreement is hereby approved and the Mayor is authorized to sign and execute it on behalf of the City.
3. The City Clerk is instructed to attest the signature of the Mayor and affix the corporate seal of said City.

/s/

Mayor

ATTEST:

(SEAL) /s/
City Clerk

0655G

Resolution adopted by the City Council of the City
of _____, California, at a regular
meeting held on _____, 2002 by the
following vote of the Council members:

AYES: Council Members

NOES NONE

ABSENT: NONE