

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
14	10/14/13	Open	Action	09/27/13

Subject: Approving License Agreements with Qwest Communications for Fiber Optic Cable

## ISSUE

Whether to approve a sale of fiber optic cable, a License Agreement with Qwest Communications Corporation for use of underground fiber conduit, and an amendment to a pre-existing License Agreement for use of RT right of way.

## RECOMMENDED ACTION

- A. Adopt Resolution No. 13 - 10\_\_\_\_\_, Approving First Amendment to the Irrevocable License Agreement for Underground Conduit Use between the Sacramento-Placerville Transportation Corridor Joint Powers Authority, Sacramento Regional Transit District and Qwest Communications Corporation for Additional Underground Conduit; and
- B. Adopt Resolution No. 13 - 10-\_\_\_\_, Approving the Bill of Sale and License Agreement - 12<sup>th</sup> Street with Qwest Communications Company, LLC.

## FISCAL IMPACT

Approval of the amended License Agreement would result in RT receiving a one-time past due payment of \$141,916 for the additional conduit. RT will also receive a one-time fee of \$65,502 for the remaining six years of the 20-year agreement.

Approval of the Bill of Sale and License Agreement would result in RT receiving a one-time fee of \$15,000 for the repurchase of fiber optic cable ownership and a one-time fee of \$245,640.

The total amount due upon execution of the new and amended agreements would be \$468,058.

## DISCUSSION

On August 9, 1999, the RT Board approved a 20-year License Agreement with Qwest Communications (a national provider of fiber optic based telecommunications), allowing Qwest to install five four-inch fiber optic conduits within the JPA/RT right of way from Alhambra Boulevard to Zinfandel Drive. Four of the fiber optic conduits were to be installed for Qwest's use and the fifth conduit was to be installed for RT's future communication system. Qwest installed an additional sixth conduit without RT's consent.

RT discovered the unauthorized conduit during construction of the Watt Avenue Grade Separation Project, but was unable to reach any resolution with Qwest Communications at that time. As part of the discussions regarding a new License Agreement for Qwest to use RT's downtown conduit system (also on the agenda for this meeting), staff again raised the issue of the unauthorized conduit and was able to reach agreement for Qwest to appropriately compensate RT for the

Approved:

Presented:

Final 10/8/13

General Manager/CEO

Real Estate Administrator

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unauthorized conduit. RT will receive a one-time payment of \$141,916.32 as compensation for the conduit for the last 14 years. Assuming the conduit remains empty, RT will receive a one-time payment of \$65,502 for the remaining six years of the 20-year term. If, during the remaining term, Qwest pulls fiber in the conduit, Qwest will pay the difference between \$10,917 per year and \$57,456 per year between the time the fiber is pulled and the end of the License term.

On March 4, 1991, the RT Board approved a 20-year License Agreement with Southern Pacific Telecommunications Company (a predecessor to Qwest Communications Corporation) for SP Telecom to use a portion of RT’s underground conduit to install 2 fiber optic cables. The cable extends 6,141 feet from a point 72 feet north of the 12<sup>th</sup> Street overcrossing to the intersection of 8<sup>th</sup> and L Streets, located within the City of Sacramento.

In 2011, the original license term expired and Qwest has been in a “holdover”/”trespasser” status since. Because Qwest failed to remove the fiber at the end of the License term, ownership of the fiber reverted to RT. Qwest has offered a settlement of \$15,000 to repurchase ownership of the fiber optic cables. In addition, Qwest has agreed to a new five-year License Agreement, pursuant to which RT will receive a one-time fee of \$245,640, which represents the assessed market value for use of the fiber optic cable.

Staff recommends the Board adopt the attached resolutions, approving the amendment to the Folsom Corridor License Agreement to encompass the unauthorized additional conduit, and approving the sale of the fiber-optic cable in the 12<sup>th</sup> Street corridor and a new 5-year License Agreement for use of the conduit.

RESOLUTION NO. 13-10-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

October 14, 2013

**APPROVING FIRST AMENDMENT TO THE IRREVOCABLE LICENSE AGREEMENT  
FOR UNDERGROUND CONDUIT USE BETWEEN THE SACRAMENTO-  
PLACERVILLE TRANSPORTATION CORRIDOR JOINT POWERS AUTHORITY,  
SACRAMENTO REGIONAL TRANSIT DISTRICT AND QWEST COMMUNICATIONS  
CORPORATION FOR ADDITIONAL UNDERGROUND CONDUIT**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE  
SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the First Amendment to the September 8, 1999 Irrevocable License Agreement for Underground Conduit Use between the Sacramento Regional Transit District and the Sacramento-Placerville Transportation Corridor Joint Powers Authority therein referred to collectively as "Licensor," and Qwest Communications Company, LLC, therein referred to as "Licensee," whereby Licensor consents to the continued presence of an unauthorized sixth conduit and Licensee agrees to compensate Licensor for the additional conduit, as further set forth therein, is hereby approved.

THAT, the General Manager/CEO is hereby authorized and directed to execute said First Amendment.

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PATRICK HUME, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 13-10-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

October 14, 2013

**APPROVING THE BILL OF SALE AND LICENSE AGREEMENT - 12<sup>TH</sup> STREET WITH QWEST COMMUNICATIONS COMPANY, LLC.**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, notwithstanding the provisions of the Procurement Ordinance (Ordinance No. 09-05-01) related to the disposition of surplus personal property, the sale of 6141 feet of fiber optic cable located within RT conduit in 12<sup>th</sup> Street to the intersection of 8<sup>th</sup> and L Streets, to Qwest Communications Company, LLC is hereby approved.

THAT, the License Agreement between the Sacramento Regional Transit District therein referred to as "RT," and Qwest Communications Company, LLC, therein referred to as "Licensee," whereby RT grants Licensee a 5-year license for the purpose of repurchasing fiber optic cables within RT's conduit and accessing and maintaining fiber optic cables within RT conduit, within the City of Sacramento, is hereby approved.

THAT, the General Manager/CEO is hereby authorized and directed to execute said License Agreement and Bill of Sale necessary to re-confer ownership of the cables.

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PATRICK HUME, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary