AGREEMENT REGARDING INSTALLATION AND USE OF TELECOMMUNICATIONS FIBER OPTIC CABLE AND RELATED INFRASTRUCTURE

This Agreement ("Agreement") is effective this ___ day of December, 2011 by and between CVIN LLC, a California Limited Liability Company, (hereinafter "CVIN"), and the City of Fresno, a municipal corporation (hereinafter "City"); each of CVIN and City are hereinafter referred to as a "Party", with respect to the following:

RECITALS

WHEREAS, CVIN has joint ventured with the Corporation for Educational Network Initiatives in California, a 501c(3) ("CENIC"), toward achieving statewide high-bandwidth internet networking for educational and research purposes, and in relation thereto CVIN has been awarded federal and state ARRA and grant funding including by the Broadband Technology Opportunities Program and the California Advanced Services Fund program (collectively "CVIN Grants") variously administered by the National Telecommunications and Information Association ("NTIA"), to design and construct the Central Valley Next Generation Broadband Infrastructure Project ("CVIN Project"); and

WHEREAS, pursuant to CVIN's Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission for public telecommunications services (hereinafter "CPCN"), CVIN is in the process of building the CVIN Project, as variously assisted with the CVIN Grants, to interconnect state-wide anchor education institutions and to provide high speed broadband services throughout 18 California Counties with high speed fiber optic cables, housed in conduit; and

WHEREAS, it is necessary for such conduit and high speed fiber optic cable to be located in certain designated portions of the public right-of-way in the City of Fresno; and

WHEREAS, City is in the process of developing a Traffic Signal Synchronization Project (hereinafter "City Project" or "ITS Project") which requires installation of fiber optic cable within the City's existing right-of-way; and

WHEREAS, CVIN represents, warrants and agrees that the CVIN Grants are eligible and available for the purposes and uses provided hereunder, and that the CVIN Grants contain no restrictions, covenants and/or limitations inconsistent with the terms and conditions of this Agreement, and that that City is expressly relying therein in pursuit hereof; and

WHEREAS, CVIN at its sole cost and liability has offered to provide the City with: up to $100,000 for CVIN Project related City staff services; exclusive use of CVIN Project 5-pack conduit, fiber optic cables and related infrastructure designed and installed by CVIN as provided hereunder, all compliant with the ITS National Architecture for Local Government Agencies and Schools or as otherwise approved by Federal Highway Administration; Underground Service Alert (USA) services for the entire City Project as it exists now and in the future; repair and maintenance services for the entire City Project as it exists now and in the future with CVIN to bear all costs thereof up to $40,000 during each July 1st to June 30th, and then on a time and material basis per the fee schedule attached hereeto as Exhibit C incorporated herein, commencing from and after the effective date of this Agreement.

IN CONSIDERATION OF WHICH THE CITY HAS OFFERED TO PROVIDE CVIN with a waiver of all fees required for City issued encroachment and/or street works permit(s) for the CVIN
Project, and exclusive right to use (i) one (1) conduit and related vault infrastructure throughout the City's ITS network infrastructure where a vacant conduit and vault capacity is available, or (ii) the carrying capacity of one (1) conduit with innerducts over existing fiber optic cables where a vacant conduit is unavailable but overall conduit and vault capacity is available, or (iii) in the absence of either "i" or "ii", the City may in its sole discretion and subject to all funding source and third party restrictions, allow CVIN exclusive use of one (1) conduit and vault constructed or placed in service by City after the date of this Agreement, any and all such exclusive use rights when granted, shall be as provided/depicted in Exhibits A and Exhibit B attached hereto and incorporated herein, upon the terms and conditions herein; and

WHEREAS, this Agreement has been environmentally assessed by City staff and determined to be categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), 15303 (New Construction or Conversion of Small Structures) and 15304 (Minor Alterations to Land); and resulting in a finding of no possibility of significant environmental effect pursuant to CEQA Guideline 15061 (b) (3), and

WHEREAS, the CVIN Project has been environmentally assessed under CEQA resulting in an adopted Finding of Negative Declaration by the California Public Utilities Commission dated July 14, 2011; and under NEPA an approved Finding of No Significant Impact by the National Telecommunications and Information Administration dated September 30, 2011; and

WHEREAS, the Parties acknowledge and agree that the City Project has been assisted by Federal Congestion Mitigation and Air Quality funds under [Master Administering Agency State Agreement(s) for Federal Aid Projects dated July 5th, 1997 and February 27th 2007, and by State grant funds under Master Administering Agency-State Agreement(s) for State Funded Projects dated May 2nd, 2001 and December 28th 2006, and by Prop 1B. Traffic Light Synchronization Program funds pursuant to the Traffic Light Synchronization Program Project Scope, Cost, Schedule and Benefit Baseline Agreement dated August 22nd, 2008, all incorporated herein, and that this Agreement is subject to all the terms, conditions and requirements thereof; and

WHEREAS, the City finds and determines that the foregoing recitals will foster development and implementation of the City Project as well as the public interest mission of CVIN Project, and is in furtherance of the public interest.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals which are contractual in nature and the covenants and conditions contained herein, and for other good and valuable consideration, the parties agree as follows:

