

AGENDA REPORT

Ordinance: Approval of the *Amendment No. 3 to Conduit Use Agreement* with Level 3 Telecom of California, L.P., for a Term of Three Years with Two Additional One-Year Extension Options, to Commence on December 1, 2021, for Operations at Oakland International Airport with Anticipated Total Revenues of \$16,236 in Fiscal Year 2022. **(Aviation)**

MEETING DATE: 10/14/2021

AMOUNT: \$16,236 (FY 2022) Revenue

PARTIES INVOLVED: **Level 3 Telecom of California, L.P.**
James Crowe, CEO
Littleton, CO

SUBMITTED BY: Bryant L. Francis C.M., Director of Aviation

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

The requested action would adopt an Ordinance to (i) approve the *Amendment No. 3 to Conduit Use Agreement* (“*Amendment No. 3*”) with Level 3 Telecom of California, L.P. (“Level 3”) at Oakland International Airport (“OAK” or “Airport”), for a three-year extended term with two consecutive one-year options for Level 3 to extend the term, to commence on December 1, 2021, and expire as late as November 30, 2026; and (ii) authorize the Executive Director to execute the amendment and any other documents required to effect the transaction detailed below.

BACKGROUND

The current *Conduit Use Agreement* (“CUA”) with Level 3 provides for the use of Port owned conduit to support the fiber-optic infrastructure for the Federal Express Corporation (“FedEx”) Metroplex sorting facility located at OAK. A chronology of the relationship between the Port of Oakland (“Port”) and Level 3 is as follows:

- At its Meeting on February 12, 2005, the Board adopted Ordinance No. 3831 approving a Conduit Use Agreement (“Agreement”) with Time Warner Telecom of California, L.P. (“Time Warner”) to install, maintain and operate fiber-optic cable within 9,984 linear feet of Port-Owned, subsurface conduit duct bank to provide internet access for FedEx operations. The term of the Agreement commenced on April 1, 2006 and expired on November 30, 2011; this expiration date was concurrent with the expiration date of the existing *Lease* between FedEx and the Port for FedEx’s sorting facility. The Agreement

with Level 3 would terminate in the event of: (i) the FedEx Lease terminating for any reason, or, (ii) the Agreement between FedEx and Time Warner, or its successors (now Level 3), terminating or expiring.

- In 2008, Time Warner transferred over 51% of its company's shares to tw telecom of California l.p. ("tw", company name is all lowercase). The Agreement was transferred and assigned from Time Warner to tw as a part of the sale and corporate name change.
- Effective April 1, 2009, the Port and FedEx entered into a long-term *Amended and Restated Lease* (expires December 31, 2036). FedEx and tw also extended their Agreement for tw to continue providing internet services to FedEx. Thereafter, at its meeting on December 1, 2011, the Board adopted Ordinance No. 4175 approving *Amendment No. 1 to Conduit Use Agreement* ("Amendment No. 1") with tw to extend the term of the Agreement for an additional five (5) year period. The term of *Amendment No. 1* commenced on December 1, 2011 and expired on November 30, 2016.
- In October 2014, Level 3 purchased tw telecom inc., along with all domestic and international subsidiaries, including tw. The Agreement, as amended was transferred and assigned from tw to Level 3, as part of the sale and corporate name change.
- At its regular meeting on June 23, 2016, the Board adopted Ordinance No. 4380 approving *Amendment No. 2 to Conduit Use Agreement* ("Amendment No. 2") with Level 3. *Amendment No. 2* extended the term of the CUA for an additional five years from December 1, 2016 through November 30, 2021.

A depiction of the approximate route of Level 3's use of Port owned conduit is depicted below:



Level 3 is an indirect subsidiary of Lumen Technologies, Inc., a Louisiana based Publicly Traded Company (NYSE: LUMN). Currently, Level 3 remains the exclusive provider of fiber-optic internet access for the FedEx Metroplex sorting facility at the Airport. The approximate length of Level 3's conduit use route remains at 9,984 linear feet.

