



## Item No. 12 Town of Atherton

### **CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER**

**FROM: ANTHONY SUBER, DEPUTY CITY MANAGER / CITY CLERK**

**DATE: MARCH 18, 2020**

**SUBJECT: REVIEW AND APPROVAL OF A MEMORANDUM OF UNDERSTANDING WITH THE CABLE JOINT POWERS MEMBER AGENCIES FOR THE USE OF PUBLIC, EDUCATION, AND GOVERNMENT (PEG) FUNDS.**

#### **RECOMMENDATION**

Approve and authorize the City Manager to execute a Memorandum of Understanding (MOU) between the Cable Joint Powers covering the use of public, educational, government (PEG) funds for qualifying capital projects in member jurisdictions with corresponding grants to the Midpen Media Center (Attachment 1).

#### **BACKGROUND | ANALYSIS**

In 1983, the cities of Menlo Park, Palo Alto, East Palo Alto, the Town of Atherton and portions of unincorporated San Mateo and Santa Clara counties entered into a Joint Exercise of Powers Agreement (JPA) for purposes of obtaining cable television service for residents, businesses and institutions within these jurisdictions. The JPA gives the City of Palo Alto the sole authority to grant and administer the cable franchise process on behalf of its members. Palo Alto, on behalf of the JPA members, provides for such activities as franchise and PEG fee collection, PEG oversight, customer service and the like with respect to all state franchise holders.

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) went into effect January 1, 2007. DIVCA established a state franchising system administered by the Public Utilities Commission for video service providers. DIVCA allows agencies to exact a fee from video service providers with state-issued franchises for public, education and governmental (PEG) channel purposes. In 2007, the City Council adopted an ordinance, amending Chapter 13.10 of the Town of Atherton Municipal Code, establishing a PEG fee of \$0.88 per residential subscriber per month. Prior to DIVCA, PEG fees were collected via independent franchise agreements between video service providers and the respective agencies. With the enactment of DIVCA, most video service providers opted to move to the state franchising system. The Town collected PEG fees prior to 2007 and remitted them directly to the Cable JPA for operation of the Mid-Peninsula Media Center.

DIVCA requires reauthorization of the \$0.88 PEG fee by ordinance at the expiration and renewal of each state video franchise. The term of a state franchise is 10 years. AT&T's State Video Franchise was renewed March 30, 2017. In early 2018, the City Council adopted an ordinance reauthorizing a PEG support fee of \$0.88 per residential subscriber per month that applies to AT&T and Comcast under their respective renewed State video franchises. The Town will need to reauthorize the PEG fees in 2027/28.

The JPA has designated the Media Center, as the Community Access Organization, to operate and manage PEG channels and to promote PEG access. The Midpen Media Center (formerly the Mid-Peninsula Access Corporation) has served in this capacity since the early 1990s. In this role, the Midpen Media Center administers the JPA's seven local PEG channels, broadcasts local community programs, provides gavel-to-gavel coverage of local government meetings, offers video production classes and workshops to community members and provides local election coverage.

The City of Palo Alto forwards all PEG fee revenues received by JPA members from franchise holders (currently AT&T and Comcast) to the Midpen Media Center in support of these services. Federal law restricts the use of PEG fees to capital expenditures and Atherton's share of the PEG fee revenues total approximately \$24,000 annually (or 88 cents per subscriber per month).

On May 10, 2016, the City of Palo Alto auditor issued the Cable Franchise and PEG Fee Audit, which included a finding that the Midpen Media Center had been using PEG fees for operating expenses, rather than solely for capital expenses, which is the only use permitted by federal law. The Palo Alto City Council directed staff to work with the Midpen Media Center to correct this practice, preferably in a way that enabled the Midpen Media Center to continue operations. The Midpen Media Center is currently placing PEG fees in a restricted account that can only be used for capital expenditures.

During fall 2019, the JPA Working Group, which included the Town, discussed and developed an alternative that proposed the JPA use PEG revenues to pay for appropriate PEG-related expenditures (capital projects) in member jurisdictions. The member agency would provide the Midpen Media Center with a grant of unrestricted funds in the amount of the PEG-related capital expenditures.

A revised MOU was reviewed by the member agencies and ultimately adopted by the City of Palo Alto, representing the Cable Joint Powers Group (Palo Alto, East Palo Alto, Menlo Park, Atherton, and portions of San Mateo and Santa Clara counties). That revised MOU must also be adopted by member agencies. Attached is a copy of the City of Palo Alto staff report as informational only (staff report only).

Staff recommends that the City Council approve and authorize the City Manager to execute the Memorandum of Understanding (MOU) between the Cable Joint Powers communities covering the new arrangement for the use of PEG fees.

