

AGREEMENT REGARDING OCCUPANCY OF THE RIGHT-OF-WAY

This Agreement Regarding Occupancy of the Right-of-Way (the “**Agreement**”) is made this _____ day of _____, 2023 (“**Effective Date**”), by and between the City of Cleveland (“**City**”), a municipal corporation in the State of Ohio (“**State**”), through its Director of Mayor’s Office of Capital Projects (“**Director**”), under the authority of ***** and SiFi Networks Cleveland LLC, a Delaware limited liability company (“**SiFi**”) (each of City and SiFi, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, the City desires to enter into an agreement to allow SiFi to install a fiber optic network System (as defined below) in the City and SiFi desires to install such a System; and

WHEREAS, SiFi owns, maintains, operates and controls a communications System to allow internet service providers to provide Service (as defined below) to Subscribers; and

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

WHEREAS, the City has agreed to grant to SiFi access to and a non-exclusive license to use the Public Right-of-Way for SiFi to install, operate, and maintain the System as well as Shelters (as defined below) and/or Cabinets (as defined below) and other equipment and materials in connection with the installation of the FON; 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, ordinances, and standards including the City’s Right-of-Way Management Chapter and Right-of-Way Permitting and Construction Manual, as amended as of the Effective Date (collectively, “**Regulations**”), and it is the mutual understanding of the City and SiFi that the specifications contained in Exhibit A are in conformance with those Regulations and shall be deemed compliant until Substantial Completion, acknowledging the City’s right to require reasonable modifications as part of the permitting process in the event the Regulations are subsequently updated; 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;

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 as follows:

SECTION 1

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 Way.

“**Boundary**” means the legal boundaries of the City as of the Effective Date and including any additions, subject to SiFi’s investor approval, or subtractions to the legal boundaries by annexation or other means after the Effective Date.

“**Cabinets**” means above ground enclosures placed within the Public 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 Way facilitating access to the active and passive equipment for the provision of Service throughout the System.

“**Commencement Date**” means the date that Substantial Completion, as that term is defined herein, of the System has been achieved.

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

“**Construction Contractor**” or “**Contractor**” means the construction company(ies) performing the physical work of installing the System.

“**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 (as 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.

“**FON**” means SiFi’s fiber optic network built by utilizing a combination of Microtrenching (as defined below), blown fiber, aerial, and/or other conventional techniques, as well as electronics to enable multi gigabit technologies, all methods of which are subject to the City’s permitting process.

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

“Multiple Dwelling Unit” means an apartment building or other building containing more than four dwelling units 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.

“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, except as otherwise required by this Agreement.

“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 Way due to the City not possessing the right, title, interest or authority to permit SiFi to use and occupy the Public Way in order for SiFi to access such Premises, or (ii) because SiFi lacks a right to access any non-City owned property within the Boundary in order to access such Premises, or (iii) because the incremental material cost to connect such Premises would be at least ten percent (10%) higher than the average cost to connect SiFi-accessible 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, and Substantial Completion determination shall not be impacted as a result.

“Public Right-of-Way” or **“Public Way”** shall mean the surface of, and the space above and below, any now existing or future: dedicated public street, road, highway, parkway, driveway, lane, path, court, sidewalk, bridge, alley, boulevard, traffic signals, lamp post, public way, or other public right of way or easement, including rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by, granted or dedicated to or under the jurisdiction of the City within the Boundary. For the avoidance of doubt, the term “Public Right-of-Way” or “Public Way” shall also mean any easement now or hereafter held by the City within the Boundary on dedicated streets for the purpose of public travel, or for utility or public service use dedicated for compatible uses and shall include all other legally and/or practically available easements or rights of way on dedicated streets held by the City within the Boundary. Areas not in the Public Right-of-Way at the time of execution of this Agreement but later dedicated shall be considered Public Right-of-Way for purposes of this Agreement.

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

“**Service Providers**” means any entity who enters into a contract with SiFi to provide Services over the System. All Service Providers must comply with Chapter 510 of City of Cleveland Codified Ordinances.

“**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 Service from a Service Provider.

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

“**Substantial Completion**” means the date on which, the System has been installed such that it Passes the addresses of each of the Primary Premises and the System is capable of providing Service to each such Primary Premises (but for the lack of a Drop).

“**System**” means all parts of the FON system under and above ground in the City 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 License.

2.1 Grant of License for System in Public Way.

2.1.1 SiFi Granted a License to Public Way. This Agreement sets forth the basic terms and conditions upon which SiFi is granted a non-exclusive license to install the System in the Public Right-of-Way. The particular terms and location of each portion of the System shall be specified in the applicable permit, including but not limited to encroachments, licenses, or other forms of plan review and approval or authorization, as described in Section 3.2 (Permits and General Obligations). Subject to this Agreement and the terms and conditions of any permits, including but not limited to encroachments, licenses, or other forms of plan review and approval or authorization, the City hereby grants and conveys to SiFi a non-exclusive license 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 location, including but not limited to depth, width, and height, of all equipment and other parts of the System. Both Parties agree to cooperate during the design and permitting process. Both Parties agree that SiFi must first disclose all engineering designs, construction drawings, and plans with respect to the applicable permit to the City for such permit approval. Notwithstanding the foregoing, installation of the System and use of the Public Right-of-Way is subject to the applicable permit(s) for a specific location. This license agreement is non-exclusive and is made subordinate to the right of the City to use the License Area (defined in Section 2.3) for any public purpose. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in SiFi a real property interest in land, including any fee, leasehold interest, or easement.

2.1.2 Removal or Abandonment of the System upon Termination of Agreement.

Except as otherwise provided by this Agreement, upon the cancellation, expiration, non-renewal, or termination of this Agreement, SiFi shall, at its sole cost, remove from or abandon in place all or any above-ground part of the System in the Public Right-of-Way. SiFi shall reimburse the City for any costs associated with SiFi's failure to adequately remove the System or restore City property to its original condition, minus reasonable wear and tear. Any part of the System abandoned by SiFi as described in this agreement shall become the property of the City. Within ninety (90) days after the cancellation, expiration, non-renewal or termination of this Agreement, SiFi must notify the City in writing of its intent not to abandon the System. Failure to provide such written notice within the time specified will be deemed an abandonment of the System.

2.1.3 Removal or Relocation for Safety Reasons. If, in the reasonable discretion of the Director, any above ground portion of the System is installed, operated and/or maintained in material non-compliance with the applicable permit issued by the City, the Director shall provide written email notice and SiFi shall promptly, within the applicable timeframe specified in Section 8.1.1, repair such portion of the System within the time required by the Director.

