

Agenda Report

March 15, 2021

TO: Honorable Mayor and City Council
FROM: Department of Information Technology
SUBJECT: AUTHORIZATION TO ENTER INTO A FIBER LEASE AGREEMENT WITH LEVEL 3 COMMUNICATIONS, LLC

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the following proposed action is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15301 (c) (Existing Facilities); and
2. Authorize the City Manager to enter into a ten-year fiber lease agreement with Level 3 Communications, LLC for use of City fiber, resulting in \$1,300,000 in revenue over the term of the agreement.

BACKGROUND:

In 1999, following the completion of the City's original fiber optic backbone, the City leased a significant portion of the fiber in the backbone to GST Telecom, Inc (GST). The fiber lease, which resulted from a competitive Request for Proposals process, was designed to recoup the City's cost of installing the fiber network and to bring competitive telecommunications services to the local business market. The original lease agreement, 17,090, had a twenty-year term with one optional one ten-year renewal term, and generated revenue to the City of over \$4.8 million.

GST was subsequently purchased by Time Warner Telecom of California, LLP (Time Warner Telecom), and the original fiber lease agreement was amended and restated as City agreement 17,090-1, with the same twenty-year term and lease payment schedule. The initial twenty-year term of the agreement expired on November 15, 2019.

During that time, there was significant corporate restructuring and merger and acquisition activity in the telecommunications industry. Time Warner Telecom became TW TELECOM LLC in 2014, and subsequently changed its name to Level 3 Telecom, LLC (Level 3) in 2016, which is now a subsidiary of CenturyLink, Inc.

In June 2019, Level 3 notified the City of its interest in exercising the optional 10 year renewal of the fiber lease agreement. The lease agreement provided for renewal at Lessee's option, upon agreement by the City and Lessee on the fair market value of the rent to be paid for the leased fiber during the renewal period.

Level 3 subsequently identified desired changes to the number of strands to be leased, and to the lease fee. Concurrently, City staff identified that a variety of terms in the agreement related to operating and maintenance procedures should be updated to reflect current network operations practices. Therefore, in October 2019, the agreement, 17,090-1, was amended to extend it for one year to allow time for changes to the number of strands and terms in the agreement to be finalized. This agreement was restated as City agreement 17,090-2, and expired on November 15, 2020.

Although the current fiber lease agreement expired, Level 3 and City staff continued to negotiate in good faith on revised terms, pricing, and fiber strands to use on a prospective basis. Based on those discussions, and the fact that the terms differ substantially from the original lease agreement, staff is recommending authorization to enter into a new fiber lease agreement with Level 3. The new agreement will have a ten-year term and generate \$1,300,000 in revenue from lease fees. The lease fee, which is distance-based, consisting of 744 strand-miles, compensates the City for ongoing use of the fiber, as well as City maintenance and repair of any outages. This new agreement also returns 1,956 strand-miles to the fiber ring, allowing the City to lease more fiber assets to potential customers in the near future.

COUNCIL POLICY CONSIDERATION:

The proposed agreement promotes the Council goal to support and promote the quality of life and the local economy by leveraging the fiber optic network to help meet the data communications needs of local institutions and businesses. Additionally, the agreement supports the Council goal to maintain fiscal responsibility and stability by generating revenue that will facilitate ongoing operation of the fiber optic network as a self-sustaining activity.

ENVIRONMENTAL ANALYSIS:

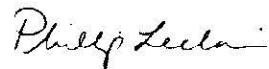
The proposed agreement extension is exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15301 (c) Existing Facilities which exempts actions relating to existing facilities or structures where there is negligible or no expansion of the use. The proposed action relates to lease of fiber that is already installed in existing conduit systems.

FISCAL IMPACT:

This action will generate revenue to the Telecommunications Fund from the lease fee of \$1,300,000 during the ten-year term of the agreement. Additional revenue may also be generated if Level 3 requests that the City perform work on the leased strands.

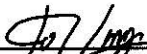
The anticipated impact to other operational programs or capital projects as a result of this action will be minimal.

Respectfully submitted,



PHILLIP LECLAIR
Chief Information Officer
Department of Information Technology

Prepared by:



Jonathan Lang (Mar 4, 2021 18:58 PST)

Jonathan Lang
Telecom & Regulatory Administrator

Approved by:



steve mermell (Mar 11, 2021 11:11 PST)

STEVE MERMELL
City Manager

Attachment A: Taxpayer Protection Amendment