

## **PUBLIC BENEFITS AGREEMENT**

THIS AGREEMENT ("Agreement") dated March 15, 2006 ("Effective Date") is made by and between Pacific Bell Telephone Company, a California corporation doing business as AT&T California ("AT&T California" or "Company") and the City of San Ramon, California, a Charter City ("City"). AT&T California and City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

### **RECITALS**

A. AT&T California is an established provider of telecommunications services operating under a state franchise, and intends to provide enhanced broadband services including IP-enabled video services and programming to City residents over its network facilities.

B. AT&T California asserts that in California the franchise it has from the state pursuant to Section 7901 of the Public Utilities Code encompasses the network enhancements that AT&T California contemplates within the City and that AT&T California may offer broadband services, including IP-enabled video services and programming, within City without legal requirement for a franchise or license from City and

C. AT&T California believes there is no legal authority by which it or its new broadband services to be provided over its network may be subject to a local franchise. The City acknowledges and believes in good faith that the law is not established that AT&T California, in offering these new broadband services over its network, is subject to a local franchise requirement; and

D. AT&T California believes, and City concurs, there is no definitive authority that AT&T California, by offering IP-enabled video services and programming, over its existing and enhanced network in City, is a "Cable Operator" as defined in Title VI of the Communications Act of 1934, as amended ("Title VI"), and, correspondingly, AT&T California believes, and City concurs, there is no definitive authority that the network facilities and services to be offered by AT&T California over such network facilities constitute a "Cable System" or "Cable Service" under Title VI; and

E. AT&T California believes, and City concurs that there is no definitive authority, that use by AT&T California of its network to provide IP-enabled video services and programming, among other services, constitutes construction of a "community antenna television system" as set forth in Section 53066 *et seq.* of the California Government Code; and

F. The Parties, without determining whether the system or services that AT&T California will use in City to provide IP-enabled services are subject to Title VI or are subject to Section 53066, have entered into the Public Benefits Agreement which the

Parties, in good faith, intend to be binding as a matter of contract between them and believe is in accord with such obligations as might be imposed by Title VI and the state law of California, if and to the extent such are applicable; and

G. Both Parties agree that the deployment of the IP Based Network and the provision of IP-enabled Video Services should not be delayed by possible litigation to establish the scope of Section 7901 or the application of the City's franchise ordinance to IP-enabled Video Services; and,

H. City and AT&T California further agree that litigation to resolve this issue would be complex and protracted, and that it is in the best interests of both Parties and the residents of City to reach a compromise of each other's positions and claims; and,

I. AT&T California intends to provide video service on a non-discriminatory basis, and without regard to the income or minority status of any resident or group of residents residing in the AT&T California Service Area located within the municipal boundaries of the City, as defined by Paragraph 5 as shown in Attachment A (Service area). AT&T California intends to make video programming available, subject to technology or other economic infeasibility, to residential units within the general city boundaries, by use of IP Video or other alternative video programming technology; and

J. AT&T California recognizes the right of the City to impose reasonable conditions relative to time, place and manner of the construction, operation and maintenance of the IP Network in the City's ROW.

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, City and AT&T California agree as follows.

1. Term. The term of this Agreement shall be from the Effective Date of this Agreement through December 31, 2011. The term may be extended upon mutual agreement of the Parties.

a. The parties agree to consult in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either City or Company, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either party, within thirty (30) days of receipt of the ruling, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the parties mutually may agree. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such

efforts shall entitle either party to terminate the Agreement on the provision of thirty (30) days' written notice.

b. Either party may request to negotiate a modification to this Agreement that shall take effect immediately after the thirty-sixth (36<sup>th</sup>) month of the term of this Agreement if at any time any action by a court, agency, commission, legislative body, or other authority of competent jurisdiction repeals, modifies or clarifies state or federal law with respect to the rights, duties, privileges, exemptions, immunities and or authority of either City or AT&T California as it existed on February 1, 2006, in whole or in part, relative to the provision of the IP-enabled Video Services product as the product is defined by AT&T which is the subject of this Agreement. In the event a party requests modification to the Agreement as provided in this paragraph, should the parties be unable to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts, either party may terminate the Agreement on the provision of thirty (30) days' written notice.

