

DEVELOPMENT AGREEMENT

This Development Agreement (the “**Agreement**”) is made this ____ day of _____, 2023 (“**Effective Date**”), by and between the City of Sugar Land, Texas a municipal organization (“**City**”) and SiFi Networks Sugar Land LLC, a Delaware limited liability company (“**SiFi**”) (each of City and SiFi, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, the City desires to implement a fiber optic network System (as defined below) for community benefit in the City and SiFi desires to install such a System;

WHEREAS, SiFi wishes to install, operate, and maintain the System in the City’s Public Right-of Way (as defined below); and

WHEREAS, the installation, maintenance, and repair of the System including fiber optic cable, conduit, and related facilities in the City’s Public Right-of-Way will be done in a manner consistent with all City regulations, including the City’s Right-of-Way Use Ordinance and related development and permitting provisions, as amended; and

WHEREAS, the City has agreed to grant to SiFi access to and a nonexclusive license to use the Public Right-of-Way to install, operate, and maintain the System as well as points of presence and/or a series of distributive cabinets and other equipment and materials in connection with the installation of the FON (as defined below); and

WHEREAS, the Parties intend for the System to be an open access network capable of supporting more than one internet service provider; and SiFi will make reasonable efforts to invite more than one internet service provider to provide services over the System; and

WHEREAS, SiFi plans to use diesel-powered generators as a back-up power source to operate the Shelters (as defined below) for the System; the City requires these generators to be converted from diesel power to a more environmentally friendly power source as soon as possible; and SiFi will use commercially reasonable efforts to replace diesel power generators with a more environmentally friendly technology when such technology becomes widely available commercially and has a proven track record of meeting the Shelter’s power generation specification requirements in an economically feasible way; and

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree to the following terms and conditions:

SECTION 1

1. Definition of Terms.

1.0 **Terms**. For the purpose of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below.

“Access” means facilitation of all necessary City permits encroachments and/or license and/or lease agreements for specified areas within the Public Right-of-Way.

“Boundary” means the legal boundaries of the City as of the Effective Date, and any additions or subtractions to the City legal boundaries, by annexation or other legal means.

“Cabinets” means above ground enclosures placed within the Public Right-of-Way for the protection of active and passive equipment for the provision of Service throughout the System and as further described in Exhibit A.

“Chambers” means underground enclosures placed within the Public Right-of-Way facilitating access to the active and passive equipment for the provision of Service throughout the System.

“Connected Premise” means any Premise that is hard-wired to the System and where a Person at such Premise is a current Subscriber.

“Construction” means breaking ground for the installation of the System.

“Contractor” means the construction company(ies) performing the physical work.

“Drop” means the fiber optic cable run from the System at the edge of the Public Way or the Fiber Access Box (“FAB”) or the Toby Box (each is described in Exhibit A) in the Public Way, as the case may be, to the Premises Wall.

“Facility” means the secure spaces that the City agrees to make available to SiFi during the Term for the installation of Shelters and Cabinets.

“Fiber Optic Network” or “FON” means SiFi’s fiber optic-+ network built by utilizing a combination of blown fiber, aerial and/or other conventional techniques, as well as electronics to enable multi gigabit technologies.

“Hazardous Materials” means any substance, waste or material which, because of its quantity, concentration or physical or chemical characteristics is deemed by any federal, state, or local government authority to pose a present or potential hazard to human health or safety or the environment.

“Home” means a residential single-family dwelling, or a residential single dwelling unit located within a Multiple Dwelling Unit, located within the Boundary.

“Microtrenching” means the process of cutting a trench with a dry cut machine and reinstated with cementitious slurry fill as further described in Section 4.1.1.

“Multiple Dwelling Unit” means a building on 1 platted lot that contains 3 or more Dwelling Units located within the Boundary.

“Pass” or “Passes” means the duct or Chamber as parts of the System has reached to the curbside of a residential Primary Premise, or the engineered point at or near a commercial Premises from which a Drop can be connected.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, limited liability company, or other legally recognized entity, whether for profit or not for profit, but shall not mean the City or SiFi.

“Premises” means a Home, Multiple Dwelling Unit, office or other building located within the Boundary.

“Premises Wall” means the exterior of an outside wall of a Premises to which the fiber optic cable can be terminated.

“Primary Premises” means the Premises within the Boundary as of the Effective Date but excluding any Premises which SiFi cannot connect (i) because of a lack of a right to access and use the Public Right-of-Way due to the City not possessing the right, title, interest or authority to permit SiFi to use and occupy the Public Right-of-Way in order for SiFi to access such Premises, or (ii) because SiFi lack of a right to access any non-City owned property within the Boundary in order to access such Premises, or (iii) if there would be an incremental material cost to connect such Premises would be at least ten percent (10%) higher than the average cost to connect accessible by SiFi Primary Premises within the Boundary, or (iv) where such Premises already have a pre-existing fiber service available to them and do not desire SiFi to connect such Premises. SiFi shall not be required or obligated to make the System available to such Primary Premises described in (i) through (iv) in this definition.

“Public Right-of-Way” means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include (i) a private easement, or (ii) the airwaves above the public right-of-way with regard to wireless telecommunications.

“Release” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any improvements constructed hereunder, including the System.

“Service” means internet, voice, data, and video service or any combination thereof, provided by the City or another Service Provider over the System.

“Service Providers” means any entity, which enters into a contract with SiFi to provide Services over the System.

“Shelter” means the above ground facility housing System equipment as further described in Section 4.2 and in Exhibit A hereto.

“Subscribe” means an agreement to receive from a Service Provider.

“**Subscriber**” means any Person (which for purposes of this definition shall include the City) that has entered into an agreement to receive or otherwise lawfully receives Service.

“**System**” means all parts of the FON system under and above ground in the Boundary that is designed to support the delivery of Service to Subscribers, including the fiber optic cable and its component parts and appurtenances, and the other cables, wires, components, facilities, Cabinets, ducts, conduits, connectors, Shelters, Chambers, manholes, manhole covers, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the FON system.