1. CVIN Shall:
   a. Pay for the cost of the CVIN Project, including City Staff time in connection with the review of the CVIN Project, including field reviews, plan reviews, construction inspection and all CVIN Project related activities and overhead. CVIN shall pay a maximum of $100,000, pre-paid on City's invoice no more frequently than monthly, and within 30 days thereof, in $30,000 deposit increments and receive from City an accounting of charges at the completion of the design phase and a final accounting of charges within 6 months after the completion of the construction phase with a refund of any unearned pre-paid funds; and
b. Acquire and install as part of the CVIN Project 5-pack conduits and vaults, for City's exclusive use, and connect to City's ITS existing infrastructure, in compliance with the City's ITS Standards and Specifications, and Qualified Products List or Material Specifications, all by not later than June 30, 2013 and as provided below:

i) along Copper Ave east from the intersection with Friant Rd. to Copper’s intersection with Cedar Ave, along Cedar Ave south from the intersection with Copper Ave to Cedar's convergence with International Ave; along International Ave east from the convergence with Cedar Ave to International's intersection with Willow Ave,

ii) along Champlain Drive east from the intersection with Friant Road to Champlain's intersection with Shepherd Ave,

iii) along Chestnut Ave north from the intersection with Alluvial to Chestnut’s intersection with Nees Ave, along Nees Ave east from the intersection with Chestnut to Nees’ intersection with Willow Ave, along Willow Ave north from the intersection with Nees to Willow’s intersection of the Sugar Pine Trail,

iv) along Kings Canyon Road east from the intersection with Chestnut Ave to Kings Canyon’s intersection with Clovis Ave,

v) along First Street north from the intersection with McKinley Ave to First Street’s intersection with Clinton Ave, along the EMS Radio Park property located at 2233 N. First Street; to building point of demarcation,

vi) along the Fresno Memorial Auditorium property located at 2425 Fresno Street, from Fresno Street vault to Fresno Memorial Auditorium building point of demarcation,

vii) along the EMS Backup Operations Center (BOC) property located at 2925 Fresno Street, from the Fresno Street vault to building point of demarcation.

c. Acquire and maintain for the duration hereof all necessary agreements, licenses, and/or permits for CVIN's use of any ITS Project conduit crossings of railroads and Caltrans highway/freeway right of way, and any Caltrans conduit crossings dedicated for City use including but not limited to State Route 99 and Shaw Ave crossing, Highway 41 and Shaw Ave crossing, Highway 180 and Clovis Ave crossing, and Highway 168 and Willow Ave crossing. City agrees to reasonably cooperate as necessary without additional costs to CVIN to obtain any required consent. CVIN will be responsible for any fees levied by the railroads/Caltrans in connection with the required consent.

d. Repair all fiber optic cable and related infrastructure damages caused by the installation of new fiber optic cables and related infrastructure as part of the CVIN Project,

e. Assess and repair existing conduit damage at Chestnut Ave & Balch Ave; intercept and reconnect one (1) conduit to vault at Willow Ave and Magill Ave; construct new conduit and vaults for CVIN use along P Street from the intersection of Fresno Street to P Street's intersection with Tulare Street; construct new conduit for CVIN use along Herndon Ave from the intersection of Willow Ave to Herndon's intersection with Chestnut; install 2 (1.5") and 2 (1") innerducts for City's exclusive use along with a no cost option to vest ownership free and clear in City at end of term in City's sole discretion.
and 4 (1") innerducts for CVIN use in existing 4" conduit along Palm Ave from the intersection with Herron Ave to Palm's intersection with Nees Ave and install 2 (1.5") and 2 (1") innerducts for City's exclusive use along with a no cost option to vest ownership free and clear in City at end of term in City's sole discretion and 4 (1") innerducts for CVIN use in 4" conduit along Nees Ave from the intersection with Palm Ave to Nees' intersection with Ingram Ave; and construct and/or repair conduits, vaults, innerducts, install and/or relocate fiber optic cables, as needed for CVIN Project, at CVIN's sole expense, as conduit/vault capacity deficiencies are identified during CVIN Project design phase, all by not later than June 30, 2013

f. Acquire, install, terminate and Optical Time-Domain Reflectometer (OTDR) test, 168 count fiber optic cable, for City's exclusive use, along with a no cost option to vest ownership free and clear in City at end of term in City's sole discretion in compliance with the City's ITS Standards and Specifications, and Qualified Products List or Material Specifications, all by not later than June 30, 2013 and as provided below:

i) along Willow Ave north from the intersection with Ashian Ave to Willow's intersection with Herron Ave, along Herron Ave west from the intersection with Willow Ave to Herron's intersection with Chestnut Ave, along Chestnut Ave north from the intersection with Herron Ave to Chestnut's intersection with Nees Ave, along Nees Ave east from the intersection with Chestnut Ave to Nees' intersection with Willow Ave, along Willow Ave north from the intersection with Nees Ave to Willow's intersection with International Ave,

ii) along Kings Canyon Road east from the intersection with Chestnut Ave to Kings Canyon's intersection with Clovis Ave,

iii) along P Street north/west from the intersection with Tulare Street to P Street's intersection with Fresno Street, along Fresno Street south/west to Fresno Memorial Auditorium server room; and

g. Acquire, install, terminate, and OTDR test 96 count fiber optic cable, for City's exclusive use, along with a no cost option to vest ownership free and clear in City at end of term in City's sole discretion, in compliance with the City's ITS Standards and Specifications, and Qualified Products List or Material Specifications, all by not later than June 30, 2013 and as provided below:

i) along McKinley Ave east from the intersection with Blackstone Ave to McKinley's intersection with First Street, along First Street north from the intersection with McKinley Ave to First Street's intersection with Clinton Ave, along the EMS Radio Park property to the building server room; and

h. Acquire, install, terminate, and OTDR test 48 count fiber optic cable, for City's exclusive use, along with a no cost option to vest ownership free and clear in City at end of term in City's sole discretion in compliance with the City's ITS Standards and Specifications, and Qualified Products List or Material Specifications, all by not later than June 30, 2013 and as provided below:

i) along Fresno Street from the Fresno Memorial Auditorium server room located at 2425 Fresno Street to the EMS BOC server room located at 2925 Fresno Street; and
i. Acquire, install, terminate and Optical Time-Domain Reflectometer (OTDR) test, 36 count fiber optic cable, for City's exclusive use, along with a no cost option to vest ownership free and clear in City at end of term in City's sole discretion, in compliance with the City's ITS Standards and Specifications, and Qualified Products List or Material Specifications along Willow Ave from Ashlan Ave to Herndon Ave, all by not later than June 30, 2013,

j. Provide Underground Service Alerts (USA) services for the entire City Project ITS network infrastructure, as provided(depicted in Exhibit B and as it may exist in the future, in accordance with California Government Code Section 4216 et seq., from and after the effective date of this Agreement; and

k. Be the responding authority for and provide all City requested maintenance services and repair services for the entire City Project ITS network infrastructure as provided(depicted in Exhibit B, as it exists now and may exist in the future, including conduit, fiber optic cables, vaults, and splice enclosures, and assume all expenses thereof to the extent caused by City forces or vandalism or acts of nature and not exceeding $40,000 during each July 1st to June 30th, with City to reimburse CVIN on a time and material basis per the fee schedule attached hereto as Exhibit C to the extent such causes exceed $40,000 during each July 1st to June 30th, commencing from and after the effective date of this Agreement, and further provided that:

i) CVIN shall respond on site within 4 hours and begin repairs within 6 hours,

ii) CVIN shall invoice the City for City requested maintenance and repairs of damages that exceed $40,000 during each July 1st to June 30th hereunder, for reimbursement by City within 90 days,

iii) City shall assign to CVIN any and all rights City may hold as against third parties causing any expenses borne by CVIN under this subsection "k",

iv) in the event CVIN fails to comply with its repair obligations hereunder, the City may, but shall not be obligated to provide such and invoice CVIN for the actual costs thereof and/or setoff such amount from any sums due to CVIN from City hereunder,

v) CVIN acknowledges and agrees that City retains all right and authority to preserve the operational safety and the functional and aesthetic quality of the subject street/highway facility(ies) notwithstanding this Agreement,

vi) CVIN reserves the right to increase Exhibit C CVIN Fee Schedule and Repair Rates by 1.34% annually.

2. City Shall:

a. Provide staff time to assist with field reviews of conduit and vaults, design reviews, plan reviews, and construction inspection services including overhead not to exceed the total amount of CVIN's deposit up to a maximum of $100,000, and an accounting of charges at the completion of the design phase and a final accounting of charges within 6 months after the completion of the construction phase with a refund of any unearned pre-paid funds,
b. Identify, for CVIN's exclusive use one (1) conduit and related vault infrastructure where vacant within the City's ITS existing and future conduit infrastructure, more specifically provided/depicted by Exhibit A, all by no later than March 31, 2012.

c. Identify, where vacant conduit/infrastructure under sub “b” immediately above is not available, and for the exclusive use by CVIN, the carrying capacity of one (1) conduit, where conduits are occupied with one or more cables that can be relocated as part of the CVIN Project, or at City's discretion, identify one (1) conduit in which two (2) innerducts can be installed over existing fiber optic cables without injury to existing cables, more specifically provided/depicted by Exhibit A, all by no later than March 31, 2012.

d. Identify, where vacant conduit/infrastructure under sub “b” and excess carrying capacity under sub “c” immediately above are not available, and in City's discretion and subject to all funding source and third party restrictions allow CVIN exclusive use of one (1) conduit and vault constructed or placed in service by City after the date of this Agreement; provided that nothing herein shall obligate the City to design, construct or place in service such facilities.

e. Review CVIN design plans at 30%, 60%, 90% and final plans, as required by this Agreement and/or controlling law.

f. Waive all fees required for City issued encroachment and/or street works permit(s) for the CVIN Project when CVIN has satisfied all permit requirements.

g. Cooperate with CVIN in order to enable it to perform its duties under this agreement including, but not limited to, providing access to databases and records of facilities which may be required for CVIN to perform its duties under Section 1 of this agreement.

3. Ownership. The City shall be vested with ownership of all the City Project including ITS existing and future conduit, fiber optic cable and infrastructure, except as may be otherwise expressly provided herein. The City also shall have exclusive use of CVIN Project conduit, vault and fiber optic cables as well as a no cost option to vest ownership free and clear in City at end of term in City's sole discretion in fiber optic cables as identified in 1e, 1f, 1g, 1h, 1i as may be expressly provided herein. CVIN shall retain the ownership of and be responsible for all the CVIN Project including, but not limited to, conduit, vaults, fiber optic cables and related infrastructure except as may be otherwise expressly provided herein.

4. Conduit and Fiber Use Rights. The use rights granted by the Parties in this Agreement are solely for the purposes of the CVIN Project for activities within the CPCN, and for the City Project, and shall include the minimal space needed to secure the fiber optic cable coils to one side or the bottom of the vaults.

5. Indemnity.

a. To the furthest extent allowed by law, CVIN shall indemnify, hold harmless and defend City, and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, CVIN or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the negligent or
intentional acts or omissions, or willful misconduct, of CVIN or any of its officers, officials, employees, agents and volunteers in the performance of this Agreement.

b. CVIN shall require each contractor or subcontractor to indemnify, hold harmless and defend City, and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

c. This section shall survive termination or expiration of this Agreement.

6. Insurance.

a. Throughout the life of this Agreement, CVIN shall pay for and maintain in full force and effect all insurance as required in Exhibit D or as may be authorized in writing by City’s Risk Manager or his/her designee at any time and in his/her sole discretion.

b. If at any time during the life of the Agreement or any extension, CVIN or any of its contractors or subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CVIN shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall constitute an event of default under this Agreement. No action taken by City pursuant to this section shall in any way relieve CVIN of its responsibilities under this Agreement.

c. The fact that insurance is obtained by CVIN shall not be deemed to release or diminish the liability of CVIN, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CVIN. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CVIN, its officers, officials, employees, agents, authorized volunteers, contractors or subcontractors.

d. Upon request of City, CVIN shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

e. CVIN shall require each contractor and subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CVIN and City prior to the commencement of any work by the contractor or subcontractor.

