



**NOTICE OF AND AGENDA FOR
SPECIAL MEETING OF THE CITY COUNCIL
TOWN OF COLMA**

**Colma Community Center
1520 Hillside Boulevard
Colma, CA 94014**

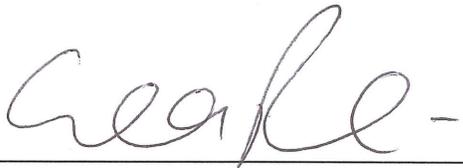
**Tuesday, February 17, 2015
6:00 p.m.**

NOTICE IS HEREBY GIVEN that the City Council of the Town of Colma will hold a Special Meeting at the above time and place for transacting the following business:

Study Session: Basic Cable Television Service

This item is for discussion only; no action will be taken at this meeting

Posted: February 13, 2015


Sean Rabé, City Clerk



STAFF REPORT

TO: Mayor and Members of the City Council
FROM: Roger Peters
VIA: Sean Rabé, City Manager
MEETING DATE: February 17, 2015
SUBJECT: Bulk Television Services

RECOMMENDATION

None. This is a study session to receive feedback from residents regarding two proposals to provide television services to residents. No Council action will occur at this meeting. This matter will be placed on the March 11, 2015 agenda for action by the City Council. Comments, questions, impressions and opinions from the public regarding the matters described in this report are encouraged to help the Council make a decision at the appropriate time.

EXECUTIVE SUMMARY

Comcast has offered to provide television service to all 424 households at a bulk rate of \$30 per dwelling unit, payable by the Town.

AT&T has offered to provide television services to 385 households at a bulk rate of \$31 per month per dwelling unit, payable by the Town. The remaining 39 households in Town would be served by Comcast or by another provider (such as Dish TV or DIRECTV). The 39 households are located along El Camino Real, Mission Road and Hillside Boulevard and include the Creekside Villas senior housing complex and the various cemetery caretaker homes.

As part of its proposal, AT&T will spend an estimated \$127,000 to construct and install the infrastructure to provide television service.

Under both proposals, any upgrades or additional services would be paid by the resident. Both contracts would be for five years and would be renewable annually.

FISCAL IMPACT

The current contract with Comcast for bulk television services costs the Town \$266,000 each year (actual cost for fiscal year 2013/14). The Town has budgeted \$278,300 for

cable services for fiscal year 2014/15. Under both proposals, the Town would realize a substantial annual reduction in costs.

BACKGROUND

In 2002, the Town contracted with TCI Cablevision, the predecessor to Comcast Corporation, to provide cable television services to all residents. Under the Town's current contract, Comcast provides television service to all dwelling units at the rate of \$52.87 per month or \$266,000 per year (actual cost for fiscal year 2013/14). The Town has budgeted \$278,300 for cable services for fiscal year 2014/15. Since then, the Comcast contract has been renewed every three to five years. Currently, the contract is for an annual term that expires on January 31, 2016.

Last year, the Town asked AT&T if it would be interested in providing television services to Colma residents. After studying costs and feasibility, AT&T has offered to provide bulk television services to 385 households as explained in the Analysis section below. The Town made a similar request to Comcast, and Comcast has responded with its own offer. The two proposals are explained in the Analysis section below.

ANALYSIS

Dwelling Units Covered

There are 424 dwelling units in Town, located in the Sterling Park neighborhood, the Hoffman complex, the Verrano townhouses, the Creekside Villas, and residences scattered along El Camino Real, Mission Road and Hillside Boulevard. Comcast has offered to provide television service to all 424 households (See, *Exhibit C*) and AT&T has offered to provide television service to 385 households (*Exhibit D*). AT&T is unable to provide coverage to the remaining units (*Exhibit A*), so the remaining 39 households could continue to be served by Comcast or by another provider (such as Dish TV or DIRECTV). AT&T will spend approximately \$127,000 to construct and install the infrastructure to provide television service to the 385 dwelling units in Colma. AT&T needs eight months from execution of a contract to complete the build-out. If a decision were made at the March 11 meeting to contract with AT&T as the main provider, the infrastructure would be completed in sufficient time to begin service to all households on February 1, 2016.

Comparison of Comcast and AT&T Proposals

The following three tables succinctly compare the two proposals. The comparisons in the first table are from the Town's perspective, while the comparisons in the second table are from each resident's perspective. The third table is a comparison of the relative costs to the Town over a five-year contract for service to 385 dwelling units, which is an "apple-to-apple" comparison.

COMPARISON OF AT&T AND COMCAST VIDEO BULK SERVICES PROPOSALS

Deal Point	AT&T	Comcast	Differences
POINTS OF SIGNIFICANCE TO TOWN			
Coverage	385 residential units	427 residential units	Comcast covers entire town. With AT&T, two providers are needed to serve the entire Town.
Base Rates (payable by Town)	\$31.00 per unit per mo Plus taxes & regulatory fees	\$30.00 per unit per mo Plus taxes & regulatory fees	Minimal
Broadcast TV Surcharges	Normal surcharge of \$4/mo will be waived in contract.	Normal surcharge of up to \$3.50/mo will be waived in contract.	Minimal
Sports programming surcharge	None at this time. AT&T will agree to waive future programming fees.	None at this time. Comcast will agree to waive programming fees.	None
Equipment Included	1 "Total Home" DVR. Only one DVR is needed for recording shows throughout the home. A remote control can work the DVR from any TV.	1 digital converter (DCT) box, which does not have recording capabilities.	With AT&T, the resident has recording capability without additional fee; with Comcast, the resident would incur an additional fee to obtain recording capability. (See below)
Rate Escalator on Base Fee	5% per year	3% per year	See Table below, "Comparison of Relative Costs"
Term	5 years, auto renewal for 1 year periods	5 years, plus 1 year renewal period	None

Deal Point	AT&T	Comcast	Differences
POINTS OF SIGNIFICANCE TO RESIDENTS			
Channels	U-verse TV U-200 (200+ channels)	Digital Starter (140+ channels)	See "Comparison of Channel Lineups"
HD Services Fees	\$10 per mo	\$10 per mo	None
DVR Services Fees	None. DVR service is included with U200 at no additional fee.	\$10 per month Alternatively, the user could upgrade to X1 platform and then would get DVR service.	For residents who want to record shows, AT&T's offer is less expensive.
Additional Receivers	\$9 per month.	\$10 per month	Minimal
Discount for Bundled Services	No	Yes	Residents who want a combination of services would have to make an individualized comparison of costs.
Provider Point of Contact	Yes	Yes	None

Table: Comparison of Relative Costs to Town for 385 Units Under Comcast and AT&T Proposals

Year 1	Comcast Cost to Town			AT&T Cost to Town		
	Per Month		Per year	Per Month		Per year
	<i>Per Unit</i>	<i>385 Units</i>	<i>385 Units</i>	<i>Per Unit</i>	<i>385 Units</i>	<i>385 Units</i>
1	\$30.00	\$11,550	\$138,600	\$31.00	\$11,935	\$143,220
2	\$30.90	\$11,897	\$142,758	\$32.55	\$12,532	\$150,381
3	\$31.83	\$12,253	\$147,041	\$34.18	\$13,158	\$157,900
4	\$32.78	\$12,621	\$151,452	\$35.89	\$13,816	\$165,795
5	\$33.77	\$13,000	\$155,996	\$37.68	\$14,507	\$174,085
Total			\$735,846			\$791,381

Residents' Feedback

At the study session, the residents are encouraged to express their opinions about the two proposals including questions such as: which channel lineup is preferred? how important are bundled discounts? would having two different providers in Town at the same time be an issue?

Next Steps

At its March 11 regular meeting, the City Council may, in its sole discretion, select either proposal, direct staff to negotiate an agreement or agreements, or take no action. The award of contract need not be based solely on price, but on a combination of factors as determined to be in the best interest of the Town.

CONCLUSION

Comments, questions, impressions and opinions from the public regarding the matters described in this report are encouraged to help the Council make a decision at the appropriate time.