Under this agreement the Joint Powers would use PEG revenue to pay for the PEG-related capital projects of individual members, such as a Council chambers renovation project. The member

agency would provide a grant to Midpen Media in the amount of its total PEG-related expenditures for the project. The granted funds would be unrestricted and could be used by Midpen Media for both its operation and capital needs. The MOU includes an “Authorization Form” that will be approved by the City of Palo Alto, as administrator of the Cable JPA, and the member agency (Attachment 1). This form will document the member request for use of PEG fees and the agreement to contribute a matching sum to Midpen Media.

Comcast and AT&T are required to remit all Joint Powers’ PEG fee payments directly to the City of Palo Alto, each jurisdiction has a share of the revenue, which is based on each member’s pro rata share of the total JPA area cable subscribers. The Joint Powers members have agreed to pool the PEG revenue to support qualifying projects that may exceed an individual member share of the revenue. The City of Palo Alto will maintain an accounting of each member’s share of the funds to facilitate the prioritization and availability of funds for all jurisdictions with quality PEG-capital projects.

Presently, some portions of the Town Center Council Chambers construction project would qualify as a PEG capital expenditure. A capital expenditure for qualifying PEG costs is defined as capital expenditures that enable JPA Members to start to provide for, or upgrade to enhance, the cablecasting of government meetings on the PEG channels. The primary purpose of the project must be to provide for or upgrade PEG channel capacity. Capital expenditures that would have been made separate and apart from PEG considerations, cannot be considered PEG capital expenditures. Examples of PEG Capital expenditures may include but not be limited to portions of facility construction support infrastructure costs, broadcast systems including cameras, switcher, captioning systems, and portions of audio systems costs (speakers, microphones, etc.).

Future agreements and proposals related to restructuring of the Cable JPA, long-term use of funds and other related matters would come back to the City Council for consideration.

### **POLICY FOCUS**

The recommendations in this report are consistent with Town policies and the Atherton Municipal Code Chapter 13. In 2007, City Council adopted an ordinance establishing a public, educational, and government (PEG) fee of \$0.88 per residential subscriber per month. The Town is required to reauthorize this fee by ordinance at the expiration and renewal of each state video franchise.

### **FISCAL IMPACT**

The JPA receives PEG fee revenue of approximately \$300,000 in calendar year 2019 (Atherton’s share is approximately \$24,000). The new arrangement for the use of PEG fees would not have any resource impact on the Town.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately

1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service provides (water, power, and sewer), and regional elected officials.

**COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item \_\_\_ has or X has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)

**ATTACHMENTS**

1. MOU between Cable JPA Members
2. Amended Restated JPA
3. Palo Alto Staff Report

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE MEMBERS OF THE AMENDED AND RESTATED JOINT POWERS  
AGREEMENT DATED JUNE 9, 2009, RELATING TO THE ADMINISTRATION  
OF CABLE TELEVISION AND VIDEO FRANCHISES**

This Memorandum of Understanding (“MOU”) between and amongst the members of the Amended and Restated Joint Powers Agreement dated June 9, 2009, relating to the administration of cable television and video franchises, outlines the general understanding of each member’s agreement with respect to the utilization of PEG Fees.

**BACKGROUND**

Under the terms of the Amended and Restated Joint Exercise of Powers Agreement, dated June 9, 2009, and as hereinafter may be amended (“JPA Agreement”), by and between the Cities of Palo Alto, East Palo Alto and Menlo Park, the Town of Atherton and the Counties of San Mateo and Santa Clara (collectively, “Joint Powers” or “JPA”), the City of Palo Alto (“CPA”) is authorized, on behalf of the JPA members, to administer and enforce the State Franchises awarded to Comcast and AT&T to provide cable and video services within the Franchise Area.

In accordance with California Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”), and the federal Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §§ 521 *et seq.* (“Cable Act”), AT&T and Comcast provide ongoing funding to the JPA members, equivalent to \$0.88 per residential subscriber per month, to support the operation of the public, educational and government (“PEG”) channels provided for by the Franchises (“PEG Fee”). Under the JPA Agreement, CPA collects and oversees expenditures of the PEG Fees on behalf of the JPA members.

The JPA designated the Midpeninsula Community Media Center (“Midpen Media”) to operate and administer the PEG channels, and CPA oversees Midpen Media’s PEG operations on behalf of the JPA members through a contract between CPA and Midpen Media. Pursuant to the JPA Agreement, CPA has been collecting and remitting all PEG Fees to Midpen Media for support of the PEG facilities and channels.

Under federal law, PEG Fees may only be used for capital costs associated with PEG access facilities and equipment. Since 2016, the PEG Fee revenue has been placed in a restricted account managed by Midpen Media (the “PEG Fee Account”). These funds have been accumulating and currently amount to \$1,065,701 as of November 7, 2019.