c. Where any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding or takes action described in paragraphs 1.a. or 1.b. above, and such finding is not final and is subject to appeal, during the interval of such appeal the parties may agree mutually to acts taken in mitigation of legal or administrative risks as may be presented should the finding or action be sustained upon appeal. Should the finding or action subsequently be repealed, reversed, amended or changed, City and Company shall act to restore this Agreement to operation as preceded the finding or action, in a manner consistent with such repeal, reversal, amendment or change and Company may discontinue any or all of the IP-Enabled Services and terminate this Agreement in the event that it is subject to a ruling of a court or agency of competent jurisdiction that directs or requires such result or that renders the continued provision of such Services commercially impracticable as an economic matter, notwithstanding the absence of a final judgment, in which case Company shall provide not less than ten (10) days' prior written notice to City before discontinuing such Services. Where Services have been terminated under such circumstances, Company shall have no obligation to restore Services or revive this Agreement in the event the finding later is reversed, overturned, modified or changed.

2. Compensation to City. During the term of this Agreement, AT&T California shall pay to City a fee of up to 5% of the gross revenues from subscription fees collected from each subscriber to AT&T California's IP-enabled Video Services product delivered over the IP Network in the City's rights of way, such product to be defined by AT&T California when it is offered to the public. Gross revenue includes a pro rata portion of all revenue derived by the Company pursuant to compensation arrangements for advertising and Home Shopping Network sales derived from the operation of the Company's network to provide IP-enabled Video Services, as that product is defined by AT&T California when offered to the public, within the City. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Company may make to advertisers) shall not be netted against advertising revenue included in gross revenue. The allocation shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant region or national compensation

arrangement. The fee does not apply to revenues of products and services other than the IP-Enabled Video Services product as defined by AT&T California when offered to the public, or the revenues of a bundled product containing other offerings with the IP-Enabled Video Services product as defined by AT&T California when offered to the public. The fee will be identified and passed through on any subscriber bill by AT&T California, and all such fees collected will be forwarded to City quarterly on the last of each quarter after collection.

3. Educational and Governmental Programming. AT&T California shall provide access for the City's noncommercial, education and governmental ("EG") programming through AT&T California's IP-enabled Video Services (such IP-enabled Video Services product to be defined by AT&T California when it is offered to the public). City may be required to support a change in or addition to current City technology now in use for PEG programming to make it compatible with AT&T California's IP enabled video technology. When requested, AT&T California will provide facilities necessary to connect its IP based facilities to Tri-Valley Community Television (TV30) premises located at 4663 Bernal Ave., Suite B, Pleasanton, California (or such alternate location as the City designates at the time of its request), for TV30 use in providing video programming, which includes channels 28, 29 and 30 produced by TV30 from the studio to all residential subscribers of AT&T California's IP-enabled Video Service within the City. AT&T California's obligation herein will begin when its IP Video subscribers in the Service Area defined by Paragraph 5 within the municipal boundaries of the City as shown in Appendix A reach 1000 subscribers or 18 months after the effective date of this Agreement, which ever comes first.

a. AT&T California will provide quarterly, within 30 days after the close of the quarter, to City fifty cents (\$0.50) per subscriber per month of AT&T California's IP-enabled Video Service within the City. AT&T California shall have the right to charge its subscribers for this fee.

b. AT&T California will provide the City a one time capital grant in the amount of two hundred thousand dollars (\$200,000.00) for use in lieu of providing public access facilities and programming and for the TV30 upgrade of facilities, payable as follows:

(1) One hundred thousand dollars (\$100,000.00) payable within 18 months of AT&T California's offering its IP-enabled Video Services product, as that product is defined by AT&T California when it is offered to the public, for subscription to residents in the City of San Ramon.

