

FORT BEND COUNTY FY 2009  
DRAINAGE DISTRICT AGENDA REQUEST FORM

AGENDA ITEM

D3

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted:	September 2, 2009	Submitted By:	Mark Vogler
Court Agenda Date:	September 8, 2009	Department:	Drainage District
		Phone Number:	281/342-2863

**SUMMARY OF ITEM:**

Take all appropriate action on a Telecommunications Facility Relocation Agreement between Fort Bend County Drainage District and Qwest Communications Company, LLC in the amount of \$211,891.76 to facilitate the extension of Ditch H to Upper Oyster Creek, Precinct 4.

RENEWAL AGREEMENT/APPOINTMENT YES  NO

REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES  NO

List Supporting Documents Attached: Agreement

**FINANCIAL SUMMARY:**

BUDGETED ITEM: YES  NO

FUNDNG SOURCE: Accounting Unit: 702620888 Account Number: 64600  
Activity (If Applicable): P620-96UPOYSTER

DESCRIPTION OF LAWSON ACCOUNT: Upper Oyster Creek Fund

COUNTY JUDGE RECEIVED  
SEP 03 2009

**Instructions to submit Agenda Request Form:**

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

**DISTRIBUTION:**

Original Form Submitted with back up to County Judge's Office  (✓ when completed)  
If by E-Mail to [ospindon@co.fort-bend.tx.us](mailto:ospindon@co.fort-bend.tx.us) If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input type="checkbox"/> Auditor (281-341-3774)	<input type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input type="checkbox"/> Budget Officer (281-344-3954)	<input type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input type="checkbox"/> Purchasing Agent (281-341-8642)	<input type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input type="checkbox"/> Information Technology (281-341-4526)	<input type="checkbox"/> County Clerk (281-341-8697)
<input type="checkbox"/> Other:	<input type="checkbox"/> County Atty (281-341-4557)

**RECOMMENDATION / ACTION REQUESTED:**

Take all appropriate action on a Telecommunications Facility Relocation Agreement between Fort Bend County Drainage District and Qwest Communications Company, LLC in the amount of \$211,891.76 to facilitate the extension of Ditch H to Upper Oyster Creek, Precinct 4.

Special Handling Requested (specify): Return to Rose Ann Vargas after recording. *at Drainage*

9-16-09 3 orig. ret: ↑

## RELOCATION AGREEMENT

**THIS RELOCATION AGREEMENT** (“**Agreement**”), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between **Fort Bend County Drainage District, Texas** having an office at 1004 Blume Road, Rosenberg, Texas 77471, hereinafter referred to as the “**Agency**” and **Qwest Communications Company, LLC**, a Delaware Company, having an office at 1801 California Street, Floor 26, Denver, Colorado 80202, hereinafter referred to as the “**Company**.”

### WITNESSETH:

**WHEREAS, Company** owns and operates a communications conduit system (the “**Facilities**”) along and upon the right of way of Union Pacific Rail Road, hereinafter referred to as “UPRR” at Mile Post 25.35 and 25.30 the location for the proposed construction of a drainage channel, more fully described in Exhibit A, which is attached hereto and incorporated herein by this reference (the “**Right Of Way**”); and

**WHEREAS**, the Agency is preparing plans, specifications and estimates of costs of constructing its own facilities in the Right Of Way, and has determined that the facilities of Company and the other communications companies must be relocated to accommodate the construction activities of Agency; and

**WHEREAS**, Company and Agency have reached an agreement for reimbursement of the costs of such relocation that will separately be incurred by Company (“**Exhibit B, Estimate of Relocation Cost**”).

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the parties as follows:

1. The Company shall relocate the communications conduit systems owned by Company and the Cooperating Carriers (collectively the “**Carrier Facilities**”) in the Right Of Way. A substitute location for the communications facilities, and the materials and methods used in the relocation, are subject to the prior review and approval by Owner. The Company shall not perform any construction until authorized in writing by both the Agency and the owner of the Right Of Way (the “**Owner**”, UPRR).

2. The Company will notify Agency’s Project Engineer by telephone at least twenty-four (24) hours before beginning any work covered by this Agreement.

3. Agency shall reimburse Company for all costs incurred by Company in relocating the Carrier Facilities. A non-binding estimate of the costs to be incurred is set forth in Exhibit B, which is attached hereto and incorporated herein by this reference. Before authorizing any additional charge in excess of the \$211,891.76, Company shall obtain the written consent from Agency, which shall not be unreasonably withheld. Company shall have the right to approve charges which are equal to or less than the foregoing amounts to the extent that Company reasonably deems such changes to be

necessary, including, without limitation, changes required to comply with applicable local, state or federal laws, rules or regulations.

