

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

127A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
May 9, 2013

**SUBJECT:** Letter Agreement with Level 3 Communications for the Relocation of Fiber-optic Communication Facilities, Airport Boulevard Grade Separation Project, Thermal area.

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the submitted Letter Agreement between the County of Riverside (County) and Level 3 Communications for the relocation of fiber-optic communication facilities, which are in conflict with the planned railroad grade separation improvement project at the Airport Boulevard and Union Pacific Railroad (UPRR) crossing in the Thermal area; and
2. Authorize the Chairman of the Board to execute the agreement on behalf of the County; and

Juan C. Perez  
Director of Transportation and Land Management

JP:sd  
(Continued On Attached Pages)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 121,615	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/2014

<b>SOURCE OF FUNDS:</b> TUMF (CVAG) (100%)	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
There are no General Funds used in this project.	<b>Requires 4/5 Vote</b>	<input checked="" type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE  
BY:   
Tina Grande

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY:   
NEAL R. KIPNIS  
Departmental Concurrence  
DATE: 5/13/13

FISCAL PROCEDURES APPROVED  
PAUL ANGULO, CPA, AUDITOR-CONTROLLER  
BY:   
SAMUEL WONG  
5/28/13

Dep't Recomm.:  Consent  Policy

Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.** | **District:** 4/4 | **Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**3-49**

The Honorable Board of Supervisors

RE: Letter Agreement with Level 3 Communications for the Relocation of Fiber-optic Communication Facilities, Airport Boulevard Grade Separation Project, Thermal area.

May 9, 2013

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3. Approve and direct the Auditor-Controller to make the budget adjustment as shown on Schedule A.

**BACKGROUND:** Airport Boulevard (also known as Avenue 56) is designated in the Riverside County General Plan as a six lane urban arterial highway that serves the Thermal Community of eastern Riverside County, the City of Coachella, and the City of La Quinta while providing direct access from SH-86S and Grapefruit Boulevard (SH-111) to the Jacqueline Cochran Regional Airport. A UPRR at-grade crossing currently exists on Airport Boulevard just south of the City of Coachella, paralleling State Route 86S. A grade separation project that will separate Airport Boulevard from the UPRR mainline tracks has been proposed and it is anticipated that construction will begin in the first quarter of 2014.

The railroad grade separation project includes the construction of a bridge structure to elevate Airport Boulevard over the UPRR tracks. The project will improve motorist safety by separating vehicle traffic from rail traffic.

This project has been identified to receive \$10 million from the State's Prop 1B Bonds Goods Movement Program administered through Transportation Corridor Improvement Funds (TCIF). A Project Baseline Agreement with the California Transportation Commission (CTC) identifying the scope and cost of the project was approved by the Riverside County Board of Supervisors on July 29, 2008. The County is required to execute a construction contract for the project by December 31, 2013 under the terms of the Baseline Agreement.

The project has been environmentally cleared. Final plans, specifications, and estimates have been prepared and right-of-way acquisition efforts are in progress.

The submitted letter agreement provides for the relocation of fiber-optic communications facilities that are owned by Level 3 Communications and located within the limits of the project. The work will be performed by Level 3 Communications. The County is responsible for all costs in this matter, inasmuch as Level 3 Communications has superior property rights.

The letter agreement is consistent with the project requirements and has been reviewed and approved by County Counsel.

Project No. A6-0241

The Honorable Board of Supervisors

RE: Letter Agreement with Level 3 Communications for the Relocation of Fiber-optic  
Communication Facilities, Airport Boulevard Grade Separation Project, Thermal area.

May 9, 2013

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SCHEDULE A

Increase Appropriations:

20000-3130500000-527980	Contracts	\$121,615
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Anticipated Decrease in Fund Balance:

