



# RESOLUTION No. 21-356

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

### RESOLUTION APPROVING A \$177,109.43 INCREASE OF FUNDING FOR THE CA FLAP NEV 40(1) DONNER PASS ROAD PROJECT, AND AUTHORIZING UTILITY AGREEMENT NO.1 WITH LEVEL 3 COMMUNICATIONS, LLC., FOR RELOCATION OF UTILITIES ON DONNER PASS ROAD IN THE AMOUNT OF \$177,109.43 - DISTRICT V

WHEREAS, the County entered a Memorandum of Understanding (MOU) with Federal Highway Administration, Central Federal Lands Highway Division (CFLHD), by adopting resolution 15-549; and

WHEREAS, during construction, utility conflicts on the Donner Pass Road Project were identified and are anticipated to cost \$491,970.62; and

WHEREAS, ATT Corp., Level 3 Communications, LLC., ATT-California and Zayo Group were unable to efficiently and effectively relocate their facilities and are responsible for the cost of relocation efforts; and

WHEREAS, CFLHD is unable to receive funds directly from ATT Corp., Level 3 Communications, LLC., ATT-California, and Zayo Group; and

WHEREAS, the County adopted Resolution 21-148 agreeing to reimburse Federal Highway Administration Central Land Division (CFLHD) up to \$491,970.62 of funding received from the utility companies for utility relocation work; and

WHEREAS, the expense and revenue for this project is included in the Road Capital Improvement budget for Fiscal Year 2021-22 and a budget amendment is not necessary; and

WHEREAS, Level 3 Communication, LLC's share of the \$491,970.62 cost for utility relocation work is \$177,109.43.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Nevada County Board of Supervisors:

1. Approves Utility Agreement No.1 with Level 3 Communications, LLC., in the amount of \$177,109.43.
2. Funds to be deposited to 1114-30154-702-1000 / 462000.
3. Authorizes the Chair of the Board of Supervisors to execute, on behalf of the County of Nevada, the agreement between Nevada County and Level 3 Communication, LLC.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 10<sup>th</sup> day of August, 2021, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By: 

  
Dan Miller, Chair

8/10/2021 cc: DPW\*  
AC\* (Hold)

10/15/2021 cc: DPW\*  
AC\*(release)



**COUNTY OF NEVADA**  
**COMMUNITY DEVELOPMENT AGENCY**  
**DEPARTMENT OF PUBLIC WORKS**  
950 MAIDU AVENUE, NEVADA CITY, CA 95959-8617  
(530) 265-1411 FAX (530) 265-9849 [www.mynevadacounty.com](http://www.mynevadacounty.com)

Mali LaGoe  
Acting Community Development Agency Director

Trisha Tillotson  
Director of Public Works

03-NEV-Donner Pass Road  
Project #: 338023  
Federal Aid No.: CA FLAP NEV 40(1)

UTILITY AGREEMENT NO. 1

**WHEREAS**, the County of Nevada, hereinafter called Local Agency, acting by and through the US Department of Transportation Federal Highway Administration, hereinafter called CFLHD, has issued Notice to Owner dated 1/29/2020, attached hereto as Exhibit A, to Level 3 Communications, LLC hereinafter called Owner, which Notice to Owner sets forth the terms and conditions pursuant to which Owner has been ordered to relocate certain Owner's facilities to clear the Local Agency's proposed road rehabilitation project on Donner Pass Road near Soda Springs, and;

**WHEREAS**, the construction of the CFLHD's project necessitates the relocation of Owner's utility facilities, and;

**WHEREAS**, CFLHD, in order to clear the right of way for the roadway construction, has ordered Owner to relocate the portions of its facilities identified within said Notice to Owner, hereafter called Owner's facilities, and;

**WHEREAS**, Owner remains 100% liable for costs associated with relocation work, and;

**WHEREAS**, Owner requests to have the U.S. Department of Transportation Federal Highway Administration, CFLHD redesign the project and work around the utilities in conflict and;

**WHEREAS**, Owner agrees to work directly with the U.S. Department of Transportation Federal Highway Administration CFLHD to determine scope and cost of unanticipated work and;

**WHEREAS**, the U.S. Department of Transportation Federal Highway Administration CFLHD agrees to have their contractor Herback General Engineering perform unanticipated work in conformance with the approved Donner Pass Road Project plans, specifications, change orders, and permits to accommodate the existing location of utilities, and;

**WHEREAS**, the County of Nevada agrees to transfer payments for unanticipated utility work from Owner to the U.S. Department of Transportation Federal Highways CFLHD on behalf of the Owner after payments have been received by the County of Nevada, and;

**WHEREAS**, Owner agrees to make a maximum of one payment for work in the year 2020, and one payment for work completed in the year 2021, and;

**NOW THEREFORE**, it is agreed between Local Agency and Owner as follows:

1. Owner will pay the County of Nevada \$125,515.83 for work in 2020 and \$51,593.60 for work done in 2021
2. County of Nevada Agrees to forward payments to the U.S. Department of Transportation Federal Highway Administration CFLHD - on behalf of the Owner.

THE ACTUAL COSTS FOR THE ABOVE DESCRIBED WORK IS \$177,109.43

IN WITNESS WHEREOF, the parties hereto have executed this Utilities Agreement this 10th day of August, 2021.

NEVADA COUNTY

*Dan Miller*  
By Dan Miller (Aug 13, 2021 12:17 PDT) Aug 13, 2021  
Honorable Dan Miller Date  
Chair, Board of Supervisors

LEVEL 3 COMMUNICATIONS, LLC.

*Tim LaFreniere*  
By Tim LaFreniere (Aug 3, 2021 11:03 PDT) Aug 3, 2021  
Tim Lafreniere Date  
Dir Ops

*Clem Helmstetter*  
By Clem Helmstetter (Aug 3, 2021 13:24 CDT) Aug 3, 2021  
Clement Helmstetter Date  
OSP Relo Project Manager

APPROVAL RECOMMENDED:

By *n/a* Oct 14, 2021  
n/a (Oct 14, 2021 10:27 PDT)  
U.S. Department of Transportation Date  
Federal Highways

Attachment A  
Joint Trench Cost Breakdown

Job: Donner Pass Road Project  
Project #: CA FLAP 40(1)

Date: 4/21/21  
Agreement #: DTFH68-15-E-00043

1. At the request of Utility Company CFLHD has agreed to redesign and perform unanticipated changes to the project to accommodate the existing location of utilities along Donner Pass Road where shown on the attached map. The anticipated cost of these changes is listed below:

Work completed in 2020

Total Shared Cost	ATT-Corp 50%	Lumen 36%	ATT-CA 7%	Zayo 7%
\$348,655.07	\$174,327.54	\$125,515.83	\$24,405.85	\$24,405.85

Work to be done in 2021

Total Shared Cost	ATT-Corp 50%	Lumen 36%	ATT-CA 7%	Zayo 7%
\$143,315.55	\$71,657.77	\$51,593.60	\$10,032.09	\$10,032.09

By signing this you agree to the cost as shown and will make payment within 30 days of receipt of an invoice to the County of Nevada. The totals are estimates based on field measurements.