2.2 Term of Agreement. This Agreement shall become effective upon the execution and delivery of this Agreement by the Parties (the "**Effective Date**"). The term of this Agreement shall commence on Commencement Date and run until midnight on the date that is thirty (30) years after the Commencement Date (the "**Initial Term**"). Following the Initial Term, and subject to the System operating in accordance with the material terms of this Agreement, the Agreement shall auto-renew for five (5) additional ten (10)-year terms (each, a "**Renewal Term**," and, collectively with the Initial Term, the "**Term**") unless, at any time prior to the upcoming Renewal Term, SiFi has been in an uncured material breach under any material term of this Agreement longer than the SiFi Cure Period (as defined below), in which case SiFi shall obtain the consent and approval of the Cleveland City Council prior to any Renewal Term becoming effective. SiFi shall send written notice of renewal to the City not later than one hundred eighty (180) days prior to the expiration of the then-current Term.

2.3 License to Occupy City Land for Shelter/Facilities.

2.3.1 Pursuant to approved permit(s) and any other required agreements, City grants to SiFi, and its contractors the authority under a license to enter, access, and occupy portions of the City's Public Right-of-Way or City-owned land, including for up to twelve (12) specific locations for (i) Shelters as further described in Section 4.2, which Shelter locations will be mutually agreed upon in good faith between the City and SiFi and will be on City-owned land; and (ii) Cabinet locations, which shall be selected by SiFi and subject to approval by City (the "License Area"), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System, Shelters, and Cabinets, 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 Shelters.

This License Agreement is subject to easements, covenants, and conditions in existence as of the date hereof. If the City determines that the Public Right-of-Way cannot accommodate any proposed Shelters, Cabinets, or other portions of the System, SiFi will acquire all necessary easements and use privilege agreements to install such equipment outside the Public Right-of-Way. If City-owned land is used, a separate lease agreement will be required.

2.3.2 Subject to this Agreement, easements, covenants, conditions and applicable permit requirements in existence as of the date hereof, and all applicable laws and regulations, 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 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 regulations, including the Right-of-Way Permitting and Construction Manual, as amended; and shall be completed within the timeframes provided by this Agreement or as otherwise provided by law.

2.3.3 SiFi will maintain the Improvements in accordance with this Agreement.

2.3.4 SiFi shall not install or construct any other structures or improvements other than the System, including the Improvements and associated appurtenances described herein.

2.3.5 The Improvements installed within the License Area by SiFi shall be made at no expense to City.

2.3.6 In the event the City determines that it is necessary for the City to do work in, make any modifications to, or alter the License Area and that such work may impact the System, the City will provide to SiFi reasonable notice, as determined by the circumstances, before commencing such work, or as otherwise provided by law. If notice is not feasible under the circumstances, the City will notify SiFi by the end of the next business day following the City's commencement of work. The City and its contractors will use reasonable care to protect any 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.

2.3.7 Except for the Shelters, SiFi acknowledges that the City, its agents or assigns, or any utility company or City franchisee may, at any time, enter upon the areas covered by this Agreement for the purpose of installing, maintaining, relocating, altering, enlarging, repairing, or inspecting any utility, facility, or public work thereon.

2.3.8 SiFi shall restore damaged or disturbed surfaces or underground utilities at or adjacent to the License Area, only when such damage or disturbance is directly caused by SiFi or its contractors, as provided by the City's Standard Construction Drawings and Specifications, as amended, or other applicable regulation.

2.3.9 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 maintaining the System and all of its parts and components at no cost to the City.

2.3.10 SiFi shall obtain all necessary private land easements and use privilege agreements for the System, Shelters, and Cabinets. The terms and conditions contained herein shall bind, inure to the benefit of, and be enforceable by, the 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), as allowed by law.

2.4 Efficient Permitting Process.

2.4.1 During the Term, and so long as SiFi has followed the process described in Section 2.5 for Balance Payments (as defined below), the City shall provide efficient and diligent good faith review of all applications for permits by SiFi and/or its contractors, to the extent reasonably possible and to the extent permits are necessary. Such permits may include but are not limited to street opening / obstruction permits, encroachment permits, tree removal permits, licenses, or other forms of plan review and approval or authorization necessary for construction work on the System within the Public Right-of-Way. The City acknowledges and agrees that, in order for SiFi to perform its obligations under this Agreement, the City must move forward in an efficient timeframe concerning permitting, licensing, and approval of the System.

Accordingly, once SiFi has submitted a preliminary design for construction work on the improvements in the Public Way to the City, the City agrees, to the extent reasonably possible, to a twenty-five (25) calendar day turnaround for permit processing from the date

of application of a reasonably sufficient permit submittal by SiFi and/or its contractors in connection with this Agreement. Permit issuance will be within five (5) calendar days of application approval and processing, for a total of no more than thirty (30) calendar days from application to issuance. Associated costs will be covered by the Balance Payments.

2.4.2 SiFi or its contractor shall submit, as part of each permit application, an Ohio professional engineer-stamped scaled drawing showing the exact proposed location of SiFi's fiber, along with all existing utilities.

2.4.3 The City reserves the right to retain the services of third-party contractors to assist in the permitting process. SiFi shall promptly respond to any contractor designated in writing by the Director as acting for the City in the permitting process.

2.4.4 Permit applications shall be submitted by SiFi or its contractor via the City of Cleveland permit portal, which will provide written acknowledgment confirming receipt of such submittal. The engineering details provided in Exhibit A are the typical details that will be primarily used to construct the System. It is the mutual understanding of the City and SiFi that the specifications contained in Exhibit A are in conformance with the City's Regulations and shall be deemed compliant until Substantial Completion, acknowledging the City's right to require reasonable modifications as part of the permitting process in the event the Regulations are subsequently updated. Engineering details outside of Exhibit A proposed by SiFi must be approved by the City's Engineering and Construction Design Section before being utilized for construction. The City's Division of Urban Forestry shall review tree lawn information and determine whether permits are necessary for removal and/or replacement of shade trees.

2.4.5 Nothing herein shall be construed as a promise, warranty, or guarantee of approval of any permit, license, or other land use approval that may be required. No permit, license, or other land use approval of any other approval requested or required by SiFi shall be unreasonably withheld, conditioned, or delayed. SiFi is solely responsible for any permit or approval from any other public agency that may be required for the work. This Section 2.4.5 does not apply to any discretionary land use approval from the City, which may be required as a result of the final design for SiFi's work in the Public Right-of-Way, which cannot be ascertained as of the Effective Date due to the lack of a final design.

2.4.6 In the event that the City does not provide a response on a fully and technically complete application in accordance with Section 2.4, such action does not result in the application being deemed approved. Such approval will not unreasonably withheld by the City.

2.5 SPOC, Costs, and Balance Payments

2.5.1 The efficient permitting process in Section 2.4 shall be facilitated by the City's single point of contact ("SPOC"). The SPOC at the City will be responsible for supervising third-party contractors that will facilitate and expedite the plan check, permitting process,

and inspections, as well as for communicating with SiFi and its contractors regarding the construction process and progress.