SECTION 2

2. Grant of Authority.

2.0 Grant of Rights.

2.0.0 SiFi Rights to Public Right-of-Way. This Agreement sets forth the basic terms and conditions upon which SiFi is granted authority to install the System in the Public Right-of-Way as further described in Section 2.3 below. The particular terms and location of each portion of the System shall be specified in the applicable permit as described in Section 3.2 Permits and General Obligations. Upon approval of this Agreement by the City and pursuant to approved permits, the City will grant SiFi the right to access the Public Right-of-Way to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain in, on, over, under, upon, across, or along any Public Right-of-Way, the System including, wires, cables, facilities, Cabinets, components, materials, apparatus ducts, conduits, connectors, vaults, manholes, manhole covers, pedestals, appliances, splitters, pots, attachments, and other related property or equipment as may be necessary or appurtenant to the System, within the Boundary, and all extensions and additions thereto. SiFi shall, subject to City approval of the applicable permit, which approval shall not be unreasonably withheld, delayed, or conditioned, determine the final engineering design and proposed locations all equipment and other parts of the System. Both Parties agree to cooperate during the design and permitting process and SiFi must first disclose all engineering designs to the City for permit approval. Installation of the System and use of the Public Right-of-Way is subject to the applicable permit for a specific location. It is understood that SiFi’s right to place the System is non-exclusive and is made subordinate to the right of the City to use the License Areas for any public purpose. Nothing in this Agreement shall be deemed to grant, convey, create, or vest SiFi a real property interest in land, including any fee, leasehold interest, or easement.

2.0.1 Abandonment and Removal of the System upon Cancellation, Expiration, Nonrenewal or Termination of Agreement. Except as otherwise provided by this Section or this Agreement, upon the cancellation, expiration, nonrenewal or termination of this Agreement, SiFi shall

remove from or abandon in place all or any part of the System in the Public Right-of-Way. Any part of the system abandoned by SiFi as described in this Agreement shall become the property of the City. Within ninety (90) days or as soon as possible of the cancellation, expiration, nonrenewal or termination of this Agreement, SiFi must notify the City in writing if it intends not to abandon the System. Failure to provide such written notice within the time specified will be deemed abandonment. As provided by Section 8.6.1 SiFi shall remove any or all above-ground parts of the System as ordered by the City upon the cancellation, expiration, non-renewal or termination of this Agreement.

2.1 **Term of Agreement.** This Agreement shall become effective on the date stated above after City Council approval and upon mutual execution by both Parties (the “**Effective Date**”). The initial term of this Agreement shall commence on the Effective Date and run until midnight on the date that is thirty (30) years after the Effective Date (the “**Initial Term**”), unless sooner terminated according to the terms and provisions of this Agreement. Thereafter, this Agreement shall automatically renew for up to five (5) successive ten (10) year terms (each, a “**Renewal Term**”), unless at any time prior to the upcoming Renewal Term, the City has issued a City Breach Notice to SiFi under Section 8.1 for not complying with or otherwise being in default with regard to any term of this Agreement, in which case SiFi shall obtain the consent and approval of the City Council prior to any Renewal Term becoming effective. SiFi may provide written notice to the City of its intent not to renew at least one hundred eighty (180) days prior to end of the Initial Term and thereafter at least one hundred eighty (180) days prior to end of any Renewal Term. Nothing in this Section shall be construed to require the City to enter into a new agreement with SiFi if this Agreement is cancelled, terminated, not renewed, or expires.

2.2 **License.**

(i) Pursuant to an approved Permit, City hereby grants to SiFi, and its successors, transferees, and assigns, the authority to enter, access, and occupy portions of the City’s Public Right-of-Way including up to two (2) Public Right-of-Way specific locations for Shelters as further described in Section 4.2, which locations will be mutually agreed upon in good faith between the City and SiFi (the “**License Area**”), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System, including, without limitation, wires, cables, ducts, conduits, connectors, vaults, handholes, handhole covers, fencing, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the System and the Facilities (the “**Improvements**”). This License is subject to easements, covenants, conditions, and regulations in existence as of the date hereof.

(ii) Subject to easements, covenants, conditions, and all applicable laws and regulations in existence as of the date hereof, SiFi shall be permitted to make such alterations to the License Area as are reasonably necessary to erect, install, construct, repair, replace, reconstruct, remove, maintain, operate, and use, the System including, without limitation, the Improvements. SiFi shall be responsible for all costs incurred in the alterations. All construction, installation, maintenance and repair of the License Area shall be conducted in a manner that does not interfere with City’s use and operation of the Public Right-of-Way. The installation of the System and alterations by

SiFi in the License Area shall be done in a good and workmanlike manner by competent personnel or contractors, in conformity with all applicable permits, licenses, ordinances, laws and regulations, and free from any liens for labor or materials. Any damage to the License Area caused by reason of the exercise of SiFi's rights hereunder shall be corrected by SiFi at its sole cost and expense, shall be completed in accordance with all applicable City Ordinances and regulations and within the timeframes provided by this Agreement or as otherwise provided by law.

(iii) SiFi will maintain the Improvements in accordance with this Agreement.

(iv) SiFi shall not install or construct any other structures or improvements other than the Improvements and associated appurtenances described herein.

(v) The Improvements installed within the License Area by SiFi shall be made at no expense to City. SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the Shelters in the event the relocation or protection of the Shelters as necessary due to changes, to the extent impacting the Shelters, in any Public Right-of-Way at any time during the term of this Agreement.

(vi) If the City determines it is necessary for the City to perform work, modify, or alter the License Area and such work may impact the System, the City will provide SiFi reasonable notice, as determined by the circumstances, before commencing such work, or as otherwise provided by state law. If notice is not feasible under the circumstances, City will notify SiFi by the end of the next business day following the City's commencement of work. City and its contractors will use reasonable care to protect utilities or facilities in the Public Right-of-Way. Portions of SiFi's System installed in the Public Right-of-Way constitute such a utility or facility.

(vii) SiFi acknowledges that City, its agents, or assigns, or any utility company or City franchisee may at any time, enter upon the License Area, for the purpose of installing, maintaining, relocating, altering, enlarging, repairing, or inspecting any utility, facility, or public work thereon.

(viii) SiFi shall restore damaged or disturbed surfaces or underground utilities at or adjacent to the License Area to substantially the same as the original condition. Restoration shall be carried out immediately after construction. Any damage not repaired to the reasonable satisfaction of the City shall be a cause to suspend any operations by SiFi within the License Area until the repairs are reasonably satisfactory to the City. Any cost incurred by the City to correct impacted areas not addressed by SiFi in a timely manner will be reimbursable to the City by SiFi at an agreed upon rate.

(ix) The System and all of its parts and components which are installed and constructed by SiFi in the License Area shall at all times be and remain the property of SiFi. SiFi is responsible for maintenance of the System and all of its parts and components at no cost to City.

(x) SiFi shall obtain all necessary easements and privilege agreements for the System. The terms and conditions contained herein shall bind, inure to the benefit of, and be enforceable by, City and SiFi, and their respective successors and assigns (including, without limitation, any and all successors to City in title to all or any portion of the Public Right-of-Way).

2.3

Permitting Process.

2.3.1 The City will comply with all applicable laws and act in accordance with its standard procedures as contained in Chapter 5 of the City's Code of Ordinances in reviewing and processing all applications submitted by SiFi and/or its contractors, including permits or other necessary items for construction work on the System within the Public Right-of-Way while this Agreement is in Effect. The City's standard practice is a fourteen (14) days plan review with permits being valid for thirty (30) days with an additional thirty (30) days extension as needed to commence the work. All permit applications will be made through the Citizen Self Service portal through the account created by SiFi. City will not unreasonably delay, withhold or condition permits.

2.3.2 Approved permitting by the City does not constitute approval by other regulatory authorities and/or private landowners. SiFi or its contractors, will be obligated to obtain any and all other required permits or licenses from such other regulatory authorities and/or private landowners as may be necessary to complete their work.

2.4 **Invoices and Payments – Fixed Monthly Amounts.** Beginning with the first business day of the month following the first permit application submitted by SiFi, City will invoice SiFi monthly and in advance for the fixed amount of \$3,500 (collectively, the "Fixed Monthly Amounts") which amounts shall cover City's costs for administration of the Permitting Process described in Section 2.3 above, plan check fees, encroachment permit fees, inspection fees, and any other applicable fees including SPOC (as defined below) costs. City represents and warrants that such Fixed Monthly Amounts are and will be a fair market value of all City costs incurred by the City in fulfilling its obligations under the Agreement. City will continue to invoice SiFi for the Fixed Monthly Amounts until Substantial Completion. Each such monthly invoice shall be payable within thirty (30) days of receipt.

2.5 **Fees, Expenses and other Charges.** Except as expressly set forth herein, each Party shall bear and be responsible for all of its own costs, fees and expenses incurred in executing and performing this Agreement. The City agrees that City bonding and insurance requirements will be satisfied by bonds and insurance coverage provided as part of the encroachment permit application and supplied by the Contractor (as principal) performing the construction of the System. Such bonds and insurance documentation to be supplied prior to the start of Construction. Prior to commencement of construction, SiFi shall establish an escrow with the City, subject to a separate escrow agreement to be negotiated in good faith between SiFi and City, in the aggregate amount of five hundred thousand dollars (\$500,000) to be used for the restoration of the Public Right-of-Way, which shall be in effect throughout the construction process and for a period of two (2) years following the completion of the construction. . Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 2.5 will survive expiration or termination of this Agreement.

2.7 **Relocation, Modification, or Alterations.** Excluding relocations requested by the City pursuant to Section 7.2(v) and repairs or maintenance to the System, SiFi may not relocate,

materially modify, or materially alter the System components any time after issuance of the permit(s) for the System, except upon City's written approval which approval will not be unreasonably withheld, delayed, or conditioned.

2.8 Calculation and Payment of License Fee

(i) For use and occupation of the Public Right-of-Way to construct, maintain and operate the system and in consideration thereof, SiFi shall pay a license fee as provided by this Section while this agreement is in effect. From the commencement of construction, SiFi shall pay the City each quarter a license fee in the amount of the greater of:

(A) Ten thousand dollars (\$10,000) as minimum amount due; or

(B) Two dollars and ninety-nine cents (\$2.99), or applicable adjusted rate if the rate has changed under section 2.8(ii), multiplied by the number of Connected Premises as of the last calendar day of each quarter.

(ii) Beginning October 1st of each year, the rate for the license fee under section 2.8 (i) (B) shall be adjusted by an amount equal to the most recent consumer price index (CPI), as determined by the Federal Bureau of Labor and Statistics or successor agency. The adjustments will be no less than 2% and no more than 5%.

(iii) Starting with the first quarter following commencement of construction, and for each quarter thereafter while this Agreement is in effect, SiFi will, within fifteen (15) days after the last day of each quarter, submit a report to City with:

(A) Total number of Connected Premises as of the last calendar day of the quarter,

(B) The applicable rate at the time under section 2.8 (i)(B), as adjusted under section 2.8 (ii),

(C) Calculation of the amount due under the then current effective rate,

(D) Statement regarding whether SiFi will pay a license fee in the amount of the minimum amount due under Section 2.8 (i)(A) or the rate under Section 2.8 (i)(B), as adjusted per the details above in accordance with the agreement,

(E) Within thirty (30) days after the last day of each quarter, SiFi shall remit payment to the City of the license fee, as described and calculated under this section 2.8.

(iv) SiFi shall pay to City a late payment charge equal to ten percent (10%) of the amount that was not paid when due within thirty (30) days following the due date and such unpaid amounts shall thereafter also bear interest until paid at the lesser of the rate of two percent (2%) per month or the highest rate permitted by law after notice.

(v) the Parties agree that any fees payable by SiFi to City under this Section 2.8 may be offset, as determined by SiFi, by any fees payable by City to SiFi (for use of the System by City pursuant to a separate agreement executed by the Parties); provided that, if any fees remain due after such offset, then the Party that owes such excess fees shall be obligated to pay them to the other Party as provided under the applicable agreement.

SECTION 3

3. The System.

3.0 System Description. SiFi will install the System within the Boundary using the Public Right-of-Way. The System shall use fiber optic cable emanating from the Shelter to the applicable Cabinet in the Public Right-of-Way and then to the private Premises Wall for each applicable Primary Premise. The City acknowledges and agrees that SiFi has the right to install the System within the Boundary using the Public Right-of-Way in order to make the delivery of Service over the System available to all Premises within the Boundary. The Parties acknowledge and agree that there is no agreed design or configuration of the actual location of the System within the Public Right-of-Way at this time and that SiFi shall submit such designs specification, plan and associated details to the City for approval when ready. The City will work with SiFi to approve the physical location of the fiber optic cable and other equipment and components of the System in, on, over, under, upon, across, or along the Public Right-of-Way and from the Public Right-of-Way to the Premises Wall.

3.1 Permits and General Obligations. Except as otherwise provided by this Agreement, SiFi may locate the System within the Boundary, subject to applicable permits including but not limited to encroachments, licenses, or other forms of plan review and approval or authorization necessary to construct, install, operate, maintain, replace, reconstruct, or repair the System, or any part thereof, during the term of this Agreement and any extensions. SiFi shall provide plans to the City for approval for the issuance of permits to construct the System.

SECTION 4

4. Construction and Facilities.

4.0 The City acknowledges and agrees that SiFi and its contractors intend to use varying construction techniques for the System Construction and deployment, which may include, any of the following:

- (i) traditional open trench and/or directional boring;
- (ii) slot cut Microtrenching as set forth in the specifications in Exhibit A to this Agreement;
- (iii) the use of a ground penetration radar system as the primary method for identifying underground utilities prior to any Microtrenching;
- (iv) aerial cables; and/or

- (v) techniques ancillary to or related to the foregoing.