7. Term and Termination.

a. This Agreement shall take effect on the Effective Date first above and shall continue in effect until the earlier of (i) June 30, 2031, (ii) a termination for default as provided in Section 8 below. Upon mutual agreement by parties, this Agreement may be extended for two additional 5 year periods until June 30, 2041.
8. Default and Termination for Default.

a. The Parties agree that each of the following shall constitute an event of default for purposes of this Agreement:

i) Any material representation, warranty, or certificate given or furnished by on behalf of a Party which proves to be materially false as of the date of which the representation, warranty, or certification was given, or that a Party concealed or failed to disclose a material fact to the other, provided, however, that if any representation, warranty, or certification that proves to be materially false is due to merely to inadvertence, a Party shall have thirty (30) day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect.

ii) A Party shall cease operations, or shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state of federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within fourteen (14) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within fourteen (14) days.

iii) A Party's failure, inability or admission in writing of its inability to pay its debts as they become due.

iv) A receiver, trustee, or liquidator shall be appointed for a Party or any substantial part of a Party's assets or properties, and not be removed within ten (10) days.

v) A Party's breach of any other material condition, covenant, warranty, promise, or representation contained in this agreement not otherwise identified within this section.

b. A Party shall give written notice to the others of any event of default by specifying i) the identity of the Party(ies) and the nature of the event or deficiency giving rise to the default, ii) the action required to cure the deficiency, if any action to cure is possible, and iii) a date, which shall not be less than thirty (30) calendar days from the date of the notice unless a shorter period of time is specified herein, by which such deficiency must be cured, provided, however that if such failure cannot be remedied in such time, the defaulting Party(ies) shall have an additional thirty (30) days to remedy such failure so long as it is diligently and in good faith pursuing such remedy.

c. Upon the happening of a default by a Party and a failure to cure said event of default within the time specified, the non-defaulting Party's(ies') obligation to render performance under the Agreement shall terminate, and the non-defaulting Party(ies) may also at its options and without notice institute any action, suit, or other proceedings in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination i) terminate the Agreement immediately upon written notice thereof ii) bring an action in equitable relief seeking specific performance of the terms and condition of this Agreement, and/or enjoying, abating, or preventing.
any violations of said terms and conditions, and/or seeking declaratory relief; iii) pursue any other remedy allowed at law, or in equity, or under this Agreement.

9. Assignment. Provided that CVIN shall not be in default of any term or provision of the Agreement, CVIN shall have the right to assign, transfer or sublet some or all of its interest in the Agreement, subject to the terms and conditions herein and assignee's assumption thereof and upon the written approval of City, which shall not be unreasonably withheld. At least thirty (30) days prior to the proposed assignment or other transfer to any person (a "Third Party Assignee"), CVIN shall deliver to City its written request including terms/conditions thereof and a current financial statement of the Third Party Assignee and such other information concerning the business and financial condition of the Third Party Assignee as City may reasonably request.

10. Notices. All notices, certificates or other communications hereunder shall be in a writing signed by the parties' duly authorized agent and shall be deemed given when personally delivered or mailed by registered or certified mail, postage prepaid, to the parties at their respective places of business set out on the signature page of this Agreement. Notices may also be sent by facsimile provided that a proof of facsimile transmission is made to verify the facsimile transmission. Personal service and facsimile service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 A.M., on the fourth (4th) calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

11. Construction and Binding Effect. Each Party represents and warrants that it has received independent legal advice as to the matters set for therein and has entered this Agreement solely in reliance thereon, and that this Agreement represents the Parties' joint efforts and shall not be construed against any Party. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

12. Severability. In the event any provisions of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provisions of this Agreement.

13. Final Agreement; Amendment. This Agreement and any documents, instruments and materials expressly referenced and incorporated herein represents the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be amended, altered or modified only by a written document signed by all the Parties.

14. Governing Law and Venue. The rights and obligations of the parties and all interpretations in performance of this Agreement shall be governed in all respects by the laws of the State of California, with venue in the Fresno judicial district.

15. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures of the parties may appear on separate signature pages. Facsimile or photocopy signatures shall be deemed original signatures for all purposes.

16. Partnership/Joint Venture. This Agreement does not evidence a partnership or joint venture between CVIN on the one hand and the City on the other.

17. Compliance with Law. In performing this Agreement, CVIN shall at all times comply with all applicable laws of the United States, the State of California, and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and
regulatory agencies, now in force, and as they may be enacted, issued, or amended during the term of this Agreement.

Without limiting the foregoing, CVIN acknowledges that CVIN, not City, is responsible for determining applicability of and complying with all local, state, and federal laws including, but not limited to, provisions of the California Labor Code, Public Contract Code, and Government Code. The City makes no express or implied representation as to the applicability or inapplicability of any such laws to the Agreement or the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or similar or different matters. The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages in the Fresno area for each craft, classification or type of work needed in the execution of contracts for the City. A copy of the Resolution is on file at the office of the City Clerk. Actual wage schedules are available at the Construction Management Office, 1721 Van Ness Avenue.

18. Attorney's Fees. If a Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party(ies) in such proceeding or action shall be entitled to recover from the other Party(ies) its reasonable attorney's fees and legal expenses in addition to any other relief to which such Party(ies) may be entitled.

19. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit hereto, the terms and conditions of the body of this agreement shall control and take precedence over terms conditions expressed within the exhibit. Furthermore, any terms or conditions contained within any exhibit hereto which purport to modify the allocation of risk between the parties, provided for within the body of this agreement, shall be null and void.

EXECUTION

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY:

CITY OF FRESNO

By: [Signature]

Patrick Wemiller
Public Works Director

CVIN:

CENTRAL VALLEY INDEPENDENT NETWORK LLC

By: [Signature]

David Nelson
President and Chief Executive Officer

ATTEST:

Stacy [Signature] 12/8/11
City Clerk

PLEASE SEE ATTACHED NOTARIAL CERTIFICATE
Approved as to form

City Attorney

By

CVIN:
CENTRAL VALLEY INDEPENDENT NETWORK LLC

By

Kirby L. Smith
Secretary

Attachments:
Exhibit “A”: Central Valley Next Generation Broadband Infrastructure Project Scope
Exhibit “B”: ITS Network Infrastructure USA, Repair & Maintenance Scope
Exhibit “C”: CVIN Fee Schedule Repair Rates
Exhibit “D”: Insurance Requirements
EXHIBIT "A"

Central Valley Next Generation Broadband Infrastructure Project Scope

[Diagram of Central Valley Transportation Systems Network and Central Valley Infrastructure]
EXHIBIT "B"

ITS Network Infrastructure
USA, Repair & Maintenance Scope
EXHIBIT "C"
CVIN Fee Schedule
Repair Rates

1. 3x5 vault and installation rate = $6,500
2. 4x7 vault and installation rate = $10,000
3. 3x5 and 4x7 vault removal and disposal rate = $5,000
4. Fiber cable and installation per foot and per cable rate
   a. 168 CT = $3.50
   b. 144 CT = $3.25
   c. 96 CT = $3.00
   d. 72 CT = $2.75
   e. 60 CT = $2.5
   f. 48 CT = $2.25
   g. 36 CT = $2.00
   h. 12 CT = $1.75
   i. 6 CT = $1.50
5. Bore and conduit installation per foot rate for 2 pack conduit, 4 pack conduit, or 6 pack conduit = $28
6. Fiber strand splicing and testing per strand rate = $30
7. Fiber strand termination and testing per strand rate = $30
8. Fiber cable pull tape and installation per foot and per conduit = $0.50
9. Fiber cable removal and disposal per foot per cable rate = $0.50
10. Fiber cable removal and reinstallation per foot per cable rate = $1.00

Fee schedule repair rates include all necessary mobilization, traffic control, equipment, materials, parts and labor. Traffic control, workmanship, materials, and parts shall be per City of Fresno ITS Standards, Specifications and Qualified Product List or equivalent industry standards as approved by City Engineer. Vault removal and disposal rate includes all necessary work for the protection, removal, and replacement of existing fiber optic cables. Fiber optic per strand rate refers to two fiber optic strands spliced together and successfully tested within acceptable tolerances or one fiber optic strand terminated to a SC connector and tested within acceptable tolerances per industry standards. City requested maintenance services not identified in Exhibit C above shall be invoiced on a time and material basis with CVIN hourly rate of $85/hour.
EXHIBIT "D"
INSURANCE REQUIREMENTS
Agreement between City of Fresno
and CVIN

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

Minimum Limits of Insurance

CVIN shall maintain limits of liability of not less than:

1. General Liability:
   - $1,000,000 per occurrence for bodily injury and property damage
   - $1,000,000 per occurrence for personal and advertising injury
   - $2,000,000 aggregate for products and completed operations
   - $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability:
   - $1,000,000 per accident for bodily injury and property damage

3. Employer's Liability:
   - $1,000,000 each accident for bodily injury
$1,000,000 disease each employee

$1,000,000 disease policy limit

Umbrella or Excess Insurance

In the event CVIN purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

CVIN shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and CVIN shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and authorized volunteers; or (ii) CVIN shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and authorized volunteers are to be covered as additional insureds.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and authorized volunteers.

3. CVIN insurance coverage shall be primary and no contribution shall be required of City.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CVIN and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and authorized volunteers.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CVIN shall furnish City with a new certificate and applicable endorsements.
for such policy(ies). In the event any policy is due to expire during the work to be performed for City, CVIN shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by City's Risk Manager.

Verification of Coverage

CVIN shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Fresno
On 11/16/11 before me, Victoria M. Najera, Notary Public
personally appeared DAVID STEWART NELSON

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature.

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: AGREEMENT REGARDING INSTALLATION

Document Date: 11/16/11

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: DAVID STEWART NELSON

Signers Name:

- Individual
- Corporate Officer — Title(s): [Blank]
- Partner — Limited [Blank] General
- Attorney in Fact [Blank]
- Trustee [Blank]
- Guardian or Conservator [Blank]
- Other: [Blank]

Signer Is Representing:

- Individual
- Corporate Officer — Title(s): [Blank]
- Partner — Limited [Blank] General
- Attorney in Fact [Blank]
- Trustee [Blank]
- Guardian or Conservator [Blank]
- Other: [Blank]

Signer Is Representing:

© 2007 National Notary Association • 9030 De Soto Ave., P.O. Box 2462 • Chatsworth, CA 91311-2462 • www.NationalNotary.org Item #5807 Reader Call Toll-Free 1-800-376-1652
CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

County of Calaveras

On NOVEMBER 18, 2011, before me, LORI FLAMING, Notary Public, personally appeared KIRBY L. SMITH, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature (Seal)
I, Kirby Smith, certify that I am the secretary of the corporation/limited liability company named herein: that David Nelson who signed this Agreement on behalf of the corporation/limited liability company, was then President/CEO of said corporation/limited liability company: that said Agreement is within the scope of its organizational powers and was duly signed for and on behalf of said corporation/limited liability company by authority of its governing body as evidence by the attached true and correct copy of the MINUTES OF THE BOARD OF GOVERNORS CVIN LLC December 16, 2010 which has not been modified and is in full force and effect.