ATTACHMENTS

- A. Table: List of Residences that Cannot Be Served by AT&T
- B. Table: Comparison of AT&T and Comcast Channels
- C. Comcast Proposal
- D. AT&T Proposal (used with permission from AT&T)

LIST OF RESIDENCES THAT CANNOT BE SERVED BY AT&T

1051	El Camino Real		Colma	CA	94014
1180	El Camino Real	A	Colma	CA	94014
1180	El Camino Real	B	Colma	CA	94014
1180	El Camino Real	C	Colma	CA	94014
1180	El Camino Real	D	Colma	CA	94014
1180	El Camino Real	E	Colma	CA	94014
1180	El Camino Real	F	Colma	CA	94014
1180	El Camino Real	G	Colma	CA	94014
1180	El Camino Real	H	Colma	CA	94014
1180	El Camino Real	I	Colma	CA	94014
1180	El Camino Real	J	Colma	CA	94014
1180	El Camino Real	K	Colma	CA	94014
1180	El Camino Real	L	Colma	CA	94014
1180	El Camino Real	M	Colma	CA	94014
1180	El Camino Real	N	Colma	CA	94014
1180	El Camino Real	O	Colma	CA	94014
1180	El Camino Real	P	Colma	CA	94014
1180	El Camino Real	R	Colma	CA	94014
1180	El Camino Real	S	Colma	CA	94014
1222	El Camino Real	A	Colma	CA	94014
1222	El Camino Real	B	Colma	CA	94014
1232	El Camino Real		Colma	CA	94014
1242	El Camino Real		Colma	CA	94014
1350	Hillside Blvd	1	Colma	CA	94014
1450	Hillside Blvd	2	Colma	CA	94014
1450	Hillside Blvd	3	Colma	CA	94014
1450	Hillside Blvd	4	Colma	CA	94014
1520	Hillside Blvd		Colma	CA	94014
1801	Hillside Blvd		Colma	CA	94014
1905	Hillside Blvd		Colma	CA	94014
2003	Hillside Blvd		Colma	CA	94014
2005	Hillside Blvd		Colma	CA	94014
2101	Hillside Blvd		Colma	CA	94014
2700	Hillside Blvd		Colma	CA	94014
2702	Hillside Blvd		Colma	CA	94014
2704	Hillside Blvd		Colma	CA	94014
2706	Hillside Blvd		Colma	CA	94014
2708	Hillside Blvd		Colma	CA	94014
2710	Hillside Blvd		Colma	CA	94014

Creekside Villas (1180 El Camino Real)	18
Other units	21
<i>Total # Households</i>	39

Comparison of Comcast and ATT Channel Offerings
Sorted by Ascending Channel Number

Comcast Digital Starter	Channel / Network	ATT U200
X	On Demand	X
	BROADCAST TV	
X	FOX (KTVU 2)	X
X	NBC (KNTV 3)	X
X	KRON (MY Network 4)	X
X	CBS (KPIX 5)	X
X	KICU (IND 36)	X
X	ABC (KGO 7)	X
X	KTSF (Channel 26)	X
X	PBS (KQED 9)	X
X	HSN	X
X	Univision (KDTV 14)	X
X	QVC	X
	KQSL (IND 8)	X
X	Unimas (KFSD)	
	Unimas (KFSF 66)	X
X	KOFY (IND 20)	X
X	KRCB PBS 22	X
X	Total Living Network (KTLN)	X
X	KMTP 32	X
	As Seen on TV	X
X	MundoFOX (KCNS 38)	X
X	Estrella (KTNC 42)	X
X	KCSM (College of San Mateo)	X
X	The CW (KBCW 44 or 12)	X
X	KSTS 48	X
X	Azteca (KEMO 50)	X
X	KQEH (PBS)	X
X	Ion Network (KKPX)	X
	BASIC CABLE	
X	TNT	X
X	TBS	X
X	AMC	X
X	Discovery Channel	X
X	BBC America	X
X	USA	X
X	FXX	X
X	FX	X
X	A&E	X
X	E!	X
X	Galavision	
	MeTV	X
X	TVLand	X
X	Comedy Central	X
X	Spike TV	X

Comparison of Comcast and ATT Channel Offerings
Sorted by Ascending Channel Number

	AWE	X
	SyFy	X
	Chiller	X
X	BET	X
	TV One	X
	Cloo	X
	Crime and Investigation Network	X
	TruTV	X
	Justice Central	X
X	OWN (Oprah Winfrey Network)	X
	Game Show Network	X
	RLTV	X
X	ABC Family	X
X	WGN America	X
X	Bravo	X
	NuvoTV	X
X	Up TV	
	Turner Classic Movies	X
	FX Movie Channel	X
X	MoviePlex	
	Sundance TV	X
X	Hallmark Channel	
X	Hallmark Movies	
	NEWS	
X	CNN	X
X	HLN	
	Fusion	X
	One America News	X
X	Fox News	X
X	Fox Business	X
X	MSNBC	X
X	CNBC	X
	Al Jazeera America	X
X	Bloomberg Television	X
X	The Weather Channel	X
	Time Life Channel	X
X	C-SPAN	X
X	C-SPAN2	X
X	C-SPAN3	X
X	TLC	X
	EDUCATION	
X	Animal Planet	X
X	Travel Channel	X
X	History Channel	X
X	H2	X
	Science Channel	X
	American Heros Channel	X

Comparison of Comcast and ATT Channel Offerings
Sorted by Ascending Channel Number

X	Investigation Discovery Channel	X
	National Geographic	X
	National Geographic WILD	X
X	FYI	X
	Military History Channel	X
	FAMILY/CHILDREN	
X	Disney Channel	X
	Disney XD	X
	Disney Jr	X
X	Nickelodeon	X
	Nicktoons	X
	Nick Jr	X
	TeenNick	X
X	Cartoon Network	X
X	Sprout	
	Boomerang	X
	Discovery Family	X
	SPECIAL INTEREST / LIFESTYLE	
X	Lifetime	X
X	LMN	X
X	Oxygen	X
X	WE	X
X	Esquire	X
X	Home Garden TV (HGTV)	X
X	Food Network	X
	DIY Network	X
	Cooking Channel	X
X	TVGN	
X	Jewelry TV	X
	MUSIC VIDEO	
X	MTV	X
	MTV2	X
X	VH1	X
	VH1 Classic	X
X	Country Music Television (CMT)	X
	Great American Country	X
	Country Deep	X
	Fuse	X
	FAITH BASED	
	Trinity Broadcasting	X
	Eternal World TV	X
	Daystar	X
	Inspiration Network	X
	Church Channel	X
	Family Net	X
	BYU	X
	FD TV	X

Comparison of Comcast and ATT Channel Offerings
Sorted by Ascending Channel Number

	JUCE	X
	World Network	X
	Family Entertainment TV	X
	SonLife	X
X	EWTN	
X	TBN	
SPORTS		
X	ESPN	X
	ESPN Classic	X
	ESPNews	X
	ESPNU	X
X	ESPN2	X
	NFL Network	X
X	NBC SportsNet	X
X	Golf Channel	X
X	Fox Sports1	X
	Fox Sports2	X
X	Pac 12 Bay Area	X
X	Comcast SportsNet Bay Area	X
X	Comcast SportsNet California	
OTHER		
X	KCNC Sino	
X	KTSF (KBS Korean)	
X	KTSF Viet Today	
X	KTSF ICN	
X	KNTV Cozi TV	
X	KRON AntennaTV	
X	KTVU LATV	
X	KQEH Life	
X	KQED World	
X	KQEH Vme	
X	KQEH Kids	
X	KRON Weather	
X	KSTS Exios	
X	KGO Live Well	
X	KOFY MeTV	
X	KICU Korean TV (KEMS)	
X	KCSM France 24	
X	KCSM Jazz	
X	KRCB Create	
X	KRCB NHK World	
X	Crossings TV	
X	Xfinity Latino Entertainment	
	Various Music Audio Only Channels	X

Noteable ATT U200 Only offerings

Comparison of Comcast and ATT Channel Offerings
Sorted by Ascending Channel Number

SyFy
TruTV
Disney Jr
Disney XD
National Geographic
NickTOONS
Nick Jr
TeenNick
Cooking Channel
MTV2
VH1 Classic
ESPN Classic
EPSNews
ESPNU
NFL Network

Noteable Comcast Digital Starter Only offerings

Sprout
Comcast SportsNet California
MoviePlex
Hallmark Channel

Notes

ATT U200 has a large block of faith based programing
Comcast Digital Starter includes access to many digital sub-channels
offered by local broadcasters



Comcast
3055 Comcast Pl
Livermore, CA 94551
www.comcast.com

January 29, 2015

Attn: Roger Peters
Town of Colma
1198 El Camino Real
Colma, CA 94014

Re: Comcast Bulk Services Agreement

Dear Roger,

Thank you for the opportunity to work with the residents of Colma to continue our bulk video service. We are extremely pleased to see so many of the Colma residents enjoying a host of our extensive catalog of products and services.