The JPA members desire to maintain Midpen Media as the PEG access-provider for the franchise territory. Midpen Media needs funding in order to continue providing PEG access facilities, programming and services. Midpen Media does not have sufficient capital needs at this time eligible for use of the PEG Fees. However, some of the individual JPA members do have capital projects planned that will be eligible for PEG Fee expenditure because they will entail updating and improving their individual capital facilities and equipment related to producing and cablecasting council and other public meetings on PEG channels. In order to make PEG Fees available for individual JPA

members' PEG capital projects, to provide Midpen Media with continued funding to operate and administer the PEG access facilities, equipment and channels, and to comply with federal requirements related to PEG Fees, the JPA members have agreed to utilize the PEG Fees and to contribute other funds to Midpen Media's operations, as follows.

### UNDERSTANDING

1) Although Comcast and AT&T are required to remit PEG Fee payments directly to CPA, each jurisdiction has a share of the PEG Fee revenue (based on each JPA member's pro rata share of total JPA area cable subscribers). JPA members have agreed to pool the PEG Fee revenue to support qualifying PEG capital projects that may exceed an individual member's share of PEG Fee revenue. CPA will maintain an accounting of each member's share of the PEG Fee funds to ensure money is available for all jurisdictions that have qualifying PEG-capital projects. However, because PEG Fee funds are limited, not all jurisdictions with qualifying projects may receive the requested amount; the distribution of the funds will depend on availability. Further, if at any time PEG Fees are no longer paid by cable subscribers or PEG Fee revenue is substantially diminished due to changes in federal law or for another reason, the jurisdictions that have utilized the pooled PEG Fee revenue are not required to reimburse the other jurisdictions that have not utilized their share of the PEG Fee funds provided the JPA member makes the payment required in Paragraph 3 of this MOU.

2) Midpen Media will continue to hold the existing PEG Fee Account, which will be available to fund JPA members' individual PEG-related capital projects on a draw-down basis. CPA shall authorize expenditure of PEG Fees for individual JPA members' PEG-eligible capital projects. Upon being presented with CPA authorization, Midpen Media shall, within forty-five (45) days, remit the authorized amount from the PEG Fee Account to the individual JPA Member.

3) Anytime a JPA member receives a payment from the PEG Fee Account as described above, it in turn shall pay to Midpen Media an equivalent amount of money from its local funds (the source of which will be determined by the individual JPA Member but shall not be restricted funds), no later than forty-five (45) days after it receives the PEG Fees from Midpen Media, which money may be used by Midpen Media without restriction to support PEG programming. In the interest of supplying Midpen Media with ongoing revenue, JPA members, in their sole discretion, may agree to provide the authorized expenditure amount to Midpen Media in advance of their receipt of the PEG Fee payment.

4) Midpen Media will continue to hold the existing PEG Fee Account until it has been depleted through the expenditure draw-down process described above. All PEG Fee revenue received after the execution date of this MOU will be held in the CPA Cable Fund, on behalf of the Joint Powers, and will be used for PEG-related capital expenditures by the JPA members or Midpen Media after the money in the PEG Fee Account is exhausted.

5) CPA may authorize reimbursement to Midpen Media for any approved actual and documented PEG-eligible capital expenditures it may incur, upon application for such by Midpen Media.

6) JPA members will use the form (or one substantially similar) attached hereto as Attachment 1 (“PEG Fee Use Authorization and Corresponding Contribution Obligation”) to memorialize their respective use of the PEG Fees and agreement to contribute an equivalent sum to Midpen Media. The JPA Working Group shall meet and review the PEG Fee process described in this MOU every 6 months to determine its efficacy, and is authorized to make any adjustments it deems necessary or desirable.

**NOW, THEREFORE,** the parties have executed this MOU as follows:

CITY OF PALO ALTO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

CITY OF EAST PALO ALTO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

CITY OF MENLO PARK:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

TOWN OF ATHERTON:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

COUNTY OF SANTA CLARA:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

COUNTY OF SAN MATEO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

## ATTACHMENT 1

**AUTHORIZATION TO UTILIZE CABLE JPA PEG FEES FOR CAPITAL  
PROJECT AND AGREEMENT TO CONTRIBUTE MATCHING SUM TO MEDIA  
MIDPENINSULA COMMUNITY MEDIA CENTER**

This Authorization to Utilize PEG Fees for Capital Project and Agreement to Contribute Matching Sum to Midpeninsula Community Media Center (“Midpen Media”), dated \_\_\_\_\_, is made by the City of Palo Alto, as administrator of the Cable JPA (“CPA”), and \_\_\_\_\_, as member of the Cable JPA (“Member”).

**RECITALS**

WHEREAS, pursuant to the Memorandum of Understanding (“MOU”) dated \_\_\_\_\_, between and amongst the members of the Amended and Restated Joint Powers Agreement, incorporated herein by reference, which outlines the process for utilizing PEG Fees, JPA members may use PEG Fees for their individual capital projects which qualify as PEG-eligible, and, in return, will contribute the same amount of money to Midpen Media to support PEG programming; and

WHEREAS, in order to use PEG Fees, Member must demonstrate to CPA that the funds it is seeking will be used only for capital costs associated with PEG access facilities and equipment; and

WHEREAS, Member has demonstrated that the amount it is seeking for its \_\_\_\_\_ Project is an eligible PEG Fee expenditure, and has agreed to contribute an equivalent amount of funding to Midpen Media in exchange for the use of PEG Fees.