Notwithstanding any City development or building code provisions or construction standards to the contrary, the City hereby approves each of the above referenced construction methods and the specifications in the exhibit and agrees to work cooperatively with SiFi in reviewing all other potential construction methods. Aerial installations to occur only where colocation is available and allowable on Centerpoint Energy poles and where easement language supports the addition of new infrastructure.

4.1.1 SiFi shall be solely responsible for all repairs, maintenance, and adjustments, and damage to the System, not caused by City's active negligence or willful misconduct. The City shall be liable to the extent any loss or damages to the System or other property and equipment results from the active negligence or willful misconduct of acts or omissions by the City or its agents.

4.1 **Location of Equipment/Facilities.**

4.1.0 **Facilities.** During the Term, the City shall provide SiFi, as needed, with access to and use of the Facilities for the installation and operation of up to two (2) SiFi's Shelters (approximately 1,000 square feet per location for each Shelter) subject to a separate lease, easement or another suitable agreement to be negotiated in good faith between the parties including payment by SiFi of fair market value for the use and occupancy of each such Shelter Facility on City-owned land.

4.1.1 **Shelters and Cabinets Locations.** SiFi agrees to provide engineering designs including intended locations of the Shelters and Cabinets required for the System to the City prior to Construction in accordance with City's permitting process. The City and SiFi agree to cooperate in the selection of suitable sites for the Shelters and Cabinets. However, City has sole and absolute but reasonable discretion to reject a proposed location; provided that, the City will use reasonable efforts to offer suitable alternative locations.

4.2 **System Connections to the Premises Wall.** SiFi will provide a terminated fiber to each Subscriber's Premises receiving a Drop in a manner to be determined by SiFi. The location and the method of the Drop will vary depending on the circumstances of the location of the Subscriber's Premises. For the avoidance of doubt, in the event SiFi cannot install fiber optic cable or other necessary equipment on private property because of a lack of a right to access the property, SiFi shall not be required to make the System available to such Premises when private easement has not been granted.

SECTION 5

5. **Oversight and Regulation by City.**

5.0 **Oversight of Construction.** In accordance with applicable law, the City shall have the right to oversee and inspect the Construction of the System in the Public Right-of-Way.

5.1 **Compliance with Applicable Laws.** SiFi and the City shall, at all times during the Term, be subject to and comply in all material respects with all applicable federal, state laws and local laws regarding the Construction of the System in the Public Right-of-Way.

5.2 **Treatment of Confidential Information.** The City acknowledges that all information regarding the System, including plans, drawings, designs, conceptual renderings, cost information, specifications, photographs, reports, manuals, and other documents is considered by SiFi to be confidential and proprietary information. The City will notify SiFi within five (5) business days after receiving a Texas Public Information Act request that seeks disclosure of information provided by or concerning SiFi or the System. The City agrees to seek a written opinion from the Texas Attorney General's Office; however, SiFi must submit written comments to the Texas Attorney General to establish reasons why the information should be withheld. The burden of establishing the confidential and proprietary nature of the information resides with SiFi. Should the Texas Attorney General issue an opinion that the requested information, or any part thereof, should be released, the City may release said information without penalty or liability. This Section 5.2 shall survive expiration or termination of this Agreement.

SECTION 6

6. **Insurance.**

SiFi or its contractors, to the extent applicable to their scope of services, shall procure and maintain from the date of start of Construction for the duration of the term of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by SiFi, its agents, representatives, employees, or subcontractors. All contractors and their subcontractors shall obtain the required insurance and no work shall be performed by SiFi or any of its contractors or subcontractors until and unless the required insurance is in place.

6.1 **Minimum Scope and Limit of Coverage.**

Coverage shall be at least as broad as:

A. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04). Coverage shall include blanket contractual liability and broad form property damage, premises, operations, explosion, collapse, underground hazard (commonly referred to as "X", "C" and "U" coverages).

B. Automobile Liability: Insurance Services Office Form CA 0001 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

C. Workers' Compensation insurance with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 each occurrence, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

D. Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

E. Umbrella Liability with limits no less than \$2,000,000 per occurrence and aggregate. Coverage shall follow form over all primary policies and include drop-down provisions.

F. Pollution Legal Liability with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If the Contractor or SiFi maintains broader coverage and/or higher limits than the minimums shown above for all policies, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor or SiFi. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City to the extent necessary to cover any actual damages suffered by the City or third parties.

6.2 Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City, such approval not to be unreasonably conditioned, withheld or delayed.

6.3 Other Insurance Provisions:

A. Additional Insured. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of SiFi including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of SiFi or its contractors. General liability coverage can be provided in the form of an endorsement to the insurance required herein but must include coverage for premises/operations and products/completed operations.

B. Primary Insurance. For any claims related to this project, SiFi's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the SiFi's insurance and shall not contribute with it.

C. Notice of Cancellation. SiFi shall provide immediate written notice if (1) any of the required insurance policies is terminated or not renewed; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, SiFi shall forthwith obtain and submit proof of substitute insurance.

D. Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

E. Waiver of Subrogation. SiFi and its contractors and subcontractors hereby agree to waive rights of subrogation which any insurer may have by virtue of the payment of any loss. All policies required herein shall contain an endorsement waiving subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

F. Verification of Coverage. SiFi shall furnish the City with Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before the date of the start of Construction. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

G. Contractor/Subcontractors. SiFi shall require and verify that the Contractor and all subcontractors maintain insurance meeting all the requirements stated herein to the extent applicable to their scope of services, and SiFi shall require, to the extent possible, the Contractor and all the subcontractors to list City as an additional insured on insurance required from subcontractors.

H. Special Risks or Circumstances. City reserves the right to modify, at any time, these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

SECTION 7

7. Parties' Obligations.

7.1 Obligations of the City. In addition to all other duties and obligations contained elsewhere in this Agreement, City has the following duties and obligations:

(i) Provide a single point of contact (“**SPOC**”) for SiFi, which SPOC will be responsible to address all issues related to the System, providing coordination with and act as a liaison to City departments, and serving as a communication and troubleshooting resource for SiFi.

(ii) Offer the full cooperation of all City departments with respect to relevant issues with respect to the System. Such cooperation will be supervised by the SPOC.

(iii) Provide access to the License Area for which a permit has been issued to SiFi for the installation, inspection, and maintenance of the System and for any other reasonable business purpose with respect to the

System, as provided by this Agreement, for such access following completion of construction. SiFi and/or any contractors it hires will be required to obtain all necessary permits and pay any related permit and inspection fees and comply with all other standard permit conditions of approval for future maintenance and/or repairs and/or alterations to its System located within the Public Right-of-Way once installed and operational.

(iv) Participate in regular status meetings for the coordination of all matters related to the System.