By: [Signature]

Name: Kirby L. Smith

Title: Secretary

Date: 11/17/11
MINUTES OF THE BOARD OF GOVERNORS
CVIN LLC
December 16, 2010

The quarterly meeting of the Board of Governors of CVIN LLC was held December 16, 2010 at Volcano Telephone Co. Chairman Earl Bishop called the meeting to order at 10:00 PM, and announced a quorum present.

Governors in attendance were:  Mitch Drake
                                Kirby Smith
                                Alan Shearer
                                Ed Ormsbee
                                Jeff Busto
                                Earl Bishop
                                Eric Wolfe

Also present:                   John Lundgren
                                David Douglas
                                David Nelson
                                Jan Dubiakova
                                Frank Leschinsky
                                Mike Swinimer
                                Mike Stewart

The Governors provided a brief update of individual company issues. Mitch Drake, Kirby Smith and Alan Shearer noted progress on respective company ARRA grant projects.

The Governors next addressed the minutes of the previous meeting. Upon motion duly made by Alan Shearer and seconded by Mitch Drake, it was unanimously

RESOLVED, to approve the October 19, 2010 minutes as presented.
RESOLVED, to elect David Nelson as President & Chief Executive Officer, Mitch Drake as Chairman, and Kirby Smith as Secretary of CVIN for the ensuing year.

Upon motion duly made by Alan Shearer and seconded by Ed Ormsbee, it was unanimously
Tuesday January 17th was tentatively noted as a conference call date to discuss the draft budget by CEO Nelson. There being no further business to come before the Governors, and upon motion made by Ed and seconded by Earl, it was agreed the meeting was adjourned at 12:50 PM.

Kirby Smith
Secretary
FROM: PATRICK N. WIEMILLER, Director  
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director  
Public Works Department, Traffic and Engineering Services Division

JOHN STANBOULIAN, Project Manager  
Public Works Department, Traffic and Engineering Services Division

SUBJECT: DOCUMENTS PERTAINING TO AGREEMENT REGARDING INSTALLATION AND USE OF TELECOMMUNICATIONS FIBER OPTIC CABLE AND RELATED INFRASTRUCTURE BETWEEN CVIN LLC AND CITY OF FRESNO (CITY WIDE)

1. A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 36TH AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION NO. 2011-133, APPROPRIATING $100,000 FOR CITY OF FRESNO FIELD REVIEW, DESIGN REVIEW, AND CONSTRUCTION INSPECTION SERVICES FOR THE CVIN PROJECT

2. ADOPT FINDING PURSUANT TO GUIDELINE 15061(B)(3) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES THAT THERE IS NO POSSIBILITY THE CITY PROJECT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT, AND FINDINGS OF CATEGORICAL EXEMPTION PURSUANT TO SECTIONS 15301, 15302, 15303 AND 15304 OF THE CEQA GUIDELINES

3. AUTHORIZE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO SIGN AGREEMENT REGARDING INSTALLATION AND USE OF TELECOMMUNICATIONS FIBER OPTIC CABLE AND RELATED INFRASTRUCTURE BETWEEN CVIN, LLC AND CITY OF FRESNO

RECOMMENDATIONS

Staff recommends that City Council:

1. Adopt the 36th Amendment to the Annual Appropriation Resolution No. 2011-133, appropriating $100,000 for City of Fresno staff to provide field review, design review, and construction inspection services for the CVIN Project.

2. Adopt findings pursuant to guidelines 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines that there is no possibility the City project may have a significant effect on the
REPORT TO THE CITY COUNCIL
Agreement Regarding Installation And Use Of Telecommunications Fiber Optic Cable And Related Infrastructure
December 1, 2011
Page 2

environment; and findings of categorical exemption pursuant to sections 15301, 15302, 15303 and 15304 of the CEQA Guidelines.

3. Authorize the Public Works Director or his designee to sign Agreement Regarding Installation And Use Of Telecommunications Fiber Optic Cable And Related Infrastructure between CVIN, LLC and City of Fresno.

EXECUTIVE SUMMARY

The Central Valley Independent Network, LLC (CVIN) has joint ventured with the Corporation for Educational Network Initiatives in California (CENIC) toward achieving a statewide broadband project. CVIN has been awarded $66.6 million in American Recovery and Reinvestment Act (ARRA) Broadband Technology Opportunity Program (BTOP) grant funding and California Advanced Services Fund (CASF) grant funding to design and construct the Central Valley Next Generation Broadband Infrastructure Project (CVIN Project). The CVIN Project will extend broadband capabilities to 18 counties in the central California to better serve CENIC’s educational institutions and CVIN customers. The CVIN Project scope for the City of Fresno is to provide fiber optic inter-connectivity to anchor educational institutions, including State Center Community Colleges District locations, Fresno County Office of Education, California State University Fresno locations, key technology centers, and CVIN customers. The CVIN Project objective is to explore mutually beneficial agreements with local government agencies and to leverage existing infrastructure towards mutually beneficial goals.