**AUTHORIZATION**

1. Authorization. Member is hereby authorized to receive \$ \_\_\_\_\_ from the Restricted PEG Fee Account held by Midpen Media (or PEG funds held by CPA after the restricted Midpen Media Account is depleted) for its \_\_\_\_\_ Project (“PEG Fee Payment”).

2. PEG Fee Payment. The PEG Fee Payment to Member shall be made in the form of an advance (pre-funding of PEG capital costs) or a reimbursement of actual PEG capital expenditures.

A. Advance. In the case of an advance, Member shall submit a request for payment of the authorized amount, and Midpen Media (or CPA after the Restricted PEG Account is depleted) shall remit the PEG Fee Payment to Member within 45 days of

receiving Member’s executed authorization. At the end of the project, Member shall provide CPA with an accounting of its actual PEG capital expenditures. If the amount of the advance is in excess of actual PEG capital expenditures, Member shall reimburse CPA for the difference within 45 days of completing the project or within 1 year of the remittance of the advance, whichever occurs earlier. CPA may extend the period for reimbursement upon request; any extension shall be in writing. If the PEG capital expenditures are in excess of the amount of the advance, Member may seek reimbursement from the PEG fund for the difference.

B. Reimbursement. For a reimbursement, upon receiving evidence of payment made by Member for authorized costs, Midpen Media (or CPA after the Restricted PEG Account is depleted) shall remit the PEG Fee Payment to Member within 45 days.

**CONTRIBUTION TO MIDPEN MEDIA**

3. Contribution. In return for its use of PEG Fees, Member agrees to contribute a like sum, or \$\_\_\_\_\_ (“Member Contribution”) to Midpen Media. The source of funding for Member Contribution shall be in Member’s sole discretion but shall be unrestricted funds, and Midpen Media may use the Member Contribution in any manner that supports PEG programming.

4. Timing of Contribution. The Member Contribution may be made any time following Member’s authorization to use PEG Fees, as evidenced by this Agreement, but in no event later than 45 days following receipt of the PEG Fee Payment, or, in the case of an advance, no later than 45 days after the final accounting for the project is completed or within 1 year of the remittance of the advance, whichever occurs earlier. If CPA approves an extension of the period for reimbursement under Section 2.A above, CPA may also extend the timing of the contribution.

IN WITNESS WHEREOF, the parties by their duly appointed representatives have executed this Agreement as of the date written above.

CITY OF PALO ALTO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

MEMBER ENTITY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Contract No. S10133156

**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 June 9, 2009**

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**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**

This Amended and Restated Joint Exercise of Powers Agreement (the "Agreement"), dated June 9, 2009 (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, 11<sup>th</sup> 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, 9<sup>th</sup> 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

Monna J. Gilder [Signature]  
City Clerk Mayor

APPROVED AS TO FORM:

[Signature]  
Senior Asst. City Attorney

APPROVED:

[Signature]  
City Manager

[Signature]  
Director of Administrative Services

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

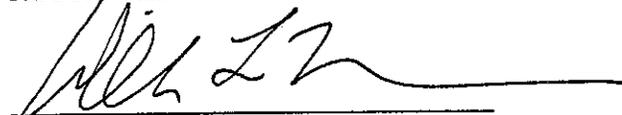
ATTEST

CITY OF MENLO PARK

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

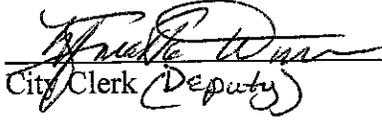
APPROVED AS TO FORM:

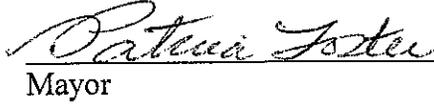
  
\_\_\_\_\_  
City Attorney

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 (Deputy)

  
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney (Interim)

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

ATTEST

TOWN OF ATHERTON

*Kathi Hamilton*  
Acting Town Clerk

*Jan A. J.*  
Mayor

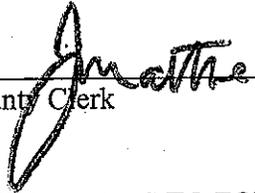
APPROVED AS TO FORM:

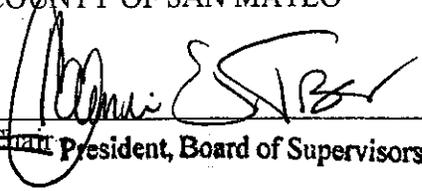
*[Signature]*  
Town Attorney

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

ATTEST

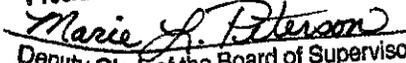
COUNTY OF SAN MATEO

  
\_\_\_\_\_  
County Clerk

  
\_\_\_\_\_  
Chair President, Board of Supervisors

APPROVED AS TO FORM:

\_\_\_\_\_  
County Counsel

Certificate of Delivery  
(Government Code Section 25103)  
I certify that a copy of the original document filed in  
the Office of the Clerk of the Board of Supervisors of  
San Mateo County has been delivered to the  
President of the Board of Supervisors.  
  