20013-3130500000-321101	Restricted Program Money	\$121,615
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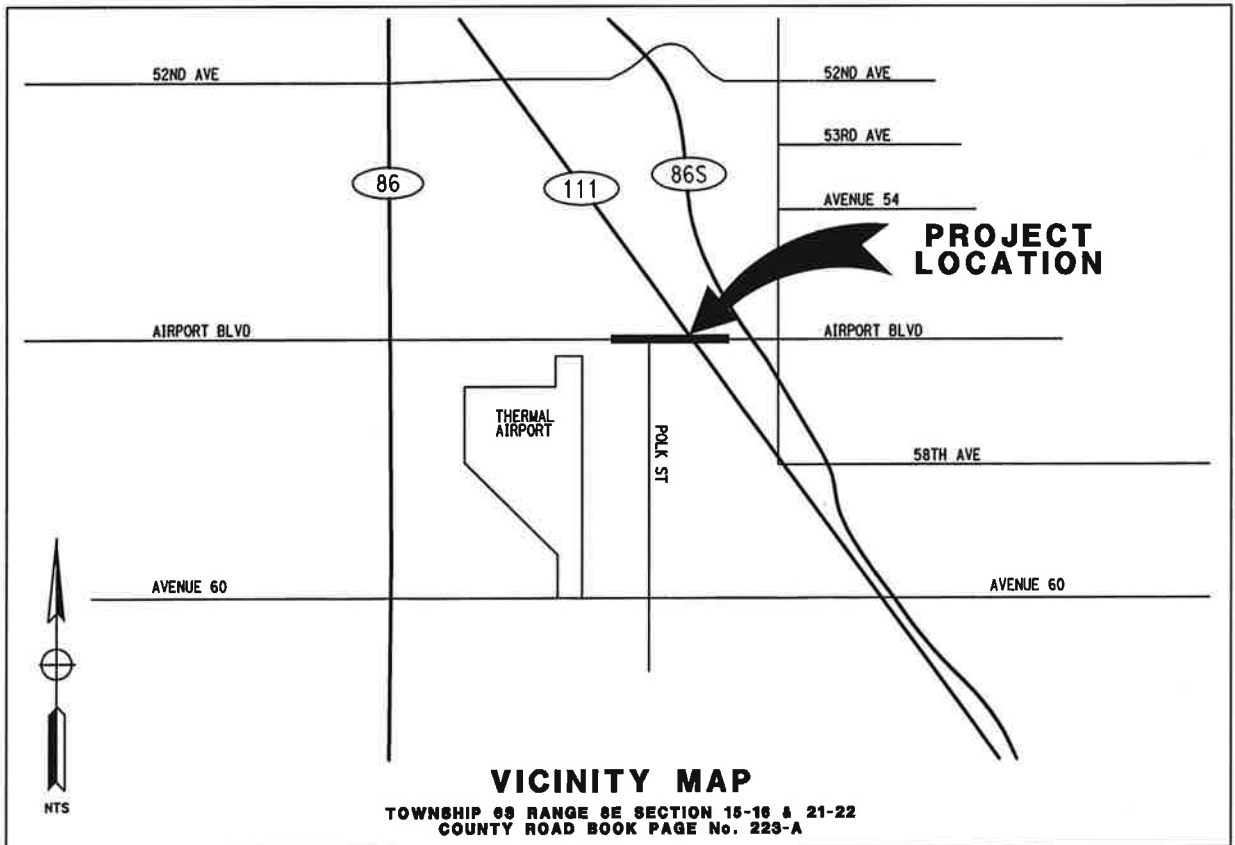
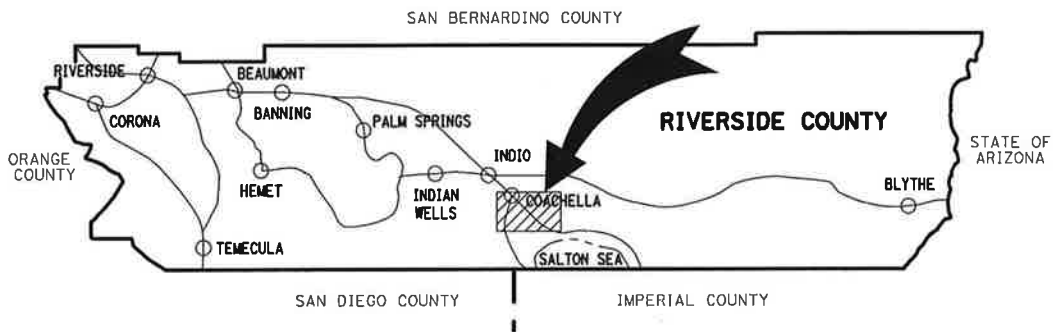
COUNTY OF RIVERSIDE  
DEPARTMENT OF TRANSPORTATION