ANALYSIS

The proposed *Amendment No. 3* allows Level 3's continued use of approximately 9,984 linear feet of an existing underground, Port-owned conduit duct bank between the Hegenberger Road entrance to the Airport and the FedEx sorting facility on Sally Ride Way; the basic terms and conditions of the proposed *Amendment No. 3* are found in Exhibit 1, attached hereto. The proposed rental rate of \$0.23 per linear foot should be considered market rate. There is adequate space within the duct bank for other potential users. Not extending the CUA would:

- Force Level 3 to remove its telecommunications infrastructure from the duct bank;
- Leave FedEx without a telecommunications services provider; and,
- Reduce the Port's rental revenue by more than \$16,000 per year.

BUDGET & STAFFING

There is no FY 2022 Budget or staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

Goal: Grow Net Revenues

Goal: Improve Customer Service

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this agreement as the Permittee does not employ 21 or more employees working on Port-related work. However, the Permittee will be required to certify that should the Living Wage obligations become applicable, the Permittee shall comply with the Living Wage obligations.

SUSTAINABILITY

The tenants have not proposed any development for the leased area. If the tenants decide to develop the site in the future, the tenant must comply with the 2000 Sustainability Policy and

complete the Sustainability Opportunities Assessment Form. Although no development is proposed, CNG, as an alternative transportation fuel, has value from a sustainability standpoint because of its clean burning qualities, its domestic resource base, and its availability via underground pipelines. Providing access to CNG fueling infrastructure has been and continues to be a cornerstone in the Airport's alternative fuel program.

ENVIRONMENTAL

CEQA Determination: This action has been determined to be categorically exempt from requirements of the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of existing or former use. No changes to the premises or use are proposed.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

1. Adopt an Ordinance that provides for the following:
 - a. Approve the terms and conditions of the proposed *Amendment No. 3 to Conduit Use Agreement* with Level 3 Telecom of California, L.P. at Oakland International Airport, for a three-year extended term with two consecutive one-year options to extend the term, to commence on December 1, 2021 and expire at the latest on November 30, 2026 and providing \$16,236 in anticipated revenue for FY 2022
 - b. Authorize the Executive Director's execution of the *Amendment No. 3 to Conduit Use Agreement* with Level 3 Telecom of California, L.P.

This is the recommended action.

2. Do not approve the proposed *Amendment No. 3 to Conduit Use Agreement* with Level 3 Telecom of California, L.P, as outlined above, which would result in:
 - a. The termination of Level 3's operating privileges at the Airport effective November 1, 2021;
 - b. The loss of \$16,236 in anticipated revenue for FY 2022; and,
 - c. Cause significant negative business operations impacts to FedEx – one of the Port's major tenants – by disrupting Level 3's delivery of internet services to the FedEx Metroplex.

RECOMMENDATION

It is recommended the Board adopt an Ordinance:

- Approving the *Amendment No. 3 to Conduit Use Agreement* with Level 3 Telecom of California, L.P, extending the term from December 1, 2021 to November 30, 2024, with two consecutive one-year options to further extend the term to as late as November 30, 2026, with anticipated total FY 2022 revenue to the Port in the amount of \$16,236, and;
- Authorizing the Executive Director's execution of the *Amendment No. 3 to Conduit Use Agreement* with Level 3 Telecom of California, L.P. and any other documents to effect this transaction;
- All subject to approval by the Port Attorney as to form and legality.

Exhibit 1

TERM SHEET FOR AMENDMENT NO. 3 TO CONDUIT USE AGREEMENT

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|--------------------------------|--|
| Landlord: | Level 3 Telecom of California, L.P., a Delaware limited partnership |
| Permittee: | City of Oakland, a Municipal Corporation, acting by and through its Board of Port Commissioners |
| Premises: | 9,984 linear feet of Port owned conduit situated between the Hegenberger Road entrance to the Airport and the FedEx Metroplex sorting facility on Sally Ride Way within the boundaries of Oakland International Airport, Oakland, CA 94621 |
| Permitted Use: | The Premises shall be used by Permittee to support fiber optic telecommunications infrastructure benefitting the FedEx Metroplex facility at the Airport. |
| Extension Term: | Thirty-Six (36) Months |
| Commencement Date: | December 1, 2021 |
| Expiration Date: | November 30, 2024 |
| Term Extension Options: | Two (2) consecutive one-year options to extend the Term |
| Consideration: | Monthly Rent = \$2,289.99 (adjusted annually per the terms of the CUA) |
| Performance Deposit: | \$15,000 (fixed throughout the term) |