(2) One hundred thousand dollars (\$100,000) payable within 60 days of AT&T California reaching IP-enabled Video Services product (as that product is defined by AT&T California when it is offered to the public), subscriptions within the municipal boundaries of the City which equal or exceed fifty-percent (50%) of the total video subscriber base in the City sustained for a period of ninety (90) days.

4. Service Standards. AT&T California will comply with California Government Code sections 53054 et seq. (Cable Television and Video Provider Customer Service and Information Act) and 53088 et seq. (Video Customer Service Act).

A verified and continuing pattern of noncompliance with the customer service standards set forth above shall constitute a material breach of this Agreement.

5. Service Area. AT&T California, subject to the terms herein, will provide video services to all residences located within the service area indicated in Appendix A (Service Area) within eighteen months of the effective date of this Agreement. In those areas annexed to the City to which AT&T California provides telephone service after the effective date of this Agreement (Annexed Service Areas), AT&T California will, subject to the terms herein, offer video services to all residences in the Annexed Service Area within two years of the effective date of the annexation.

Upon a showing of legal, technical or other valid causes that make it impossible or unreasonable for the services provided for in this Section to be furnished by AT&T California, the City Manager may give time extensions. Any such extensions shall be in writing and in response to a request in writing by SBC with detailed justification.

a. The Company will not deny access to its IP-enabled Video Services within the municipal boundaries of the City because of the income or minority status of the residents within the municipal boundaries of the City. The Company may, subject to the terms herein, satisfy its nondiscrimination and service area obligations through the use of direct-to-home satellite service or another alternative technology that provides comparable content, service, and functionality.

b. The Company's construction, operation, maintenance, repair and upgrade of its Facilities within the Service Area, as shown in Appendix A, is subject to the following technical and operational limitations: (A) for periods of Force Majeure; (B) for periods of delay caused by the City; (C) for periods of delay resulting from Company's inability to obtain authority to access rights-of-way in the Service Area, as shown in Appendix A; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Company cannot access under reasonable terms and conditions after good faith negotiation, as determined by Company; and (F) in areas, developments or buildings where Company is unable to provide video service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density (average density is equal to or greater than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active network trunk or feeder line) and other requirements.

c. In addition to the termination rights set forth above, the Company shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days notice to the City, if (a) the Company concludes in its reasonable business judgment that IP Video Service in the City is no longer technically, economically or financially

consistent with the Company's business objectives; (b) Title VI or California Government Code Section 53066 et seq. obligations, or any similar obligations not expressly provided for by this Agreement, are imposed on the Company; or (c) it becomes clear that the Company must offer or provide IP Video Service pursuant to a franchise (cable or otherwise) and/or franchise-like requirements or other local authorization.

6. **Emergency Message.** AT&T California shall provide an appropriate message through AT&T California's IP-enabled Video Services in order to capture and rebroadcast any Costa Contra emergency broadcast messages, that originate at the Costa Contra County Emergency Network, over the AT&T California IP based Video facilities to residents in the AT&T California IP Video within the City.

7. **Obligations of City.** During the term of this Agreement City will not attempt to nor subject the provision of AT&T California's IP-enabled Video Services over the IP Network to regulation under its cable television franchise ordinance or similar ordinance unless authorized by Federal, State law or administrative regulation. In addition:

a. City agrees to subject the construction and installation of the IP Network to the process and review as set forth in Chapter I (Encroachments), where applicable, of Division C6 (Public Works and Flood Control) of Title C (Construction, Development and Land Use) of the San Ramon Municipal Code and to impose such conditions of approval as are appropriate and reasonable.

b. City agrees not to unreasonably block, restrict, or limit the construction and installation of the IP Network.

c. City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the IP Video upgrades in a timely manner.