The City of Fresno and CVIN reached a mutually beneficial Agreement Regarding Installation and Use of Telecommunications Fiber Optic Cable and Related Infrastructure. CVIN will provide the City of Fresno with Underground Service Alert (USA) locating services, maintenance and repair services totaling $40,000 annually, and installation and unrestricted exclusive use of five conduits and vaults for Chestnut Avenue and Willow Avenue corridor, Champlain Drive corridor, International Avenue and Copper Avenue corridor, Kings Canyon Road corridor, and emergency services downtown locations and Radio Park, and installation and unrestricted exclusive use of fiber optic cables with no cost fee vesting option in City at termination of the Agreement to fiber optic cables for Chestnut Avenue and Willow Avenue corridor, Kings Canyon Road corridor, and emergency services downtown locations and Radio Park. CVIN will also provide City with $100,000 in capital funding for City staff time, including overhead, to assist CVIN with field reviews, design plan reviews, and construction inspection services. CVIN will provide $30,000 upon execution of this Agreement, and subsequent $30,000 deposits will be prepaid for staff services upon the City’s request. The City of Fresno will provide staff time to assist CVIN Project as noted above, identify for CVIN’s use the carrying capacity of one conduit and vault space throughout the City-wide Intelligent Transportation Systems (ITS) conduit network, and waive all fees for City encroachment and street work permits.

Staff recommends that the Council adopt the amendment to the AAR in order to receive the funding from CVIN to pay for staff costs associated with the CVIN project, make the environmental findings as noted in the recommendations and authorize the Public Works Director or designee to execute the agreement on behalf of the City.

BACKGROUND

On January 22, 2010, National Telecommunications and Information Administration (NTIA) announced general policy and application procedures for the Broadband Technology Opportunity
Program (BTOP) that the agency established pursuant to the American Recovery and Reinvestment Act (ARRA) of 2009. BTOP provides grants for deploying broadband infrastructure in unserved and underserved areas of the United States, enhancing broadband capacity at public computer centers, and promoting sustainable broadband adoption projects. In facilitating the expansion of broadband communications services and infrastructure, BTOP advances the objectives of the Recovery Act to spur job creation and stimulate long-term economic growth and opportunity (DOC NTIA BTOP Summary, Federal Registry, Vol 75, No 14, January 22, 2010). On December 20, 2007, the California Public Utilities Commission also authorized the California Advanced Services Fund (CASF) to promote universal service in unserved and underserved areas in the state.

The Central Valley Independent Network, LLC (CVIN) has joint ventured with the Corporation for Educational Network Initiatives in California (CENIC) toward achieving a statewide broadband project, and CVIN has been awarded $66.6 million in federal American Recovery and Reinvestment Act (ARRA) Broadband Technology Opportunity Program (BTOP) grant funding and state California Advanced Services Fund (CASF) grant funding to design and construct the Central Valley Next Generation Broadband Infrastructure Project (CVIN Project). CENIC is a non-profit 501(c)3 corporation, with five charter associates, including California Community Colleges, California K-12 system, California State University system, private universities, and the University of California system. CVIN is a consortium of rural carriers serving various areas in California pursuant to Certificates of Public Convenience and Necessity (CPCN) granted by the California Public Utilities Commission.

The CVIN Project will extend broadband capabilities to 18 counties in central California to better serve CENIC's charter educational institutions and CVIN customers. The CVIN Project will provide new fiber-based infrastructure of 1371 route miles, involving 720 miles of new construction; 128 miles of new fiber in CVIN affiliated company conduits; 36 miles of CVIN affiliated company existing fiber; use of 302 miles of existing CENIC fiber; and use of 185 miles of an existing CVIN affiliated company fiber ring.

The CVIN Project scope for the City of Fresno is to provide fiber optic inter-connectivity to anchor educational institutions, including State Center Community Schools District locations, Fresno County Office of Education, California State University Fresno locations, key technology centers, and CVIN customers. The CVIN Project objectives are to explore mutually beneficial agreements with local government agencies and to leverage existing infrastructure towards mutually beneficial goals.

City of Fresno staff and CVIN have reached a mutually beneficial 20-year Agreement Regarding Installation and Use of Telecommunications Fiber Optic Cable and Related Infrastructure. CVIN will provide the City of Fresno with 1) $100,000 capital funding for staff time to assist CVIN with field reviews, plan reviews, and construction inspection services, 2) Underground Service Alert (USA) conduit locating services, and maintenance and repair services totaling $40,000 annually, and 3) installation and unrestricted exclusive use of five conduits and vaults for the Chestnut Avenue and Willow Avenue corridor; Champlain Drive corridor; International Avenue and Copper Avenue corridor; Kings Canyon Road corridor; emergency services two downtown locations; and emergency services Radio Park location, and installation and unrestricted exclusive use of fiber optic cables with no cost fee vesting option at termination of the Agreement to fiber optic cables, for the Chestnut Avenue and Willow Avenue corridor; Kings Canyon Road corridor; emergency services two downtown locations; and emergency services Radio Park location.
REPORT TO THE CITY COUNCIL
Agreement Regarding Installation And Use Of Telecommunications Fiber Optic Cable And Related Infrastructure
December 1, 2011
Page 4

More specifically, CVIN will provide the City of Fresno with the following:

1. **Capital Project Funding:** The Agreement provides $100,000 in capital funding for City staff time, including overhead, to assist CVIN with field reviews, design plan reviews, and construction inspection services. CVIN will provide $30,000 upon execution of the Agreement, and subsequent $30,000 deposits will be prepaid for staff services, upon City’s request. An accounting of charges will be provided to CVIN at the conclusion of the design phase and final accounting of charges within six months after completion of the construction phase of the CVIN Project.

2. **USA Services, Maintenance and Emergency Repair Services:** The Agreement provides for City-wide fiber optic conduit locating services known as Underground Service Alert (USA). Currently, USA locating services are provided by City’s Traffic Signal and Street Light maintenance staff. The Agreement will also provide for routine maintenance services and emergency repair services to the City-wide fiber optic network, totaling $40,000 annually.

