

Los Angeles  Department of Water & Power

ERIC GARCETTI
Mayor

Commission
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BARBARA E. MOSCHOS, *Secretary*

MARCIE L. EDWARDS
General Manager

October 22, 2014

The Honorable City Council
City of Los Angeles
Room 395, City Hall
Los Angeles, California 90012

Honorable Members:

Subject: Optical Fiber Lease Agreement No. FO-741-02/2014 (Master); Short Form IRU-01 Lease Agreement No. FO-742-02/2014 (IRU-01); Short Form IRU-02 Lease Agreement No. FO-743-02/2014 (IRU-02); Short Form IRU-03 Lease Agreement No. FO-744-02/2014 (IRU-03); Short Form IRU-04 Lease Agreement No. FO-745-02/2014 (IRU-04); and Short Form IRU-05 Lease Agreement No. FO-746-02/2014 (IRU-05) with NBC Universal, Inc.

Pursuant to Charter Section 606, enclosed for approval by your Honorable Body is Resolution No. 015 068, adopted by the Board of Water and Power Commissioners on October 21, 2014, approved as to form and legality by the City Attorney, which approves Optical Fiber Lease Agreement No. FO-741-02/2014 (Master); Short Form IRU-01 Lease Agreement No. FO-742-02/2014 (IRU-01); Short Form IRU-02 Lease Agreement No. FO-743-02/2014 (IRU-02); Short Form IRU-03 Lease Agreement No. FO-744-02/2014 (IRU-03); Short Form IRU-04 Lease Agreement No. FO-745-02/2014 (IRU-04); and Short Form IRU-05 Lease Agreement No. FO-746-02/2014 (IRU-05) with NBC Universal, Inc. for lease of LADWP Optical Fibers.

If additional information is required, please contact Ms. Winifred Yancy, Director of Intergovernmental Affairs and Community Relations, at (213) 367-0025.

Sincerely,



Barbara E. Moschos
Board Secretary

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Enclosures: LADWP Resolution
Board Letter
CAO Report

Agreement No. FO-741-02/2014 (Master)
Agreement No. FO-742-02/2014 (IRU-01)

Agreement No. FO-743-02/2014 (IRU-02)
Agreement No. FO-744-02/2014 (IRU-03)
Agreement No. FO-745-02/2014 (IRU-04)
Agreement No. FO-746-02/2014 (IRU-05)

Los Angeles Aqueduct Centennial Celebrating 100 Years of Water 1913-2013

c/enc: Mayor Eric Garcetti

Councilmember Felipe Fuentes, Chair, Energy and the Environment Committee

Gerry F. Miller, Chief Legislative Analyst

Miguel A. Santana, City Administrative Officer

Rafael Prieto, Legislative Analyst, CLA

William R. Koenig, Chief Administrative Analyst

Winifred Yancy

WHEREAS, Optical Fiber Lease Agreement No. FO-741-02/2014 (Master), Short Form IRU-01 Lease Agreement No. FO-742-02/2014 (IRU-01), Short Form IRU-02 Lease Agreement No. FO-743-02/2014 (IRU-02), Short Form IRU-03 Lease Agreement No. FO-744-02/2014 (IRU-03), Short Form IRU-04 Lease Agreement No. FO-745-02/2014 (IRU-04), and Short Form IRU-05 Lease Agreement No. FO-746-02/2014 (IRU-05) between the Los Angeles Department of Water and Power (LADWP) and NBC Universal, Inc. (NBC Universal), will continue to grant NBC Universal the Indefeasible Right of Use of certain components of LADWP's fiber optic network which will generate revenues that will be deposited into LADWP's Power Revenue Fund; and

WHEREAS, these Master and IRU-01 to IRU-05 Agreements are to replace Agreement Nos. FO-561-12/2008, FO-562-12/2008, FO-628-05/2010, FO-635-07/2010, FO-724-03/2013, and FO-735-08/2013 which expired on May 5, 2014 and will commence promptly to ensure continual operations; and


WHEREAS, the Board of Water and Power Commissioners finds that the optical fibers to be leased are not presently needed for LADWP purposes and the execution of these leases will not interfere with LADWP operations; and

WHEREAS, the term of the Master is fifteen years and IRU-01 to IRU-05 is five years with automatic yearly renewal up to a maximum of fifteen years, subject to any market rate adjustment set by LADWP pursuant to City Charter Section 607 (b).

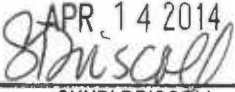
NOW, THEREFORE, BE IT RESOLVED that the proposed Master and IRU-01 to IRU-05, approved as to form and legality by the City Attorney and filed with the Secretary of the Board, between LADWP and NBC Universal, be and the same are hereby approved and ratified.