2.5.2 In order to facilitate the permitting process, to have continuous oversight during the construction process, and to ensure the productivity and efficiency of the construction of the System without undue delay, the City agrees to supply and SiFi agrees to pay for third-party contractors that will supplement existing City staff (“Efficiency Costs”). The services provided through the Efficiency Costs shall include program project management, program administration, engineering design reviews, plan check, permit application reviews, permit processing and approval, construction inspection, punch list generation, project closeout, and any other services reasonably required by the City for the administration and management of the program directly related to and necessary for the efficient permitting process described above. Specifically, Efficiency Costs shall include the cost of time and materials based at rates pre-agreed in writing by SiFi prior to commencement of construction. They shall include (but are not limited to):

- (a) One (1) inspector for each construction team that will be on site for the duration of each day of construction to perform construction inspections and to ensure compliance to City Standards, specifications, and permit requirements or City approved design up to a maximum of eight (8) inspectors, provided that, each inspector engagement must be pre-approved by SiFi in writing.
- (b) One (1) certified arborist to ensure tree preservation requirements are met and to provide timely direction on tree-related work.
- (c) One (1) professional engineer who shall serve as permit coordinator to review SiFi submittals / designs, process permit applications, manage inspectors / arborist, coordinate construction and design issues, and to provide documentation and invoicing to SiFi.
- (d) Any additional personnel that the City deems necessary to proceed smoothly with the implementation of the System and pre-agreed in writing by SiFi.

2.5.4 The City will provide a detailed Expenditure Summary to SiFi for project costs as described above on a monthly basis. The Expenditure Summary will include detailed accounting information including personnel used (title), rate, hours, date, project name/number, and tasks completed.

2.5.5 SiFi will remit to the City \$250,000 to be deposited into a separate agency City subfund (the “**Account**”) to be used only by the City to pay for the fees and costs identified within this Agreement, subject to audit. Any funds expended from the Account shall be replenished on a monthly basis upon the SiFi receipt from the City of detailed information on the expenditures for the previous month and the processing and issuance of permits by the City as set forth in this Agreement. The City will charge all agreed upon eligible costs to the Account and provide all back up documentation to SiFi within seven (7) days of the

billing cycle closure. Upon completion of the System, any remaining dollars within the fund not utilized will be refunded in their entirety to SiFi.

A. The funds in the Account shall remain the property of SiFi until such funds are either (a) applied by the City as Balance Payments (as defined below) or (b) released to SiFi, in each case in accordance with C below. The funds in the Account shall be held in a non-interest bearing escrow account, which will be managed by the City, and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any party hereto.

B. Reporting. City will, at the end of each fiscal quarter, report to SiFi the balance of the Account. Additionally, any time City intends to draw on the Account as provided in C below, City will provide to SiFi seven (7) days advanced written notice and report indicating (i) the amount to be drawn, (ii) City's reasons for the drawing and (iii) the remaining balance thereon.

C. DRAWN DOWN. FORFEITURE AND RELEASE. SiFi agrees and acknowledges that if SiFi fails to perform its maintenance obligations specified in the Agreement as soon as practically possible after having received notice from the City of the need for such maintenance, the Account will be used to cover incidental expenses and costs, damages, and fees; provided that if covered by any insurance policies, City will reimburse the Account for such insurance paid amounts, including but not limited to: interest, charges by the City to maintain and restore the specific Public Way sites disturbed by SiFi or its contractors to their prior condition pursuant to this Agreement, and any unpaid permit and administrative fees. Any amount in the Account, including any investment income related thereto or any accrued interest based on the prevailing interest earned by City on its own bank deposits, shall be released back to SiFi after termination of the Agreement.

2.5.6 Following the first permit application submitted by SiFi, the City will charge to the Account the actual fees incurred by the City during the previous month, including Efficiency Costs and costs of City staff or standard augmentation fees for administrating plan check, permit review, or inspection services, or permit application fees of this agreement and the Efficient Permitting Process described in Section 2.4 above, plan check fees, encroachment permit fees, inspection fees, and any other applicable fees (collectively, the "Balance Payments"). The City represents and warrants that such Balance Payments represent actual fair market costs of the City incurred by fulfilling its obligations under the Agreement. The City will continue to charge the Balance Payments to the Account until Substantial Completion.

2.5.7 SiFi shall have the right to request and obtain and audit of time and expense records for any and all fees paid to the City pursuant to this Agreement at SiFi's sole cost and expense. Said audit shall take place during the City's normal business hours following written notice of intent to audit given at least one week in advance.

2.6 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.

For the avoidance of doubt, because of the payment of the Balance Payments, City agrees that SiFi shall not be responsible and liable for any other or additional fees or payments to the City in connection with this Agreement or the permitting process in excess of the Balance Payments except for the Service Provider Registration Fee under § 510.03 of the City's Codified Ordinances, the value of replacing any trees removed from the tree canopy, any expense associated with the indemnification provisions in Section 8.4, and any fees associated with leasing of property from the City. The Agreement does not exempt SiFi from any assessments, fees, or taxes that might be levied by the City for use of the Public Right-of-Way and from City's ordinary business or property taxes, or State franchise or utility use tax fees, if applicable.

SiFi or its contractors shall provide a two-year warranty for all work in the Public Right-of-Way, including cuts in the curb and sidewalk for Drops and other work in the Public Right-of-Way. This two-year warranty begins at the conclusion of installation of the entire system.

The provisions of this Section 2.6 will survive expiration or termination of this Agreement.

2.7 Relocation, Modification, or Alterations. Excluding relocations requested by the City pursuant to this Agreement 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, except as necessary to protect the public health and safety.

In the event that the City determines it is necessary for the City or its contractors to do work in the Public Right-of-Way that is reasonably required to be within two inches (2") radius from the SiFi System in accordance with industry standards ("Conflict"), the City will coordinate with SiFi to the extent reasonably possible on a process to allow SiFi, at SiFi's cost, to temporarily or permanently move, relocate, or repair, when needed, portions of the System that may be impacted. The City will provide notice to SiFi as provided by this Agreement or other applicable law. SiFi understands that the City regularly conducts different types of work in the Public Right-of-Way, including, but not limited to:

- (1) emergency situations that endanger the health, safety, or welfare of the public or property, which must be addressed immediately and completed within a matter of minutes or hours;
- (2) routine repairs to streets, curbs, sidewalks, and other portions of the Public Right-of-Way, which are completed within a matter of hours or days; as well as
- (3) long-term projects involving straightening, widening or reclamation of streets, as well as placement or replacement of water, wastewater, or storm water facilities, which are

planned months in advance and completed over the course of multiple days, weeks or months.

Each instance of City work in the Public Right-of-Way is unique and will be considered on a case-by-case basis regarding the extent to which the City can reasonably coordinate with SiFi on a process to allow SiFi to move, relocate, or repair, when needed, portions of the System that may be impacted by such work. SiFi, its contractors, and agents must daily clean up and haul off debris and waste materials from the site related to the construction process as well as the temporary or permanent relocation, moving, or repair, when needed, of portions of the System.