8. **Indemnification.**

a. AT&T California agrees to indemnify, defend, and hold harmless City, its officers, agents, and employees, from and against any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by AT&T California's negligent construction, operation, or maintenance of its IP Network, provided that City shall give AT&T California written notice of its obligation to indemnify City within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, AT&T California shall not indemnify City for any damages, liability or claims resulting from the negligence or willful misconduct of City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or programming.

b. AT&T California agrees to indemnify, defend and hold harmless City its officers, agents and employees in accordance with the provisions of Appendix B, which is made a part of this agreement.

c. With respect to AT&T California's indemnity obligations set forth above, AT&T California shall provide the defense of any claims brought against City by selecting counsel of AT&T California's choice to defend the claim, subject to the consent of City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent City from cooperating with AT&T California and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with City, AT&T California shall have the right to defend, settle or compromise any claim or action arising hereunder, and AT&T California shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement do not include the release of City and City does not consent to the terms of any such settlement or compromise, AT&T California shall not settle the claim or action, but its obligation to indemnify City shall in no event exceed the amount of such settlement.

d. City shall hold AT&T California harmless and shall be responsible for damages, liability or claims resulting from the negligence or willful misconduct of City.

e. City shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by City for which City is legally responsible, subject to any and all defenses and limitations of liability provided by law. AT&T California shall not be required to indemnify City for acts of City which constitute willful misconduct or negligence on the part of City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

9. Breach of Agreement. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within 30 days.

10. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and use of a mediator when such discussions have failed. In the event of no resolution, the Parties agree to submit such dispute to binding Arbitration in San Francisco, California before a single arbitrator in accordance with the Arbitration Procedures of the American Arbitration Association, and judgment of such Arbitrator upon such rendered decision may be entered in any court of competent jurisdiction thereof. Each party shall bear its own costs of arbitration including attorney fees.

11. Insurance. Upon the effective date of renewal AT&T California shall, at its sole expense, take out, and maintain during the life of this Agreement and furnish to the City, a policy of liability insurance as required by the State of California for Workers'

Compensation, and a policy of liability insurance that shall conform to the provisions of Section 12.2 of Ordinance No. 335.

a. The amount of the liability insurance shall not be less than the following:

Combined Single Limit Coverage applying to Bodily and Personal Injury and Property Damage: Two Million Dollars (\$2,000,000) per occurrence.

b. The Following endorsements shall be attached to the liability policy:

(1) The policy shall cover on an "occurrence" basis, if reasonably available at comparable costs to "claims made" coverage.

(2) The policy shall cover Personal Injury as well as Bodily Injury

(3) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

(4) Broad Form property damage liability shall be afforded.

(5) City shall be named additional insured on the policy.

(6) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance effected by the City will be called upon to contribute to a loss under this coverage.

(7) Standard form of cross-liability shall be afforded.

(8) An endorsement stating that the policy shall not be cancelled without thirty (30) days notice of such cancellation given to City.

c. AT&T California shall submit to City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements. City will accept self-insurance in lieu of commercial insurance policies. AT&T California shall issue City a statement of self-insurance for general liability (including bodily injury), Workers Compensation, and automobile liability.

d. AT&T California hereby indemnifies City for any damage resulting to it from failure of either AT&T California or any subcontractor to comply with this paragraph.

12. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:



If to City: City of San Ramon  
Attn: City Manager  
2222 Camino Ramon  
San Ramon, California 94583

If to AT&T California: AT&T California  
Attn. Ken McNeely  
President  
AT&T California  
525 Market Street, Rm. 1901  
San Francisco, California 94101

With a copy to: Attn: William R. Drexel  
Senior Vice President, General Counsel & Secretary  
ATT West  
2600 Camino Ramon 4CS100  
San Ramon, California 94583

13. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

14. Assignment. AT&T California may not assign or transfer this Agreement or any interest therein, without the prior consent of City, which consent shall not be unreasonably withheld; except that AT&T California may assign or transfer this Agreement or any interest therein to an affiliated parent or subsidiary entity of AT&T California or other direct or indirect majority owned subsidiary of AT&T Inc. upon written notice and without prior consent of the City.

15. Entire Agreement. This Agreement constitutes the entire agreement between City and AT&T California with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and AT&T regarding the subject matter hereof.

16. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

17 Miscellaneous.

a. AT&T California and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

b. The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

c. AT&T California and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

d. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

18. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

19. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of March 15, 2006 ("Effective date").