Below is our proposal for the bulk contract renewal. Please note, I've included important information regarding our video and Internet services as attachments to this letter.

Service. Comcast will continue to provide bulk video service to the existing 427 residential units in The Town of Colma. The presented service is our Digital Starter product which would include the attached channel lineup.

Equipment. The Digital Starter product also includes, without any additional costs to The Town, one (1) digital converter and one remote control for the primary outlet in the unit. This equipment provides access to On Demand (hundreds of programs, movies, and popular series libraries – most at no cost); also access to Pay-Per-View channels and will be HD capable.

Term, Option and Rate. The proposed **Term** is a five year term with a 1 year renewal. The auto renewal can be cancelled by either party with a 60 day written notice to terminate. The bulk rate quote is a per unit rate, plus government fees and taxes. In addition your annual rate will increase no more than 3% on the contract anniversary.

Franchise fee. Franchise fees will be paid on gross video revenues over and above the Bulk Video Services

Bulk Exclusivity Provision. The agreement does not prevent The Town from entering into "Right of Entry/Access" agreements with other providers. The agreement does not prevent The Town or its residents from ordering services from other service providers. The agreement does contain a "Bulk" exclusivity clause which essentially says that The Town will not enter into an agreement for "Bulk" services with another provider for services similar to those offered by Comcast.

Comcast Designated Contact. Comcast will provide designated sales numbers to the residents of The Town for any upgrades and or upgrade inquires.



Comcast
 3055 Comcast Pl
 Livermore, CA 94551
 www.comcast.com

Multiservice Discounts. Comcast will invoice the resident for any additional services (upgrades, internet, telephone etc.) over and beyond the services provided by The Town of Colma. The rates shall be quoted by the Town of Colmas' assigned sales team; the rates will include the customers' requests less the fixed rate the Town pays for on behalf of each dwelling unit.

As requested, Comcast is pleased to offer the following two options for a five year service agreement with exclusive marketing rights. The options below factor in any cost in continuing the bulk service to the residents of the Town of Colma.

Option 1: Bulk Services - Video Only.

Term - 5 year with a 1 year renewal term.

Video		Term		Price Reduction & Savings	
Current Rate	New Rate	Current	New	Savings	Monthly & Annual Savings
\$53.00	\$30.00 per unit	5 years +5 year renewal	5 year + 1 year renewal	\$23.00 per unit	\$9831.00 Monthly/Annually - \$117,852.00

Option 2: Bulk Services - Video and Internet Services.

Term - 5 years with a 1 year renewal term.

Video and Internet		Term		Price Reduction & Savings	
Current	New	Current	New	Current Retail	Your Bulk Rate Offer
N/A	\$55.00 per unit	N/A	5 year + 1 year renewal	Video -\$70.99 and Internet \$59.00	\$55.00 Bulk Video/Digital Starter and Internet.
				\$129.99 per unit.	Savings \$74.99 per unit.

Please call me with questions.

Best regards,

Jacyntha

Jacyntha Bass-Davis

Proposal Terms Subject to Final Approval

Expires 3/1/2015



Comcast
3055 Comcast Pl
Livermore, CA 94551
www.comcast.com

Comcast
Pardee Drive Oakland, CA 95112
510-772-1367 - Mobile
jacyntha_bass-davis@cable.comcast.com

BULK SERVICES AND MARKETING AGREEMENT

EXISTING PROPERTIES – TOWN OF COLMA SFU AND TOWNHOME PROPERTIES

This **BULK SERVICES AND MARKETING AGREEMENT** (“Agreement”) is entered into as of the date that AT&T executes this Agreement (“Effective Date”), by and between **AT&T Services, Inc.**, a Delaware corporation with its principal place of business at 530 McCullough, San Antonio, Texas 78215, on behalf of certain Affiliates of AT&T whose products and services AT&T Services, Inc. is authorized to sell, (“AT&T”), and **Town of Colma** a California municipality (the “Town”) with its principal place of business at 1198 El Camino Real, Colma California 94014. AT&T and Town may hereinafter be referred to individually as a “Party” or collectively as the “Parties”.

RECITALS

A. Within the territorial limits of the Town of Colma, there are privately-owned single family and townhome properties located as described in Exhibit A, attached hereto and incorporated herein by reference (the “Properties”).

B. Town desires to arrange for the provision, at Town’s expense, of video services to the Properties, subject to the terms of this Agreement.

C. AT&T and its Affiliates are in the business of delivering communications and other services, which include but are not limited to any audio, video, Internet access, local telephone, long distance and any other services which AT&T and its Affiliates offer for sale to consumers on a generally available basis on their networks.

D. In order to be able to provide the End Users of the Properties with use of the Bulk Services and in order for Town to obtain those services at an attractive price, Town has asked AT&T and AT&T has agreed to provide those services on a “bulk” basis to the Residential Dwelling Units (as defined herein) on the Properties, subject to the terms and conditions contained in this Agreement, whereby AT&T will invoice Town for all Bulk Services (as defined in Exhibit B) provided for use by the End Users at the Properties and AT&T shall have the exclusive right to contract with Town to provide the Bulk Services under a bulk billing arrangement for the Properties.

E. In addition to providing the Bulk Services, AT&T may sell to End Users of the Properties Other Services (as defined herein) that are not included in the Bulk Services, subject to the terms and conditions contained in this Agreement, and payment for such Other Services will not be included under this bulk billing arrangement.

F. Town intends that AT&T shall, consistent with this Agreement, be granted rights to install and operate Equipment (as defined in Exhibit B) and deliver Bulk Services and Other Services, to residents of the Properties and acknowledges that AT&T will make a substantial investment in order to provide these Services.

G. In addition to the foregoing, Town agrees to assist AT&T with the marketing and promotion of certain other AT&T services as described in Section 8 below on behalf of AT&T to current and prospective residents of the Properties.

NOW, THEREFORE, for the mutual consideration set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as set forth below.

TERMS AND CONDITIONS

1. Definitions. Capitalized terms defined above or in the text of this Agreement shall have the meanings set forth herein. Other capitalized terms shall have the respective meaning set forth in Exhibit B, which is attached hereto and incorporated herein by reference.

2. AT&T Services Description.

2.1 Bulk Services. Commencing on the BBSD, AT&T will be prepared to install, at each Residential Dwelling Unit, the Bulk Services during the Term so long as End Users order the Bulk Services and agree to and comply with AT&T’s Standard Terms of Service. AT&T may use any land line technology that it chooses to deliver the Bulk

AT&T Proprietary (Internal Use Only)

Services and may change the technology used at any time as long as the Bulk Services continue to meet the requirements of this Agreement. AT&T will coordinate with End Users in the transition of Bulk Services to such updated technology necessary to provide the Bulk Services, including, without limitation, any necessary equipment changes or installations and any required execution of AT&T's Standard Terms of Service, at no charge to End User or Town. No installation charges shall apply for standard installations of Bulk Services, although End User requests for additional wiring, jacks or additional set top boxes, will be billed to the End User at the applicable retail rate.

2.1.1 Subject to the terms and conditions herein, AT&T agrees that the Bulk Services provided to the Town pursuant to this Agreement and the Other Services provided to the End Users will be equal in quality to the same Services provided to other AT&T customers served in the same metropolitan area of the Properties. End Users may upgrade the Bulk Service by purchasing Premium Services as described below.

2.2 Other Services.

2.2.1 Generally. The Other Services are ordered separately from the Bulk Services by an End User and will be provided by AT&T directly to the End User pursuant to terms and conditions set forth between AT&T and each End User. AT&T will directly bill the End User for any Other Services purchased by the End User. AT&T may price the Other Services and offer them in such combinations and with such other products and services as AT&T may determine and AT&T may add or change service features, components, pricing, terms and conditions, means of delivery, etc., at any time. AT&T may deny Other Services to any End User, require deposits, or modify its credit terms as it deems appropriate or in accordance with applicable regulatory commission rules and regulations of the state in which the service is to be provided. Nothing in this Agreement shall preclude, nor shall Town restrict, in any way, AT&T from providing direct, Other Service-related communications with End Users or prospective End Users and delivery of telephone directories and related products. If the End User requests an additional account for the Bulk Services at the Residential Dwelling Unit, such additional account will be considered Other Services and AT&T may directly bill the End User for such service on a separate account at the then current retail rate.

