

**ADDENDUM NO. 1 TO AGREEMENT REGARDING INSTALLATION AND USE OF HIGH
SPEED FIBER OPTIC CABLE AND RELATED INFRASTRUCTURE
BETWEEN
THE CITY OF FRESNO AND CLOVIS UNIFIED SCHOOL DISTRICT**

THIS ADDENDUM NO. 1 TO AGREEMENT REGARDING INSTALLATION AND USE OF HIGH SPEED FIBER OPTIC CABLE AND RELATED INFRASTRUCTURE, dated May 20, 2003 ("Agreement"), is made and entered into between the CITY OF FRESNO, a municipal corporation ("City"), and CLOVIS UNIFIED SCHOOL DISTRICT, a public agency ("District".)

RECITALS

WHEREAS, the City and District are parties to the Agreement regarding the initial phase of a Municipal Area Network Project for installation and use of high speed fiber optic cable and related infrastructure ("Project"); and

WHEREAS, the parties desire to modify the Agreement to provide for the second phase of the Municipal Area Network Project consisting of installation of 6-pack fiber optic conduit and cable along Willow Avenue south from the intersection with Behymer to Willow's intersection with Shepherd Avenue, and then continuing west along Shepherd, ("Phase II"), as more specifically provided/depicted in the Phase II Terms/Conditions/Schedule attached as Exhibit "A" and incorporated herein, upon the terms and conditions provided in this Addendum No. 1.

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

1. The Agreement is hereby modified to include Project Phase II.
2. District shall be responsible to acquire and install fiber optic conduit for Phase II in a manner and location as more fully described in Exhibit [A] to this Addendum. The District shall also install cable for its own benefit within the conduit designated for its use. The parties acknowledge that the District intends to contract with the City of Clovis ("Clovis") to perform the work required for Phase II.

City will pay District for the costs required for its portion of Phase II, not to exceed \$8,000, as more fully described in Exhibit [A].

3. The parties acknowledge and agree that this Addendum is expressly contingent upon and the parties shall have no obligation hereunder unless and until the City of Clovis, as Project Phase II lead agency, agrees to provide for the construction of the Project Phase II improvements.
4. The parties further acknowledge and agree that, as between the City and the District, the District shall be solely responsible for and shall indemnify and defend City (including reasonable attorney's fees) as to any and all damage to existing Project conduit and fiber occurring during the installation or relocation of fiber optic cable and conduit along Willow Avenue and Shepherd Avenue. District's obligation under this section shall include all costs, damages and

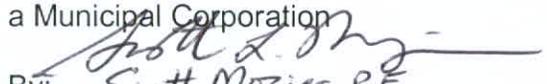
liabilities arising hereunder or related hereto except to the extent of City's negligence or willful misconduct.

5. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.
6. In the event of conflict between the body of this Addendum No. 1 and any Exhibit or attachment hereto, the body of Addendum No. 1 shall control/take precedence.
7. The District will own the cable installed within the conduit designated for its use within the City's right of way as part of this Phase II project.

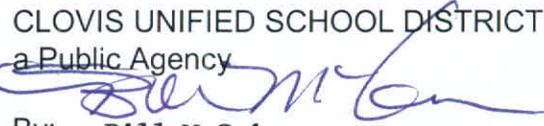
In all other regards, the Agreement shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties authorized agents have executed this Addendum No. 1 to Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO
a Municipal Corporation


By: **Scott Mozier, P.E.**
Title: **Assistant Director, Interim City Engineer**
Date: **11/27/07**

CLOVIS UNIFIED SCHOOL DISTRICT
a Public Agency


By: **Bill McGuire**
Title: **Associate Superintendent**
Date: **10/1/2007**

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

ATTEST:
Rebecca E. Klisch
City Clerk

By: Cindy Bruer 12/12/07
Deputy

APPROVED AS TO FORM:
James Sanchez

By:  11-29-07
Deputy *Coyle*

CLOVIS UNIF. SCH. DIST.
Attn: Bill McGuire

1450 Herndon Ave.
Clovis, CA 93611
Phone: 559- 327-9110
FAX: 559- 327-9129

CITY:

City of Fresno-Public Works Dept.

Attn: Scott Mozier
2600 Fresno Street, Room 4016
Fresno, CA 93721
Phone: 559-621-8811
FAX: 559-488-1045

Attachments:

Exhibit A – Project Phase II Terms/Conditions/Schedule

EXHIBIT "A"
PHASE II Terms/Conditions/Schedule

1. District shall:

Pay all cost of construction of the Project Phase II improvements as described/depicted in the attached Project Phase II schematic map. All conduit shall be 6 pack and shall terminate/connect to existing City owned conduit at Willow/Behymer and Willow/Shepherd.