**AT&T CALIFORNIA**

By: 

Name: CHARLES H SMITH

Title: President & CEO ATT West

**CITY**

By: 

Name: H. ABRAM Wilson

Title: Mayor - City of San Ramon

## **APPENDIX B**

### **COMMON INTEREST AND JOINT DEFENSE AGREEMENT**

This Common Interest and Joint Defense Agreement is between Pacific Bell Telephone Company, d/b/a AT&T California, ("AT&T California") and the City of San Ramon, California ("City") (AT&T California and the City shall be referred to as the "Parties"), effective March 15, 2006.

Whereas, AT&T California and City have entered the Public Benefits Agreement dated March 15, 2006, attached hereto as Exhibit A ("Public Benefits Agreement"), according to which AT&T California shall continue to construct, repair, maintain and improve its network facilities within the City's jurisdictional limits to provide IP-enabled video services and programming, among other services; and

Whereas, AT&T California is an established provider of telecommunications services operating under a state franchise, and intends to provide enhanced broadband services including IP-enabled video services and programming to City residents over its network facilities; and

Whereas, AT&T California asserts that in California the franchise it has from the state pursuant to Section 7901 of the Public Utilities Code encompasses the network enhancements that AT&T California contemplates within the City and that AT&T California may offer broadband services, including IP-enabled Video Services and programming, within City, without legal requirement for a franchise or license from City; and

Whereas, AT&T California believes the City has no legal authority to impose a franchise or other requirements on its provision of IP-enabled video services, and the City believes in good faith that the law is not established that AT&T California is a Cable Operator, that the network facilities and services to be offered by AT&T California over such network facilities constitute a Cable System or Cable Service as defined in Title VI of the Communications Act of 1934, as amended ("Title VI"), or that use by AT&T California of its network to provide IP-enabled video services and programming, among other services, constitutes construction of a community antenna system as set forth in Section 53066 *et seq.* of the California Government Code; and

Whereas, the Parties, without determining whether the system or services that AT&T California will use in City to provide IP-enabled services are subject to Title VI or are subject to Section 53066, have entered into the Consent Agreement which the Parties,

in good faith, believe is in compliance with such obligations as would be imposed by Title VI and Section 53066, if such are applicable; and

Whereas, the Parties acknowledge that the City is party to a Cable System Franchise Agreement with Comcast Communications, LLC ("Comcast"), which grants Comcast a franchise license to operate as a cable services provider within the City's limits and according to which the City is subject to certain obligations and has certain rights; and,

Whereas, the Parties are aware of statements and communications by, and on behalf of, Comcast by which Comcast takes the position that AT&T California's IP-enabled video services are, or should be, subject to local franchise authority pursuant to Title VI, Section 56066, and the City's ordinances applicable to cable operators, cable systems and cable television service and programming; and,

Whereas, the Parties are further aware of statements and communications by, and on behalf of, Comcast directly and indirectly indicating Comcast will seek to adjudicate its alleged rights, interests and remedies pursuant to its Cable System Franchise Agreement with City pursuant to federal, state and local law, and thus the Parties are of the reasonably informed and good faith opinion that Comcast will take action adverse to the Parties and, in particular, the City by asserting claims against them in state and federal adjudicatory tribunals; and,

Whereas, the Parties reasonably believe litigation arising from their execution of the Consent Agreement and Comcast's assertion of claims arising from its Franchise Agreement is imminent;

Now therefore, the Parties agree as follows:

### **Common Interest and Exchange of Information**

The Parties have made this Agreement based on the informed belief that the law permits those against whom claims have been asserted and their counsel to share and exchange information ("Information") that would be necessary or useful in a common effort to defend and resolve litigation or a proceeding in which they are or may become parties and to enhance their respective counsel's ability to represent them in such litigation or proceeding, without thereby waiving any privilege or claim of confidentiality with respect to such Information.