2.2.2 Premium Services. "Premium Services" are those Other Services that are End User selected upgrades to the applicable tier of service provided as part of the Bulk Services (e.g., a larger channel package than a video Bulk Service). The Premium Services shall be offered to the End User at the difference between AT&T's standard retail market rate for the Premium Services requested by the End User and AT&T's standard retail market rate for the retail service that is equivalent to the Bulk Service at the time of purchase. The End User shall be financially responsible for any additional customer premises equipment necessary to deploy the Premium Services.

2.3 End User Terms. An End User's use of the AT&T Services shall be subject to this Agreement and AT&T's Standard Terms of Service. End Users will be required to acknowledge acceptance of and comply with AT&T's Standard Terms of Service.

3. Payment Terms for Bulk Services. Town will pay AT&T a Bulk Monthly Fee for each Residential Dwelling Unit for the Term as described on Exhibit D, attached hereto and made a part hereof.

4. Term and Auto-Renewal. This Agreement shall commence when fully executed by both Parties, and shall continue for five (5) years from the date of the first Bulk Bill sent by AT&T to the Town (the "Initial Term"), unless terminated in whole or in part as provided for in Section 3 of Exhibit E. THIS AGREEMENT WILL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE (1) YEAR PERIODS ("RENEWAL TERM") UNLESS EITHER PARTY GIVES NOTICE TO THE OTHER AT LEAST SIXTY (60) DAYS PRIOR TO THE END OF THE INITIAL TERM OR RENEWAL TERM OF ITS INTENT NOT TO RENEW. The Initial Term and Renewal Term(s) shall be referred to as the "Term".

5. Alternative Arrangements. During the Term, Town hereby agrees that it will not enter into any other bulk billing agreement with another service provider with respect to any services competing with an AT&T Service at the Properties. Town will not contract with or knowingly permit any third party to promote any services which compete with the Bulk Services and shall ensure that any contractors or other representatives of Town comply with the restrictions set forth in this Section. Nothing in this Agreement is intended to, nor shall it be construed to, preclude any End User from electing to receive services from another provider. This Agreement shall not constitute an exclusive services facilities contract.

6. Service Delivery.

6.1 Installation, Maintenance and Repair. AT&T shall provide and maintain its Equipment from its central office to the AT&T Service demarcation point(s) for the Properties ("Demarc(s)") provided that the necessary space and power is made available. AT&T will provide technical support for the Bulk Services that is equivalent to that generally available to customers of AT&T's residential services comparable to the Bulk Services. AT&T shall maintain and

repair Bulk Services from the network side of the Demarc through its network in addition to the CPE (as defined in [Section 6.3](#) below). In the event an End User trouble is located on the End User side of the Demarc and is not CPE, and the End User and AT&T agree that AT&T will repair the trouble, AT&T shall bill the End User, where applicable, at AT&T's standard repair rate.

AT&T may, at its own expense, take any actions which are necessary or convenient, in AT&T's reasonable opinion, to install, operate, alter, maintain, replace, supplement or remove Equipment and to deliver the AT&T Services. AT&T's selection of the particular Equipment, and Equipment manufacturers, shall be at AT&T's discretion.

6.2 Ownership. All Equipment will remain the sole property of AT&T during and after this Agreement, and Town acknowledges that it has no right, title or interest in or to any of the Equipment. No piece of Equipment will be deemed to be a fixture or in any other manner a part of the Properties.

6.3 Customer Premises Equipment. AT&T agrees to distribute to the End User during initial installation of the Bulk Services any customer premises equipment normally provided by AT&T for use within a Residential Dwelling Unit as part of the AT&T Services ("CPE") but not less than the CPE specified in Exhibit C. Any CPE provided to End Users is the sole responsibility of the End User and the End User shall be responsible for returning such CPE to AT&T when the service is cancelled.

6.4 Vendor Use. AT&T reserves the right to utilize a third party vendor or provider to perform any of its obligations, in whole or in part, contemplated by this Agreement; provided, however, such use shall not relieve AT&T of any of its obligations under this Agreement.

6.5 Inside Wire.

6.5.1 Inside Wire Provision. "Inside Wire" is defined as wire, cable, and connector jacks from the Demarcs to the wall jacks in the Residential Dwelling Units. AT&T's provision of the Bulk Services to all or any portion of the Properties is subject to AT&T's technical evaluation to determine whether the Inside Wire meets the minimum specifications. AT&T shall have no obligation to provide AT&T Services where the Inside Wire does not meet AT&T's minimum wiring specifications required to accommodate provision of such AT&T Service as listed below.

6.6 End User Access. AT&T may, in its sole discretion, immediately terminate a particular End User's access to and use of the AT&T Services (i) if such End User violates any provision of AT&T's Standard Terms of Service; or (ii) if the equipment used by the End User or the End User's use of the AT&T Services interferes with AT&T's provision of services to another end user. Should any device or any facility used by an End User not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, AT&T reserves the right to discontinue AT&T Services or the End User's access to, and use of, AT&T Services, as necessary until such non-conformance is cured by the End User. In addition, notwithstanding any other provision of this Agreement, AT&T reserves the right to (1) refuse to activate any Other Service or require a non-refundable fee or refundable deposit for any Other Service from an End User if such End User fails to meet AT&T's credit requirements or (2) suspend or terminate the Other Services to an End User (but not the Bulk Video Services) if an End User fails or has failed to pay AT&T for any Other Service.

7. Obligations of Town.

7.1 Non-Interference With Equipment. Except as authorized by AT&T, Town may not attach any device to any Equipment or otherwise disturb, use or interfere with any Equipment. Town will use its best efforts to prevent persons that are not authorized by AT&T from attaching any device to, disturbing, or using any Equipment on the Properties. Town will promptly notify AT&T of any known or suspected occurrence of the foregoing.

7.2 Access to Properties. Employees, agents, and contractors of AT&T and its Affiliates shall have reasonable access, at no charge, to the Properties to perform any and all work required of AT&T or its Affiliates. Unless otherwise required by law or as limited herein, these rights shall survive the Agreement for as long as AT&T or the applicable Affiliate is serving a customer at the Properties.

7.3 No Additional Charges. Town shall not market or bill charges for the Bulk Services to End Users at rates higher than those charged to Town by AT&T, but Town charges may include the reasonable costs of administering, billing and collecting such charges.

8. Marketing Obligations.

8.1 Town's Marketing Obligations. Town will ensure that the Other Services are promoted to End Users by any or all of the following: (i) the display or distribution of AT&T provided literature (ii) inclusion of AT&T contact information in any utility contact lists that are provided and (iii) including mutually agreeable references to the Other Services in newsletters, websites and community portals where available. Upon specific approval by Town or onsite personnel, at the Property, of each specific instance, AT&T may conduct on-site promotional events, post promotional materials and signage at the Properties, leave door hangers and market door-to-door. Town agrees to ensure that the Services are marketed in a commercially acceptable manner.

9. General Terms and Conditions. The Parties agree to the terms and conditions set forth in Exhibit E.

10. Entire Agreement. This Agreement and Exhibits A through E, incorporated herein by reference, constitute one and the same legally binding instrument and the entire agreement between Town and AT&T as to the matters provided for herein, and it supersedes all prior oral or written agreements between the Parties with respect to the matters provided for herein.

11. Counterparts; Signatures. The Parties may execute this Agreement in multiple identical counterparts, each of which constitutes one and the same Agreement. Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document (e.g., pdf or similar format) are true and valid signatures for this Agreement and shall bind the Parties to the same extent as that of an original signature.

(SIGNATURE PAGE FOLLOWS)

UNLESS PREVIOUSLY WITHDRAWN OR IF THIS CONTRACT IS SUBSEQUENTLY EXECUTED BY AT&T, THE PROPOSED TERMS OF THIS AGREEMENT SHALL EXPIRE IF NOT SIGNED BY TOWN AND DELIVERED TO AT&T ON OR BEFORE FEBRUARY 25, 2015. SUBMISSION OF THIS CONTRACT FOR EXAMINATION OR SIGNATURE DOES NOT CONSTITUTE AN OFFER BY AT&T FOR THE MARKETING OF SERVICES DESCRIBED HEREIN.

NOW, THEREFORE, the Parties, being fully apprised of all the contents and obligations contained in this Agreement, and intending to be fully bound thereby, hereby execute this Agreement, through their respective representatives, who are duly authorized to legally bind each Party.

