

**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
BY AND BETWEEN
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK,
THE CITY OF EAST PALO ALTO,
THE TOWN OF ATHERTON,
THE COUNTY OF SAN MATEO
AND
THE COUNTY OF SANTA CLARA**

Dated as of _____, 2008

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**AMENDED AND RESTATED JOINT EXERCISE OF POWERS
AGREEMENT BY AND BETWEEN THE CITY OF PALO ALTO,
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THE TOWN OF ATHERTON, THE COUNTY OF SAN MATEO
AND THE COUNTY OF SANTA CLARA**

This Amended and Restated Joint Exercise of Powers Agreement (the “Agreement”), dated _____, 2008 (the “Effective Date”), is made by the City of Palo Alto, the City of Menlo Park, the City of East Palo Alto, the Town of Atherton, the County of San Mateo and the County of Santa Clara (individually, a “Party” and, collectively, the “Parties” or the “Cable Joint Powers”), in reference to the following facts and circumstances:

RECITALS:

A. Title 1, Division 7, Chapter 5 of the California Government Code (the “Joint Exercise of Powers Act” or the “Act”), Section 6500 et seq., authorizes two or more public agencies by agreement to jointly exercise any power common to the contracting agencies. Each of the Parties is a “public agency” within the meaning of the Act, Section 6500.

B. In July 1983, the Parties executed a Joint Exercise of Power Agreement (the “JPA Agreement”), authorizing the City of Palo Alto (“Palo Alto”), on behalf of the Cable Joint Powers, to administer a cable television franchising process within a common geographical area or franchise area (the “Franchise Area”), described in Exhibit A, to award one or more franchises to render state-of-the-art cable television services in that area.

C. In October 1983, the Parties executed a Joint Operating Agreement (the “JOA Agreement”), authorizing Palo Alto on behalf of the Cable Joint Powers to administer and otherwise oversee and implement the cable television franchise that was awarded to Cable Communications Cooperative of Palo Alto, Inc. (the “Co-op”), in March 1986. In July 2000, the City Council of Palo Alto (the “Council”) approved the assignment and transfer of the Co-op franchise to TCI Cablevision of California, Inc. (“TCI”). In October 2003, Comcast Cable Communications, Inc. acquired TCI’s assets, while Comcast of California IX, Inc. (“Comcast”) held the franchise under the JPA Agreement (the “Comcast franchise”).

D. Under the JPA Agreement, Palo Alto on behalf of the Cable Joint Powers is granted the power and authority to award and administer a cable franchise for the Franchise Area, and a joint cable working group is (and to the extent there is created by the Cable Joint Powers a franchise review board) established to deal with any cable issues that may arise. Palo Alto intends to continue as the administrator of the Comcast franchise, to the extent obligations under that franchise will continue to be performed until July 24, 2010, in accordance with DIVCA, referred to in Recital F, and the Comcast

State Franchise (as defined in Section 2.2) and the AT&T State Franchise (as defined in Section 2.2), on behalf of the Cable Joint Powers.

E. Under the JOA Agreement, Palo Alto on behalf of the Cable Joint Powers is required to, among matters, account for franchise fee payments and administration expenses related to administration and enforcement of the Comcast franchise, and to administer the community access process on behalf of the Parties.

F. In September 2006, the Digital Infrastructure and Video Competition Act, Assembly Bill 2987, Stat. 2006, Chapter 700 (“DIVCA”), changed the laws and regulations governing video franchises. The California Public Utilities Commission now has the sole authority to issue video franchises, and local agencies are permitted only to regulate current local cable franchises until the earlier of the expiration date of such franchises or a date on which it is determined that there exists effective competition following the entry of a holder of a state franchise into the Franchise Area. Under DIVCA, a local agency retains its right to impose and collect a franchise fee, to require a franchise to abide by certain public, education and government (“PEG”) channel access (“PEG Access”) obligations, and to exercise due authority over management of its public rights-of-way.

G. Palo Alto, Menlo Park, East Palo Alto, and Atherton have adopted, and the Counties of San Mateo and Santa Clara are in the process of adopting, ordinances to conform their applicable ordinances, resolutions, laws, rules and regulations to DIVCA. In furtherance thereof, the Cable Joint Powers intend to amend and restate the selected provisions of the JPA Agreement and the JOA Agreement in order to address, among other matters, the rights and obligations of the Parties and the role of Palo Alto with respect to current and future cable and video franchise issues arising in connection with the Comcast franchise obligations, to the extent outstanding, and, in particular, the provision of PEG Access by Comcast and any other holder of a state video franchise (“State Franchise”) which operates within the Franchise Area (“State Franchisee”). Both Comcast and Pacific Bell Telephone Company dba AT&T California (“AT&T”) have been awarded State Franchises to operate within the Franchise Area as of the Effective Date.

H. The Parties intend to substitute this Agreement for the JPA Agreement and JOA Agreement. It is the intention of the Parties to give to the California Secretary of State written notice of the amendment to the Joint Exercise of Powers Agreement in accordance with California Government Code section 6503.5.

AGREEMENT:

NOW, THEREFORE, in consideration of the following covenants, terms and conditions, the Parties agree:

SECTION 1. TERM; PURPOSE OF AGREEMENT

1.1 The term of this Agreement will commence on its execution by the Parties and continue on a year-to-year basis until the Parties agree to terminate this Agreement or a majority of the Parties have withdrawn from the Cable Joint Powers pursuant to Section 6.

1.2 Pursuant to the Joint Exercise of Powers Act, the purpose of this Agreement is to provide for the administration of the cable television and video franchising and franchise administration and enforcement processes relating to the State Franchises separately granted to Comcast and AT&T (and any other State Franchisee) to provide cable and related video services within the Franchise Area until the respective expiration dates of their State Franchises and any renewals thereof that result in the provision of cable or related video services within the Franchise Area at any time during the term of this Agreement. The purpose of this Agreement is also to make efficient use of the common powers of each Party and develop all other reasonably necessary or appropriate powers to provide greater individual and group coordination and collaboration among the Parties to secure state-of-the-art video services to the extent permitted by the laws and regulations governing such services and operations.

SECTION 2. ORGANIZATION, POWERS, FUNCTIONS

2.1 There will not be established pursuant to the Act an agency which will be a public entity separate from the Parties. The Parties, acting in their capacity as a joint action agency, are referred to in this Agreement as the Cable Joint Powers.

2.2 Palo Alto is empowered and authorized to administer and enforce the State Franchises awarded to Comcast (the "Comcast State Franchise") and AT&T (the "AT&T State Franchise") and any other State Franchisee seeking to provide video service under DIVCA within the Franchise Area, except as (a) provided in Sections 2.3 or 2.4, or (b) as may be expressly disapproved by the Parties and expressly reserved to any Party other than Palo Alto. Nothing in this Agreement will be construed to limit the right of any Party to administer a cable or video franchise that operates wholly and exclusively within that Party's jurisdictional boundary or to take such actions as are necessary to effectuate the purpose of this Agreement.

2.3 Notwithstanding the provisions of Sections 1.2 and 2.2, the Parties empower and authorize Palo Alto to administer the Comcast State Franchise and the AT&T State Franchise on behalf of the Cable Joint Powers and to the extent it is permitted by DIVCA, including, but not limited to, collecting and remitting the franchise fee and any PEG support fee after accounting for reasonable and necessary expenses, enforcing customer service standards, and managing PEG Access for the Franchise Area. A Party may at any time give notice to Palo Alto and the other Parties that, in accordance with Section 6, it wishes to withdraw from this Agreement and assume all rights and obligations with respect to the administration and management of the Comcast State

Franchise, the AT&T State Franchise and any other State Franchise operating within its jurisdictional boundary.

2.4 Notwithstanding the provisions of Sections 1.2 and 2.2, if any entity other than Comcast or AT&T is granted a State Franchise and it elects to provide video service within the Franchise Area, then the Cable Joint Powers empower and authorize Palo Alto to administer that State Franchise on behalf of the Cable Joint Powers and to the extent it is permitted by DIVCA, including, but not limited to, collecting and remitting the franchise fee and any PEG support fee after accounting for reasonable and necessary expenses, enforcing customer service standards, and managing PEG Access for the Franchise Area. A Party may at any time give notice to Palo Alto and the other Parties that, in accordance with Section 6, it wishes to withdraw from this Agreement and assume all rights and obligations with respect to the administration and management of such State Franchise operating within its jurisdictional boundaries.

2.5 The right of Palo Alto to acquire an ownership interest in the cable or video system of Comcast pursuant to Sections 1.2.01 and 1.2.02 of the JOA Agreement is hereby terminated. The right of any Party or some, but not all, Parties to acquire an ownership interest in the cable or video system of Comcast, AT&T or any other State Franchisee will be determined by agreement of the Parties at a mutually convenient time.