(v) Comply with all applicable laws and will act in accordance with its standard procedures in reviewing and processing all applications for permits submitted by SiFi or its representatives or contractors, including permits or other necessary items for construction work on the System within the Public Right-of-Way.

(vi) In the event of emergency repairs to the System, the Public Right-of-Way or City facilities are necessary in the License Area, City and the SPOC will work with SiFi to facilitate prompt repairs. SiFi shall be solely responsible for completing the repairs to the System and must coordinate with any utility providers or other users of the Public Right-of-Way in the process. Emergency repairs shall be made subject to all City rules and regulations related to work in the Right-of-Way.

(vii) When reasonably able, City will provide SiFi with a least thirty (30) calendar days advance notice of any work in the Public Right-of-Way that requires the relocation of the System. In addition, where necessary, the City will provide SiFi with an opportunity to access the System at the time of the excavation in the Public Right-of-Way by others.

(viii) City hereby agrees that access to and from the FAB and/or or Toby Box to extend the Drop to a Premise does not require permits from the City.

7.2 Obligations of SiFi. In addition to all other duties and obligations contained elsewhere in this Agreement, SiFi has the following duties and obligations:

(i) Work closely with the SPOC of the City and relevant City departments with respect to the construction of the System.

(ii) Comply with all requirements of City for permit and Public Right-of-Way use applications, to the extent they may be required.

(iii) Maintain or provide for the maintenance of the System such that the System is fully operational and capable of providing Service to Subscribers and customers at all times.

(iv) SiFi and its contractors shall comply with the Texas Utilities Code Chapter 251, and other applicable law, including registration, contacting notification centers prior to construction, and complying with applicable response times; and shall comply with all City requirements to contact the appropriate City representative to identify City facilities in the Public Right-of-Way prior to construction.

(v) SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the System or installation of temporary facilities when relocation of the System is necessary due to changes in any Public Right-of-Way or when the City has determined that relocation, change or alteration of the System is reasonably necessary due to the construction, operation, repair, maintenance or installation of the City or other governmental public improvements in the License Area and City shall provide SiFi with not less than sixty (60) days advance written notice. If SiFi fails to act on such notice within sixty (60) days from receipt, the City or other public entity may cause the work to be done and City will not be liable to SiFi for any resulting damages to the System. The Parties will cooperate in good faith in relation to the relocation of the System or facilities. The City agrees to provide all reasonable accommodations as reasonably requested by SiFi, subject to applicable fees, costs, and charges, including standard permit application and inspection fees, to allow and facilitate SiFi the ability to temporarily or permanently relocate such portion of the System in or around the Public Right-of-Way in a manner sufficient to maintain the operation of the System pursuant to the terms of this Agreement. SiFi shall ensure that the System continues to provide Service at all times to Subscribers and customers during the process of relocating the System or installing temporary facilities.

(vi) Upon the City's request, SiFi will facilitate an introductory meeting between the City and Service Provider(s) who use the Network to provide services to residential and business locations, and further will advise any such Service Provider(s) that the City may require fees as required by law or regulation. SiFi will use reasonable efforts through a competitive solicitation process to enable more than one (1) Service Provider to have access to the Network to deliver Service to Primary Premises within thirty-six (36) months from commencement of construction. SiFi agrees to have at least one (1) Service Provider providing Service over the System to potential Subscribers in all areas where portions of the System are located not later than twenty-four (24) months following the commencement of construction and throughout the duration of this Agreement. City acknowledges that SiFi does not have control over how many Service Providers provide Service over the System and, therefore, City agrees that if SiFi has applied reasonable efforts through a competitive solicitation process under this Section to enable more than one (1) Service Provider to provide Service over the System, SiFi's failure to have at least

two (2) Service Providers providing Service over the System in the City while this Agreement is in effect does not constitute a breach of this Agreement. Such Service, which is the responsibility of the Service Providers, shall include internet services capable of symmetrical speeds of one (1) Gigabit per second (Gbps) or higher. Service Providers may also provide additional tiered packages of internet services with different higher or lower speeds. As portions of the System are completed, SiFi will ensure that the System is capable of providing Service to Subscribers in the areas where completed portions of the System are located while this Agreement is in effect.

(vii) SiFi shall be responsible for repairing all portions of the System in the event of a fault or damage. SiFi shall respond and make any necessary repairs to the System or take any actions necessary to address a fault or damage no later than forty-eight (48) hours after notification, except where such fault or damage constitutes an emergency or endangers the health, safety, or welfare of the public or property, such repairs shall be completed no later than four (4) hours after notification.

(ix) SiFi shall repair any damage to the Public Right-of-Way or any City property where such damage is caused by SiFi, or its agents, contractors, employees, affiliates, or representatives. Such repair work shall be completed no later than seven (7) calendar days after written notice from City, except where such damage constitutes an emergency or endangers the health, safety, or welfare of the public or property, SiFi shall notify the City immediately and such repairs shall be completed no later than four (4) hours after notice. If SiFi fails or refuses to repair such damage or at the City's option in lieu of requiring SiFi to make such repair, the City may make such repairs at the sole cost and expense of SiFi, and charge to SiFi the cost and expense of making such repairs. In such case, City shall send SiFi an invoice for the total cost and expense and SiFi agrees to pay City within thirty (30) days of receipt of an invoice. If the City chooses to repair any damage in lieu of requiring SiFi to make such repair, the City will provide reasonable notice as determined by the circumstances prior to making such repairs, unless such notice is not feasible under the circumstances, in which case, City will notify SiFi by the end of the next business day following the City's commencement of repairs.

(x) Upon reasonable notice, as determined by the circumstances, at the request of the City and at SiFi's cost, SiFi shall remove and abate any portion of the System or any facility that is dangerous to life or property, as determined by the City. If SiFi, after reasonable written notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of SiFi. If the City removes or abates any portion of the System or any facility under this Section 7.2, the City will notify SiFi twenty-four (24) hours prior to commencing such work, unless such notice is not feasible

under the circumstances, in which case, City will notify SiFi by the end of the next business day following the City's commencement of such work. SiFi shall promptly restore any public and/or private improvements located within the License Area as required by the City's applicable regulations.

(xi) Power Generators for Shelters. City understands that SiFi plans to use diesel powered generators as a back-up power source for its Shelters. SiFi understands that the City requires these generators to be converted from diesel power to a more environmentally friendly power source as soon as possible. SiFi will use commercially reasonable efforts to replace, when possible and economically feasible, such diesel powered generators, with a more environmentally friendly technology when such technology is widely available commercially and has a proven track record of meeting the power requirement specifications for the Shelters.