SO AGREED:

Town of Colma
a California municipality
(Town)

AT&T Services, Inc.,
a Delaware corporation
(AT&T)

Signature

Signature

Sean Rabe

Printed/Typed Name

Tom Bennett

Typed Name

City Manager

Title

Sr. Customer Contracts Manager – AT&T Connected Communities

Title

Date

Date

**EXHIBIT A
 PROPERTY DESCRIPTION**

Contracting Entity: Town of Colma Attn: Sean Rabe 1198 El Camino Real Colma, California 94014 Tel: 650-997-8300 Fax: 650-997-8308 Email: sean.rabe@colma.ca.gov	Payee: NO PAYEE
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Property Name	Leasing Office Address Street, City, State, Zip phone, fax, email	Number of Units	Services* to be Exclusively Marketed by Town
Sterling Park (SFU)	401 B Street Colma, CA 94014 Tel: 650-997-8300	293	V, IA, UV
Hoffman Villas (Townhomes)	301 Hoffman Street Daly City, CA 94014 Tel: 650-997-8300	18	V, IA, UV
Verano Townhomes (Townhomes)	1377 Mission Road S. San Francisco, CA 94080 Tel: 650-997-8300	63	V, IA, UV
Mission Road Residences (SFU)	1420 Mission Road S. San Francisco, CA 94080 Tel: 650-997-8300	11	V, IA, UV
Total Units		385	

"V" = Voice

"IA" = Internet Access

"UV" = U-verse TV

LEGAL NOTICES AND BULK BILLING ADDRESSES

To Town:	To AT&T – Legal Notices:
Legal Notice Address: Town of Colma Attn: Sean Rabe 1198 El Camino Real Colma, California 94014 Tel: 650-997-8300 Fax: 650-997-8308 Email: sean.rabe@colma.ca.gov	AT&T Connected Communities Attention: Contract Management 1265 N. Van Buren, Room 280 Anaheim, CA 92807 Fax: 714-237-7667
Address for Bulk Bills: Town of Colma Attn: Sean Rabe 1198 El Camino Real Colma, California 94014 Tel: 650-997-8300 Fax: 650-997-8308 Email: sean.rabe@colma.ca.gov	

PROPERTY ADDRESS FORM

**ALL PROPERTY ADDRESS FORMS SHALL BE SUBMITTED ON AN EXCEL FORM TO AT&T. THE FORM MAY BE REQUESTED FROM AND THE COMPLETED FORMS SUBMITTED TO THE FOLLOWING E-MAIL ADDRESS:
 acc.west@att.com**

**EXHIBIT B
DEFINITIONS**

The following capitalized terms used in this Agreement shall have the respective meanings specified below:

1.1 “Affiliate” is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or equivalent thereof) of more than 10 percent (10%).

1.2 “AT&T Services” means the following AT&T services that AT&T makes available at the Properties during the Term (including, without limitation, the Bulk Services, the Premium Services and the Other Services):

(a) “Voice” includes landline U-verse® and Non-U-verse Voice Services, as available, and is comprised of residential local and long distance telephone service provided by or through AT&T, and may include Interconnected VoIP service (as defined in 47 C.F.R. Section 9.3) when available, or any other means to deliver landline voice service to End Users. Voice Service also includes primary and secondary lines and all calling features;

(b) “Internet Access” includes landline U-verse and Non-U-verse Internet Access Service, as available, and its high-speed digital data communication capabilities and interconnectivity with the Internet, including ISP services and transportation of and access to other ISP products, excluding dial up Internet access services; and

(c) “U-verse® TV” is the provision of a video entertainment medium suitable for television, screen, or other projection delivered by AT&T via Internet Protocol over a coax, copper or fiber facility.

1.3 “AT&T’s Standard Terms of Service” means AT&T’s standard terms and conditions, terms of service, service agreements, acceptable use policies, software license agreements and all other policies or terms of service that apply to an AT&T Service as amended from time to time.

1.4 “Bulk Billing Start Date” or “BBSD” is January 1, 2016 provided the Effective Date is no later than April 1, 2015; and if the Effective Date is delayed AT&T may postpone the BBSD by one day for each day that the Effective Date is delayed. The BBSD is the date that billing for Bulk Services to the Town and billing for Premium Services to an End User, begins for any of the Residential Dwelling Units.

1.5 “Bulk Monthly Fee” is the monthly recurring charges, as described and set forth on Exhibit D, excluding taxes and fees, that are billed to Town for Bulk Services for each Residential Dwelling Unit during the Term.

1.6 “Bulk Services” are the AT&T Services (e.g., video, data, etc.) set forth in Exhibit C that AT&T will provide to Town for use by End Users pursuant to this Agreement. Exhibit C further sets forth the specific tier of service offering of each AT&T Service included in the Bulk Services under this Agreement.

1.7 “End User” is an occupant of a Residential Dwelling Unit to whom an AT&T Service is made available for use.

1.8 “Equipment” is all wires, cables, antennas, towers, connectors, amplifiers, couplers, splitters, tuners, modulators, CPE (as defined in Section 6.3), and any other equipment and facilities owned and provided by AT&T or one or more of its Affiliates from time to time which are used to deliver AT&T Services. Equipment shall not include inside wire.

1.9 “Other Services” means the AT&T Services described in Section 2.2 and marketed by Town pursuant to Section 8.1. The Other Services do not include the Bulk Services.

1.10 “Residential Dwelling Units” or “Unit(s)” include all types of residential dwelling units on the Properties including, but not limited to: single-family homes, duplexes, town homes, condominiums, and rental apartments, constructed within the Properties, and certified as ready for occupancy, whether occupied or not; but excluding commercial buildings/structures, common areas under the control of an association such as a homeowner’s or property owner’s association, and the commercial portions of mixed-use buildings.

EXHIBIT C
BULK SERVICES

Notwithstanding the service descriptions below, AT&T may modify the Bulk Services at any time during the Term to conform to the equivalent service available to similarly situated AT&T residential customers in the same DMA. AT&T shall notify Town and End Users of such changes in the same manner as it provides such notice to its residential subscribers. The Bulk Service(s) will be made available to Town for use by End Users pursuant to the terms of this Agreement and will at a minimum be substantially similar to services provided to similarly situated AT&T customers in the same DMA.

BULK VIDEO SERVICE

AT&T's Bulk Video Service shall include U-verse[®] TV U-200 service, with a minimum of approximately two hundred (200) channels to be provided to each End User; provided, however, that the channel line-up may vary during the Term. AT&T will provide Bulk Video Service to one (1) End User provided television per Residential Dwelling Unit via a Residential Gateway and one (1) set top box capable of digital video recording ("DVR"), provided by AT&T. The Bulk Video Service shall include the features and channels that are made available by AT&T for the equivalent retail offering of U-200 services to similarly situated AT&T residential customers in the same DMA.

The individual services and total channels included in AT&T's video services will vary by market, depending on the specific DMA (Designated Market Area) in which the property is located, AT&T's ability to secure related content rights for the individual services, and the actual commercial availability date of the features still in development. Referenced service components listed in this document reflect current plans. These plans are subject to change based on various business factors.

EXHIBIT D
PAYMENT TERMS FOR BULK SERVICE

1. Bulk Monthly Fee. The Bulk Monthly Fee is **\$31.00** per Residential Dwelling Unit excluding applicable taxes and applicable fees that AT&T is lawfully allowed to pass through to similarly situated retail customers in the same market area who purchase equivalent services, and is subject to increase as provided herein. The TV Broadcast Surcharges are waived by AT&T.

2. Bulk Billing Implementation. AT&T will begin billing the Bulk Monthly Fee on the BBSD and invoice Town each month for all Bulk Services provided pursuant to this Agreement (the "Bulk Bill"). The first Bulk Bill will be issued in the month following the month in which the BBSD occurs. For the first 60 days following the BBSD, the Bulk Monthly Fee will be waived for those Residential Dwelling Units where Bulk Services have been activated by an End User and following such period, the Bulk Monthly Fee will apply to all Residential Dwelling Units at the Properties.

Subject to other provisions of this Agreement, the Bulk Bill shall equal the Bulk Monthly Fee times the number of Residential Dwelling Units for which the Bulk Monthly Fee applies; plus any and all fees, sales and use taxes, duties, or levies imposed or permitted by any authority, government, or government agency (other than taxes levied on AT&T's net income) and expenses incurred by AT&T reasonably relating to regulatory assessments stemming from an order, rule or regulation of the Federal Communications Commission or other regulatory authority or court having competent jurisdiction, in connection with Bulk Service.