BE IT FURTHER RESOLVED that the President or Vice President, or the General Manager, or such person as the General Manager shall designate in writing, and the Secretary, Assistant Secretary, or the Acting Secretary of the Board are hereby authorized and directed to execute said Master and IRU-01 to IRU-05 for and on behalf of LADWP.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of the resolution adopted by the Board of Water and Power Commissioners of the City of Los Angeles at its meeting held OCT 2 1 2014


Secretary

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. FEUER, CITY ATTORNEY

APR 14 2014
BY 
SYNDI DRISCOLL
DEPUTY CITY ATTORNEY





Los Angeles
Department of
Water & Power

RESOLUTION NO. _____

BOARD LETTER APPROVAL



DAVID H. WIGGS
Chief Administrative Officer



MARCIE L. EDWARDS
General Manager

DATE: September 23, 2014

SUBJECT: Optical Fiber Lease Agreement No. FO-741-02/2014 (Master), Short Form IRU-01 Lease Agreement No. FO-742-02/2014 (IRU-01), Short Form IRU-02 Lease Agreement No. FO-743-02/2014 (IRU-02), Short Form IRU-03 Lease Agreement No. FO-744-02/2014 (IRU-03), Short Form IRU-04 Lease Agreement No. FO-745-02/2014 (IRU-04) and Short Form IRU-05 Lease Agreement No. FO-746-02/2014 (IRU-05) With NBC Universal, Inc. (NBC Universal) for Lease of LADWP Optical Fibers

SUMMARY

Fiber Optics Enterprise (FOE) provides fiber optic circuits for internal LADWP use for control systems and the corporate network. FOE leases the excess fiber optic cable capacity to commercial businesses. A Master Agreement called the "Optical Fiber Lease Agreement" establishes contractual terms and conditions with each commercial fiber customer. A subordinate agreement to the Master Agreement, the "Indefeasible Right of Use" (IRU) agreement, is established for each individual fiber optic cable lease. IRUs have their own contract period and terms, and may be added at any time during the life of the Master Agreement by our commercial fiber customers.

The proposed Master and IRU-01 to IRU-05 Agreements replace Agreements Nos. FO-561-12/2008, FO-562-12/2008, FO-628-05/2010, FO-635-07/2010, FO-724-03/2013, and FO-735-08/2013 which expired on May 5, 2014. The term of the Master Agreement is fifteen years and IRU-01 to IRU-05 is five years up to a maximum of fifteen years. These new agreements will allow NBC Universal to continue to use LADWP's excess fiber cable capacity. The IRU agreements may generate up to \$3.8 million in revenue for the Power System if the full term is realized.

City Council approval is required according to Charter Section 606.

RECOMMENDATION

It is requested that the Board of Water and Power Commissioners adopt the attached Resolution recommending City Council's approval of execution of proposed Master and IRU-01 to IRU-05 Agreements per Charter Section 606.

FINANCIAL INFORMATION

IRU-01 to IRU-05 Agreements will generate annual revenue of \$253,008 and a total revenue of \$3,795,120 for the Power Revenue Fund, if the full term is realized.

The proposed Master and IRU-01 to IRU-05 Agreements replace Agreements Nos. FO-561-12/2008, FO-562-12/2008, FO-628-05/2010, FO-635-07/2010, FO-724-03/2013, and FO-735-08/2013 which expired on May 5, 2014 and will commence promptly to ensure continued service.

Contract negotiations with NBC Universal began in late October 2013, and a draft of the contract was completed in February 2014. The final version of the contract has been with NBC Universal since late February 2014 and has now been signed in April 2014.

Term/Duration:	Master Agreement: <u>15 years</u> Fixed Term	IRU-01 to IRU-05: <u>5 years</u> Initial Term and <u>15 years</u> Maximum Term
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Termination:	LADWP's Sole Discretion: <u>180 days</u>	NBC Universal's Sole Discretion: <u>180 days</u>
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There is no additional cost associated with the execution of IRU-01 to IRU-05 since these agreements enable the continuation of active circuits provisioned under expired agreements.

IRU-01 to IRU-05 were priced using the current FOE Dark Fiber tiered pricing structure reviewed in the 2013 pricing study. No Consumer Price Index (CPI) adjustment was applied because the Communications CPI for Urban Consumers has not increased since this pricing structure was established. IRU-01 to IRU-05 have the following annual market rate adjustment built in:

Market Rate Adjustment Type:	<input checked="" type="checkbox"/> Market Pricing	<input type="checkbox"/> CPI	<input type="checkbox"/> Fixed Pricing
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BACKGROUND

FOE provides fiber optic circuits for internal LADWP use for both control systems and the corporate network. FOE also generates revenue from leasing excess fiber optic cable capacity to Los Angeles (LA) businesses. The customers are primarily LA area businesses, entertainment industries, health and educational institutions, and City of Los Angeles entities.

NBC Universal is a media and entertainment company with a global customer base.

NBC Universal is an existing FOE customer and is current with all payments required by previously executed agreements. A summary of their agreements to date is as follows:

AGREEMENT NO.	DESCRIPTION	TERM	EXPIRATION DATE	ANNUAL REVENUE
FO-561-12/2008	Master Agreement	5 years	May 5, 2014	Not Applicable
FO-562-12/2008	IRU-01	3 years	May 5, 2014	\$33,600
FO-628-05/2010	IRU-02	1 year with automatic renewal up to 5 years	May 5, 2014	\$69,840
FO-635-07/2010	IRU-03	1 year with automatic renewal up to 5 years	May 5, 2014	\$69,840
FO-724-03/2013	IRU-04	1 year with automatic renewal up to 5 years	May 5, 2014	\$81,360
FO-735-08/2013	IRU-05	7 months	May 5, 2014	\$70,560
Total Annual Revenue				\$325,200

The proposed contract will require City Council approval according to Charter Section 606. A copy of the City Administrative Officer (CAO) report dated August 29, 2014 is attached.