SECTION 3. WORKING GROUP, REVIEW BOARD

3.1 Palo Alto's city manager (the "City Manager") will establish a joint cable working group (the "Working Group") to consider any and all cable and video service-related issues relating to the Comcast State Franchise, the AT&T State Franchise and any other State Franchise operating within the Franchise Area pursuant to Section 2.4, and to make recommendations to be presented to the Council. The City Manager or designee will chair the Working Group meetings and proceedings and otherwise provide staff services to the Working Group. These meetings will not be subject to compliance with the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

3.1.1 Each Party has the right to designate an individual to become a voting member of the Working Group. A representative of Stanford University may be designated the representative of the County of Santa Clara.

3.1.2 The Working Group will continue to function during the Comcast State Franchise, the AT&T State Franchise and any other State Franchise operating within the Franchise Area pursuant to Section 2.4, for the purpose of oversight, review and enforcement of all requirements of the operation and management of the cable or video system over which DIVCA confers authority to local agencies.

3.2 Upon Palo Alto's receipt of a request, in writing, of a majority of the Parties, Palo Alto by its City Manager or designee will inform the Parties of the request to appoint a franchise review board (the "Review Board") to address any issue that cannot or has not been resolved by the Working Group to the complete satisfaction of all

Parties. Palo Alto then will arrange for a meeting to consider the creation of the Review Board. The governing body of each Party will each appoint an individual to serve on the Review Board. The Review Board, if appointed, will consist of seven (7) members, appointed by the governing body or the delegate of each Party; provided, however, two (2) members will be appointed by Palo Alto and one (1) member each will be appointed by the other five (5) Parties. The County of San Mateo member will represent the interests of residents of unincorporated San Mateo County, comprising Ladera, Menlo Oaks and University Heights. The County of Santa Clara will represent the interests of residents of unincorporated Santa Clara County, comprising the Leland Stanford Junior University. These meetings will be subject to compliance with the Ralph M. Brown Act, California Government Code Section 54950 *et seq.* The Parties acknowledge that the Review Board has not been appointed as of the Effective Date.

3.2.1 The Review Board, if appointed, will review and resolve issues formally raised by any Party in accordance with Section 3.2 in regard to the administration, enforcement and execution of responsibilities relating to State Franchises operating within the Franchise Area assigned to local agencies by DIVCA that are issues not delegated to Palo Alto to handle under the terms of this Agreement. The processes and procedures for formally presenting issues to and resolving issues by the Review Board will be established at the time the Review Board is appointed. The Review Board, if appointed, will convene only when a majority of the members of the Cable Joint Powers requests, in writing, the convening of such meeting and notice is directed to Palo Alto, as the administrator, that all Cable Joint Powers members shall be given notice of the convening of such meeting in order to resolve any issue that is presented by one or more members of the Cable Joint Powers.

3.2.2 Palo Alto, as administrator of the JPA Agreement and continuing as the administrator of this Agreement in accordance with Section 2.2, will be responsible for the oversight, enforcement and regulation of the Comcast State Franchise, the AT&T State Franchise and any other State Franchise, consistent with DIVCA. Palo Alto will follow the determinations of the Review Board, if appointed, in matters under the Review Board's jurisdiction. In its role of administrator, Palo Alto will provide the Review Board members on a regular basis at the frequency as may be determined by the Review Board information on its activities and substantial changes in the Comcast State Franchise, the AT&T State Franchise and any other State Franchise, including, but not limited to, rates, services, PEG Access and other matters. The City Manager or designee with the assistance of the Working Group members will provide staff services to the Review Board, if appointed, and such services are requested and approved by the Cable Joint Powers.

SECTION 4. FRANCHISE-RELATED REVENUES AND EXPENSES

4.1 Palo Alto will receive and account for any and all franchise fees due and payable by Comcast, AT&T and any other State Franchisee, to the Cable Joint Powers. The franchise fees will be made payable to Palo Alto. After Palo Alto accounts for the reimbursement of all costs and expenses contemplated in Section 4.2, Palo Alto will

distribute the franchise fees to the other Parties on the basis of the percentage of franchise revenue derived from cable or video customers in each jurisdiction.