3. Payment Terms. Town will pay the Bulk Bill on or before the 30th day after the date of the Bulk Bill ("Due Date"). Town will pay a \$35 charge for any check returned for non-sufficient funds. Town will reimburse AT&T for all reasonable costs, including, without limitation, attorney fees, incurred in any attempt to collect any balance unpaid thirty (30) days after its due date. If full payment is not received within thirty (30) days after the Due Date, in addition to any rights it may have, AT&T may send notice to Town that it will terminate, or suspend, at AT&T's election, the provision of the Bulk Services, if payment is not received within ten (10) days of the date of such written notice. Town shall defend, indemnify and hold AT&T harmless from any and all third party claims or causes of action of any nature arising from termination or suspension of Bulk Service for such non-payment. Payments received by AT&T after the Due Date will bear interest at an annual rate equal to the lesser of (i) 18% or (ii) the maximum permitted by applicable law.

4. Credit for Service Failure. If AT&T fails to deliver all Bulk Services, as required hereunder, for a period of more than 24 consecutive hours, then AT&T will provide a credit representing a pro-rated amount of the monthly recurring charges for each affected Residential Dwelling Unit to Town's account for each full day of service outage, upon written request of Town. The maximum credit for service downtime associated with a particular End User shall not exceed the total monthly bill to Town for such End User's Bulk Service, for the month in which such downtime or failure occurs.

5. Bulk Price Escalation. After the first anniversary of the BBSD, AT&T may increase the Bulk Monthly Fee by an amount equal to no more than five percent (5%) per calendar year, provided that the resulting Bulk Monthly Fee may not exceed the retail price for AT&T services that are functionally equivalent to the Bulk Services. AT&T will use commercially reasonable efforts to provide Town sixty (60) days advance written or email notice of such change to the Bulk Monthly Fee and such increase shall apply from the date set forth in the notice. However, failure to make such notice does not exempt AT&T from instituting the increase no earlier than 1 year after the previous increase became effective. Notwithstanding the foregoing, and in addition to the Bulk Monthly Fees, AT&T will include in its Bulk Bill, charges for any and all fees, sales and use taxes, duties, or levies imposed or permitted by any authority, government, or government agency (other than taxes levied on AT&T's net income) or for expenses incurred by AT&T reasonably relating to regulatory assessments stemming from an order, rule or regulation of the Federal Communications Commission or other regulatory authority or court having competent jurisdiction in connection with Bulk Service.

EXHIBIT E
GENERAL TERMS AND CONDITIONS

1. Representations and Warranties.

1.1 Town represents and warrants that during the Term:

(a) Town has all necessary permissions and other legal authority to enter into and perform this Agreement, and this Agreement constitutes a legal, valid, and binding obligation enforceable against Town in accordance with its terms;

(b) Town is a duly organized municipality and in good standing in the State of California;

(c) No agreement, easement, instrument, mortgage, encumbrance, or other document or grant of rights conflicts with Town's obligations under this Agreement, and Town's entry into and performance of this Agreement will not cause any default under any of the foregoing. Town will not, during the Term, enter into any other agreement that would interfere with or frustrate the mutual intent and obligations of the Parties, or adversely affect AT&T's rights, as set forth herein.

1.2 AT&T represents and warrants that during the Term:

(a) AT&T has or will acquire all necessary licenses, permits, franchises, authorizations, permissions and corporate or other legal authority to enter into and perform this Agreement, and this Agreement constitutes a legal, valid, and binding obligation enforceable against AT&T in accordance with its terms; and

(b) AT&T is a duly organized corporation and in good standing in the State of Delaware authorized to do business in California.

2. Assignment.

2.1 Assignment by AT&T. AT&T may not assign this Agreement to any third party without the prior written consent of Town, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, AT&T may assign this Agreement without the consent of Town to (a) any Affiliate, or (b) a purchaser of all or substantially all of its assets or in connection with a consolidation or merger of AT&T (or that portion of AT&T providing all or any material portion of the services under this Agreement).

2.2 Assignment by Town. Town may not assign or transfer any of its rights, duties or obligations with respect to this Agreement without the prior written consent of AT&T, which consent shall not be unreasonably withheld, denied or delayed. Specifically, among other reasons, consent may be withheld if the proposed assignee does not pass AT&T's credit qualifications or post a required security deposit.

2.3 Other Attempts Void. Any attempt to assign this Agreement or any rights hereunder except in accordance with this Section will be void. This Agreement shall remain in full force and effect as between AT&T (or its assignee) and Town (or its successor) for the Term.

3. Termination.

3.1 If AT&T breaches any of the material terms, conditions, obligations, or representations contained in this Agreement and does not cure such breach within thirty (30) days of written notice of such breach, then Town may (as its sole remedy, except for any credits that may be payable for downtime) terminate this Agreement; provided, however, that if such AT&T breach applies solely with respect to the Other Services, then, notwithstanding the foregoing, Town may only as its sole remedy, terminate Town's marketing obligations under Section 8.1 of the Agreement and, in such case, all other provisions of this Agreement as they relate to the Bulk Services shall continue in full force and effect. In addition, Town may (as its sole remedy except for any credits that may be payable for downtime) terminate this Agreement if AT&T becomes the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization, or liquidation proceeding, makes an assignment for the benefit of creditors, or admits in writing its inability to pay debts when due.

3.2 AT&T may, at its sole discretion, terminate this Agreement, in whole or in part, if (i) Town fails to pay any amount within ten (10) days after written notice that the same is delinquent; or (ii) Town breaches any of the material terms, conditions, obligations, or representations contained in this Agreement (other than payment) and does not cure such breach within thirty (30) days of written notice of such breach; or (iii) Town becomes the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization, or liquidation proceeding, makes an assignment for the benefit of creditors, or admits in writing its inability to pay debts when due. In addition, if AT&T reasonably determines that the continued provision of Bulk Services pursuant to this Agreement has become impractical or infeasible for any technical, legal or regulatory reason, then AT&T may terminate this Agreement, in whole or in part,

with at least sixty (60) days prior notice if reasonably practical.

3.3 If AT&T terminates the provision of the Bulk Services under this Agreement due to default by Town, Town shall pay a termination fee equal to the Bulk Monthly Fee multiplied by the number of units on Exhibit A, multiplied by the number of months remaining in the Term then reduced by multiplying the result by 25%.

4. Dispute Resolution - Arbitration.

4.1 In the event of any dispute, claim or controversy arising out of or related to this Agreement or breach thereof, the Parties shall use commercially reasonable efforts to settle such disputes, claims or controversies by consulting and negotiating with each other in good faith and attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach such a resolution within thirty (30) days, the dispute, claim or controversy shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) for expedited arbitrations, unless modified herein. The arbitration shall be held before a single arbitrator selected in accordance with said rules and shall be conducted in San Mateo County, California. The arbitrator shall hear and determine any preliminary issue of law asserted by a Party as dispositive to the same extent that a court could hear and determine a motion for summary disposition (such as a motion for summary judgment under United States Rules of Civil Procedure Rule 56 by a U.S. District Court). A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

4.2 Neither Party nor the arbitrator may disclose the existence, content, or results of the arbitration without prior written consent of both Parties. There shall be no discovery other than the exchange of information that is required by the arbitrator from the Parties. The arbitration award shall be in writing and shall specify the legal and factual basis for the award. Each Party shall bear its own costs, attorney's fees and disbursements, regardless of which Party prevails.

4.3 Disputes that meet the small claims court requirements in the state in which the Bulk Services are provided may be resolved in small claims court. The Parties agree that this Section 4 shall not apply to debt collection matters, disputes relating to Intellectual Properties, and that Title 15 Chapter 48 of the Code of Laws of South Carolina shall not apply to this Agreement or to any arbitration or award hereunder.

4.4 Disputes under this Agreement may not be (a) resolved on a class-wide basis, (b) joined with another lawsuit, or (c) joined in arbitration with a dispute of any other entity. The arbitrator may not award, and the Parties waive any claims for awards for, punitive damages or attorney fees or any damages that are barred by this Agreement, unless such damages are expressly authorized by a relevant statute.

4.5 Nothing in this Agreement shall be construed to limit either Party's right to obtain equitable or injunctive relief in a court of competent jurisdiction in appropriate circumstances.