2.8 Conditions. Notwithstanding any other provision to the contrary in this Agreement, SiFi is subject to the following terms and conditions:

- 2.8.1** SiFi shall not remove, cut or otherwise disturb any public roadway improvements and utilities during construction and installation of the System within the specified License Area, or any reconstruction thereof, in any manner that is not to the satisfaction and acceptance of the City.
- 2.8.2** This License Agreement; SiFi; and SiFi's construction, operation, and maintenance of all facilities that are installed within the License Area are subject to all applicable state and federal laws, the City's Charter, the City's Ordinances, the City's Standard Construction Drawings and Specifications, and all applicable rules and regulations, including those governing public service providers (including Chapter 510 of the City Codified Ordinances), as they are now in effect or those which may hereafter be passed, adopted, or amended. It is the mutual understanding of the City and SiFi that the specifications contained in Exhibit A are in conformance with the City's Regulations and shall be deemed compliant until Substantial Completion, acknowledging the City's right to require reasonable modifications as part of the permitting process in the event the Regulations are subsequently updated.
- 2.8.3** As part of the permitting process, SiFi shall submit to the City detailed construction plans, specifications, drawings and maps with respect to the applicable permit application showing the location and proposed routing of the System and all facilities to be installed on, across, or under the License Area, and any other information or documentation requested by the City that the City determines to be necessary to process such permit application. The City shall review the plans and may require reasonable modifications in order to protect existing or anticipated public improvements or utilities and to minimize interruption.
- 2.8.4** In the event the construction or maintenance of the System requires the temporary closing of a traffic lane or lanes, SiFi will comply with all applicable provisions of the City's Standard Construction Drawings and Specifications and conditions of the permit, or other applicable regulations regarding traffic control plans and lane closures.

- 2.8.5** SiFi's contractor shall conduct all traffic control in accordance with the latest version of the Ohio Manual on Uniform Traffic Control Devices as it may be amended from time to time.
- 2.8.6** SiFi's contractors shall provide advance notice to the City prior to commencing any routine construction, reconstruction, or maintenance within the Public Right-of-Way in accordance with City ordinances and the City's Standard Construction Drawings and Specifications.
- 2.8.7** SiFi acknowledges that it is subject to the police powers of the City, other governmental powers, and the City's rights as a custodian of public property under state and federal laws.
- 2.8.8** Within thirty (30) days of completion of SiFi's System in each License Area, SiFi shall supply the City with electronic files showing the permitted route of the fiber optic cable for the System in a format prescribed by the City as well as Esri geographic information system (GIS) shapefiles for every twenty-five (25) feet of construction of the System. The current required format for the electronic files shall be Auto CAD, drawing exchange format (DXF), or Esri GIS geodatabase format. SiFi shall supply global positioning system (GPS) geographic coordinates using decimal degree latitude and longitude with accuracy of no less than five (5) decimal places for all components of the system as requested by the City. Upon prior approval by the City's Director of Mayor's Office of Capital Projects, SiFi may provide electronic files in a different electronic format, or transfer the files to the City via email.
- 2.8.9** SiFi will comply with applicable provisions of the City's Ordinances, as well as the City's Standard Construction Drawings and Specifications, regarding proximity to drainage facilities, sanitary sewer, water mains, and other water utility infrastructure. It is the mutual understanding of the City and SiFi that the specifications contained in Exhibit A are in conformance with the City's Regulations and shall be deemed compliant until Substantial Completion, acknowledging the City's right to require reasonable modifications as part of the permitting process in the event the Regulations are subsequently updated.
- 2.8.10** The City reserves the right to construct, maintain, repair, and operate roadways, streets, alleys, sidewalks, bridges, underground communication conduits, electric transmission and distribution lines, telephone lines, water, drainage and sewer pipelines, and other utilities across the System; provided, however, the City shall use reasonable efforts to exercise any of the rights reserved in such a manner so that:
- (a) the System, Shelters, and facilities located on the City property shall not be endangered, obstructed, or injured;
 - (b) SiFi may access the System, Shelters, and facilities;

- (c) the System and facilities are left with the amount of cover originally installed to allow safe operation of the System;
- (d) the System, Shelters, and facilities are left with the sufficient support; and
- (e) SiFi's use of the System, Shelters, and facilities for the purposes set forth herein is not unreasonably impaired or interfered with.

In the event of Conflict, when the City determines it is necessary for the City to exercise the rights reserved under this Section 2.8.10, the City and SiFi will follow the provisions in Section 2.7.

- 2.8.11** SiFi, at its own cost and expense, shall pay for all labor performed and materials furnished in connection with SiFi's use, installation, occupancy, operation and maintenance of the System or other improvements located on the License Area and City shall not be chargeable with, or liable for, any part thereof. SiFi shall protect the License Area from liens of every character arising from its activities on the License Area.
- 2.8.12** Prior to construction and as needed throughout the construction process, SiFi shall notify all property owners and businesses adjacent to the planned System construction project. All notices should identify at a minimum a person who can be contacted for information regarding the planned System construction activities. SiFi shall provide to the City at the time of permit submittals, evidence regarding its notification efforts with property owners and businesses.
- 2.8.13** As assessed by the City's arborist, any trees that are damaged to the point of instability shall be removed by SiFi at its own expense, and SiFi shall compensate the City for such tree based on the agreed upon tree replacement schedule submitted by the City.
- 2.8.14** SiFi shall, in general, place their facilities within the locations indicated in Section 7.2 unless otherwise approved by the City.

SECTION 3

3. The System.

3.1 System Description. SiFi will install the System within the Boundary within 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 City's consent pursuant to this Agreement to install the System within the Boundary within the Public Right-of-Way in order to make the delivery of Service over the System available to all Primary Premises located on dedicated streets within the Boundary, subject to the terms and conditions of this Agreement. 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 and prior to commencing any physical work. 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.

3.2 Permits and General Obligations. Construction and installation of the System shall be performed in a safe manner compliant with all applicable laws and regulations, using materials of good quality. All permits shall provide for and allow work on residential streets between 7AM and 5PM, Mondays to Fridays and on arterial streets between 9AM and 4PM, Mondays to Fridays that are under City control. Work times in the Central Business District may vary from the times set forth herein, upon prior notice given by the City. Any roadways or highways not under City control are subject to consent of the controlling entity. All transmission and distribution structures and equipment installed by SiFi for use in the System in accordance with the terms and conditions of this Agreement shall be located so as to minimize interference with the proper use of the Public Right-of-Way and the rights of property owners who own property that adjoin any such Public Right-of-Way. Except for the approved construction techniques specified in Section 4.1.1 and the specifications listed in Exhibit A, SiFi shall adhere to all then-current and applicable Municipal and Building Code requirements, and applicable laws.

- a. City agrees SiFi's contractors' working hours are Monday through Friday from 7AM to 5PM on residential streets, with all material stockpiles, equipment, and contractor equipment to be completely removed from the Public Right-of-Way by 5PM.
- b. Arterial streets work hours are limited from 9AM to 4PM.
- c. Saturday work hours are limited from 9AM to 4PM and to perform punch list repairs and other clean-up activities only.

- d. Work hours in the Central Business District will be determined ahead of time by the Bureau of Traffic depending on professional sports games and other events.

