


0150-10589-0000

**TRANSMITTAL**

TO Marcie L. Edwards, General Manager Department of Water and Power	DATE JAN 19 2010	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT	

**OPTICAL FIBER USE LEASE AGREEMENT AND SHORT FORM INDEFEASIBLE RIGHT OF USE LEASE AGREEMENT WITH LEVEL 3 COMMUNICATIONS, LLC**

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: January 15, 2016

CAO File No.: 0150-10589-0000

Council File No.:

Council District: Citywide

To: The Mayor

From: Miguel A. Santana, City Administrative Officer *MS*

Reference: Communication from the Department of Water and Power dated December 8, 2015; referred by the Mayor for report on December 29, 2015

Subject: **OPTICAL FIBER USE LEASE AGREEMENT AND SHORT FORM INDEFEASIBLE RIGHT OF USE LEASE AGREEMENT WITH LEVEL 3 COMMUNICATIONS, LLC**

SUMMARY

The Department of Water and Power (DWP; Department) requests approval of a proposed resolution to amend and restate two existing agreements with Level 3 Communications, LLC (Level 3) relating to the use of DWP's fiber optic system. Below is a summary of the proposed agreements:

Agreement	Purpose	Term (as ratified)	Amount
Optical Fiber Use Lease Agreement (Master Agreement) FO-625-05/2010	To establish the general contractual terms and conditions.	20-years. (August 3, 2010 – August 3, 2030)	NA
Short Form Indefeasible Right of Use (IRU) Lease Agreement FO-626-05/2010	To identify the contract period and terms for each fiber optic cable.	1-year. Automatic annual renewal through January 6, 2021.	\$124,099 annually. \$620,495 over 5-year term.

The proposed agreements replace similar agreements with Level 3 that began in August 2010 and expired in August 2015. Approval of the proposed resolution specifically extends the recently expired five year term of the Master Agreement by 15 years resulting in a total duration of 20 years commencing August 3, 2010 through August 3, 2030. Additionally, approval authorizes a one-year subordinate IRU with automatic annual renewal for a total of five years through January 6, 2021. DWP states that while negotiations of the proposed agreements were in process, it was mutually agreed that Level 3 will pay, in advance, for all lease fees under the terms and conditions of the prior IRU Agreement.

The Department states that it expects to receive \$124,099 annually in revenue for the Power Revenue Fund based on service rates included within the IRU. The pricing schedule for the IRU

is set at the market-rate based on a price survey. Future price adjustments will be negotiated periodically, subject to the provisions in the 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 previous agreement, no additional connection cost will be incurred.

The Master Agreement and IRU can be terminated by either DWP or Level 3 with 30 days written 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 resolution and agreements as to form and legality.

## RECOMMENDATIONS

That the Mayor:

1. Approve the proposed resolution which authorizes the Amended and Restated Optical Fiber Lease Agreement No. FO-625-05/2010 and Short Form Indefeasible Right of Use Lease Agreement No. FO-626-05/2010 with Level 3 Communications, LLC for use of the DWP 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 will result in revenue for the Power Revenue Fund up to \$124,099 annually and \$620,495 over a five year term. There is no impact on the City's General Fund. 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.