Deputy Clerk of the Board of Supervisors

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

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST

COUNTY OF SANTA CLARA

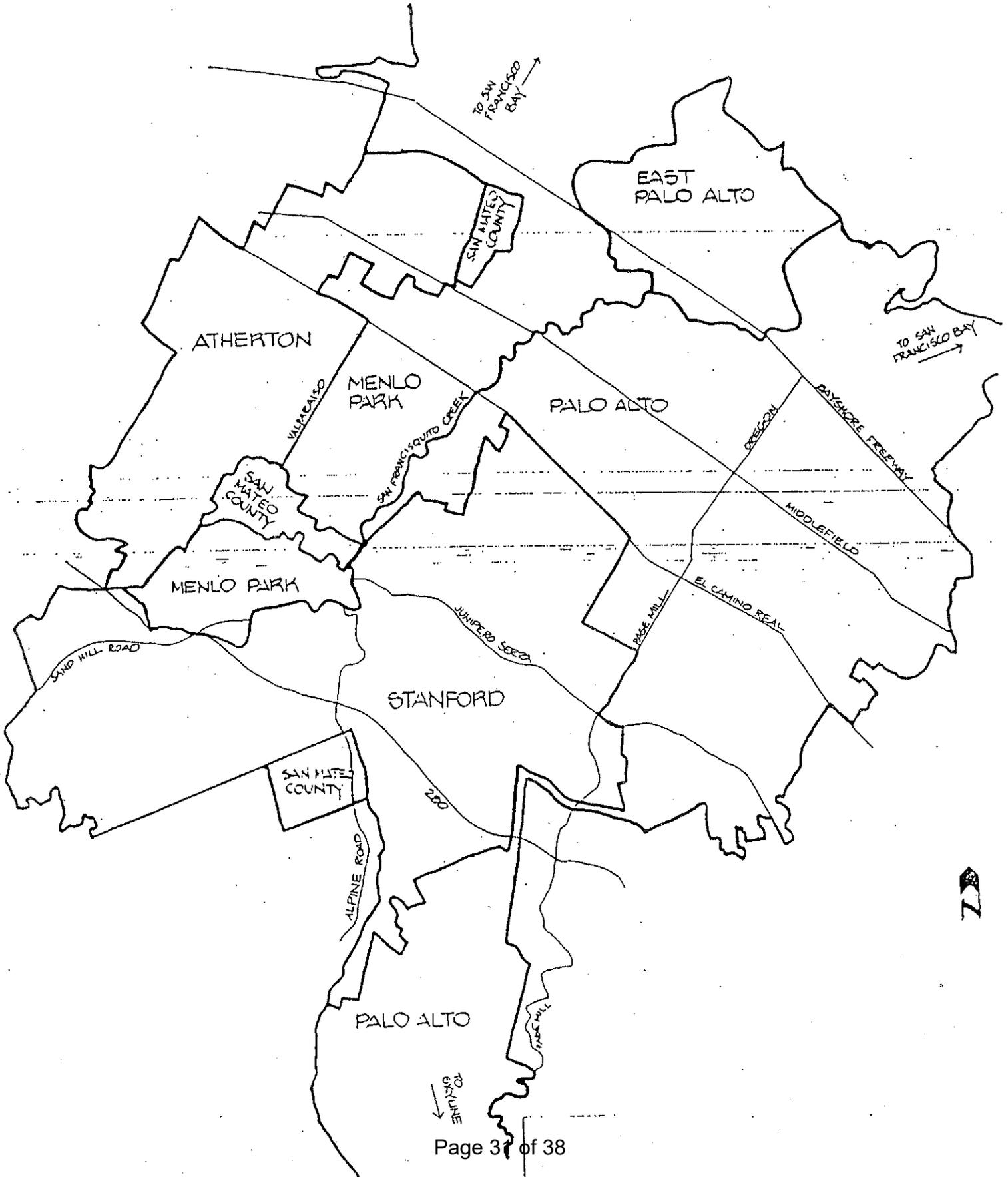
  
\_\_\_\_\_  
Maria Marinos  
Clerk of the Board of Supervisors

  
\_\_\_\_\_  
Liz Kniss, President  
Board of Supervisors

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Elizabeth G. Pianca  
Deputy County Counsel

EXHIBIT A





## City of Palo Alto City Council Staff Report

(ID # 11006)