SECTION 4

4. Construction and Facilities.

4.1 SiFi shall undertake commercially reasonable efforts to commence Construction as soon as possible and, in any case, shall commence Construction on or before a date that is no later than twenty-four (24) months after the execution date of this Agreement; provided however, in the event of major circumstances that has been approved by the City, the construction start date may be extended to a time approved by the City. The Construction Commencement Deadline and the Construction Completion Deadline shall be agreed upon by both the City and SiFi prior to the execution of this Agreement. If the City does not provide a response on a fully and technically complete application for a permit within the timeframe provided by Section 2.4, the Construction Completion Deadline will be extended by the amount of time starting with the day that the City's response was due and ending with the day the City's response was provided.

SiFi will complete construction of the System, such that there is a Pass for every Primary Premises with the City, according to the following schedule in relation to the first five anniversaries following the Construction Commencement Date.

- a. by the first anniversary, SiFi will complete construction of the Passes for at least fifteen percent (15%) of the Primary Premises within the City;
- b. by the second anniversary, SiFi will complete construction of the Passes for at least thirty-five percent (35%) of the Primary Premises within the City;
- c. by the third anniversary, SiFi will complete construction of the Passes for at least fifty-five percent (55%) of the Primary Premises within the City;
- d. by the fourth anniversary, SiFi will complete construction of the Passes for at least seventy-five percent (75%) of the Primary Premises within the City; and
- e. by the fifth anniversary, SiFi will complete construction of the Passes for the remaining Primary Premises within the City.

The construction deadlines and schedule above may only be modified if the Parties agree in writing. From the time that Construction is commenced until the time that Construction is completed, SiFi will keep the City informed by submitting written reports to the Director detailing the progress in meeting this construction schedule at least every three (3) months, or as otherwise requested by the City.

4.1.1 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, for which SiFi will abide by City's horizontal directional drilling ("HDD") policy and procedures;
- (ii) slot cut Microtrenching as set forth in the specifications set forth in Exhibit A to this Agreement;
- (iii) the use of a ground penetration radar system, in addition to notification of OHIO811 and potholing, as the primary method for identifying underground utilities prior to any Microtrenching provided that SiFi has registered with the Ohio Utilities Protection Service;
- (iv) aerial cables (shall only be permitted where other aerial facilities and poles exist and existing poles are used) as allowed, provided that SiFi has obtained written permission from the pole owners and accepted any costs associated with that permission; and/or
- (v) techniques ancillary or related to the foregoing.

The City acknowledges that it has reviewed and approved each of the above referenced construction methods and the specifications in Exhibit A. The parties agree to work cooperatively in reviewing all other potential construction methods.

The City will evaluate on a case-by-case and location-by-location basis whether a proposed Construction Method is appropriate and consistent with applicable City ordinances and regulations. The City has final approval over all construction methods proposed by SiFi. Construction will be conducted according to the specifications contained in Exhibit A but is ultimately subject to City approval through the permitting process. All construction methods must be conducted in compliance with all applicable City ordinances, regulations, and standards. It is the mutual understanding of the City and SiFi that the specifications contained in Exhibit A are in conformance with the City's Regulations and shall be deemed compliant until Substantial Completion, acknowledging the City's right to require reasonable modifications as part of the permitting process in the event the Regulations are subsequently updated.

4.1.2 SiFi shall be solely responsible for all repairs, maintenance, and adjustments, as well as 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 sole active negligence or sole willful misconduct of acts or omissions by the City or its officers, employees, or contractors. The parties agree that the City shall bear no financial or other

responsibility for the acts of third parties not in contract privity with and/or have not been issued permits by the City.

4.1.3 If the City changes the City's regulations governing the construction method of Microtrenching at any time before the Construction Completion Deadline, and if SiFi demonstrates to the City that the new regulations result in a material adverse impact to SiFi's ability to continue building the System or to complete construction of the System, then SiFi may either: (i) terminate this License Agreement; or (ii) cease construction of new portions of the System that were planned to be installed using the Microtrenching construction method, in which case SiFi shall have no further obligation to continue construction of the System under Section 4.1, and may continue to operate the System under this License Agreement that was built prior to the effective date of the City's new Microtrenching regulations. In order to exercise any option under this Section 4.1.3, SiFi shall provide the City with at least thirty (30) days' advance written notice. The options under this Section 4.1.3 are not available once the Construction Completion Deadline has passed.

4.1.4 If, prior to the Construction Completion Deadline, the City proposes changes to the City's Microtrenching regulations as described in Section 4.1.3, the City will notify SiFi. SiFi may submit its concerns to the City regarding changes to the City's Microtrenching regulations as well as recommendations on the effective date following passage of the new regulations.

4.2 Location of Shelters/Facilities.

4.2.1 Facilities. In accordance with Section 2.3 of this Agreement, the City grants to SiFi access to and use of the Facilities for the installation and operation of up to twelve (12) SiFi's Shelters (approximately 1,000 square feet per location for each Shelter) subject to a separate lease 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 Shelters Lease Area on City-owned land. The leased areas will be for a duration that does not exceed the duration of this License. If the License is terminated, SiFi must remove all equipment from the leased areas within one hundred eighty (180) days of termination of License. If SiFi cannot find good locations for the Cabinets within the City Right-of-Way, SiFi will pay for and acquire easement on private property for their locations.

4.2.2 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.

SECTION 5

5 Oversight and Regulation by City.

5.1 Oversight of Construction. The City shall have the right to oversee and inspect the Construction of the System in the Public Right-of-Way. No construction may be performed without a City Inspector present or as otherwise approved in writing by the City. SiFi shall notify the City thirty (30) days in advance of starting new work on the System, as approved by the City under Section 2.4 of this Agreement.

5.2 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, and local laws regarding the Construction of the System in the Public Right-of-Way.

5.3 Treatment of Confidential Information. Except for federal, state, and local law; subpoenas; and court orders, the City agrees that, without the prior written consent of SiFi, certain proprietary information that may be designated by SiFi as confidential (“**Confidential Information**”) and so labeled as confidential, is proprietary, shall be kept confidential, and shall not be disclosed to any Persons other than the City's authorized employees, representatives, staff, and consultants (collectively, “**Representatives**”) with a need to know such information as determined by the City.

The City shall cause its Representatives to observe the confidentiality obligations described herein and shall be responsible for any breach of these obligations by any of its Representatives. The City agrees to notify SiFi within five (5) business days if the City receives a public records request relating to SiFi or the System. The parties will cooperate to determine when and to what extent the requested information must be released. The burden of establishing the applicability of an exception to disclosure of the information resides with SiFi, who shall indemnify and defend the City against all losses, claims, and penalties that result from nondisclosure of information alleged by SiFi to be confidential but determined by a court of law to be disclosable public records of Confidential Information.

As permitted by law, upon the written request of SiFi or the termination of this Agreement, and subject to the City's Records Retention and Destruction Policy or other applicable laws, the City shall return to SiFi or destroy all copies of the Confidential Information and all other documents prepared by the City that contain or reflect the Confidential Information.

Notwithstanding anything to the contrary contained in this Agreement, the City's obligations set forth in this Section 5.3 will survive expiration or termination of this Agreement.

