

City of Brisbane

Agenda Report

To: Mayor and City Council

From: Caroline Cheung via Clay Holstine, City Manager

Date: December 8, 2016

Subject: City of Brisbane's Withdrawal from the San Mateo County Telecommunications Authority (SAMCAT)

Recommendation:

Authorize the City Manager to send a letter to SAMCAT that notifies SAMCAT the City Council has authorized the City's withdrawal from the organization.

Background:

In 1989, SAMCAT was formed as a Joint Powers Authority to manage and assist local franchisors (the County, unincorporated areas, and cities within the County) with the provisions of the Telecommunications Act of 1986. These were new federal regulations with respect to cellular antennas and cable television regulation and Public, Educational and Governmental (PEG) cable television channels. In addition, there was a need to establish a local authority to manage a countywide channel at the College of San Mateo, which was initially called SAMNET (now referred to as Peninsula TV or PenTV after spinning off as a non-profit in 2011). Later, SAMCAT's JPA was amended to address additional issues and franchise enforcement.

On September 29, 2006, the Legislature passed, and Governor Schwarzenegger signed into law Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). Prior to DIVCA, cable television franchises were issued by cities and counties. DIVCA replaces that system with one in which video franchises are now issued by the California Public Utilities Commission (CPUC), rather than these local entities. A local entity, however, will be the lead agency for any environmental review with respect to network construction, installation, and maintenance in local rights-of-way. For more on DIVCA, see Attachment 2.

Discussion:

SAMCAT has discussed dissolution for the past several years as it struggled with its role and relevance following the passage of DIVCA. In the past, SAMCAT relied on annual contributions/dues from member agencies to meet its expenses. These dues have not been assessed since FY 2009/10 due to very little activity discussed amongst the Board. At their meeting of November 16, 2016, the SAMCAT Board voted to assess each member agency \$2,000 in dues in order to meet its current obligations and take the necessary steps to close out the JPA. There are currently 17 member agencies in SAMCAT.

Also at their November 16th meeting, the SAMCAT Board voted to not move towards dissolution, and instead formed a subcommittee to work on re-purposing SAMCAT; they will report back to the Board their findings at a meeting in late January.

Paragraph 9 in the attached JPA (Attachment 1) provides for any member to withdraw by filing a written notice to do so with the other members of the JPA. Withdrawal takes effect on July 1 of any year and requires a minimum of six months' notice. To be effective by July 1, 2017, withdrawal notice must be received by all members no later than December 31, 2016. Withdrawing members are still obligated for all payments due from them for the fiscal year of the withdrawal.

Fiscal Impact/Financing Issues:

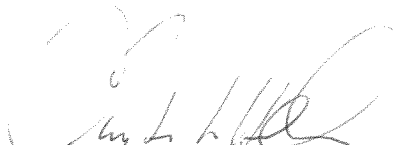
\$2,000 will be invoiced to the City from the City of San Mateo, which provides financial services for SAMCAT.

Measure of Success:

The Council's withdrawal from SAMCAT will demonstrate fiscal prudence as it will no longer, after July 1, 2017, be responsible for any ongoing expenses incurred while the SAMCAT JPA is still in existence.



Caroline Cheung, Sr. Management Analyst



Clay Holstine, City Manager

Attachments:

1. Second Amended JPA for SAMCAT
2. Digital Infrastructure and Video Competition Act of 2006 FAQs

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

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

RECITALS:

- A. The undersigned are the member entities (the "Members") of that Joint Power Authority ("JPA") formerly known as the San Mateo Cable Television Authority created by Agreement dated June 27, 1989, pursuant to Government Code Section 6500 through Section 6518; and
- B. The Members have authority to exercise certain powers relating to telecommunication services and for the negotiation of and renegotiation of franchises with public utilities in their respective communities and desire to establish a telecommunication services and franchise negotiation joint powers authority ("SAMCAT"); and
- C. The Members are authorized to contract with each other for the joint exercise of any common power including those relating to telecommunication services, franchise negotiation, renegotiation and local regulation of public utilities pursuant to Government Code Sections 6500 through 6518; and

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

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

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

1. Purpose. The Members are entering into this Agreement for the sole purposes of:
 - a. jointly addressing complaints from customers and potential customers

of CATV within the jurisdictions of Members and including, but not limited to, the operation of a common office(s) to receive and address such complaints, the hiring of personnel to receive and address complaints;

b. jointly operating or contracting for the operation of public, educational, and/or government access facilities;

c. jointly providing research resources, including consultants, model ordinance and franchise provisions, to assist members in negotiating franchises, right-of-way agreements, lease and service agreements. These roles shall not be limited to cable television franchises, but shall include franchise, right-of-way, lease and service agreements involving cable television, telephone, competitive access providers (CAPs), open video systems (OVS), data, wireless, other telecommunications services, public utility agreements and franchises, encroachment and other matters relating to the use of franchising agency real property, rights of way or structures.