**AIRPORT BLVD GRADE SEPARATION**

FROM 0.49 MILES WEST OF GRAPEFRUIT BLVD  
TO 0.34 MILES EAST OF GRAPEFRUIT BLVD

COMMUNITY OF THERMAL

PROJECT No. A6-0241





*Via Email Delivery*

Via Email Delivery

February 28, 2013

County of Riverside  
3525 14th Street  
Riverside, CA 92501

Attn: Stan Dery

**Re: Level 3 Communications, LLC, including its affiliates and subsidiary companies ("Level 3") Telecommunications Facility Relocation – Airport Blvd (AVE 56) Railroad Grade Separation**

Dear Mr. Dery:

The County of Riverside (the "Requestor") has contacted Level 3 regarding relocation and/or adjustment of fiber optic lines (the "Facilities") located at or in the vicinity of Airport Blvd (AVE 56) and Union Pacific Railroad, rights of way (the "ROW") within the Union Pacific Railroad, ("ROW Provider") for the Airport Blvd (AVE 56) Railroad Grade Separation Project.

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"), provided that:

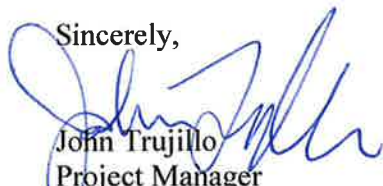
- (1) ROW Provider first grants to Level 3 the complete authority to relocate its Facilities to the New Facility Location. Level 3 is responsible to obtain such authority, at the expense of Requestor.
- (2) Level 3's contractor (or ROW Provider) will coordinate and perform all relocation work (the "Work"). Work shall be performed in accordance with relocation plans to be prepared by Level 3 and which have been approved by Requestor as being compatible with Requestor's Railroad Grade Separation Project. Level 3 will use reasonable efforts to perform all Work from within the ROW Provider's right of way; however, where Level 3 is 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 **ONE HUNDRED TWENTY-ONE THOUSAND SIX HUNDRED FIFTEEN DOLLARS (\$121,615.00) USD** prior to Level 3 performing any Work. Such amount reflects the estimated cost and expense of performing the Work as detailed in Exhibit "B". 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.** All facilities relocated under the terms of this letter agreement are owned and operated by Level 3.
- (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 within sixty (60) days of written notice from Level 3. A failure to pay such amount within stated timeframe 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). However, an amendment to this agreement shall be required if the actual costs exceed the amount of 125% of the estimated cost, as described in Exhibit B. In the event of the need for an agreement amendment, the 60 day timeframe shall commence upon full execution of the amendment by both parties.
- (6) 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) Requestor's failure to perform under this Agreement. 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) Each party 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 shall cause said insurance to be maintained by its construction contractor, and said insurance policies shall include Level 3 as additionally insured.
- (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 California.
- (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 City Of Ontario to coordinate a construction start date and the times for performing the work.

Sincerely,  
  
 John Trujillo  
 Project Manager  
 Network Relocations Services  
 Level 3 Communications, LLC