SECTION 6

6. Insurance.

SiFi and its contractors, to the extent applicable to their scope of work as determined in SiFi's reasonable discretion, provided that, SiFi shall be responsible for any uninsured claims subject to the limitation of liability hereunder and to the extent directly attributable to SiFi's failure to require such coverage, shall procure and maintain from the date of start of Construction and for the duration of the term of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the SiFi, its agents, representatives, employees, or subcontractors.

If SiFi or its contractors maintain broader coverage and/or higher limits than those in this Section 6 of the Agreement, 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.

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 \$2,000,000 per occurrence and \$3,000,000 in the aggregate, which limits can be met with Excess Liability Insurance below. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. 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 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident and \$2,000,000 in the aggregate for bodily injury and property damage.

C. Workers’ Compensation insurance as required by the State, within statutory limits, as well as Employers’ Liability insurance with a limit of no less than \$1,000,000 accident and \$1,000,000 for bodily injury or disease, all for each occurrence.

D. Excess Liability Insurance. In an amount not less than \$5,000,000 applying in excess over all limits and coverages noted in paragraphs A, B, and C above.

E. Professional Liability with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy in the aggregate. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract work.

F. Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If the services involve lead-based paint or asbestos identification/remediation, the Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

G. Installation Floater: Coverage shall be written on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into or used in the work. Coverage includes property in SiFi’s or its contractors’ and subcontractors’ care, custody, and control, while in transit to the site, while at the site awaiting and during installation, and continuing at least until the installation of the covered property is completed and the work is accepted by the City.

6.2 Self-Insured Retentions.

Self-insured retentions must be declared to and approved in writing in advance by the Director. At the option of the City, SiFi shall cause the insurer to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, and employees; or SiFi shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

6.3 Other Insurance Provisions.

A. Additional Insured. The City, its officers, officials, and employees 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. General liability coverage can be provided in the form of an endorsement to the SiFi’s insurance and the insurance of its contractors and subcontractors (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

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 officials, employees, and contractors or subcontractors. Any insurance or self-insurance maintained by the City, its officials, employees, contractors or subcontractors shall be excess of the SiFi’s insurance and shall not contribute with it.

C. Notice of Cancellation. SiFi shall provide prompt written notice if (1) any of the required insurance policies is terminated; (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. Builder’s Risk (Course of Construction) Insurance. SiFi may, if requested by the City, submit evidence of Builder’s Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall

be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery, and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery, or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

E. 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.

F. Waiver of Subrogation. SiFi hereby agrees to waive rights of subrogation that any insurer of SiFi may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

G. Verification of Coverage. SiFi shall furnish, upon request, the City with all 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.

H. Contractor/Subcontractors. SiFi shall require that the Contractor and all subcontractors maintain insurance meeting all requirements stated herein, as applicable to the scope of their respective services, and SiFi shall require the Contractor and all the subcontractors to list City as an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

I. 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 SPOC for SiFi, as described in Section 2.5.1, who will be responsible to address all issues related to the System, providing coordination with and acting as a liaison to City departments, and serving as a communication and troubleshooting resource for SiFi.

(ii) To the extent feasible, offer the reasonable cooperation of all City departments with respect to relevant issues with respect to the System. Such cooperation will be supervised by the SPOC.

(iii) Subject to Section 3.2, provide SiFi and its representatives with access to all City property and all City assets and infrastructure 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. Following Substantial Completion, SiFi and/or any contractors it hires will be required to obtain encroachment permits and pay any related permit and inspection fees and comply with all other standard encroachment permit conditions of approval for future maintenance and/or repairs and/or alterations to its System located within the Public Right-of-Way.

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

(v) Provide efficient and diligent, as specified in Section 2.5, good faith review of 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 that emergency repairs by the City or its contractors in the Public Right-of-Way are necessary, coordinate the repairs with SiFi in order to facilitate prompt repairs, such coordination to be supervised by the SPOC and the SPOC shall keep SiFi continually apprised of the status of such repairs.

(vii) Except in case of emergency, provide SiFi with a least thirty (30) days advance notice of any work by the City in the Public Right-of-Way that requires the relocation of the System under Section 2.7 of this Agreement. In addition, where feasible, the City will alert SiFi of the time of the excavation in the Public Right-of-Way by others.

The City shall require all City contractors and permittees in the Public Way to maintain the City required insurance and to indemnify the City for any third party claims raised against the City. The City shall also require its contractors to exercise reasonable care to protect any utilities or facilities when performing work in the Public Way. Portions of SiFi's System installed in the Public Right-of-Way constitute such a utility or facility.

The City shall be liable to SiFi for any damages to the System resulting from City's negligence or willful misconduct; provided, however, that City shall have no liability for damages resulting from inaccuracies in information provided by SiFi to the City or to the Ohio Utilities Protection Service.

(viii) The City agrees that SiFi shall have the right, subject to the terms and conditions herein, to use Microtrenching and construct and maintain the System on recently resurfaced public streets subject to a duty to repair or replace any parts of the Public Right-of-Way that are adversely impacted by such construction method.

(ix) The City 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 once construction is finalized.

(x) Refrain from installing, constructing, or otherwise impeding, disturbing, interfering with, or restricting SiFi's access to, use, and possession of the System unless required due to reasons relating to health and safety and only so long as necessary. The City shall not be responsible for the acts of third parties not in privity with and/or have not been issued permits by the City, regardless of whether such third parties impede, disturb, interfere with or restrict SiFi's access to, use and possession of the System.

(xi) Allow SiFi to submit permit applications with final designs and without the identified Contractor so as not to delay the process for obtaining the permit within the City. SiFi will identify each Contractor for each project prior to the start of construction from a pre-qualified list; however, no Contractor can proceed unless approved in advance by the Director in writing.

(xii) Provide, upon reasonable notice, Street and/or tree lawn restoration training to all SiFi contractors as part of the Contractor pre-qualification process.

(xiii) Agree to make tree removal determinations during the permitting phase if possible; if not, it will be determined during construction as needed by a certified arborist approved by the City. No trenching shall commence on any Public Right-of-Way unless and until required tree removals are complete and the stump is ground.

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) SiFi shall work closely with the SPOC of the City and relevant City departments with respect to the construction of the System.
- (ii) SiFi shall comply with all requirements of City for permit and Public Way use applications, to the extent they may be required.
- (iii) SiFi shall maintain or provide for the prompt maintenance of the System during the term of this Agreement.
- (iv) SiFi and its Contractor shall register with the State of Ohio's Call Before You Dig safe excavation notification system through the Ohio Utilities Protection Service and, through it, shall maintain a timely report of the location of the System.
- (v) SiFi shall be required to relocate their infrastructure if it is in Conflict with a current or future city project. If practicable, the City shall provide SiFi with not less than thirty (30) days written notice of such Conflict. If the City receives less than thirty (30) days' notice of work that needs to be performed, including but not limited to emergency, exigent, or reasonably necessary work, the City shall provide notice to SiFi of such in a reasonable timeframe, including but not to limited to those situations set forth in this

subsection (v). If SiFi fails to act on such notice of Conflict within thirty (30) days from receipt, City will not be liable to SiFi for any resulting damages to the System.