SECTION 8

8. **Breach; Rights and Remedies; Termination; Indemnification.**

8.1. **SiFi Breach or Default.** In the event the City believes that SiFi has not complied with or is otherwise in default with regard to any term of this Agreement, the City shall promptly notify SiFi in writing with specific details regarding the exact nature of the alleged noncompliance or default (a “**City Breach Notice**”).

8.1.1 **SiFi's Right to Cure or Respond.** Except as provided by Section 8.1.4 or otherwise provided by law or regulation, or in case of an emergency event that endangers the health, safety, or welfare of the public or property, SiFi shall have thirty (30) calendar days from its receipt of a City Breach Notice (the “**Initial SiFi Cure Period**”) to:

(i) respond to the City, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest and to the extent the Parties are unable to resolve such contest within thirty (30) days of SiFi's response, each Party shall be entitled to seek any and all rights and remedies available to it at law or in equity to resolve such contest; or

(ii) cure an actual default or noncompliance; provided, however, if the Parties agree in writing, the SiFi Cure Period may be extended for an additional thirty (30) calendar days in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the SiFi Cure Period.

8.1.2 **City Rights and Remedies.** Except as provided in Sections 8.1.4, if SiFi fails to cure any actual noncompliance or default as provided in Section 8.1.1(ii) above within the SiFi Cure Period, the City may:

- (i) seek specific performance of any provision of this Agreement which lends itself to such remedy as an alternative to money damages;
- (ii) seek money damages from SiFi; or
- (iii) in the event of the breach of, noncompliance with or default under any material term of this Agreement (a “Material Breach”), terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

The City’s exercise of its rights and remedies under this Section shall not be deemed a waiver of any other right or remedy of the City under Texas or Federal law.

8.1.3. **Material Breach.** The Parties agree that the following non-exclusive list of events constitute a Material Breach of this Agreement:

- (i) SiFi fails to provide proof of insurance as required by this Agreement or fails to carry the required coverages of insurance as required by this Agreement.
- (ii) SiFi fails to commence construction by twenty-four (24) months from the Effective Date, unless an extension of time is agreed between the Parties.
- (iii) SiFi fails to complete construction by forty-eight (48) months from the commencement of construction, unless an extension agreed between the Parties.
- (iv) SiFi fails to pay any fee or charge by the required deadline.
- (v) SiFi fails to comply with any obligation included in Section 7.2.
- (vi) SiFi fails to comply with any local, state, or federal law or regulation.
- (vii) SiFi assigns, sells, transfers, or otherwise conveys its rights or interests in this Agreement or sublets the License Area in whole or in part to another person, party or entity who is not an Affiliate of SiFi without obtaining the City’s prior written consent unless such consent was unreasonably conditioned, withheld, or delayed.
- (viii) SiFi fails to obtain City’s prior consent before proceeding with any work, when such prior consent is required under this Agreement.

8.1.4. **Termination for Insurance Material Breach.** Notwithstanding any provision to the contrary, if SiFi commits a Material Breach related to insurance under Section 8.1.3(i), SiFi shall have forty-eight (48) hours from receipt of notice from the City to cure an actual default or noncompliance. If SiFi fails to cure any actual or noncompliance or defaults within the time required by this Section 8.1.4, the City may terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

8.2 **City Breach or Default.** In the event SiFi believes that the City has not complied with or is otherwise in default with regard to any term of this Agreement, SiFi shall promptly notify the City in writing with specific details regarding the exact nature of the alleged noncompliance or default (a “**SiFi Breach Notice**”).

8.2.1 **City's Right to Cure or Respond.** The City shall have thirty (30) calendar days from its receipt of a SiFi Breach Notice (the “**City Cure Period**”); to:

(i) respond to SiFi, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest and to the extent the Parties are unable to resolve such contest within thirty (30) days of the City’s response, each Party shall be entitled to seek any and all rights and remedies available to it at law or in equity to resolve such contest; or

(ii) cure an actual default or noncompliance; provided, however, if the Parties agree in writing, the City Cure Period may be extended for an additional thirty (30) calendar days in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the City Cure Period.

8.2.2 **SiFi Rights and Remedies.** If the City fails to cure any actual noncompliance or default as provided in Section 8.2.1(ii) above within the applicable City Cure Period, SiFi may:

(i) seek specific performance of any provision of this Agreement which lends itself to such remedy as an alternative to money damages;

(ii) seek money damages from the City; or

(iii) in the event of the breach of, noncompliance with or default under any material term of this Agreement, terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

8.3 **Additional Rights to Terminate.**

8.3.1 If at any time prior to commencing Construction, SiFi has not secured the funding or financing required to complete construction of the System, SiFi shall have the immediate right, at its option, upon written notice to the City to terminate this Agreement.

8.3.2 Prior to commencing construction of the System, SiFi must have provided assurances to the satisfaction of the City from reputable financial institutions, banks, or investment banking firms that SiFi will receive sufficient funding or financing on a timely basis in order to complete construction of the System according to this Agreement, and SiFi must have received written notice from the City acknowledging that the assurances were made to the City's satisfaction. If SiFi does not provide assurances to the satisfaction of the City under this Section, the City may terminate this Agreement, at its option, upon written notice to SiFi.

8.4 **Indemnification.**

8.4.1 SIFI SHALL DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, VOLUNTEERS AND AGENTS FREE AND HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS, EXPENSES, LIABILITY, LOSS, DAMAGE OR INJURY, IN LAW OR EQUITY, TO PROPERTY OR PERSONS, INCLUDING WRONGFUL DEATH, IN ANY MANNER WHICH ACTUALLY DIRECTLY OR ALLEGEDLY ARISE OUT OF OR ARE INCIDENT TO ANY ALLEGED ACTS, OMISSIONS, NEGLIGENCE OR WILLFUL MISCONDUCT OF SIFI, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, AND SUBCONTRACTORS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES, THE PROJECT OR THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PAYMENT OF ALL REASONABLE ATTORNEY'S FEES AND OTHER RELATED COSTS AND EXPENSES EXCEPT WHERE CAUSED BY THE ACTIVE NEGLIGENCE, SOLE NEGLIGENCE, OR WILLFUL MISCONDUCT OF THE CITY ITS OFFICERS, OFFICIALS, EMPLOYEES AND VOLUNTEERS. SIFI SHALL DEFEND, AT ITS OWN COST, EXPENSE AND RISK, ANY AND ALL SUCH AFORESAID SUITS, ACTIONS OR OTHER LEGAL PROCEEDINGS OF EVERY KIND THAT MAY BE BROUGHT OR INSTITUTED AGAINST THE CITY, ITS DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, AGENTS OR VOLUNTEERS. SIFI SHALL PAY AND SATISFY ANY JUDGMENT, AWARD OR DECREE THAT MAY BE RENDERED AGAINST THE CITY OR ITS DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, AGENTS OR VOLUNTEERS, IN ANY SUCH SUIT, ACTION OR OTHER LEGAL PROCEEDING. SIFI SHALL REIMBURSE THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND/OR VOLUNTEERS, FOR ANY AND ALL REASONABLE LEGAL EXPENSES AND COSTS INCURRED BY EACH OF THEM IN CONNECTION THEREWITH OR IN ENFORCING THE INDEMNITY HEREIN PROVIDED. SIFI'S OBLIGATION TO INDEMNIFY SHALL NOT BE RESTRICTED TO INSURANCE PROCEEDS, IF ANY, RECEIVED BY THE CITY ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS OR VOLUNTEERS.