The Parties have a common interest in seeking the prompt availability of new, IP-enabled services, including video services and programming, as AT&T California intends to provide to City residents and as City seeks to secure in order to foster new telecommunications services and increased competition. In recognition of the likelihood of litigation to challenge such actions, counsel for the Parties have concluded that their respective Clients have a mutuality of interest in a joint defense and confidential sharing of privileged information in connection with

litigation as may be brought against the Parties by Comcast. The Parties have common interests with respect to many of the significant issues related to expected Comcast litigation, and the Parties have concluded that their participation in the information sharing arrangements will best enable them to defend their respective interests and to respond properly to any future claims that may be asserted against them, and that such participation is reasonably necessary for accomplishment of the purpose of otherwise privileged communications. The Parties do not intend to waive any evidentiary privileges or any claims or defenses by their actions or communications in furtherance of these arrangements. Rather, they intend to share otherwise protected and privileged information without loss of evidentiary privileges pursuant to the joint defense or common interest doctrine.

(A) To further their mutual interests, the undersigned Parties agree:

- (1) To share information, documents and other communications protected from disclosure by the attorney-client privilege, the work-product rights of the Parties and their respective attorneys, the "common interest" doctrine, the "joint defense" doctrine, the "pooled interest" doctrine, the self-critical analysis privilege, and any other privilege or immunity from discovery, or otherwise confidential and/or proprietary to a Party or its attorneys.
- (2) To facilitate discussions between counsel for the Parties concerning strategy, tactics and other issues shall be conclusively presumed to be attorney-thought processes and mental impressions and attorney work product protected by this Agreement and the work product doctrine.
- (3) To share and exchange directly between themselves at the direction of their respective counsel, and to share and exchange between themselves and their counsel, consultants and any testifying experts who may be retained by them, Information for the limited and restricted purpose of assisting the Parties and their counsel in defending and resolving a potential Comcast Claim described in Section II below, while protecting their respective interests and not otherwise authorizing or permitting any other publication or use of the Information; and
- (4) Not to reveal to any third party including, without limitation, any person or entity with whom either of the Parties have entered into a separate work product or information exchange agreement, the Information (or any part thereof) without the prior written consent of the other Party (or their counsel) who contributed or caused the same to be disclosed pursuant to this Agreement;
- (5) That this Agreement and the subject matter hereof is subject to the legal privilege exemption(s) contained at Sections 6254 (b) and 6254 (k) of the Public Records Act, Cal. Gov. Code §§ 6250 *et seq.*, and

- (6) That injunctive relief is the only appropriate relief to prevent any Party to this Agreement from disclosing or using the Information in violation of this Agreement.

## **II. Joint Defense**

In the event Comcast Corporation (or its affiliate, legal successor or assignee to its Cable Service Agreement with the City) ("Comcast") initiates a suit, complaint or administrative proceeding against City on the basis that the Public Benefits Agreement, by its terms, gives rise to a claim for breach of the Cable Service Agreement between Comcast and City, violates California Government Code Section 53066.3(d), or violates 47 U. S. C. Section 541(b) ("Comcast Claim"), AT&T California agrees as follows:

(A) To defend City, subject to the following:

- 1) AT&T California shall, at its expense, control the direction and management of City's defense, including selection of legal counsel, consultants and testifying experts, tactical and strategic decisions affecting the litigation, including settlement thereof as provided in paragraph II.(B) of this Agreement, *provided that* in no event shall AT&T California enter into any settlement of such litigation without City's consent where (a) the settlement might create precedent affecting future City operations or liability, or (b) when involvement of the City, and its consent to such settlement, is otherwise mandated by law. Where City's consent to settlement is required, it shall not be unreasonably withheld.
- (2) The City shall notify AT&T California as soon as practical of any suit, claim, process, or other action, including potential suits, claims or process, which is a matter covered by this Agreement of which the City is aware, and in no event delay such notice to AT&T California such that the City's rights in any matter covered by this Agreement, or the rights of AT&T California pursuant to this Agreement, are prejudiced. The City shall, as soon as practical following receipt or otherwise obtaining possession, provide to AT&T California copies of all documents and things pertaining to any matter covered by this Agreement, and make originals available for inspection, review, and copying by AT&T California, legal counsel and consulting or testifying experts, or others who may facilitate the defense of City consistent with the terms of this Agreement. AT&T California shall keep the City informed of proceedings for which it is providing the City its defense in any matter covered by this Agreement, to provide the City copies of all pleadings, briefs and memoranda of law filed with the court, orders, documents and things (or the right to inspect and review documents and things at the City's election), and deposition transcripts. The City may, to the extent consistent with the requirements to preserve legal privilege, and at its own expense with respect to attorneys' fees and

cost, attend and participate in communications concerning matters covered by this Agreement by its City Attorney or other designated representative.