5. Limitation and Disclaimer of Liability.

5.1 NEITHER PARTY NOR ANY OF ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS SHALL HAVE ANY LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, ECONOMIC, PUNITIVE, INDIRECT OR SPECIAL DAMAGES SUFFERED BY THE OTHER OR ANY OTHER PARTY (INCLUDING, WITHOUT LIMITATION, END USERS), NOR SHALL AT&T HAVE ANY LIABILITY FOR LOSS PROFITS, LOSS OF USE, LOSS OR CORRUPTION OF ANY DATA OR INFORMATION, OR TOLL FRAUD SUFFERED BY TOWN OR END USER, AS A RESULT OF THIS AGREEMENT OR EITHER PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT WHETHER IN TORT OR CONTRACT, REGARDLESS OF WHETHER OR NOT SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS, INCLUDING WITHOUT LIMITATION NEGLIGENT PERFORMANCE OR FAILURE TO PERFORM, OR A DEFECT OR FAILURE TO PERFORM, OF A DEFECT IN EQUIPMENT, REGARDLESS OF THE FORESEEABILITY THEREOF. TOWN EXPRESSLY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION SHALL ALSO APPLY TO ALL CONTENT OR OTHER SERVICES AVAILABLE THROUGH OR AS PART OF THE SERVICES. TOWN AGREES THAT TOWN WILL NOT IN ANY WAY HOLD AT&T RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, THIRD PARTIES, EXCLUDING AT&T'S AGENTS AND SUBCONTRACTORS, IN CONNECTION WITH AT&T SERVICES. IN ADDITION, AT&T SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER TO TOWN RESULTING FROM ANY CLAIMS BY END USERS RELATING TO TOWN'S ENTRY INTO THIS AGREEMENT WITH AT&T OR THE TERMS OF THIS AGREEMENT.

5.2 In the event that a court should hold the limitations of liabilities set forth in this Agreement are unenforceable for any reason, Town agrees that under no circumstances shall AT&T's total liability to Town or any party claiming by, through or under Town for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including, without limitation, negligence, in the aggregate, exceed the amount of charges paid by Town for Bulk Services during the twelve-month period preceding the date such claim first arose.

5.3 AT&T shall not be responsible for any use of AT&T Services by End User or Resident, or End User's or Resident's authorized users or any third party. Without limiting the generality of the foregoing, AT&T shall not be liable to Town or to any End User for: (a) any claim or other action against Town by any third party (except as set forth in Section 8 of this Exhibit on infringement) relating in any way to an End User's use of AT&T Services; (b) any

act or omission of any other entity furnishing products and services that are used by End User in connection with AT&T Services or for failure of any equipment provided by an End User in connection with AT&T Services; or (c) any damages or losses caused by the fault or negligence of Town or an End User's failure to perform his responsibilities.

6. Limitation and Disclaimer of Warranties. NEITHER AT&T NOR ANY OF ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE AT&T SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR MAKES ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE AT&T SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, OTHER THAN THOSE WARRANTIES (IF ANY) THAT ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS SERVICE AGREEMENT, ALL SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED.

7. Remedies of Town. Town's sole remedy for any failure or non-performance of any Bulk Service (including, without limitation, any associated Equipment, Software or other materials supplied in connection with any Bulk Service) shall be (i) for AT&T to use commercially reasonable efforts to effectuate an adjustment or repair of Bulk Service and to receive a pro-rata refund or credit as set forth in Section 4 of Exhibit D, or (ii) if after 30 days from written notice of such failure or non-performance of any Bulk Service, such failure or non-performance results in downtime or degradation so substantial as to render a Bulk Service essentially unavailable to or unusable by more than 5% of the End Users at the Properties for normal use and such is not due to the condition or failure of Town's or End User's wire to meet the specifications in Section 6.5 of this Agreement, to request termination of such Bulk Service, as applicable by providing 90 days written notice. The maximum credit for service downtime associated with a particular End User shall not exceed the total monthly bill to Town for such End User's Bulk Service for the month in which such downtime or failure occurs.

8. Infringement.

8.1 To the extent a Bulk Service infringes any United States patent, trademark, copyright, or trade secret and a written claim is made or suit is brought by any third party against Town on that account, AT&T agrees to defend or settle any such claim or suit at AT&T's expense. AT&T will also pay all damages and costs that by final judgment are assessed against Town attributable to such infringement.

8.2 AT&T's obligation as set forth in this Section is expressly conditioned upon the following: (a) that AT&T shall be notified promptly in writing by Town of any claim or suit of which Town is aware; (b) that AT&T shall have sole control of the defense or settlement of any claim or suit and that Town shall not make any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without AT&T's prior written approval; (c) that Town shall cooperate with AT&T in all reasonable ways to facilitate the investigation, settlement or defense of any claim or suit; and (d) that the claim or suit does not arise from an End User's modifications, or from combinations of Bulk Service with equipment, software or services provided by Town or the End User or others.

8.3 If a Bulk Service becomes, or in AT&T's opinion, is likely to become the subject of a claim of infringement, or a final injunction is obtained against Town or an End User prohibiting usage of such Bulk Service by reason of such infringement, AT&T will, at its option: (a) procure for Town and End User the right to continue using such Bulk Service as applicable (b) replace such Bulk Service with a non-infringing service substantially complying with the specifications of the applicable Bulk Service; or (c) modify such Bulk Service so it becomes non-infringing and performs in a substantially similar manner to the original service.

8.4 If the options in Sections 8.3(a), (b) or (c) of this Exhibit are not reasonably available to AT&T, then AT&T may direct the End User to cease use of such Bulk Service and return any amounts prepaid by Town for the applicable Bulk Service beyond the date such use ceases.

8.5 The foregoing states the entire obligation of AT&T, and the exclusive remedy of Town, with respect to infringement of proprietary rights. The foregoing is given to Town solely for its benefit and is in lieu of, and AT&T disclaims, all warranties of non-infringement with respect to the AT&T Services.

8.6 If promptly notified in writing of any action brought against AT&T, due to claims for infringement of United States patents, copyright, trademark, or other intellectual property rights, or due to any other claims or causes of action by third parties of any nature whatsoever, arising from the use, in connection with a Bulk Service, of equipment, software or information not provided by AT&T, or otherwise relating to or arising out of an End User's use of a Bulk Service, Town will defend that action at its expense and will pay any and all fees, costs or damages that may be finally awarded in that action or a settlement resulting from it provided that (i) AT&T shall permit Town to control the defense of such action and shall not make any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without Town's prior written approval and (ii) AT&T shall cooperate with Town in all reasonable ways to facilitate the settlement or defense of any claim or suit.

9. Indemnification. Each Party agrees to indemnify and defend the other Party from and against any and all liabilities, losses, damages, claims and expenses resulting from (a) a third party claim of bodily injury (including

AT&T Proprietary (Internal Use Only)

death) or tangible personal property damage to the extent caused by the negligence or intentional misconduct of the indemnifying Party, or (b) the indemnifying Party's breach of its obligations under Section 11 of this Exhibit. Notwithstanding the foregoing, AT&T shall have no obligation to indemnify or defend Town in connection with any claims by End Users relating to Town's entry into this Agreement with AT&T or the terms of this Agreement. In the event that a claim arises under this Section 9, the indemnified Party agrees to provide the indemnifying Party with prompt notice of any claim, and the indemnifying Parties will fully cooperate with the indemnifying Party in the defense of the claim. The indemnifying Party shall have sole control of the defense or settlement of any claim or suit, and the indemnified Party shall not make any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without the indemnifying Party's prior written approval.

10. Force Majeure. Neither Party will be liable for any delay or failure in delivery or performance of any of its obligations hereunder (except with regard to Town's obligations to pay for Bulk Services provided by AT&T) due to acts or omissions of any network or any other occurrence commonly known as force majeure, including, without limitation, war, riots, embargoes, accidents, acts of God, acts of terrorism, strikes or other concerted acts of workers, changes in law or government regulation, reallocation of resources resulting from any such events, or any other event beyond its reasonable control ("Force Majeure"). AT&T may cancel or delay performance hereunder for so long as such performance is delayed by such occurrence or occurrences and in such event AT&T shall have no liability to Town.

11. Advertising and Publicity.

11.1 Use of Marks. Each Party hereto recognizes and acknowledges the existence and validity of the other Party's and its Affiliates' intellectual property rights in its respective names, logos, trademarks, service marks, copyrights and/or other intellectual property ("Marks"). The Parties shall acquire no interest in the Marks of the other Party or the Party's Affiliates. Any request to use the other Party's Marks for the limited purposes stated in this Agreement other than by virtue of materials supplied by the Party owning such Marks shall be in accordance with the provisions set forth in an Affixation amendment to this Agreement or through a separate Trademark License Agreement duly executed between the owning Parties.