4.2 Palo Alto will be reimbursed for all out-of-pocket costs and expenses incurred in connection with its administration of the Comcast State Franchise, the AT&T State Franchise and any other State Franchise, operating within the Franchise Area. The franchise fees received will be allocated according to the following priority:

A. To reimburse Palo Alto for any out-of-pocket costs that Palo Alto may incur in the administration of any and all State Franchises, including, but not limited to, reasonable attorneys' fees and the fees of consultants with expertise in cable and video franchising and the costs associated with PEG Access and programming for any Cable Joint Powers member other than Palo Alto or otherwise reasonably attributable to such member;

B. To cover the costs of the regulatory and oversight functions; and

C. To pay for other cable- or video-related activities benefiting the area in which the revenue was generated, as allocated by Palo Alto among all of the Parties on the basis of the percentage of revenues derived from the cable or video customers located in each jurisdiction.

4.3 The Working Group will review Palo Alto's reimbursement requests on a quarterly basis or other frequency as may be determined by the Working Group. The Review Board, if appointed and so authorized, will review Palo Alto's reimbursement claims to the extent such claims are not approved by the Working Group. The determination of the Review Board will be final.

4.4 Palo Alto will submit an accounting of franchise-related revenues and expenses to the Cable Joint Powers on a quarterly basis or other frequency as may be determined by the Working Group. Palo Alto's accounting of franchise-related revenues and expenses will be audited annually by an independent auditor and included in the audit of Palo Alto's books and accounts, which will be conducted annually. The audit of the independent auditor will be made available to all other Parties within thirty (30) days of its issuance.

SECTION 5. PUBLIC, EDUCATION AND GOVERNMENT ACCESS

5.1 The Parties have appointed the public benefit corporation and not-for-profit entity, the Midpeninsula Community Media Center, Inc. ("Media Center"), as the community access organization to administer the PEG channels and manage PEG Access support on the cable or video systems that are required to be provided under the Comcast State Franchise, the AT&T State Franchise and any other State Franchise in the provision of PEG Access in the Franchise Area, including, but not limited to, the development of rules for the administration of bandwidth of the institutional network to be made available to public institutions and non-commercial users of the cable or video service

system(s) in the Franchise Area. Each Party will reasonably cooperate with the Media Center or other community access organization for the purpose of implementing PEG Access.

5.2 Any revocation of the designation of the Media Center or other entity as the community access organization may be referred to the Review Board, if appointed, whose decision on revocation will be final.

5.3 Palo Alto will ensure that the Media Center or other community access organization performs the following primary responsibilities:

- A. The adoption of rules governing the use of PEG channel time and facilities;
- B. The scheduling and use of PEG channel time and facilities;
- C. The provision of training to PEG channel access users;
- D. The raising and uses of funds for PEG Access purposes consistent with the Comcast State Franchise, the AT&T State Franchise and any other State Franchise;
- E. The maintenance of PEG Access channels and facilities and coordination of the use of institutional network access facilities;
- F. The promotion of PEG Access; and
- G. The development of new PEG Access uses and the determination of the need for additional PEG Access channels and facilities.

5.4 Palo Alto will require the Media Center or other community access organization to provide reports annually or at other established frequency to the Council and the Review Board, if appointed, on its budget and activities, including, but not limited to, its accomplishments during the annual reporting period or any other reporting period.

5.5 Each Party will be responsible for administering the government access channel(s) and that portion of the institutional network available for local government use within its jurisdictional boundary lying within the Franchise Area.

5.6 Palo Alto will receive and account for any and all PEG support fees paid and to be paid by Comcast, AT&T and any other State Franchisee serving the Franchise Area and remit the appropriate amounts to the Media Center or other community access organization. The PEG support fees will be made payable to Palo Alto.

SECTION 6. WITHDRAWAL OF MEMBER

6.1 Any Party may withdraw from participation in the Cable Joint Powers or the Review Board, if appointed, or the Working Group, on terms and conditions mutually acceptable to the Parties or, if no agreement can be reached by the Parties, as determined by an arbitrator acceptable to the Parties or in accordance with applicable law.

6.2 A Party seeking to withdraw will provide no less than six (6) months' prior written notice to the other Parties of its intention to withdraw. A Party which seeks to withdraw from the Cable Joint Powers will perform all of its outstanding obligations under this Agreement through the effective date of its withdrawal. A Party's obligation to pay for its allocable portion of administrative costs and expenses incurred to the effective date of withdrawal will survive the withdrawal of a Party from the Cable Joint Powers, and such obligation will also survive the termination of this Agreement.