- (3) City agrees to cooperate in its defense and to timely respond to all requests for assistance in its defense by AT&T California and legal counsel, including but not limited to searching for, identifying and producing all responsive or relevant documents, information and things in City's possession, custody or control; identifying and making available employees, consultants and representatives of the city for interview, preparation for testimony, provision of declarations and affidavits, and testimony; and to otherwise comply with terms of this Agreement.
- (4) City agrees to undertake all necessary actions, and that it shall not fail or omit to do anything prudent or necessary to preserve, assert and/or support all statutory, regulatory, common law and equitable defenses, exemptions and immunities available to it in any matter covered by this Agreement, including but not limited to governmental and quasi-governmental immunity, limitation of liability provided by 47 U.S.C. Section 555, contractual limitations of liability, and all exceptions, waivers and grounds for variance provided for by state and federal law relative to City's franchise authority and cable service agreements.
- (5) City agrees AT&T California, and counsel representing City, may assert in City's defense, that AT&T California, its network, its IP-enabled video product, and video programming offered by AT&T California, are not subject to a requirement, under City ordinances, California Government Code Section 53066 et seq., and/or Title VI, to enter into a local franchise agreement with City. City further agrees that AT&T California, and counsel representing City, may assert in City's defense, all facts, arguments and claims necessary to establish such a defense. City further agrees AT&T California, and counsel representing the City, may assert in City's defense, that AT&T California's provision of video service is authorized by California Public Utilities Code Section 7901, to the exclusion of local franchising authority, together with all facts, arguments and claims necessary to establish such defense. City agrees it will assert no objection, inconsistent testimony or policy position, or conflict of interest in connection with these defenses.
- (6) City agrees, in the event AT&T California seeks intervention in any matter covered by this Agreement, that City shall not object or otherwise take action adverse to AT&T California's intervention.
- (7) In the event AT&T California is joined as a party, or successfully intervenes, in any matter covered by this Agreement, City agrees to share defense counsel, consultants and testifying experts, litigation support, and



to otherwise comply with the terms of this Agreement in the conduct of a joint defense with AT&T California.

(8) City agrees the representation or assistance of City in the defense of any matter covered by this agreement by legal counsel or consultants and experts (including but not limited to employees of AT&T California and its affiliates) selected by AT&T shall not be asserted as the basis to disqualify, exclude or object to AT&T California's engagement and use of, or representation by, such legal counsel, consultant or expert in any future matter not covered by this agreement, in which the City and AT&T California may be adverse or have an interest. To the extent the fact that such legal counsel, law firm, consultant or expert has represented City in matters covered by this agreement may, in itself, represent a basis to assert a real or potential conflict of interest, or appearance of impropriety, the City agrees to waive such conflict of interest in future matters in which AT&T may engage such legal counsel. The legal and ethical rules governing attorney and law firm conflicts of interest, along with any other applicable professional or contractual bases governing non-attorneys, are otherwise reserved by the parties, consistent with the terms of this Agreement.

(B) If, after any matter covered by this Agreement, following exhaustion of all remedies, appeals or other administrative, regulatory and judicial process, a final order, judgment, or ruling is entered in favor of Comcast, or in the event AT&T California determines settlement of the matter is appropriate, AT&T California agrees it will, at AT&T California's sole discretion, either (i) cease offering and withdraw its IP-enabled video product and video programming made the subject of the Consent Agreement with City for sale within City upon reasonable notice to its customers, and consistent with any other legal, regulatory or contractual obligations applicable to AT&T California's termination of service to current customers; or (ii) without regard to the unexpired term of the Consent Agreement with City, enter into good faith negotiations with City in order to renegotiate terms of an agreement consistent with such order, judgment or ruling and applicable law, including but not limited to City's Municipal Ordinance Title B9 and California Government Code Section 53066 et seq.; or, (iii) enter into such other settlement and compromise with Comcast on behalf of the City, on such terms as are otherwise mutually acceptable to both AT&T California and the City.