11.2 Sales, Advertising and Marketing. Town will use only materials supplied by AT&T (the "AT&T Materials") in promoting the Services described herein. The AT&T Materials will bear the Marks licensed exclusively by AT&T Intellectual Properties ("ATTIP") and are provided solely in conjunction with the terms of this Agreement. Town is not authorized otherwise to use the Marks, in any form. Any use of the Marks that is not authorized by ATTIP is strictly prohibited. AT&T shall own all right, title and interest in the AT&T Materials. Upon termination or expiration of this Agreement, Town shall return to AT&T, or destroy, at the discretion of AT&T, any AT&T Materials in the possession of Town and shall cease using any portion of the AT&T Materials.

11.3 Publicity. Press releases, advertisements and other publicity statements, in any medium ("Publicity") that use, mention or imply Marks of AT&T are not permitted. Use or reproduction by Town for Publicity purposes of any testimonial quotations, thank you letters, reference letters or any other communications in any form or medium from AT&T, or its employees and/or agents is not permitted. Exceptions to the policies outlined above must be requested in writing solely from ATTIP, which may grant or refuse such requests in its sole discretion. Town agrees to submit to ATTIP in writing all such requests and materials relating to this Agreement. Town further agrees not to publish or use such Publicity materials without ATTIP's prior written consent.

11.4 Grant. Nothing in the Agreement will be construed as an assignment or grant of any license or other right, title or interest, either express or implied, with respect to any copyrighted material, logo, trademark, trade name, Marks, or any other intellectual property now or hereafter owned by any Party, or its Affiliates.

12. Confidential Information.

12.1 Each Party agrees that (a) all information communicated to it by the other and identified and marked as "confidential," whether before or after the date hereof, (b) all information identified as confidential to which it has access in connection with the AT&T Services, and (c) this Agreement, all associated contract documentation and correspondence, and the Parties' rights and obligations hereunder shall be deemed "Confidential Information".

12.2 Each Party agrees that it will (a) not disclose any Confidential Information of the other Party to any third party (including, without limitation, through recordation by a Party of a copy of this Agreement in any governmental public record) without the disclosing Party's prior written consent, provided that a Party may disclose this Agreement and any disclosing Party's Confidential Information to those who are employed or engaged by the recipient Party, its agents or those of its Affiliates who have a need to have access to such information who are bound by obligations of nondisclosure and limited use at least as stringent as those contained herein, and (b) use the Confidential Information of the other Party solely for purposes of performing its obligations under this Agreement. Each Party agrees to use the same means it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and protect the confidentiality of Confidential Information.

12.3 If Confidential Information is required to be disclosed pursuant to law, regulation, tariff or a requirement of a governmental authority, or in connection with an arbitration, such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the disclosing Party with timely prior written notice of such requirement and coordinates with the disclosing Party in an effort to limit the nature and scope of such required disclosure.

12.4 The obligations set forth in Section 12.1 of this Exhibit will not prevent any Party from disclosing information that belongs to such Party or (a) is already known by the recipient Party without an obligation of confidentiality other than under this Agreement, (b) is publicly known or becomes publicly known through no unauthorized act of the recipient Party, (c) is rightfully received from a third party, (d) is independently developed without use of the disclosing Party's Confidential Information or (e) is disclosed without similar restrictions to a third party by the Party owning the Confidential Information.

12.5 Upon written request at the expiration or termination of this Agreement, all documented Confidential Information (and all copies thereof) owned by the requesting Party (if previously received by the terminating Party) will be returned to the requesting Party or will be destroyed, with written certification thereof being given to the requesting Party. The provisions of this Section shall remain in effect during the Term and shall survive the expiration or termination thereof for a period of one (1) year, provided that the obligations hereunder shall continue in effect for any Confidential Information for so long as it is a trade secret under applicable law. The Parties agree that monetary damages for breach of this Section 12 are not adequate and that either Party will be entitled to injunctive relief with respect to such breach.

13. Miscellaneous.

13.1 Governing Law. This Agreement is governed by and construed under the laws of the State in which the Properties are located without regard to its principles of conflicts of law.

13.2 Notices. In order for any notice given under this Agreement to be effective, the notice must be in writing and sent to the address(es) set forth in Exhibit A by (i) facsimile; (ii) nationally-recognized overnight service; or (iii) by first class registered or certified mail, return receipt requested. Any notice sent in accordance with this Section will be deemed to have been received: (a) upon transmission confirmation if by facsimile; (b) one (1) business day after mailing, if sent by overnight service; or (c) five (5) business days after any other form of delivery. A Party may change its address for notices by sending written notice to the other Party.

13.3 Modifications and Waivers. No modifications to these terms, including, without limitation, handwritten modifications, are permitted or will be made without a duly executed written amendment between the Parties. No waiver of any provision of this Agreement will be effective unless executed in writing by the Party granting the waiver. If a Party fails to enforce any right under this Agreement, such failure will not be a waiver of such right. If a Party waives a breach by the other Party, such waiver is not a waiver of any other breach or any subsequent breach of the same provision.

13.4 Headings. The headings of this document are for convenience only, and are not for interpretation of this Agreement.

13.5 Severability. If a court of competent jurisdiction holds that any provision, or part hereof, of this Agreement is illegal, invalid or unenforceable, this Agreement and all other provisions will remain in effect, unless the illegal, invalid or unenforceable provision goes to the essence of this Agreement. The Parties will act in good faith in renegotiating such illegal, invalid or unenforceable provision to as closely reflect the original intent of the Parties as possible without changing the essence of this Agreement.

13.6 Compliance with Laws. The Parties shall each comply at their own expense with all applicable federal, state and local laws, rules and regulations ("Laws") in the performance of their obligations hereunder and the performance of each shall be contingent on obtaining all necessary legal and government approvals relating to such performance.

13.7 Regulatory Mandates. In the event this Agreement for any reason becomes the subject of a regulatory proceeding, Town will cooperate with AT&T in such proceeding. AT&T may, in the exercise of reasonable judgment and good faith, modify this Agreement to the extent it deems it necessary to ensure compliance with any rule, regulation, order or other requirement of a regulatory body or other governmental agency; and to the extent any such modification materially alters the obligations of or materially reduces the benefits received by AT&T under this Agreement, the Parties shall negotiate in good faith to make equitable adjustments to the Agreement that allow either Party to receive the same level of benefits originally contemplated under the terms of the Agreement. If after such negotiations the parties are unable to agree on such equitable adjustments, either Party shall have the option to

terminate this Agreement without further liability upon ninety (90) days written notice to the Town. Furthermore, if the obligations of AT&T under this Agreement are materially altered by a change in the degree of regulation or by a change in the application or interpretation of any rule, order or regulatory requirement existing at the time of the execution of this Agreement, then AT&T shall have the option to terminate this Agreement without further liability upon written notice to the Town.

13.8 Insurance. Town will maintain, as a minimum, at all times during the Term, the following insurance coverage and any other additional insurance and/or bonds required by law: Commercial General Liability insurance for bodily injury or death and property damage liability with limits of at least \$1,000,000 per occurrence and \$2,000,000 General Policy Aggregate (applicable to Commercial General Liability Policies). Upon AT&T request, Town agrees to furnish certificates or other acceptable proof of the foregoing insurance. AT&T shall maintain at least equivalent insurance requirements as stated above. Upon request, AT&T will furnish proof of insurance.

13.9 No Liens. Neither Party shall cause, suffer, or permit any lien or claim of lien to attach to or encumber the property of the other Party as a result of or in connection with this Agreement. If any lien is filed against the property of a Party by anyone claiming through the other Party, then such other Party shall cause the lien to be removed or bonded around to the other Party's reasonable satisfaction within twenty (20) days after demand.

13.10 Binding Nature. This Agreement is binding upon and inures to the benefit of the permitted transferees, successors, and assigns of the Parties.

13.11 Survival. Any respective obligations of the Parties hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration.

13.12 Relationship of the Parties. The Parties are independent contractors. This Agreement does not create a joint venture, partnership, or any agency or fiduciary relationship between the Parties. Neither Party has the power to create any obligation on behalf of the other.

13.13 No Third Party Beneficiaries. Except as otherwise specifically stated in this Agreement, the provisions of this Agreement are for the benefit of the Parties hereto and not for any other person.

13.14 Independent Liability. AT&T Services, Inc., and its Affiliates shall not be jointly liable under this Agreement, each AT&T entity being independently and individually liable only for its own acts hereunder.

13.15 Drafter. The Parties are deemed to have participated in the drafting and negotiation of this Agreement after consulting with their respective counsel of their own choosing. Therefore, this Agreement shall not be presumptively construed either in favor of, or against, any Party.