APPROVED AND AGREED TO:  
Level 3 Communications, LLC


Name: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

APPROVED AND AGREED TO:  
**COUNTY OF RIVERSIDE**

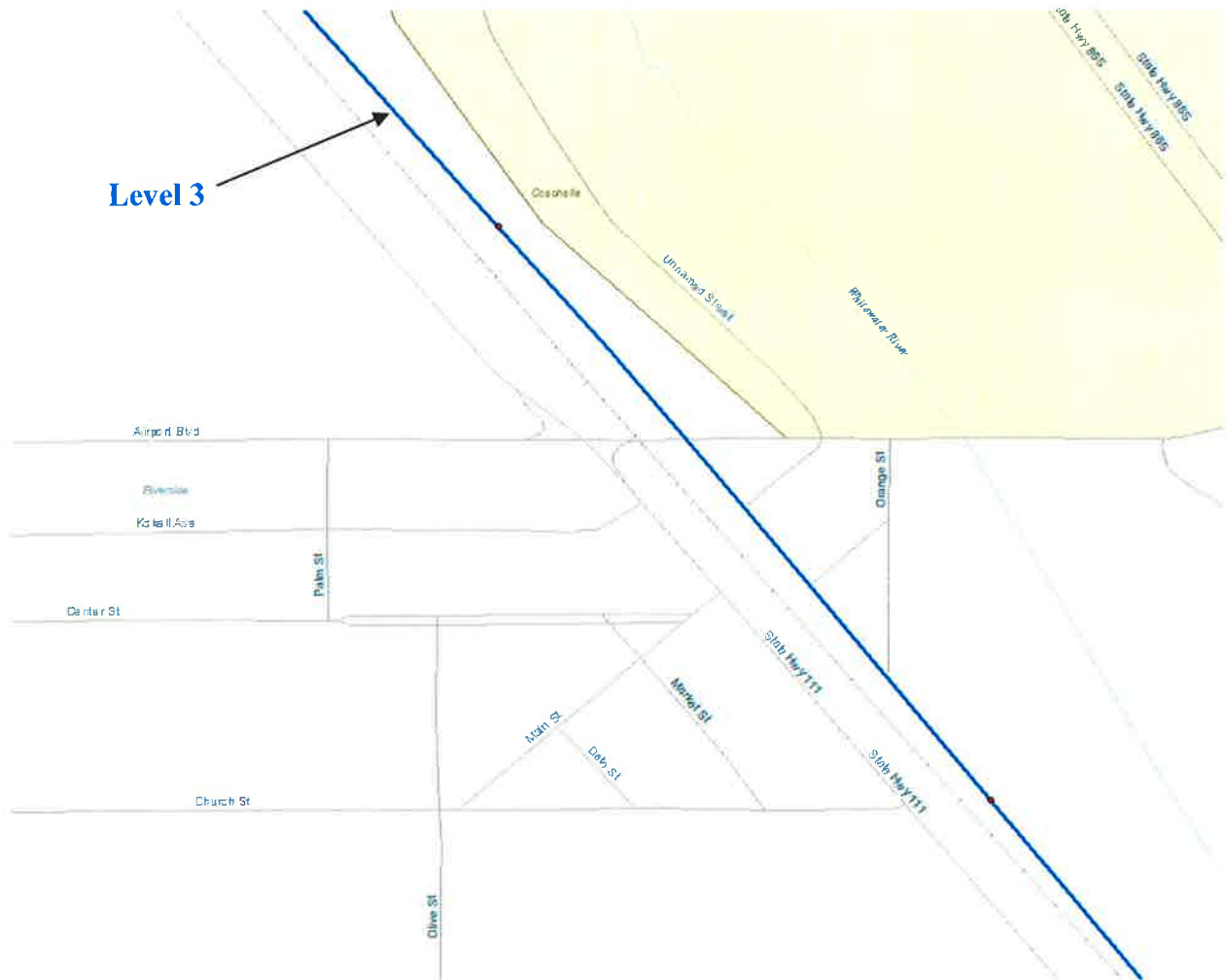
Name: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Title: Chairperson, Board of Supervisors  
 Date: \_\_\_\_\_

ATTEST:

Name: Kecia Harper-Ihem  
 Signature: \_\_\_\_\_  
 Title: Clerk of the Board  
 Date: \_\_\_\_\_

FORM APPROVED COUNTY COUNSEL  
 BY:   
 DATE: 5/24/13

**Exhibit "A"**  
(Current Location of Facilities in ROW)





**Exhibit "B"**  
 (Cost Estimate Break Down & Scope of Work)

<b>Engineering</b>	\$	6,500.00
<b>Construction</b>		
Raise and encase conduits (approx 265LF)	\$	40,800.00
Provide and Install 2 manholes	\$	24,250.00
Level 3 Inspector	\$	10,000.00
<b>Union Pacific Railroad Flagging &amp; Inspection</b>	\$	12,000.00
<b>Subtotal</b>	\$	93,550.00
<b>Level 3 General &amp; Administrative Costs (30%)</b>	\$	28,065.00
<b>TOTAL ESTIMATED COST</b>	\$	121,615.00

Engineer and construct raising by 6" and encasing in cement backfill approximately 265 LF of conduit structure and providing and installing 2 manholes. Includes inspector to maintain the Level 3 structure to insure it is protected during the grade separation project and Union Pacific Railroad flagging and inspections.