Require that all Project Phase II improvements including construction and materials meet City of Fresno/ITS standards and specifications, subject to necessary City permits/approvals.

Require, as a condition of its payment for Project Phase II improvements, that the City shall be vested with full ownership rights to all Project Phase II conduits in the City public right of way including related vaults and appurtenances.

Require that any/all future additions or modifications to the fiber optics cables be subject to City review and approval.

2. City shall:

Pay all costs of relocating the City owned vault at Willow/Shepherd with a new vault in the ultimate location, as described and depicted in the attached Project Phase II schematic map and as depicted in the Willow/Shepherd Intersection 60% design drawings, not to exceed a cost of \$8,000.00.

Allow District the use of one (1) City owned conduit previously installed in the public right of way along Willow Avenue between Behymer Ave. and International Ave.

Allow District the use of one (1) City owned MAN conduit in the public right of way along Willow Avenue between Behymer and Shepherd, installed as part of the Project Phase II improvements. District will own the cable installed within the conduit designated for its use.

Maintain all conduit, cable, vaults and appurtenances within the City's right of way, except as expressly provided herein.

Obtain all permits necessary for the completion of the work on Phase II at no cost to District.

3. District shall use its best efforts to have the improvements completed no later than March 31, 2008 and will keep City apprised of the progress.

November 28, 2007

Council Adoption: 11/27/07

TO: MAYOR ALAN AUTRY

RECEIVED

Mayor Approval:

FROM: REBECCA E. KLISCH, CMC
City Clerk

REC 2007 DEC 10 PM 2:22
CITY CLERK, FRESNO CA

Mayor Veto:

Override Request:

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 11/27/07, Council took legislative action entitled **Auth Addendum #1 to existing agreement w/Clovis Unified School District**, Item No. **1P**, by the following vote:

Ayes	:	Calhoun, Dages, Duncan, Sterling, Westerlund, Xiong, Perea
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before December 10, 2007. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)



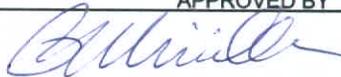
Alan Autry, Mayor

Date: 12/10/07

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	:

AGENDA ITEM NO.	1 P
COUNCIL MEETING	11-27-07
APPROVED BY	
	
DEPARTMENT DIRECTOR	
CITY MANAGER 	

November 27, 2007

PN
FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, Assistant Director/Interim City Engineer *SM*
Public Works Department

JOHN STANBOULIAN, Project Manager *JS*
Public Works Department, Traffic Engineering Division

SUBJECT: AUTHORIZE PUBLIC WORKS DIRECTOR OR DESIGNEE TO SIGN ADDENDUM NO. 1 TO AN EXISTING CONDUIT AND FIBER MAINTENANCE AGREEMENT BETWEEN CITY OF FRESNO AND CLOVIS UNIFIED SCHOOL DISTRICT

KEY RESULT AREA

Resource Management and Customer Satisfaction.

Presented to City Council
Date 11/27/07
Disposition new approved

RECOMMENDATIONS

Staff recommends that City Council authorize the Public Works Director or designee to sign Addendum No. 1 to Agreement Regarding Installation And Use Of High Speed Fiber Optic Cable And Related Infrastructure between the City of Fresno and Clovis Unified School District.

EXECUTIVE SUMMARY

In 2003, the Clovis Unified School District "District" was in the process of developing its Metropolitan Area Network "MAN" to connect the District office with the District's high schools and intermediate schools by means of high speed fiber optics. On May 20th 2003, the City and Clovis Unified School District signed the Agreement Regarding Installation And Use Of High Speed Fiber Optic Cable and Related Infrastructure "Agreement." The District was responsible for all costs of the project; and the City constructed, owns, and maintains the conduit and fiber optic cable.

Addendum No. 1 to the May 20th 2003 Agreement represents Clovis Unified School District's Metro Area Network Project Phase 2 which will provide fiber connectivity to the District's new schools on Willow Ave. The District will be responsible for the construction and all associated costs of the project, and the City will be responsible for the costs associated with the relocation of a fiber vault at a cost not to exceed \$8,000. Once the project is complete, the City will own the conduit and maintain fiber optic cable. Staff is recommending this addendum to the existing agreement as an excellent opportunity for partnership between the Clovis Unified School District and the City of Fresno, providing for not only communication between school campuses but also infrastructure for traffic signal synchronization.