8.4.2 Concurrent Liability and Governmental Immunity.

In the event of joint or concurrent negligence of SiFi and City, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas. In connection with any claims, suits, or actions against the City, the City Agrees to fully assert its governmental immunity and to take such other actions as are available to it to minimize the amount of any claims, damages, losses or expenses incurred and for which indemnification is or will be requested from SiFi.

8.5 Limitation of Liability. EXCEPT WITH RESPECT TO A BREACH OF THE CITY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING ANY LOST SAVINGS OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY AND ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, MEMBERS, EQUITY AND DEBT HOLDERS, PARTNERS, EMPLOYEES, CONTRACTORS AND REPRESENTATIVES AND THEIR HEIRS, SUCCESSORS AND ASSIGNS, FROM CLAIMS FOR ANY SUCH DAMAGES. SiFi aggregate liability under this Agreement shall be limited to the higher of five million dollars (\$5,000,000) or the amount of available applicable insurance coverage. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 8.5 will survive expiration or termination of this Agreement.

8.6. Termination, Cancellation, and Expiration. This License Agreement is granted subject to the following conditions, terms and reservations:

8.6.1. Notwithstanding any other provision, at such time as this Agreement is terminated, canceled, not renewed, or expires, as described herein, SiFi, upon orders issued by the City, acting through its City Manager, shall remove any or all Cabinets, Shelters, other components of the System, and all other installations, improvements and appurtenances, if any, owned by SiFi situated in, under or attached to the License Areas, as instructed by City, and shall restore the premises to substantially the same as the pre-existing conditions, at the sole cost of SiFi. Such work, if required, shall be commenced within thirty (30) calendar days of termination, cancellation, nonrenewal, or expiration of this License Agreement and shall be completed within ninety (90) days thereafter. In the event, upon termination, cancellation, nonrenewal, or expiration of this Agreement, SiFi or SiFi's surety shall fail to remove, if required, all Cabinets, Shelters, other components of the System, and all other installations, improvements and appurtenances, as instructed by City, and to restore the License Areas in compliance with orders issued by the City, or such work is not done to the satisfaction of the City Manager, then in either event after providing reasonable written notice to SiFi, the City shall have the right to do all work necessary to restore said areas, or cause such work to be done and to assess the reasonable and necessary cost of all such work against SiFi; in neither event shall the City be liable to SiFi on account thereof.

8.6.2. If this Agreement is terminated, not renewed, or cancelled, there will be no refund of any amounts paid to the City under this Agreement and City shall retain all compensation paid in accordance with this Agreement. In the event of termination, nonrenewal, or cancellation this Agreement shall become null and void except for any surviving provisions and SiFi or anyone claiming any rights under this instrument shall remove, if required under this Agreement, any improvements and encroachments at SiFi's expense. Failure to do so shall subject SiFi to the provisions contained in this Section 8.6. All work shall be done at the sole cost of SiFi and to the satisfaction of the City Manager or his designee.

8.6.3. It is further understood that if and when the City, in the exercise of its discretion, shall determine that the grade of any street or sidewalk should be modified or changed, or that any other work should be done in connection with any public improvement which will affect the License Areas and/or any of SiFi's installations and improvements thereon, City will provide SiFi with thirty (30) calendar days' notice and SiFi shall make any modification or relocation of SiFi's Cabinets, Shelters, and all other components of the System that City determines, in its sole judgment, to be reasonably necessary because of City's proposed activity. Any modification or relocation shall be made at the sole expense of SiFi and to the satisfaction of City. As provided by Section 7.2, SiFi shall ensure that the System continues to provide Service at all times to Subscribers and customers during the process of relocating the System or installing temporary facilities.

SECTION 9

9. Disputes.

9.1 For all claims, disputes or controversies arising out of, or in connection with, the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System which cannot be settled through negotiation, the Parties may agree first to try in good faith to settle the matter by mediation in Fort Bend County, prior to commencing litigation.

9.2 All claims, disputes or controversies arising out of, or in connection with, the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System, shall be decided in a court of law. The sole and exclusive venue for all claims, disputes or controversies arising out of, or in connection within the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System, shall be the United States District Court for the Southern District of Texas, or if there is no federal court jurisdiction, the state courts in Fort Bend County, Texas.

SECTION 10

10. Miscellaneous Provisions

10.1 Assignment.

(i) SiFi may assign or transfer this Agreement, in whole or part, or sublet all or any part of the License Areas to any entity that is an Affiliate of SiFi without the City's prior written consent; provided however, that SiFi provides the City with at least thirty (30) days' notice prior to the assignment or transfer. For purposes of this section 10.01, a person, association, partnership, corporation, or joint-stock company, trust or other business entity, however organized, ("Person") is an "Affiliate" of SiFi if that Person directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with SiFi. "Control" shall be defined as (i) ownership of a majority of the voting power of all classes of voting stock, or (ii) ownership of a majority of the beneficial interests in income and capital of an entity other than a corporation. SiFi shall not assign this Agreement in whole or in part or sublet all or any part of the License Areas to any entity who is not an Affiliate of SiFi without City's prior written consent.

(ii) SiFi will pay all costs due under this Agreement prior to assignment or transfer to an Affiliate.

(iii) City shall not unreasonably withhold its consent to any assignment or transfer of this Agreement to any entity who is not an Affiliate with SiFi, provided, however:

(A) the proposed Assignee may be required by City to agree to comply with all provisions of this Agreement and such additional conditions as the City may prescribe;

(B) the proposed Assignee may be required by the City to provide assurances reasonably satisfactory to the City of its qualifications, financial capability, character of effect of the transaction and other such matters as the City deems relevant; and

(C) SiFi pays all costs due under this Agreement prior to assignment or transfer.

(iv) SiFi shall pay a one thousand dollars (\$1,000) non-refundable processing fee for each request for the City's consent to any proposed transfer, assignment or subletting. Such payment is due at the time the request is submitted to City. If the City's cost to process the request exceeds one thousand dollars (\$1,000) SiFi shall reimburse the City the additional costs within thirty (30) days upon receipt of reasonable documentation of such costs. SiFi will pay the processing fees whether such transaction is approved or denied.

