Note:

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

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

Additions are *single-underline italics Times New Roman*; deletions are strikethrough italies Times New Roman. Board amendment additions are double underlined. Board amendment deletions are strikethrough normal.

Be it ordained by the People of the City and County of San Francisco: Section 1. Findings.

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

17

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

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

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

- (e) In the "Bay Bridge Consortium Agreement" dated August 28, 1997, as supplemented by a November 22, 2000 agreement (collectively the "Consortium Agreement"), the Consortium established the terms and conditions under which Joint Users would share the Consortium's responsibilities and obligations under the Pacific Bell Agreement.
  - (f) The Consortium recently offered the City access to these fiber-optic facilities.
- (g) The Department of Technology ("DT") has determined that accessing these fiber-optic facilities, which can only be obtained through the Consortium, would benefit City departments by providing high speed data connections for public safety, Wi-Fi and other related services.
- (h) DT expects that through the Consortium, the City would be able to access Pacific Bell's fiber-optic facilities on the Bay Bridge at a minimal cost.
- (i) The Consortium Agreement is a standard agreement that all Joint Users must execute. The Consortium is unwilling to modify the terms and conditions of the agreement to include standard City contract provisions.
- (j) DT expects the City's membership in the Consortium to continue, unless the City elects to terminate either the Consortium Agreement or the Pacific Bell Agreement, or the other Joint Users terminate the City's participation due to a material breach by the City.
- (k) To become a party to the Consortium Agreement and access the fiber-optic facilities, the City will be required to agree to mutual indemnity provisions required of each Consortium member with respect to all other Consortium members, and to indemnity obligations pertaining to all Consortium members with respect to the Consortium Manager for the Consortium Manager's performance under the Consortium Agreement, unless the Consortium Manager has been negligent or exercised willful misconduct.
- (I) In addition, to become a party to the Consortium Agreement and access the fiber-optic facilities, the City would be required to satisfy the insurance provision of the

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

- (m) In 2013, the City paid \$5,000 to join the Consortium. There are no annual fees for joining the Consortium. The City's recurring costs will be solely in connection with the City's access to fiber-optic facilities pursuant to the Pacific Bell Agreement, and will depend on the number of fibers the City uses. DT expects that these funds will be available in its budget.
- (n) To access Pacific Bell's fiber-optic facilities, the City would also have to execute the Pacific Bell Agreement. This is a standard agreement that all Joint Users must execute. Pacific Bell is unwilling to modify the terms and conditions of the agreement to include standard City contract provisions.
- (o) The Pacific Bell Agreement parallels the Consortium Agreement. As long as the City is a Joint User under the Consortium Agreement, the City will be a party to the Pacific Bell Agreement.
- (p) The Risk Manager has reviewed the insurance and indemnity provisions of the proposed agreements and supports the department's decision to proceed with these contracts.

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

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

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

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

- (a) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors authorizes the Executive Director of DT to execute the Pacific Bell Agreement for a term in excess of 10 years. The Executive Director of DT shall take all steps necessary for the City to obtain access to fiber-optic facilities on the Bay Bridge pursuant to the Pacific Bell Agreement. A copy of the Pacific Bell Agreement is on file with the Clerk of the Board of Supervisors in File No. 160827.
- (b) The Board of Supervisors finds that it is reasonable and in the public interest to waive the requirement in Administrative Code Section 21.9 that contracts not include an automatic renewal provision. The City's participation in this agreement is necessary for the City to continue to access Pacific Bell's fiber-optic facilities. If the City no longer needs to use those facilities, the City can elect to terminate its participation in the agreement. Accordingly, the requirement in Administrative Code Section 21.9 that contracts not include an automatic renewal provision is hereby waived for the Consortium Agreement.

Deputy City Attorney

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By:

Mayor Lee Page 5

**BOARD OF SUPERVISORS** 



## City and County of San Francisco Tails

City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

## Ordinance

File Number:

160827

Date Passed: August 02, 2016

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

July 28, 2016 Board of Supervisors - PASSED ON FIRST READING

Ayes: 8 - Avalos, Breed, Campos, Cohen, Mar, Peskin, Tang and Wiener

Excused: 1 - Farrell
Absent: 2 - Kim and Yee

July 27, 2016 Budget and Finance Sub-Committee - RECOMMENDED AS COMMITTEE REPORT

August 02, 2016 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

File No. 160827

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 8/2/2016 by the Board of Supervisors of the City and County of San Francisco.

> Angelå Čalvillo Clerk of the Board

Mayor

Date Approved