*SUBJECT TO MAYOR'S VETO

REPORT TO THE CITY COUNCIL

Addendum to Agreement with CUSD for Conduit and Fiber Maintenance

November 27, 2007

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KEY OBJECTIVE BALANCE

The recommendation perfectly balances the three Key Objectives of Customer Satisfaction, Financial Management and Employee Satisfaction. This Agreement is an essential part of providing fiber connectivity to new schools built on Willow Avenue (Customer Satisfaction). The agreement substantially reduces the District's expenses and provides value for the City (Financial Responsibility). The agreement provides one (1) mile of additional conduit for future traffic synchronization efforts (Employee Satisfaction).

BACKGROUND

In 2003, the Clovis Unified School District "District" was in the process of developing its Metropolitan Area Network "MAN" to connect the District office with the District's high schools and intermediate schools by means of high speed fiber optics, and the District required that the infrastructure be located in public right of way in the City of Fresno.

On May 20th 2003, the City of Fresno and Clovis Unified School District signed the "Agreement Regarding Installation and Use of High Speed Fiber Optic Cable and Related Infrastructure." The City, at the District's expense, constructed conduit and fiber within the City's right of way from

- Willow & Sugar-Pine-Trail to
- Willow & Shepherd to
- Shepherd & Millbrook to
- Millbrook & Nees to
- Nees & First and ending at
- First at Kastner Middle School.

As part of the May 20th 2003 Agreement, the City constructed, owns and maintains six (6) conduits in which one (1) conduit and fiber optic cable is dedicated for use by the District.

Addendum No. 1 to the May 20th 2003 Agreement represents Clovis Unified School District's Metro Area Network Project Phase 2 which will provide fiber connectivity to the District's new schools on Willow Avenue. The District, at their expense, will construct conduits and vaults within the City's right of way along Willow Avenue from Shepherd to Behymer. The District, at their expense, will install fiber in City owned conduit along Willow Avenue from Behymer to International.

As part of the Addendum No. 1 to the May 20th 2003 Agreement, the City shall own and maintain six (6) conduit in which one (1) conduit and fiber optic cable will be dedicated for use by the District.

REPORT TO THE CITY COUNCIL

Addendum to Agreement with CUSD for Conduit and Fiber Maintenance

November 27, 2007

Page 3

The Clovis Unified School District is responsible for the entire cost of the Metro Area Network Project Phase 2 except for the relocation of a fiber vault at a cost not to exceed \$8,000. The City has plans to move the fiber vault as part of a future signalization of the Willow and Shepherd intersection; therefore, the Public Works Department is being prudent and fiscally responsible by relocating the vault at a fraction of the future costs prior to the District's installation of fiber-optic cables.

FISCAL IMPACT

The May 20th 2003 Agreement stipulates that the City maintain the conduit and fiber optic cable within the City's right of way. The proposed arrangement represents a substantial infrastructure contribution to the City in exchange for long-term City maintenance of the conduit and fiber. Maintenance costs are expected to be nominal and will be absorbed within the operating budget of the Public Works Department.

PNW/SLM/JS/eam
Authorize Director to Sign Add #1 CUSD MAN Agr 11-27-07 R1

Attachment: Copy of Addendum No. 1

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liabilities arising hereunder or related hereto except to the extent of City's negligence or willful misconduct.

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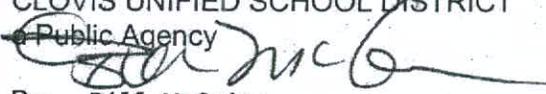
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IN WITNESS WHEREOF, the parties authorized agents have executed this Addendum No. 1 to Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO
a Municipal Corporation

By:
Title:
Date:

CLOVIS UNIFIED SCHOOL DISTRICT
a Public Agency


By: Bill McGuire
Title: Associate Superintendent
Date: 11/1/07

By:
Title:
Date:

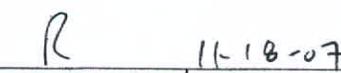
By:
Title:
Date:

ATTEST:
Rebecca E. Klisch
City Clerk

By:

APPROVED AS TO FORM:
James Sanchez

By:


Deputy Coyle

CLOVIS UNIF. SCH. DIST.
Attn: Bill McGuire

1450 Herndon Ave.
Clovis, CA 93611
Phone: 559- 327-9110
FAX: 559- 327-9129

CITY:

City of Fresno-Public Works Dept.

Attn: Scott Mozier
2600 Fresno Street, Room 4016
Fresno, CA 93721
Phone: 559-621-8811
FAX: 559-488-1045

Attachments:

Exhibit A – Project Phase II Terms/Conditions/Schedule

EXHIBIT "A"
PHASE II Terms/Conditions/Schedule

1. District shall:

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