



Via Email Delivery

June 18, 2009

FBC Drainage District
Attn: Dwayne G. Grigar
Fort Bend County Drainage District
1004 Blume Road
Rosenberg, TX 77471

Re: Level 3 Communications, LLC, including its affiliates and subsidiary companies ("Level 3") Telecommunications Facility Relocation – SR 6 & US 90A & Union Pacific Railroad in Fort Bend County, Texas

Dear Mr. Grigar:

FBC Drainage District (the "Requestor") has contacted Level 3 regarding relocation and/or adjustment of fiber optic lines (the "Facilities") located at or in the vicinity of SR 6 & US 90A & Union Pacific Railroad, within the limits of Union Pacific Railroad ("ROW Provider") rights of way (the "ROW") for the benefit of the Ditch H Extension in Fort Bend County, passing from US 90A and under the Union Pacific Railroad line.

The current location of the Facilities in the ROW is set forth in the description attached hereto as Exhibit "A". Level 3 will relocate its Facilities to an alternative location in such manner to avoid all possible known conflicts between the Facilities and the Requestor's site improvements. The new location will be agreed upon by the ROW Provider and Level 3 and shall be located within property owned and under the control of the ROW Provider (the "New Facility Location") attached hereto as Exhibit "B", provided that:

- (1) ROW Provider first grants to Level 3 the complete authority to relocate its Facilities to the New Facility Location.
- (2) Level 3's contractor (or ROW Provider) will coordinate and perform all relocation work (the "Work"). Level 3 will use reasonable efforts to perform all Work from within the ROW Provider's right of way; however, where Level 3 is

7-22-09 2 orig. ret. to Rose Ann at Drainage

required to perform the Work from a third party's property, Level 3 will endeavor to do so at Requestor's sole cost and expense. In addition, Level 3 shall be permitted to perform the Work from Requestor's or others property. Where Level 3 performs the Work from Requestor's or others property, Level 3 will use reasonable efforts to minimize the impact of such Work thereon.

(3) Requestor will first provide Level 3 with a check in the amount of Two Hundred Twenty Five Thousand Five Hundred Forty Dollars and No Cents (**\$ 225,540.00**) USD prior to Level 3 performing any Work. Such amount reflects the estimated cost and expense, including a 15% administrative fee, of performing the Work. The check should be made out to Level 3 Communications, LLC and sent to the undersigned at the address listed below.

(4) UPON COMPLETION, REQUESTOR ACCEPTS THE WORK "AS IS". LEVEL 3 MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, WITH RESPECT TO THE WORK OR AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

(5) In the event that circumstances arise that cause the cost and expense of performing the Work to exceed the estimate, Level 3 will make an adjustment to the estimate. Requestor will pay such additional amounts, including a 15% administrative fee, within thirty (30) days of written notice from Level 3. In the event the cost and expense of performing the work is less than the estimated cost as outlined in section 3 above, Level 3 will refund the Requestor the difference between the estimated cost and the actual cost and expense of performing the Work. A failure to pay such amount shall cause same to bear interest from the due date until payment is received at a rate of one and one half percent (1 1/2%) per month (or part thereof).

(6) To the extent allowed by law, Requestor will indemnify, defend and hold Level 3, its affiliates, employees, invitees, contractors, subcontractors, agents, representatives and servants harmless from and against any loss, cost, damage and expense of whatever kind, including, but not limited to, the cost of obtaining any authorizations required by ROW Provider or any other entity, arising directly or indirectly (collectively "Claims") from (a) the Work, (b) the use or occupancy of the New Facility Location, and/or (c) Requestor's failure to perform under this Agreement. To the extent allowed by law, this indemnification will be limited to such claims or damages that arise from the sole or partial negligence, actions, or inaction of the Requestor's, affiliates, employees, invitees, contractors, subcontractors, agents, representatives and servants. Such Claims shall include attorneys' fees and court costs. The provisions of this paragraph (6) shall survive the performance of the Work.

(7) Level 3 shall obtain and maintain during the course of Work, the following insurance: (a) Commercial General Liability (for bodily injury) with combined single limit of not less than \$5,000,000.00 each occurrence or its equivalent; (b) Worker's Compensation in amounts required by applicable law and Employer's Liability with a limit of at least \$1,000,000.00 each accident; and (c) Automobile Liability including coverage for owned/leased, non-owned or hired automobiles with combined single limit of not less than \$1,000,000.00 each accident. Requestor is a governmental entity and maintains self insurance as allowed by law.

(8) The execution of this letter agreement by the parties' representatives and their performance hereunder (a) has been duly authorized by requisite action, (b) will not require any additional approval on the part of the parties, and (c) will not violate any provision of law, any regulation or any contract or other obligation.

(9) This letter agreement constitutes the complete legal, valid, and binding obligation of the parties hereto and is enforceable against the parties in accordance with the terms hereof. Except to the extent herein provided, no amendment, supplement, modification, or termination of this letter agreement shall be enforceable unless executed in writing by both parties.

(10) If any part of this letter agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, the court shall interpret the terms hereof to give the greatest effect to the parties' intentions in entering into this letter agreement.

(11) This letter agreement shall be construed under the laws of the State of Colorado.

(12) This letter agreement shall become effective on the date executed by Requestor.

Please acknowledge your acceptance of the foregoing terms and conditions by signing this letter agreement and delivering a cashier's check in the amount set forth above to the undersigned. Level 3 will countersign this agreement and thereafter work with ROW Provider and FBC Drainage District to coordinate a construction start date and the times for performing the work.

Sincerely,



Jeremy Berger
Network Infrastructure Services
Level 3 Communications, LLC

APPROVED AND AGREED TO:
Level 3 Communications, LLC

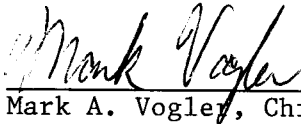
Name: _____

Signature: _____

Title: _____

Date: _____

Reviewed for Content:



Mark A. Vogley, Chief Engineer
Fort Bend County Drainage District

APPROVED AND AGREED TO:
FBC Drainage District

Name: Robert E. Hebert

Signature: 

Title: District Chairman

Date: July 21, 2009

Attest: 

Dianne Wilson, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$225,540.00 to accomplish and pay the obligation of the Fort Bend County Drainage District under this contract.

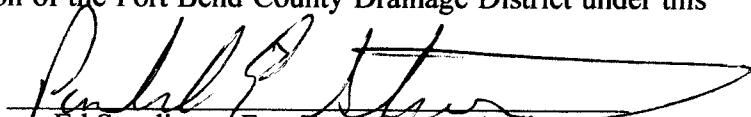

Ed Sturdivant, Fort Bend County Auditor

Exhibit "B"
(New Facility Location)

Level 3 Communications, LLC to relocate its network as follows:

Construction work will be performed by TBD.

Construction SOW is as follows but not limited to:

- Level 3 to engineer and obtain Union Pacific RR permits for required work.
- Level 3 to hire UPRR flagger for relocation work. (Required by UPRR)
- Construct new intercity conduit path from selected tie-in locations on both sides of this project.
- Install additional necessary MH's required for network connectivity.
- Pull new intercity fiber through the new conduit from existing Level 3 splice MH to existing Level 3 splice MH.
- Splice the new Level 3 intercity fibers into the existing backbone fibers at selected existing splice points.
- Remove existing intercity fiber from day one cable.
- Restore the property to the condition as it existed prior to the placement of new conduit.
- Contractor to work with the engineer on any as-builts updates.