SECTION 7. NOTICES

7.1 All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder given by a Party to any other Party or Parties, will be provided, in writing, and will be deemed sufficiently given and served upon the other Party if (1) personally served, (2) sent by United States Postal Service certified mail, postage, prepaid, (3) sent by express delivery service, or (4) in the case of a facsimile, if sent to the telephone number(s) set forth below during normal business hours of the receiving party and followed within 48 hours by delivery of hard copy of the material sent by facsimile, in accordance with (1), (2) or (3) above. Personal service will include, but not be limited to, service by express delivery service and service by facsimile transmission. Delivery of notices properly addressed will be deemed complete when the notice is physically delivered to the Party's designated representative. All notices provided pursuant to this Agreement will be addressed as set forth below or as a Party may subsequently designate by written notice.

TO: Palo Alto

City Manager
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (650) 329-2468

with a copy to:

City Clerk
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (650) 323-631

And
City Attorney
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto CA 94303
FAX: (650) 329-2646

TO: Menlo Park
City Manager
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
FAX: (650) 328-7935

with a copy to:
City Clerk
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
FAX: (650) 328-7935

And
City Attorney
City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, CA 94025
FAX: (650) 324-0227

TO: East Palo Alto
City Manager
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303
FAX: (650) 853-3115

with a copy to:
City Clerk
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303
FAX: (650) 853-3115

And
City Attorney
City of East Palo Alto
2415 University Avenue
East Palo Alto CA 94303
FAX: (650) 853-5923

TO: Atherton
Town Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027
FAX: (650) 614-1212

with a copy to:
Town Clerk
Town of Atherton
91 Ashfield Road
Atherton, CA 94027
FAX: (650)

And
Town Attorney
Town of Atherton
P. O. Box 279
Mountain View, CA 94042
FAX: (650) 967-1395

TO: San Mateo
County Manager
County of San Mateo
400 County Center
Redwood City, CA 94063
FAX: (650) 363-1916

with a copy to:
County Clerk
County of San Mateo
400 County Center
San Mateo, CA 94063
FAX: (650) 363-1916

And
County Counsel
County of San Mateo
400 County Center
Redwood City, CA 94063
FAX: (650) 363-4034

TO: Santa Clara
County Executive
County of Santa Clara
70 West Hedding, 11th Floor
San Jose, CA 95110
FAX: (408) 293-5649

with a copy to:
Office of the County Counsel
County of Santa Clara
70 West Hedding, 9th Floor
San Jose, CA 95110
FAX: (650) 292-7240

SECTION 8. MISCELLANEOUS

8.1 This Agreement will be governed by and construed in accordance with the laws of the State of California. The Parties will comply with all applicable federal, state and local laws in the exercise of their rights and the performance of their obligations under this Agreement.

8.2 All provisions of this Agreement, whether covenants or conditions, will be deemed to be both covenants and conditions.

8.3 This Agreement represents the entire agreement and understanding between the Parties and it supersedes all prior negotiations, representations and contracts, written or oral. This Agreement may be amended by an instrument, in writing, signed by the Parties. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

8.4 Any and all exhibits that may be referred to in this Agreement are by such references incorporated in this Agreement and made a part hereof.

8.5 The Parties agree that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendment or exhibit hereto.

8.6 As used in this Agreement, the special terms will have the same meaning as those words are defined in the Comcast franchise or in DIVCA, including California Public Utilities Code section 5830. In the event of a conflict, the definitions in section 5830 will take precedence, unless the context otherwise requires the Comcast franchise definition to apply.

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IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement as of the Effective Date.

ATTEST

CITY OF PALO ALTO

City Clerk

Mayor

APPROVED AS TO FORM:

Senior Asst. City Attorney

APPROVED:

City Manager

Director of Administrative Services

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

CITY OF MENLO PARK

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

CITY OF EAST PALO ALTO

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

TOWN OF ATHERTON

Town Clerk

Mayor

APPROVED AS TO FORM:

Town Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

COUNTY OF SAN MATEO

County Clerk

Chair

APPROVED AS TO FORM:

County Counsel

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

COUNTY OF SANTA CLARA

County Clerk

Chair

APPROVED AS TO FORM:

County Counsel

EXHIBIT A