(v) Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. sections 101, et seq., as may be amended, shall be deemed without further act to have assumed all of the obligations of SiFi arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to City an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall by paid to City, shall be the exclusive property of City and shall not constitute property of SiFi or of the estate of SiFi within the meaning of the Bankruptcy Code. Any monies or other considerations constituting City's property under the preceding sentence not paid or delivered to City shall be held in trust for the benefit of the City and be promptly paid to City.

10.2 **Force Majeure.**

If either Party becomes unable, wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The Party so affected shall give written notice of the existence, extent and nature of the Force Majeure event to the other Party within ten (10) calendar days, or when reasonably possible, of the occurrence relied upon and stating which provision of this Agreement is impacted by the Force Majeure event. Additionally, the Party so affected shall take reasonable steps to mitigate the Force Majeure. The term "Force Majeure" as used in this Agreement means: labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, governmental, administrative or judicial order, or other event that is beyond the Party's reasonable control. Notwithstanding any other provision to the contrary, the occurrence of a Force Majeure Event does not excuse SiFi from making timely payments of any fees or other amounts due to the City under this Agreement.

10.3 **Notice.** All notices and communications hereunder shall be in writing and shall be served upon the other party by hand delivery, nationally recognized overnight delivery service, United States certified mail, return receipt requested, or by electronic mail and addressed as follows:

IF TO THE CITY:

Sugar Land City Hall

2700 Town Center Blvd. N

Sugar Land, TX 77479

Attn: Steve Budny, Director of IT, Data and Security

Email: SBudny@Sugarlandtx.gov

IF TO SIFI:

SiFi Networks Sugar Land LLC

103 Foulk Road, Suite 500

Wilmington, DE 19803

Email: NOTICES@SiFiNetworks.com

or to such other address as such Party may hereafter specify for the purpose by notice to the other Party in the manner provided in this Section 10.3. All such notices, requests and other communications will be deemed received on the date of receipt if received prior to 5 p.m. local time on any business day in the place of receipt. Otherwise, any such notice, request or communication will be deemed not to have been received until the next succeeding business day in the place of receipt. Rejection or other refusal to accept or inability to deliver because of change of address of which no notice was given shall be deemed to be receipt of the notice.

10.4 **Entire Agreement.** This Agreement, including all Exhibits, embodies the entire understanding and agreement of the City and SiFi with respect to the subject matter hereof. This Agreement supersedes all other agreements whether written, verbal, or otherwise between SiFi and the City with respect to the subject of this Agreement.

10.5 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement (which other terms and provisions shall remain in full force and effect) or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10.6 **Governing Law.** This Agreement shall be deemed to be executed in the State of Texas and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Texas as applicable to contracts entered into and performed entirely within the State, irrespective of conflict of laws principles. A lawsuit may only be prosecuted on this Agreement in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas.

10.7 **Modification.** This Agreement shall not be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and SiFi. For the avoidance of doubt, this Agreement cannot be amended or modified orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to amend or modify this Agreement in whole or in part.

10.8 **No Third Party Beneficiaries.** Nothing in this Agreement or in any prior agreement is or was intended to confer third party beneficiary status on any party or Person not a party to this Agreement including a member of the public.

10.9 **No Waiver of Rights.** Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural that SiFi or the City may have under federal or state law unless such waiver is expressly stated herein.

10.10 **No Rights to the System.** The City expressly agrees that, except as expressly set forth in this Agreement, it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the System, throughout the term of this Agreement. Except as otherwise provided by this Agreement, SiFi shall, at all times, retain title to and ownership of the System and all future extensions of the System, and shall have the right to lease the System or parts thereof to a provider of internet, data, voice, video and other services.

10.11 **Representations and Warranties.**

10.11.1 The City represents and warrants to SiFi that: (a) it has full authority (including the authority required by any applicable law, ordinance, rule or regulation) to enter into and perform this Agreement and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby are within the right, power and authority of the City and have been duly authorized by all necessary action on

the part of City, (b) this Agreement has been duly executed and delivered by the City and it constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity) and (c) the execution and delivery of this Agreement by the City and its performance hereunder and thereunder will not violate any law, ordinance, rule, or regulation applicable to the City.

10.11.2 SiFi represents and warrants to the City that: (a) it has full authority to enter into and perform this Agreement and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby are within the power and authority of SiFi and have been duly authorized by all necessary action on the part of SiFi, (b) this Agreement has been duly executed and delivered by SiFi and it constitutes a legal, valid and binding agreement of SiFi enforceable against SiFi in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity) and (c) the execution and delivery of this Agreement by SiFi and its performance hereunder and thereunder will not violate any law, rule, or regulation applicable to SiFi.

10.12 **Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either SiFi or the City.

10.13 **No Partnership.** Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the City and SiFi or any other relationship other than a contractual relationship as expressly set forth in this Agreement. Neither Party shall in any manner act or indicate to any third party that is acting as the agent of the other Party. SiFi shall at all times remain an independent contractor. Neither Party shall control or direct the day-to-day affairs of the other Party, or their mode or method of performing their respective obligations hereunder.

10.14 **Headings.** The headings and captions of this Agreement are solely for the convenience of the Parties and shall not be deemed to modify or vary any of the substantive terms thereof.

10.15 **Construction.** Each of the Parties acknowledge that each Party to this Agreement has been represented by counsel in connection with this Agreement. Legal or equitable principles that might require the construction of this Agreement or any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement and is expressly waived. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement will refer to this Agreement as a whole and not to any particular

provision of this Agreement. References to Articles, Sections, and clauses are to Articles, Sections and clauses of this Agreement unless otherwise specified. Any singular term in this Agreement will be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

10.16 **Counterparts.** This Agreement may be signed in any number of counterparts, each of which will be deemed an original, with the same effect as if the signatures were upon the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (including PDF) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

10.17 **Further Assurances.** Each Party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other Party to effectuate the purposes and intention of this Agreement.

10.18 **No Waiver.** No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

10.19 **Governmental Immunity.** City is a governmental entity and is subject to the Texas Tort Claims Act. Nothing in this Agreement is intended to waive any governmental immunity available to the City under Texas law.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year stated above.

CITY OF SUGAR LAND, TEXAS

A political subdivision of the State of Texas

Joe Zimmerman, Mayor

ATTEST:

Thomas Harris, III, City Secretary

Approved as to form:

Meredith Riede, City Attorney

SIFI NETWORKS SUGAR LAND LLC,

a Delaware limited liability company



By: Scott Bradshaw

Its: Authorized Signatory