

1 [Agreements - Access to Fiber-Optic Facilities - Bay Bridge Consortium and Pacific Bell]

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3 **Ordinance approving two agreements to enable the City to obtain access to fiber-optic**
4 **facilities owned by Pacific Bell located on the San Francisco-Oakland Bay Bridge: an**
5 **agreement between the City and the Bay Bridge Consortium for a term potentially in**
6 **excess of ten years, and an agreement between the City and Pacific Bell for a term**
7 **potentially in excess of ten years; and, with respect to both agreements, waiving the**
8 **requirements of Administrative Code, Section 21.9, prohibiting automatic renewal**
9 **provision in contracts.**

10 Note: Additions are single-underline italics Times New Roman;
11 deletions are ~~strikethrough italics Times New Roman~~.
12 Board amendment additions are double underlined.
13 Board amendment deletions are ~~strikethrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. Findings.

16 (a) The State of California Department of Transportation (“Caltrans”) authorized
17 Pacific Bell to install fiber-optic facilities on the San Francisco-Oakland Bay Bridge (“Bay
18 Bridge”).

19 (b) As a condition of that permit, Caltrans required Pacific Bell to offer access to
20 those fiber-optic facilities to other telecommunications providers.

21 (c) The Bay Bridge Consortium (“Consortium”) was formed by certain
22 telecommunications providers (known as “Joint Users”) for the purpose of entering into an
23 agreement with Pacific Bell, entitled Agreement Regarding Joint Ownership and Use of Fiber
24 on the San Francisco Bay Bridge, dated June 1, 1997 (“Pacific Bell Agreement”).

25 (d) Under this agreement, Joint Users can obtain access to Pacific Bell’s fiber-optic
facilities on the Bay Bridge.

1 (e) In the “Bay Bridge Consortium Agreement” dated August 28, 1997, as
2 supplemented by a November 22, 2000 agreement (collectively the “Consortium Agreement”),
3 the Consortium established the terms and conditions under which Joint Users would share the
4 Consortium’s responsibilities and obligations under the Pacific Bell Agreement.

5 (f) The Consortium recently offered the City access to these fiber-optic facilities.

6 (g) The Department of Technology (“DT”) has determined that accessing these
7 fiber-optic facilities, which can only be obtained through the Consortium, would benefit City
8 departments by providing high speed data connections for public safety, Wi-Fi and other
9 related services.

10 (h) DT expects that through the Consortium, the City would be able to access
11 Pacific Bell’s fiber-optic facilities on the Bay Bridge at a minimal cost.

12 (i) The Consortium Agreement is a standard agreement that all Joint Users must
13 execute. The Consortium is unwilling to modify the terms and conditions of the agreement to
14 include standard City contract provisions.

15 (j) DT expects the City’s membership in the Consortium to continue, unless the City
16 elects to terminate either the Consortium Agreement or the Pacific Bell Agreement, or the
17 other Joint Users terminate the City’s participation due to a material breach by the City.

18 (k) To become a party to the Consortium Agreement and access the fiber-optic
19 facilities, the City will be required to agree to mutual indemnity provisions required of each
20 Consortium member with respect to all other Consortium members, and to indemnify
21 obligations pertaining to all Consortium members with respect to the Consortium Manager for
22 the Consortium Manager’s performance under the Consortium Agreement, unless the
23 Consortium Manager has been negligent or exercised willful misconduct.

24 (l) In addition, to become a party to the Consortium Agreement and access the
25 fiber-optic facilities, the City would be required to satisfy the insurance provision of the

1 Consortium Agreement. The City has informed the Consortium Manager that the City is self-
2 insured, which the Consortium Manager has agreed satisfies the insurance requirement.

3 (m) In 2013, the City paid \$5,000 to join the Consortium. There are no annual fees
4 for joining the Consortium. The City's recurring costs will be solely in connection with the
5 City's access to fiber-optic facilities pursuant to the Pacific Bell Agreement, and will depend on
6 the number of fibers the City uses. DT expects that these funds will be available in its budget.

7 (n) To access Pacific Bell's fiber-optic facilities, the City would also have to execute
8 the Pacific Bell Agreement. This is a standard agreement that all Joint Users must execute.
9 Pacific Bell is unwilling to modify the terms and conditions of the agreement to include
10 standard City contract provisions.

11 (o) The Pacific Bell Agreement parallels the Consortium Agreement. As long as the
12 City is a Joint User under the Consortium Agreement, the City will be a party to the Pacific
13 Bell Agreement.

14 (p) The Risk Manager has reviewed the insurance and indemnity provisions of the
15 proposed agreements and supports the department's decision to proceed with these
16 contracts.

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18 Section 2. Authorization to Enter into Contract with the Consortium.

19 (a) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
20 authorizes the Executive Director of DT to execute the Consortium Agreement for a term in
21 excess of 10 years. The Executive Director of DT shall take all steps necessary for the City to
22 join the Consortium and obtain access to fiber-optic facilities on the Bay Bridge pursuant to
23 the Pacific Bell Agreement. A copy of the Consortium Agreement is on file with the Clerk of
24 the Board of Supervisors in File No. 160827.

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1 (b) The Board of Supervisors finds that it is reasonable and in the public interest to
2 waive the requirement in Administrative Code Section 21.9 that contracts not include an
3 automatic renewal provision. The City's need to be a member of the Consortium will likely
4 coincide with the continued existence of the Consortium. If not, the City can elect to terminate
5 its participation in the Consortium. Accordingly, the requirement in Administrative Code
6 Section 21.9 that contracts not include an automatic renewal provision is hereby waived for
7 the Consortium Agreement.

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9 **Section 3. Authorization to Enter into Contract with Pacific Bell.**

10 (a) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
11 authorizes the Executive Director of DT to execute the Pacific Bell Agreement for a term in
12 excess of 10 years. The Executive Director of DT shall take all steps necessary for the City to
13 obtain access to fiber-optic facilities on the Bay Bridge pursuant to the Pacific Bell Agreement.
14 A copy of the Pacific Bell Agreement is on file with the Clerk of the Board of Supervisors in
15 File No. 160827.

16 (b) The Board of Supervisors finds that it is reasonable and in the public interest to
17 waive the requirement in Administrative Code Section 21.9 that contracts not include an
18 automatic renewal provision. The City's participation in this agreement is necessary for the
19 City to continue to access Pacific Bell's fiber-optic facilities. If the City no longer needs to use
20 those facilities, the City can elect to terminate its participation in the agreement. Accordingly,
21 the requirement in Administrative Code Section 21.9 that contracts not include an automatic
22 renewal provision is hereby waived for the Consortium Agreement.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

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4 By: _____
5 Austin M. Yang
6 Deputy City Attorney
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