Report Type: Action Items

Meeting Date: 1/27/2020

**Summary Title: Approval of Agreements with Midpen Media Center and Cable Joint Powers & Budget Amendment**

**Title: Approval of: 1) Agreement Between the City of Palo Alto Representing the Cable Joint Powers and Midpeninsula Community Media Center, Inc. for Public, Education, and Government Access (PEG) Channel Support Services; 2) Memorandum of Understanding (MOU) Between the Cable Joint Powers Covering the use of PEG Fees; 3) Contribution Agreement With Midpeninsula Community Media Center, Inc. in the Amount of \$511,536, Equivalent to PEG Fees Used for Council Chambers Upgrade Project; and 4) Amendment to the Fiscal Year 2020 Budget Appropriation in the Technology Fund**

**From: City Manager**

**Lead Department: Administrative Services**

### Recommendation

Staff recommends that the City Council:

- 1) Approve a five-year agreement between the City of Palo Alto, representing the Cable Joint Powers (cities of Palo Alto, East Palo Alto, and Menlo Park, the Town of Atherton and portions of San Mateo and Santa Clara counties), and Midpeninsula Community Media Center, Inc., for public, education, and government (PEG) access channel support services (Attachment A).
- 2) Approve and authorize the City Manager to execute a Memorandum of Understanding (MOU) between the Cable Joint Powers covering the use of PEG support fees paid by Comcast, AT&T, and any other State Franchisee (Attachment B).
- 3) Approve and authorize the City Manager to execute a contribution agreement between the City of Palo Alto and the Midpeninsula Community Media Center, Inc., in the amount of \$511,536, equivalent to the amount in PEG support fees to be expended by the City on the Council Chambers Upgrade project (Attachment C).

- 4) Amend the Fiscal Year 2020 Budget Appropriation Ordinance (by a 2/3 vote of approval) for the Technology Fund by:
  - a. Recognizing \$511,536 in Revenue from Other Agency for the City Council Chambers Upgrade (TE-19001) capital project; and
  - b. Appropriating \$511,536 for Inter-Agency Expenses for Media Center operations.

**Background**

In 1983 a Joint Powers Agreement (JPA agreement) was entered into by the cities of Palo Alto, East Palo Alto, and Menlo Park, the Town of Atherton, and San Mateo and Santa Clara counties for the purpose of obtaining cable television services within these jurisdictions (only portions of the counties are covered). The JPA agreement gives the City of Palo Alto (the City) the sole authority to act on behalf of the Joint Powers communities and describes the scope of that authority. Cable franchise holders provide various forms of compensation (franchise and PEG fees) for the use of the Joint Powers’ public rights-of-way.

The City of Palo Alto’s Cable Television Ordinance provides that the City may designate a nonprofit entity to administer the Joint Powers’ PEG channels and provide PEG access support services. Midpeninsula Community Media Center, Inc. (Midpen Media) has served in this capacity since the early 1990’s. In this role, Midpen Media administers the Joint Powers’ seven PEG channels, broadcasts local community programs, provides gavel-to-gavel coverage of local government meetings, offers video production classes and workshops to community members, and provides local election coverage. Palo Alto has been forwarding PEG fee revenue from franchise holders (currently AT&T and Comcast) to Midpen Media in support of these services. PEG revenue, for all the Joint Powers collectively, will be approximately \$300,000 in calendar year 2019. The existing agreement with Midpen Media Center expires on June 30, 2020.

A Cable Franchise and PEG Fee Audit (issued in May 2016) identified that Midpen Media had been using PEG revenue for operating expenses, rather than solely for capital expenses, which is the only use permitted by federal law. The Council directed staff to work with Midpen Media to correct this practice, preferably in a way that enables Midpen Media to continue operations. On January 28, 2019, staff recommended the option of using PEG fees to purchase Midpen Media’s video production and training facility at 900 San Antonio Road in Palo Alto. The Council directed staff to proceed with the necessary agreements for the purchase of the facility, using PEG fees ([CMR 9804](#)).

While working through this process, staff identified several concerns related to the potential facility purchase: First, under the existing JPA agreement, the Joint Powers are a “joint action committee,” not a separate legal entity. Neither the joint action committee, nor Palo Alto as the administering agency, is authorized to acquire real property on behalf of the Joint Powers. To allow for the joint acquisition of property, it would be necessary to form a new Joint Powers Authority, as a separate legal entity, with the power to acquire and hold title to real property. This would require the Joint Powers to negotiate a new agreement that must be approved by

the legislative bodies of each member agency. This would be a complex and a lengthy process to finalize.

Second, the Joint Powers have heightened concerns about the stability of PEG fees. PEG fees continue to decline, from a high of \$347,000 per year in calendar year 2014 to about \$300,000 in 2019. This trend is expected to accelerate as more and more subscribers “cut the cord” and move away from traditional cable to Internet-delivered service. The Joint Powers considers it risky to commit to a long-term (15 to 20 year) facility purchase with uncertainty surrounding the future of PEG revenue.