CITY ATTORNEY

The Office of the City Attorney reviewed and approved Master, IRU-01 to IRU-05 Agreements and Resolution as to form and legality.

ATTACHMENTS

- CAO Report
- Resolution
- Agreements


0220-04691-0006

TRANSMITTAL

TO Marcie L. Edwards, General Manager Department of Water and Power	DATE SEP 10 2014	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT N/A	

RESOLUTION AUTHORIZING AN OPTICAL FIBER USE LEASE AGREEMENT AND FIVE ASSOCIATED SHORT FORM INDEFEASIBLE RIGHT OF USE LEASE AGREEMENTS WITH NBC UNIVERSAL, INC.

Approved and transmitted for further processing including Council consideration.
See the City Administrative Officer report attached.

MAYOR

(Ana Guerrero)

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: August 29, 2014

CAO File No.: 0220-04691-0006

Council File No.:

Council District:

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Transmittal from the Department of Water and Power dated August 14, 2014; referred by the Mayor for report on August 18, 2014

Subject: **RESOLUTION AUTHORIZING AN OPTICAL FIBER USE LEASE AGREEMENT AND FIVE ASSOCIATED SHORT FORM INDEFEASIBLE RIGHT OF USE LEASE AGREEMENTS WITH NBC UNIVERSAL, INC.**

SUMMARY

The Department of Water and Power (DWP; Department) requests approval of a proposed resolution which authorizes the Department to execute several agreements with NBC Universal, Inc. (NBC Universal) consisting of an Optical Fiber Lease Agreement No. FO-741-02/2014 (Master Agreement) and five associated Short Form Indefeasible Right of Use (IRU) Lease Agreements including FO-742-02/2014 (IRU-01), FO-743-02/2014 (IRU-02), FO-744-02/2014 (IRU-03), FO-745-02/2014 (IRU-04), and FO-746-02/2014 (IRU-05) for the exclusive use of segments of the DWP-owned Optical Fiber system. NBC Universal has leased segments of the optical fiber system since 2009 and plans to continue using the system for telecommunication purposes, including telephone, data, and video services. The proposed Master Agreement and five IRU agreements will replace prior agreements which expired on May 5, 2014 and will commence promptly following approval by the Mayor, City Council, and DWP Board of Commissioners to ensure continued service.

The Master Agreement sets the general terms and conditions for exclusive optical fiber system leases whereas the specific business terms are identified in several subordinate Indefeasible Right of Use (IRU) lease agreements. Approval of the proposed resolution sets the term of the Master Agreement to 15 years expiring in 2029, and enables the continuation of all active subordinate IRUs. The Master Agreement can be terminated at the sole discretion of DWP with 180 days notice while the IRUs can be terminated at the sole discretion of NBC Universal with 180 days notice. In accordance with Charter Section 606, Council approval is necessary for entering into lease agreements that exceed five years. The City Attorney has approved the proposed agreements as to form and legality.

The Department states that it expects to receive revenue of approximately \$253,008 annually or \$3,795,120 if the full term is realized for the Power Revenue Fund based on service rates included within several associated IRUs. The pricing schedule for each IRU is set at the market-

rate based on a price survey and includes applicable discounts for certain industries and terms. Future price adjustments will be negotiated periodically, subject to the provisions in each IRU, to reflect the market rates; although, in no case will the period between adjustments exceed five years, in accordance with Charter Section 607(b). Since the optic fiber circuits were already set up under the prior agreement, no additional connection cost will be incurred.

Upon review of the attached DWP request, it is the opinion of this Office that the items can be approved as the requested action appears to be reasonable and in accordance with City policies and procedures.

RECOMMENDATION

That the Mayor:

1. Approve the proposed resolution which authorizes the Department of Water and Power to execute several agreements with NBC Universal, Inc. consisting of an Optical Fiber Lease Agreement (Master Agreement) and five associated Short Form Indefeasible Right of Use (IRU) Lease Agreements for the exclusive use of segments of the DWP-owned Optical Fiber system; and
2. Return the proposed resolution to the Department for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

Approval of the proposed Agreement could result in revenue of approximately \$253,008 annually or a total of \$3,795,120 if the 15 year term is realized for the Power Revenue Fund. There is no impact on the City's General Fund. Future price adjustments will be negotiated periodically, subject to the provisions in each IRU, but in no case will the period between adjustments exceed five years, in accordance with Charter Section 607(b). The proposed Agreement complies with the Department's adopted Financial Policies.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 606, "Process for Granting Franchises, Permits, Licenses and Entering Into Leases," unless the Council takes action of disapproving a franchise, permit, license, or lease that is longer than five years within 30 days after submission to Council, the document will be deemed approved.

MAS:RPR:10150004

Attachments