4. Company will make its contractor aware of the need for the Company to coordinate performance of the work with the Agency. Agency acknowledges that Company's construction schedule, flagging, protection and right of entry is controlled by the Owner and denial of access to the right of way for performance of such work by Owner shall be deemed an event of "force majeure."


5. The Company shall submit itemized bills covering the actual costs incurred for performing the work covered herein, together with supporting documentation. Agency agrees to pay the full amount within forty-five days following receipt of each bill.

6. If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs of such action, in addition any other remedy to which it may be entitled. Venue shall lie in Fort Bend County.

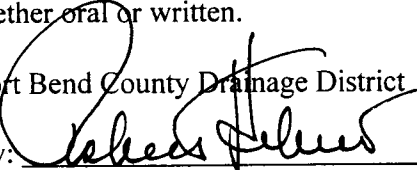
7. Company shall obtain and maintain during the course of Work, the following insurance: (a) Commercial General Liability (for bodily injury) with combined single limit of not less than \$2,000,000.00 each occurrence or its equivalent; (b) Worker's Compensation in amounts required by applicable law and 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. Agency is a governmental entity and maintains self insurance as allowed by law.

8. This Agreement constitutes the entire agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

Qwest Communications Company, LLC

By:   
Name: Peter Fall  
Title: VP-CTO  
Date: 8/31/09

Fort Bend County Drainage District

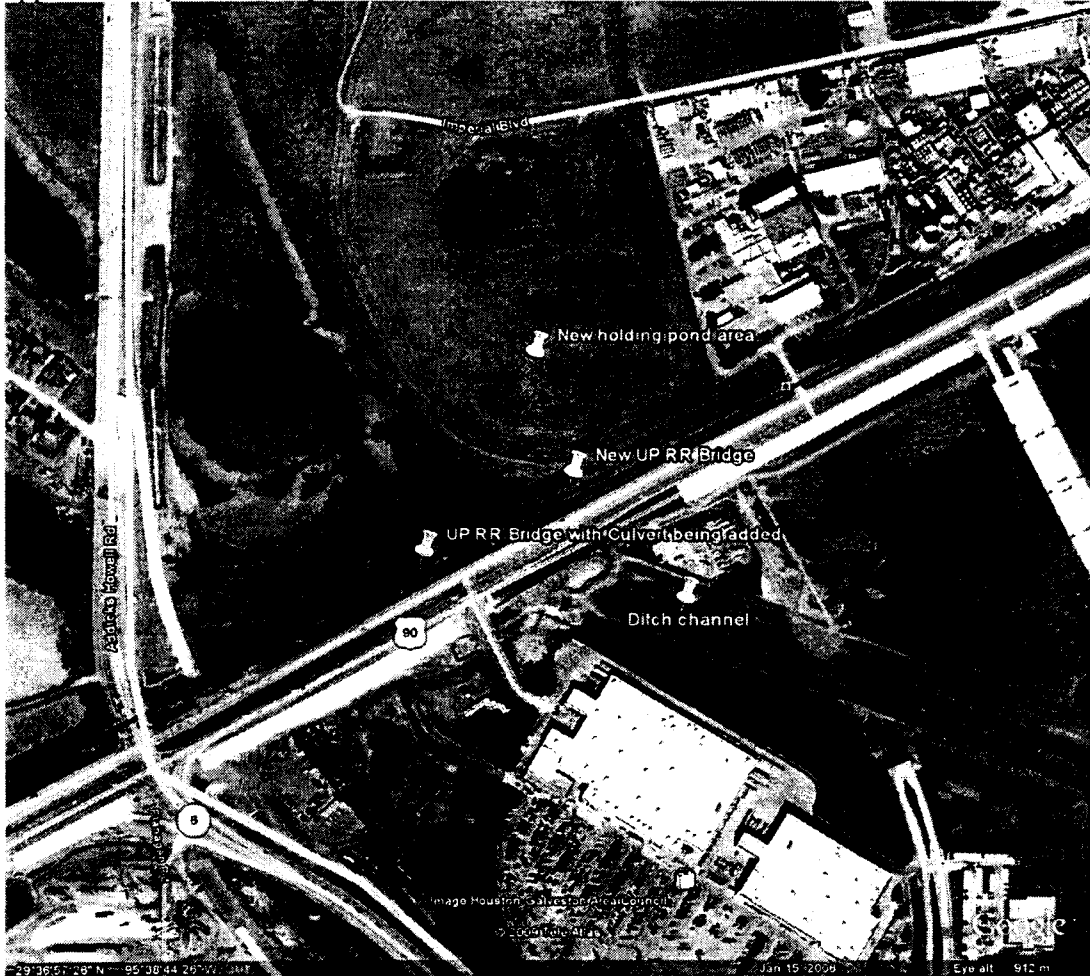
By:   
Name: Robert E. Hebert  
Title: Board Chairman  
Date: 9-8-09