Finally, there have been recent legal changes that could impact cable franchise revenue, PEG channel capacity and facilities. On August 2, 2019, the FCC released new rules that rewrite and expand the Cable Act’s “franchise fee” definition to include non-monetary franchise obligations. Under the new rules, the value of non-monetary cable franchise obligations is considered franchise fees and counts against the 5 percent franchise fee cap. The FCC deferred action on determining whether or not PEG channel capacity can be deducted from franchise fees under this ruling. Pending FCC actions could force the Joint Powers to pick between continuing to receive franchise revenue and preserving access to PEG channel programming. Palo Alto has joined a coalition of local governments to oppose the FCC’s proposals and appeal its recent ruling. Given these concerns, staff informed Council that it would be considering alternatives to the facility purchase ([CMR 10396](#)).

**Discussion**

Staff recommends that the City Council consider proceeding with the proposed alternative instead of the facility purchase at this time. Under this alternative, the Joint Powers would use PEG revenue to pay for the PEG-related capital projects of individual members, such as a Council chambers renovation project. The member agency would provide a grant to Midpen Media in the amount of its total PEG-related expenditures for the project. The granted funds would be unrestricted and could be used by the Midpen Media for both its operating and capital needs.

At the present time, two members have budgeted PEG-related capital projects: 1) City of Palo Alto Council Chambers Upgrade (TE-19001) project (\$1.7 million budget); and 2) Town of Atherton Council Chambers Building Construction project (\$2.9 million budget). The City of Palo Alto plans to issue a design/build solicitation for its project in 2020. PEG funds can be used for the portion of these projects that enable the Joint Powers to provide for, or upgrade to enhance, the cablecasting of government meetings on the government channels (i.e., broadcast systems including cameras, switchers, captioning and supporting equipment; audio visual systems including speakers, microphones, and supporting infrastructure; broadcast lighting; glare reduction film at windows; blackout shades, etc.). The Town of Atherton Council Chambers Building project is currently underway and will allow the Town to televise its City Council meetings on the government channels. Staff is in the process of determining the total value of the qualifying PEG-related expenditures for both the Palo Alto and Atherton projects.

The City of East Palo Alto may also have a qualifying project in 2021. PEG funds could also be used for Midpen Media PEG capital project needs, if available and not needed for Joint Powers projects.

It is expected that the grants to Midpen Media would be sufficient to address its budget gap for up to 5 years (in an amount of approximately \$300,000 per year). However, this is expected to be a short-term solution since there are a limited number of qualifying Joint Powers' projects. As the PEG-related projects begin to dwindle, the Joint Powers could revisit the Midpen Media facility purchase, as long as PEG fees stay strong and the FCC actions do not significantly impact local PEG channels.

Another option involves using Cable Fund reserves to defray a portion of the Midpen Media's operating costs for several years. However, this is another short-term solution since Cable Fund resources are limited (available balance of \$684,471 as of December 31, 2018) and there is no ongoing source of revenue to replenish Cable Fund reserves.

**Staff recommends that Council approve a new PEG access support services agreement with Midpen Media, on behalf of the Joint Powers, that incorporates this new grant arrangement.** The key terms are discussed below.

PEG Services Agreement

*Term:* The new agreement is for a five-year time period.

*Public Channel Administration:* Operate and manage public access channel numbers 27, 28, and 30 for local community programming purposes. Create an inclusive and transparent environment for video programming by the public that fosters free speech and celebrates local achievements, education, cultural exchange, arts appreciation, science and technology, and civic engagement.

*Government Channel Administration:* Operate and manage government access channel numbers 26 and 29 to inform residents about their local government and to provide live unedited coverage of government meetings. These duties include coordinating Joint Powers' member requests for use of the channels, program scheduling, program acquisition, replays of local agency meetings, channel publicity and maintenance of scrolling text.

*Educational Channel Administration:* The two educational access channels numbers 75 and 76 are operated by Stanford University and the Bay Voice Regional Channel consortium. Midpen Media would be called upon to manage these channels on an as needed basis.

*Classes, Facilities, and Equipment:* Manage and maintain production studios, facilities, and equipment to facilitate the dissemination of non-commercial programming on the public channels, the Internet, social media and other platforms. Provide training, workshops, internship opportunities, and technical advice in the creation and executions of productions,

emphasizing the use of new media platforms. Certify students to become community producers to create non-commercial programs for distribution on the local public channels and other appropriate platforms.

*Standard Rates:* The new agreement implements a new set of standard hourly rates that will be used by Joint Powers' communities, schools, non-profits, and small businesses when contracting with Midpen Media for the creation and production of custom videos or for cablecasting government meetings.

*Funding:* Joint Powers' communities will provide individual grants to Midpen Media anytime a member uses PEG fee revenue for its own PEG capital project needs. The grant will be in the same amount as the member's PEG capital expenditures. Joint Powers' members may agree to grant money to Midpen Media Center in advance of the receipt of PEG fee revenue. PEG funds can also be used to reimburse Midpen Media for its PEG capital requirements, when not needed for Joint Powers' PEG-related projects.