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

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

by the State law for the Members of SAMCAT.

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

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

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

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

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

3. Term. This Agreement shall be effective upon its execution by the Members.

This Agreement shall continue in effect until terminated as provided herein.

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

5. Powers. SAMCAT shall have the power to:

- a. address complaints from customers and potential customers of cable television (CATV), telephone, data, wireless, other telecommunications services, and public utility service complaints;
- b. operate a common office(s) to receive and address cable television (CATV), telephone, data, wireless, other telecommunications services complaints, and public utility service complaints;
- c. administer channels, frequencies, fibers, spectrum or other telecommunications resources allocated to or contracted for public, educational and/or government uses.
- d. provide research resources, including consultants, model ordinance and franchise provisions, to assist members in negotiating franchises, right-of-way agreements, lease and service agreements involving public utilities,

cable television (CATV), telephone, competitive access providers (CAPs), open video systems (OVS), data, wireless, other telecommunications services.

- e. hire employees;
- f. make and enter into contracts to carry out its purposes;
- g. hold or dispose of property in order to carry out its purposes;
- h. incur debts, liabilities or obligations required by the exercise of these powers; provided, however, that such debts, liabilities or obligations shall not constitute responsibilities of the Members;
- i. sue or be sued in its own name;
- j. do all things that are necessary and convenient to carry out these powers and SAMCAT's purposes.
- k. jointly collect data, hold hearings, and regulate cable television (CATV), telephone, data, wireless, and other telecommunications services permitted by the State and Federal regulations for local cable television (CATV), telephone, data, wireless and other telecommunications services for the Members of SAMCAT.
- l. jointly collect data and hold hearings concerning or relating to public utility use of the public rights of way, real property or structures as permitted by the State law for the Members of SAMCAT.
- m. jointly hiring of agent(s) to represent the Members in leasing public

property for telecommunications purposes.

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

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

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

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

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

billing.

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

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

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

8. Personnel. SAMCAT may request from the Members the services of such

personnel to serve SAMCAT ex-officio as may be reasonably necessary to carry out this Agreement and shall have the power to employ professional and technical assistance for the performance of this Agreement, provided that adequate sources of funds are assured for the payment of such professional and technical services which are not provided by a party hereto. SAMCAT may request, although not require, that Members provide personnel and service to SAMCAT in order to carry out the purposes designated in this Agreement.

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

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

assets shall be distributed in proportion to those Members' financial participation during the prior fiscal year.

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

a. The new Members reimburse SAMCAT for the expenses of SAMCAT resulting from the addition of the new Member, including, but not limited to, reasonable attorneys' fees, consultants' fees, accountants' fees, engineering fees and all other such reasonable out-of-pocket expenses as may be incurred.

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

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

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

12. Amendment. This Agreement may be amended from time to time by a

two-thirds majority vote of the Members, acting pursuant to vote of their respective City Councils or governing boards.

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

14. Miscellaneous.

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

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

c. To preserve a reasonable degree of flexibility, parts of this Agreement are stated in general terms. It is understood that there will be operating memoranda executed and amended from time to time that will further define the rights and obligations of the Parties and which will be consistent with this Agreement and particularly the purposes and powers of SAMCAT.

15. Severability. Should any party term, or provision of this Agreement be by any agency of competent jurisdiction decided to be illegal or in conflict with any law of

the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereby by their duly authorized representatives, have affixed their hands on the 3rd day of September, 2002.

ATTEST: TOWN OF ATHERTON

ATHERTON TOWN CLERK

MAYOR

ATTEST: CITY OF BELMONT

BELMONT CITY CLERK

MAYOR

ATTEST: CITY OF BRISBANE

BRISBANE CITY CLERK

MAYOR

ATTEST: CITY OF BURLINGAME

BURLINGAME CITY CLERK

MAYOR

ATTEST:

CITY OF DALY CITY

DALY CITY CLERK

MAYOR

ATTEST:

CITY OF FOSTER CITY

FOSTER CITY
CITY CLERK

MAYOR

ATTEST:

TOWN OF HILLSBOROUGH

HILLSBOROUGH TOWN CLERK

MAYOR

ATTEST:

CITY OF MILLBRAE

MILLBRAE CITY CLERK

MAYOR

ATTEST:

CITY OF PACIFICA

PACIFICA CITY CLERK

MAYOR

ATTEST:

TOWN OF PORTOLA VALLEY

PORTOLA VALLEY TOWN CLERK

MAYOR

ATTEST:

CITY OF REDWOOD CITY

REDWOOD CITY
CITY CLERK

MAYOR

ATTEST:

CITY OF SAN BRUNO

SAN BRUNO CITY CLERK

MAYOR

ATTEST:

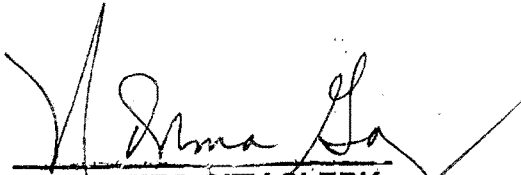
CITY OF SAN CARLOS

SAN CARLOS CITY CLERK

MAYOR

ATTEST:

CITY OF SAN MATEO


SAN MATEO CITY CLERK

ATTEST:


SOUTH SAN FRANCISCO
CITY CLERK

ATTEST:

WOODSIDE TOWN CLERK

ATTEST:

SAN MATEO COUNTY CLERK


MAYOR, SUE LEMPERT

CITY OF SOUTH SAN FRANCISCO

MAYOR

TOWN OF WOODSIDE

MAYOR

COUNTY OF SAN MATEO

PRESIDENT, BOARD OF SUPERVISORS



California Public Utilities Commission

January 2016

Frequently Asked Questions

Digital Infrastructure and Video Competition Act of 2006

Q: What has changed in video franchising?

A: The Legislature passed, and Governor Schwarzenegger signed, Assembly Bill 2987 (Nunez), which established a new state video franchise process. The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) creates a new state franchise process that replaces the current local franchise process to speed new infrastructure investment and to promote competition for broadband and video services in California.

Q: What is the California Public Utilities Commission's (PUC) role in video franchising?

A: DIVCA directs the California Public Utilities Commission (PUC) to issue state video franchises for the provision of video. The PUC has a limited role set forth by DIVCA that involves approving applications; enforcing antidiscrimination and build-out rules; preventing the use of stand-alone, residential, primary line, basic phone service revenues from being used to pay for deployment of video infrastructure; and handling complaints brought forth by local governments regarding discrimination or build-out.

Q: What aspects of video franchising does the PUC not regulate?

A: Local entities, not the PUC, have sole authority to regulate the public, education, and government (PEG) channel requirements; Emergency Alert System requirements imposed by the Federal Communications Commission; and federal and state customer service and protection standards. A local entity will be the lead agency for any environmental review with respect to network construction, installation, and maintenance in local rights-of-way. The PUC expects to work in partnership with the local entities to ensure that issues of concern are promptly dealt with.



Q: What is the main benefit of a state video franchise program?

A: This state video program facilitates market entry of those companies that are most eager to compete against existing cable and satellite video companies. Under current law, absent a state video franchise program, a company that wants to provide video service must obtain local cable franchises from each local city or town. This new law means that new video competitors may greatly speed up their deployment of state-of-the-art infrastructure that will deliver video and broadband services to Californians.

Q: What are the consumer benefits of the new video franchise order?

A: The California video franchise law will bring new competitors to cable and satellite video providers. This new competition is expected to drive down prices for video services (e.g., rates for cable and satellite video services from providers like DISH Network and DirecTV). Once this new advanced infrastructure is in place, it also may be used to provide very fast Internet service to consumers, in addition to new services like on-demand television, movies, music, and more.

Q: What is the PUC doing to protect consumers, especially low-income and rural Californians?

A: The PUC intends to vigorously enforce the antidiscrimination rules and build-out requirements of the DIVCA to ensure that the "Digital Divide" is narrowed in California. An enforcement process is set forth in the video franchise decision that makes it clear that the PUC intends to enforce these provisions, using sanctions ranging from monetary fines, suspension, and revocation of the video franchise license.

Q: Who will consumers call if they have a problem with their cable or video service bill?

A: Consumers will continue to contact their local franchise authority – usually a city or county – about their cable or video service bills. The PUC does not have authority to enforce customer service issues related to cable; that authority remains with local government pursuant to state and federal law.

Q: Who is responsible for rate increases and changes in promotional packages?

A: Rates for video programming are deregulated, and the CPUC has no jurisdiction in pricing issues.

Q: Who has authority to enforce video customer service rules?

A: Cities and counties have the sole jurisdiction to enforce video customer service rules. Disputes between local entities and franchise holders can be settled in court.

For more information on the CPUC, please visit www.cpuc.ca.gov.