### **III. General**

(A) Breach of this Agreement by City shall relieve AT&T California of its obligations set forth in paragraphs II (A) and (B), and this Agreement shall terminate upon notice to City by AT&T California. Upon such termination, AT&T California and the City will undertake reasonable and timely steps to

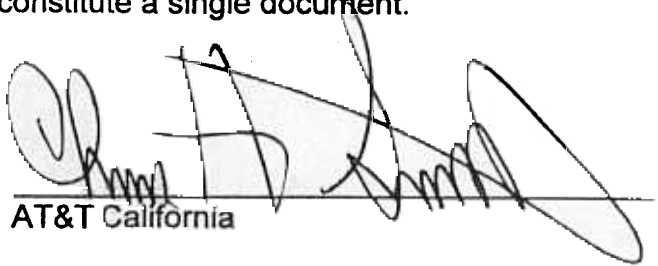
facilitate the continuation or withdrawal and substitution of new counsel of record to represent City at City's expense consistent with legal, ethical and procedural requirements to complete such withdrawal and substitution; and, to transfer such engagements, retentions, direction and control as is necessary with respect to any retained experts, consultants or litigation support in order that the City may continue its defense at its own expense.

- (B) If any person or entity other than the Parties requests or demands, by subpoena or otherwise, Information that has been exchanged pursuant to this Agreement, counsel will assert all applicable rights and privileges with regard to said Information, and immediately notify all signatories to the Agreement.
- (C) Termination shall not constitute a waiver of the attorney-client or work-product privileges, and upon termination each party shall continue to take such action as is necessary or prudent to preserve the attorney-client or work-product privileges. The confidentiality obligations of a Party that has received documents or other Information pursuant to this Agreement shall survive and remain in effect following any such termination of this Agreement.
- (D) This Agreement shall be binding on all parents, subsidiaries, affiliates and successors of the Parties.
- (E) This Agreement shall be governed by, and shall be construed in accordance with, principles of California law without regard to its conflict of laws provisions.
- (F) The undersigned represent that they are fully authorized to enter into the terms and conditions of and execute this Agreement on their own behalf.
- (G) Before a Party may reveal, disclose or describe, in whole or in part, any Information to any person pursuant to this Agreement, other than counsel or counsel's employees, that Party must inform the person receiving such information of its confidential nature, the existence of this Agreement and his or her duty and agreement to abide by the terms of this Agreement and to maintain the confidentiality of the Information.
- (H) This Agreement is not superseded by any Agreement which may impose a lesser burden upon the Parties to this confidentiality. This Agreement only may be amended or modified by the mutual written agreement of the Parties.
- (I) Except as provided in paragraph II.(A)(8), nothing in this Agreement shall be used or asserted by either Party as a basis upon which to assert a waiver of an otherwise valid conflict of interest barring representation by counsel, or engagement and use of consultants and experts, of the other Party.

This Agreement may be signed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute a single document.

Dated: 3/15/2006 2006

By:

  
AT&T California

Dated: 3/15/2006 2006

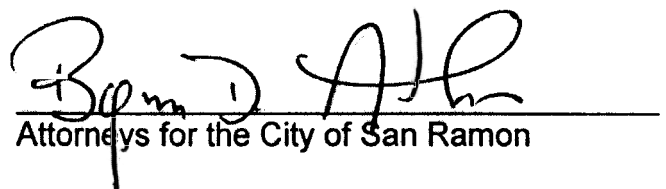
  
Attorneys for AT&T California

Dated: 3/15/2006 2006.

By:

  
City of San Ramon

Dated: 3/15/2006 2006.

  
Attorneys for the City of San Ramon