*PEG fees:* The Joint Powers receives PEG fees of 88 cents per subscriber per month, or approximately \$300,000 in 2019. The member share of 2019 PEG revenue is: City of Palo Alto \$144,000; City of Menlo Park \$81,000; City of East Palo Alto \$30,000; Town of Atherton \$24,000; County of Santa Clara \$15,000; and County of San Mateo \$6,000. Following the 2016 Cable Franchise and PEG Fee Audit, PEG revenue has been placed in a restricted account managed by Midpen Media. These funds have been accumulating and total \$1,065,701 as of November 7, 2019. The member share of the restricted account is: City of Palo Alto \$511,536; City of Menlo Park \$287,739; City of East Palo Alto \$106,570; Town of Atherton \$85,257; County of Santa Clara \$53,285; and County of San Mateo \$21,314. Midpen Media will continue to hold the PEG restricted account and it will be used (drawn down) to fund Joint Powers' communities PEG-related capital projects. All subsequent PEG fee revenue will be held in the City of Palo Alto Cable Fund, on behalf of the Joint Powers, and will be used after the money in the PEG restricted account is exhausted.

#### Memorandum of Understanding

Staff recommends that the Council approve a Memorandum of Understanding (MOU) between the Cable Joint Powers communities covering the new arrangement for the use of PEG fees. Under this arrangement, individual Joint Powers members will use PEG fee revenue for the acquisition or improvement of their own PEG access equipment and facilities. When this happens, the member agency agrees to provide a grant to Midpen Media in the same amount as the PEG-related capital expenditures. The MOU includes an "Authorization Form" that will be approved by the City of Palo Alto, as administrator of the Cable JPA, and the member agency. This form will document the member request for use PEG fees and the agreement to contribute a matching sum to Midpen Media. Although Comcast and AT&T are required to remit all Joint Powers' PEG fee payments directly to the City of Palo Alto, each jurisdiction has a share of the revenue (based on each member's pro rata share of total JPA area cable subscribers). The Joint Powers members have agreed to pool the PEG revenue to support qualifying projects that may

exceed an individual member's share of the revenue. Palo Alto will maintain an accounting of each member's share of the funds to facilitate the prioritization and availability of funds for all jurisdictions with qualifying PEG-capital projects. The City of Menlo Park City and the Town of Atherton approved the MOU in December 2019. The remaining members will bring the MOU to their governing bodies for approval following Palo Alto City Council approval.

#### City of Palo Alto Grant Agreement

Staff recommends that the Council authorize the City Manager to execute a Contribution Agreement to provide Midpen Media grant funding in the amount of \$511,536. The proposed grant amount represents the City's share of the restricted PEG account. Although it is expected that the City's qualifying PEG-related expenditures for the Council Chambers Audio/Video Upgrade Capital Improvement (CIP) Project will exceed this amount, the grant allows the City to provide some amount of funding to Midpen Media in advance of obtaining MOU approval from all Joint Powers' jurisdictions (anticipated to be about a 3-month process). In order to support Midpen Media's 2020 operating budget and its cash flow requirements, staff proposes issuing the grant prior to receipt of the PEG fee payment.

#### **Stakeholder Engagement**

In June 2019, staff met with JPA Working Group members and their attorneys to reach consensus on an alternative to the Midpen Media building acquisition by the JPA, which resulted in the approach reflected in the proposed MOU. In July 2019, staff reviewed this option with Midpen Media's Board of Directors and obtained its support. Following Palo Alto City Council approval of the proposed MOU, it will be forwarded to each Joint Powers' jurisdiction for approval. The City of Menlo Park City and the Town of Atherton approved the MOU in December 2019. The remaining members will bring the MOU to their governing bodies for approval following Palo Alto City Council approval.

#### **Resource Impact**

The JPA receives PEG fee revenue of approximately \$300,000 annually. The new arrangement for the use of PEG fees would not have any resource impact on the City. The qualifying portions of the City's budgeted Council Chambers Upgrade (TE-19001) capital project would be paid for with PEG fees and funding from the Technology Fund currently appropriated to the project would be used to fund the grant to Midpen Media to use for operating expenses. The current amount recommended for this transaction is \$511,536. Staff will continue to evaluate the expenses for TE-19001 to determine the full amount eligible to be funded with PEG funds. Staff plans return to Council with another grant request in late 2020 or early 2021. Appropriation of these funds requires a 2/3 super-majority vote, or 5 affirmative votes for the appropriation of these additional funds to be approved.

#### **Policy Implications**

The recommendations in this report are consistent with Council direction to restrict the use of PEG fees to capital costs while preserving the Media Center's operational budget funding.

**Environmental Review**

This is not a project for purposes of the California Environmental Quality Act (CEQA).

**Attachments:**

- Attachment A - PEG Services Agreement
- Attachment B - MOU between Cable JPA Members
- Attachment C - Contribution Agreement to Media Center