The City agrees to provide all reasonable accommodations as reasonably requested by SiFi based on as-built specifications, field review, and coordination with other relevant firms in the right-of-way, subject to applicable fees, costs, and charges, including standard permit application and inspection fees, to allow and facilitate coordination with the City contractor in order for SiFi to protect, or to temporarily or permanently relocate the impacted portion of the System; provided that, SiFi shall bear the direct reasonable cost for (i) relocating the affected portion of the SiFi System; and (ii) additional delays or costs incurred by the City for such Conflict work.

- (vi) SiFi shall be solely responsible for all repairs, maintenance, and adjustments to the System; however, SiFi shall have the right to seek reimbursement in accordance with this Agreement and with its rights in law and equity.
- (vii) SiFi, at its sole cost, shall promptly repair the portions of the Public Right-of-Way directly impacted by the construction of the System by SiFi or its Contractors per the City's Standard Construction Drawings. SiFi shall provide the City by January 31st of each year, a list of Contractors that are pre-qualified to work on the System and have each of them register with the City via the ROW Contractor Registration. The contractor list shall remain the same unless modified in writing by SiFi. The contractor list may be supplemented or modified on a semi-annual basis if desired by SiFi. The City shall reserve the right to withdraw a contractor from the list if work performed does not meet defined City requirements.
- (viii) Appropriate SiFi personnel shall be available to meet on a monthly basis once the project commences construction with appropriate City personnel / third-party personnel to discuss and review current and proposed aspects of the System.
- (ix) SiFi shall submit permit applications on a per-street basis or as otherwise agreed to by the City of Cleveland.
- (x) Any trees that become unstable or damaged due to construction by SiFi or its contractors shall be replaced with a tree approved in advance in writing by the City's Division of Urban Forestry. SiFi shall pay for any tree removals and replantings as required.
- (xi) Any trees that are deemed currently dead or unstable by the City's Division of Urban Forestry may be removed by SiFi without a cost to replant a new tree. All trees that are to be removed must be permitted by Urban Forestry.
- (xii) SiFi will submit a schedule to the City that covers the following six months of construction. This schedule shall be updated monthly.
- (xiii) During HDD or other trenchless technology uses, SiFi shall follow the City's HDD standard, unless it receives an exception from the City during the permitting process. It is

the mutual understanding of the City and SiFi that the specifications contained in Exhibit A are in conformance with the City's HDD standard.

(xiv) SiFi shall require at least one service provider to provide low-cost broadband service to not less than 10 percent of the households of the City as determined by the most recent data from the United States Census Bureau. The low-cost service must continue to be offered throughout the entire term of this Agreement. Recipients of the low-cost service shall be determined through a process established by the City.

(xv) Location of proposed Microtrench is dependent upon location of other service provider facilities.

(xvi) The fiber cable will be bored under all driveways.

(xvii) Failure of the apron where directly caused by the System construction, for a two-year period, will be SiFi's responsibility to repair.

(xviii) Where not microtrenched, the fiber cable shall be bored under the roadway.

(xix) Microtrench backfill shall be non-erodible material. The trench cap will be ½" in depth. SiFi to submit manufacturer specification sheet for approval.

(xx) SiFi shall run their main line along all City roads and have service readily available for all Primary Premises whether they are occupied or not unless approved by the City.

(xxi) The City will notify SiFi of new road construction as soon as construction is appropriately authorized. Subject to investor approval, SiFi will extend service to any new roads prior to final dedication of such roads provided that the City gives SiFi sixty (60) days' notice prior to start of construction of the new road subject to a mutually agreed written amendment of this Agreement. If the City does not give SiFi sixty (60) days notice prior to construction of the road, SiFi shall extend the System over the new road within ninety (90) days of authorization of that new road.

(xxii) SiFi shall coordinate with the SPOC to review existing and/or future City assets located within the System footprint to be connected to the System. SiFi shall connect the System and make it available to support and facilitate the delivery of Service to City buildings, facilities, and assets requested by City at no additional cost to City and subject to a separate mutual written agreement. SiFi shall work cooperatively with Service Providers and City to facilitate the delivery of Service to City facilities at discounted rates acceptable to the City.

(xxiii) 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.

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 material term of this Agreement, the City shall promptly notify SiFi in writing with specific details regarding the exact nature of the alleged non-compliance or default (a "**City Breach Notice**").

8.1.1 SiFi Right to Cure or Respond. SiFi shall have forty-five (45) 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 non-compliance 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) calendar 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 non-compliance; provided, however, in the event that the default is curable but due to the nature of the default or non-compliance, such default or non-compliance cannot be cured within the Initial SiFi Cure Period, so long as SiFi initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or non-compliance promptly and notifies the City of the steps being taken and the projected date that they will be completed, the Initial SiFi Cure Period shall be extended for a reasonable amount of time to permit such cure, but not to exceed sixty (60) days from SiFi's receipt of a City Breach Notice (the "**Extended SiFi Cure Period**" and together with the Initial SiFi Cure Period, the "**SiFi Cure Period**").

8.1.2 City Rights and Remedies.

(i) If SiFi fails to cure any actual non-compliance or default as provided in Section 8.1.1(ii) above within the SiFi's Cure Period, the City may:

- (a) seek specific performance of any provision of this Agreement which lends itself to such remedy as an alternative to money damages;
- (b) hire a contractor to complete repairs/work, with SiFi to pay actual market costs plus overhead; or
- (c) in the event of the breach of, non-compliance 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.

(ii) In the event of termination of this Agreement City shall allow SiFi to continue all network operations necessary to maximize use of the existing FON in accordance with this Agreement. In the event City elects to permit SiFi to continue all network operations, such permission may include mutually agreed and executed amendments of this Agreement. In addition, prior to such termination by City, the City and SiFi shall meet in person or by video meeting, and both SiFi and the City shall both utilize good faith efforts to resolve any dispute. SiFi shall, at all times, retain ownership of the System unless abandoned under Section 2.1.2 of this Agreement, including but not limited to a requirement for additional compensation to be mutually agreed upon by City and SiFi.

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 non-compliance or default (a “**SiFi Breach Notice**”).

8.2.1 City's Right to Cure or Respond. The City shall have forty-five (45) days from its receipt of a SiFi Breach Notice (the “**City Cure Period**”) provided that the City Cure Period for a failure of the City to review permit applications and issue permits necessary to construct the System as required under Section 3.2 (a “**Permit Issuance Breach**”) shall be seven (7) days from its receipt of a SiFi Breach Notice to:

(i) respond to SiFi, contesting the assertion of non-compliance 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 the rights and remedies provided herein; or

(ii) cure an actual default or non-compliance; provided, however, in the event that the default is curable but due to the nature of the default or non-compliance, such default or non-compliance cannot be cured within the City Cure Period, so long as the City initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or non-compliance promptly and notifies SiFi of the steps being taken and the projected date that they will be completed, the City Cure Period shall be extended for a reasonable amount of time to permit such cure but not to exceed ninety (90) days from the City’s receipt of a SiFi Breach Notice (the “**Extended City Cure Period**”); provided further, however, no Extended City Cure Period shall apply to a Permit Issuance Breach.