Attest:   
Dianne Wilson, County Clerk

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EXHIBIT A  
DESCRIPTION OF THE RIGHT OF WAY

In preparation of Fort Bend County H channel extension to Oyster Creek, Qwest propose to directional bore 1,000', place 3- 2" conduits, 2 split handholes, 2 marker post, pull in 28,900' of new fiber and pull out the existing fiber upon completion of splicing the new fiber. The existing UPRR Bridge #25.35 will be removed and the area filled, along with the installation of a proposed 1-60" CSP at approximately 9.54 feet depth. A new bridge structure will be placed at UPRR MP 25.30 with a concrete lined drainage channel approximately 20 feet depth.



**EXHIBIT B**  
**NON-BINDING ESTIMATE OF RELOCATION COSTS**

This estimate is based upon the prices of materials and labor current as of the date of said estimate. The estimate does not account for increases due to unknown and unforeseen circumstances in accomplishing the work or increases in materials or labor after the date of this estimates. Reimbursement shall not be limited by this non-binding estimate:


**NON-BINDING COST ESTIMATE 07/23/09**

<b>Project Name</b>	<b>UP RR Bridges 25.3 and 25.35</b>		
<b>Project Location</b>	<b>Sugarland, TX</b>		
<b>Cost Detail of OSP, FOC and Splicing</b>	<b>Quantity</b>	<b>UOM</b>	<b>Estimated Cost</b>
<b>Material Cost (Qwest Supplied)</b>			
OSP Materials			0.00
Splice Materials			350.50
Fiber Optic Cable (FOC)	29,000	ft	57,420.00
<b>Total Material Cost (Qwest)</b>			<b>57,770.50</b>
<b>Shipping on Materials &amp; FOC</b>			
Shipping	890	mi	1,201.50
<b>Total Shipping Cost</b>			<b>1,201.50</b>
<b>Taxes on Materials &amp; FOC</b>			
Taxes on Materials and FOC			4,332.79
<b>Total Tax Cost</b>			<b>4,332.79</b>
<b>External Labor Costs</b>			
External OSP Construction Costs (Labor & All Remaining Materials)			85,697.09
External Splicing Costs			22,176.00
Engineering Contractor	-	ft	6,335.00
Inspection Services / Redlines	-	days	5,980.00
<b>Total External Costs</b>			<b>120,088.09</b>
<b>Other Fees Including Permit &amp; Right of Way Costs</b>			
Railroad ROW fees			0.00
Private ROW fees			0.00
Miscellaneous ROW fees			0.00
Splicing- Splice a 144 count fiber on the UP RR @ 2 existing splice locations.			0.00
0			0.00
0			0.00
0			0.00
0			0.00
<b>Total Other Fees</b>			<b>0.00</b>
<b>Internal Labor &amp; Flagging Costs</b>			
Field Support Construction	80	hrs	6,241.60
Field Operations Construction Support	-	hrs	0.00
Field Support Engineering & Permitting	-	hrs	0.00
Field Support Splicing (from SFP)	24	hrs	1,872.48
Field Operations Splicing Support (from SFP)	16	hrs	857.60
Testing & Acceptance Support (from SFP)	-	hrs	0.00
Fiber Planning	-	hrs	0.00
Project Analysts	16	hrs	1,357.60
Optical Fiber Management (OFM)	8	hrs	678.80
CAD	16	hrs	812.00
Fiberbase	8	hrs	678.80
Fiber Leasing/Contracts	-	hrs	0.00
Railroad Flagging	20	days	16,000.00
<b>Total Internal Support &amp; Flagging Costs</b>			<b>28,498.88</b>
<b>Total Estimated Construction Cost</b>			<b>211,891.76</b>

**TOTAL ESTIMATED COST TO AGENCY IS \$211,891.76**

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 211,891.76 to pay the obligation of Fort Bend County Drainage District under this Agreement.

  
Ed Sturdivant, County Auditor