3. **Chestnut Avenue and Willow Avenue Corridor Improvements:** The Agreement provides for the installation and unrestricted exclusive use of five conduits and vault infrastructure along the one mile fiber optic corridor of Chestnut Avenue (from Alluvial Avenue to Nees Avenue), Nees Avenue (from Chestnut Avenue to Willow Avenue), and Willow Avenue (from Nees Avenue to the Sugar Pine Trail). The Agreement also provides for the installation and unrestricted exclusive use, with no cost fee vesting option at termination of the Agreement, to eight miles of 168 count fiber optic cable along Chestnut Avenue and Willow Avenue corridor (from Ashlan Avenue to International Avenue), and three miles of 36 count fiber optic cable along Willow Avenue (from Ashlan Avenue to Herndon Avenue).

4. **Champlain Drive Corridor Improvements:** The Agreement provides for the installation and unrestricted exclusive use of five conduits and vault infrastructure along 1.6 miles of Champlain Drive from Shepherd Avenue to Friant Road.

5. **International Avenue, Cedar Avenue, Copper Avenue Corridor Improvements:** The Agreement provides for the installation and unrestricted exclusive use of five conduits and vault infrastructure along 1.9 miles of International Avenue (from Willow Avenue to Cedar Avenue), Cedar Avenue (from International Avenue to Copper Avenue), and Copper Avenue (from Cedar Avenue to Friant Road).

6. **Kings Canyon Road Corridor:** The Agreement provides for the installation and unrestricted exclusive use of five conduits and vault infrastructure along 2.1 miles of Kings Canyon Road (from Chestnut Avenue to Clovis Avenue). The Agreement provides for the installation and unrestricted exclusive use, with no cost fee vesting option at termination of the Agreement, to 168 count fiber optic cable along the corridor.

7. **Emergency Services Downtown Locations:** The Agreement provides for the installation and unrestricted exclusive use of approximately 2,000 feet of conduit and vault infrastructure from the existing Fresno Street City conduit to the Veterans Memorial Auditorium (located at Fresno Street and N Street), and from the Fresno Street existing City conduit to a City Emergency Services Building (located at Fresno Street and Division Avenue). The Agreement also provides for the installation and unrestricted exclusive use, with no cost fee vesting option at termination of the Agreement, to fiber optic cables between the two facilities and City Hall.
8. Emergency Services Radio Park Location: The Agreement provides for the installation and unrestricted exclusive use of approximately 3,000 feet of conduit and vault infrastructure along First Street (from McKinley Avenue to Clinton Avenue) interconnecting exiting City conduit infrastructure to the emergency services Radio Park location. The Agreement also provides for the installation and unrestricted exclusive use, with no cost fee vesting option at termination of the Agreement, to 1.5 miles of fiber optic cable from Blackstone Avenue to Radio Park location.

As part of the Agreement, the City of Fresno will provide CVIN the carrying capacity of one conduit and vault space throughout the existing and future City-wide Intelligent Transportation Systems conduit network. As such, City will provide one conduit where vacant conduit is available; otherwise, City may elect for CVIN Project to relocate non-essential transportation fiber optic cables to avail one vacant conduit for CVIN Project, or City may elect for CVIN Project to install inner-duct placed over existing fiber optic cables. City will identify where conduit capacity is not available and require CVIN Project to construct new conduit and vault infrastructure. City will provide staff time to assist CVIN with field reviews, plan reviews, and construction inspection services. City will waive all fees for City encroachment and street work permits provided all permit requirements have been satisfied.

Staff recommends that Council authorize the Public Works Director or his designee to sign the Agreement Regarding Installation And Use Of Telecommunications Fiber Optic Cable And Related Infrastructure between CVIN and City of Fresno. This mutually beneficial Agreement will benefit the City's Intelligent Transportation Systems network, and CVIN's Central Valley Next Generation Broadband Infrastructure Project. Staff also recommends that Council adopt the 36th Amendment to the Annual Appropriation Resolution No. 2011-133, appropriating $100,000 for City staff services to assist CVIN Project.

ENVIRONMENTAL FINDING

Pursuant to the requirements of CEQA, staff has determined this Project is categorically exempt based on CEQA Guidelines: Class 1 Section 15301 which exempts the repair, maintenance, or minor alteration of existing structures or facilities with negligible or no expansion of existing use; Class 2 Section 15302 which exempts replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced; Class 3 Section 15303 which exempts new construction or conversion of small structures, and Class 4 Section 15304 which exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. These exemptions apply because the Agreement involves installation of fiber optic conduit cable and appurtenances within existing City public utility right-of-way, with no change in proposed use or intensity of use thereof. Furthermore, staff has determined that none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project. Additionally, staff has performed a preliminary environmental assessment of the Project and, pursuant to CEQA Guidelines, Section 15061(b)(3), has determined with certainty that there is no possibility of a significant effect on the environment. This is again because the Project involves a minor fiber optic cable installation within the existing City public utility right-of-way, with no change in proposed use or intensity of use thereof. Staff recommends that the Council, based upon its own independent judgment, adopt these findings per staff determination, pursuant to the CEQA Guidelines for Project.

Pursuant to the requirements of CEQA and NEPA, CVIN Project has been environmentally assessed under CEQA resulting in an adopted Finding of Negative Declaration by the California Public Utilities
Commission dated July 14, 2011; and under NEPA an approved Finding of No Significant Impact by the National Telecommunications and Information Administration dated September 30, 2011.

**FISCAL IMPACT**

There is no fiscal impact to the General Fund. CVIN will provide $100,000 capital funding for City staff services to assist with CVIN Project. The Agreement provides a positive fiscal impact to the City consisting of CVIN provided services for utility locating as required through USA and $40,000 annually for repair services along the ITS conduit and fiber network.