8.2.2 SiFi Rights and Remedies. If the City fails to cure any actual non-compliance 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 acts as a remedy and an alternative to money damages; and

(ii) in the event of the breach of, non-compliance 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 At any time prior to commencing Construction, SiFi shall have the immediate right, at its option, upon written notice to the City to terminate this Agreement and shall be entitled to any and all other rights and remedies available to it at law or in equity.

8.3.2 A Party shall have the right, at its option and upon notice to the other Party, to terminate this Agreement if the other Party becomes (i) insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (ii) subject to any bankruptcy or insolvency proceeding under federal, state or foreign statutes which is not rescinded or dismissed within thirty (30) days.

8.4 Indemnification.

8.4.1 The City agrees to hold harmless SiFi, its officers, agents, contractors and subcontractors at the City's sole expense from and against any and all claims, suits, and demands of liability, loss, cost, expense or damage, including reasonable attorney's fees (collectively, "**Damages**") arising out of third party claims and as awarded by a court of competent jurisdiction or by settlement (i) breach of this Agreement in any material respect by the City or (ii) the City's willful misconduct or gross negligence in its performance of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the indemnity obligations set forth herein will survive expiration or termination of this Agreement. Notwithstanding the foregoing, the City shall not be liable for holding SiFi harmless for claims, actions, complaints or suits to the extent arising solely out of the negligence or willful misconduct of SiFi, its officers, agents, contractors and subcontractors.

8.4.2 SiFi shall indemnify and hold the City, its officials, employees, 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 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 contractors/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 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 officials, employees, and agents as determined by a court of competent jurisdiction or by settlement. SiFi shall pay and satisfy any judgment, award or decree that may be rendered against the City or its

officials, employees, or agents, in any such suit, action, or other legal proceeding. SiFi shall reimburse the City, its officials, employees, and agents, for any and all 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, employees, and agents.

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.

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 agree first to try in good faith to settle the matter by mediation in the County where City is located, 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 with applicable federal jurisdiction for the City, or if there is no federal court jurisdiction, the state courts in the County where City is located.

SECTION 10

10. Miscellaneous Provisions

10.1 Assignment. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective successors and assigns as provided herein. The City shall not be permitted to assign, sell, or transfer this Agreement, or its rights and duties

under this Agreement, without the prior written consent of SiFi, which consent shall not be unreasonably withheld, conditioned, or delayed.

SiFi shall have the right to assign, novate, sell, encumber, or transfer this Agreement and the System or any part thereof (i) to anyone with the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed, provided:

(A) the proposed assignee may be required by the City to agree to comply with all provisions of this Agreement;

(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 the effect of the transaction and such other matters as the City deems relevant consistent with the requirements of this Agreement; and

(C) SiFi pays all costs due under this Agreement prior to the effective date of such assignment or transfer;

and/or (ii) to SiFi's affiliates and subsidiaries without the consent of the City.

For any transfer permitted by this Section 10.1, SiFi shall provide City with a fully executed copy of the assignment, sale or transfer document, signed by both SiFi and assignee/purchaser/transferee, indicating the assignee's/purchaser's/ transferee's assumption of all of SiFi's performance duties, liabilities, and obligations under this Agreement. SiFi shall not be relieved of its performance duties, liabilities, or obligations under this Agreement until City is in receipt, of a fully executed copy of the document evidencing such assignment of the obligations herein and the assignee's/purchaser's/transferee's assumption of SiFi's performance duties, liabilities, and obligations under this Agreement. Upon any such fully executed assignment, sale, transfer, or novation, SiFi shall be released from all obligations and liabilities under this Agreement from and after the date of such assignment. SiFi shall give the City fourteen (14) days' advance notice of such assignment, sale, transfer, or novation disclosing the identity of the Person to whom it has been assigned, transferred, sold, or novated. The City agrees, upon request, to promptly deliver (and in no event later than ten (10) days after request by SiFi) to SiFi an estoppel certificate addressed to the assignee, buyer or transferee designated by SiFi, affirming for the benefit of such buyer, assignee or transferee the following (to the extent that the following are then true): the Agreement is in full force and effect; SiFi is not in default thereunder; and such other matters as such assignee, buyer, or transferee may reasonably request.

10.2 Force Majeure. Except as otherwise expressly set forth in this Agreement, neither Party will be held in default under, or in breach or non-compliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to non-compliance or default (including termination, cancellation or revocation of this Agreement), where such non-compliance or alleged defaults occurred or were caused by any of the following events (each a "**Force Majeure Event**"): labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic that prevents a party from performance, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, failure of utility service necessary to construct the System, governmental,

administrative or judicial order, or other event that is beyond the Party's reasonable control. Force Majeure Events also include work delays caused by waiting for (i) utility providers to service or monitor their own utility infrastructure on which SiFi's fiber optic cable and/or equipment may be deployed, as well as unavailability of materials and/or reasonably qualified labor to perform the work or (ii) third parties' acts or omissions within the Public Way which materially interfere with the Parties' ability to perform their obligations 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:
City of Cleveland,
City Hall
601 Lakeside Avenue,
Cleveland, OH 44114
Email: RKnopf@clevelandohio.gov
Attn: Director of the Mayor's Office of Capital Projects

IF TO SIFI:
SiFi Networks Cleveland 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. 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 Ohio and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Ohio as applicable to contracts entered into and performed entirely within the State of Ohio, irrespective of conflict of laws principles.

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 herein, 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.

10.11.3 OTHER THAN THE EXPLICIT REPRESENTATIONS AND WARRANTIES MADE BY SIFI TO CITY UNDER THIS AGREEMENT, SIFI MAKES NO REPRESENTATIONS OR WARRANTIES TO THE CITY OR ANY PERSON WITH RESPECT TO THE SYSTEM (OR THE COMPONENTS THEREOF) AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT SIFI MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

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.

[Signature page follows]

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

CITY OF CLEVELAND, OHIO

Dated: _____, 2023

By: _____

Director of Capital Projects

The Legal form is approved.

Director of Law

By _____ Assistant Director
of Law

SIFI NETWORKS CLEVELAND LLC,

a Delaware limited liability company

Dated: _____, 2023

By: _____

Its: _____

EXHIBIT A
SPECIFICATIONS, SHELTERS, CABINETS

EXHIBIT A

SPECIFICATIONS-SHELTERS-CABINETS
FIBER CITY TYPICAL SPECIFICATIONS
5/1/2023



Approved per Robert Knopf
Section Chief - Permits and
Sidewalks
5/4/2023

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Articles

Article name	Color	Dimensions (mm)	Weight (kg)
Subscriber Underground Access Chamber ENPP-TBY-BOX	Black	256W255L x 128Dmm	0.7



**TOBY BOX
SPECIFICATION SHEETS**

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



