

RESOLUTION NO. 2023-02-XXX (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A NONEXCLUSIVE LICENSE AGREEMENT WITH SIFI NETWORKS MCKINNEY, LLC OF WILMINGTON, DELAWARE FOR THE DEVELOPMENT OF AN OPEN ACCESS FTTP BROADBAND NETWORK IN MCKINNEY THAT MAY PROVIDE CONNECTIONS TO CURRENT AND FUTURE PUBLIC FACILITIES, ENCOURAGE DEVELOPMENT OF A CONNECTED “SMART CITIES” ECONOMIC DEVELOPMENT CORRIDOR ALONG COLLIN MCKINNEY PARKWAY, AND INCREASE INTERNET ACCESS IN UNDERSERVED AREAS

WHEREAS, the City Council of the City of McKinney, Texas, in 2019 began evaluating the necessity of next generation cellular technology, broadband technology, and the corresponding public and private uses of such infrastructure; and

WHEREAS, the City adopted updates and changes to the Small Wireless Facilities Design Manual and corresponding sections of the City of McKinney, Texas Code of Ordinances on July 21, 2020; and

WHEREAS, the City Council adopted Strategic Goals for the 2021-2022 Fiscal Year on June 15, 2021 that included City Council Goal 1 “Direction for Strategic & Economic Growth | 1A Establish regional and infrastructure incentives to increase economic growth”; and

WHEREAS, the City entered into an agreement with HR Green, Inc., one of the nation’s longest operating engineering firms, to assist in assessing the broadband needs and status of the City of McKinney, and to provide recommendations for improvement; and

WHEREAS, the City and HR Green, Inc. have developed four primary recommendations for improvements to broadband network in the City of McKinney: 1) Increase Community Infrastructure Base, 2) Expand City Fiber Facilities, 3) Evaluate a Pilot Project with McKinney Economic Development Corporation, and 4) Evaluate Methods to Increase Adoption; and

WHEREAS, the City Council adopted the City of McKinney Broadband Assessment Report and Recommendations report on February 15, 2022, and instructed staff to move forward with developing a Request for Proposals (“RFP”) to meet said recommendations; and

WHEREAS, the City issued a RFP, 22-36RFP for Broadband Network Deployment on March 27, 2022; and

WHEREAS, the City received 387 matching eBid Supplier Notifications, of which eleven (11) submittals were received on May 12, 2022; and

WHEREAS, the City’s evaluation committee selected three respondents to interview with the committee: AT&T, NextEra, and SiFi Networks McKinney, LLC; and

WHEREAS, the City’s evaluation committee recommended on August 16, 2022 that the City move forward with exclusive negotiations with SiFi Networks McKinney, LLC based on the results of the combined scores for the proposals and interviews; and

WHEREAS, the City has developed a nonexclusive license agreement that would result in the development of an open access fiber optic network in McKinney that will pass every premises in the City, allow for connection to current and prospective future facilities, contemplates the future development of “smart cities” applications, and is focused on serving underserved areas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

- Section 1. The City Council of the City of McKinney, Texas hereby authorizes the City Manager to execute a nonexclusive license agreement with SiFi Networks McKinney, LLC of Wilmington, Delaware for the development of an open access FTTP broadband network that may provide connections to current and future public facilities, encourage development of a connected “smart cities” economic development corridor along Collin McKinney Parkway, and increase internet access in underserved areas.
- Section 2. The Approved License Agreement and associated represented standard design details are provided in Exhibit A, attached.
- Section 3. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 7th DAY OF FEBRUARY, 2023.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER, Mayor

ATTEST:

EMPRESS DRANE, City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER, City Attorney

EXHIBIT A

FIBER OPTIC NETWORK DEVELOPMENT LICENSE AGREEMENT

This Fiber Optic Network Development License Agreement (the “**Agreement**” or “License Agreement”) is made this ___ day of _____, 2023 (“**Effective Date**”), by and between the City of McKinney, Texas a municipal organization (“**City**”) and SiFi Networks McKinney 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;

WHEREAS, SiFi owns, maintains, operates and controls a communications System to provide Service 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 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 (defined below) ; and

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

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

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

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

SECTION 1

1. **Definition of Terms.**

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

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

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

“**Cabinets**” means above ground enclosures placed within the Public Right-of-Way for the protection of active and passive equipment for the provision of Service throughout the System and as further described in Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law.

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

“**City Asset**” means any City-owned elevated water storage tanks, water plants, buildings, lift stations, traffic signals, pump stations, etc., that City plans to connect to the System moving forward a list of which City Assets are to be identified by City and provided to SiFi. The list of City Assets may be expanded from time to time as the City requires without any penalty or restriction.

“**City Regulations**” means and includes: the Code of Ordinances, City of McKinney, Texas; City’s Rights-of-Way Use and Management Ordinance; City’s Engineering Design Manual; City’s Public Right-of-Way Permitting and Construction Manual; and, the North Central Texas Council of Government’s Public Works Construction Standards and all other related development and permitting provisions, as amended.

“**Computer Aided Design Files**” means all CAD drawings within the City’s possession that are used to develop and design the layout and locations for the installation of the fiber optic cable, conduit, and related facilities within the City’s Right-Of-Way.

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

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

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

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

“Fiber Optic Network” or “FON” means SiFi’s fiber optic network built by utilizing a combination of blown fiber, aerial, wastewater and/or other conventional techniques, which may also include FOCUS™ design, as well as electronics to enable multi gigabit technologies. Please note that all construction methods are subject to the City's approval through the City’s permitting processes.

“Geographical Information System” means a system that creates, manages, analyzes, and maps all types of data and provides the information in feature classes.

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

“Home” means a residential single-family dwelling, or a residential single dwelling unit located within a Multiple Dwelling Unit or located on one (1) lot containing separate living units for two (2) families, located within the Boundary.

“Microtrenching” means the technique of installing fiber optic cable(s) through the use of a microtrencher or slot-cut trencher that cuts a thin channel ranging in width from one-half inch (½”) to two inches (2”) wide and at least twelve inches (12”) deep within which to lay the fiber optic cable in the areas described in Section 4.1 and depicted generally in Exhibit A.

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

“Pass” or “Passes” means that 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 provided in 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 to which SiFi cannot connect (i) because of a lack of a right to access due to the City not possessing the right, title, interest or authority to permit SiFi to use and occupy a

Public Right-of-Way in order for SiFi to access such Premises, or (ii) because SiFi's lack of a right to access any non-City owned property within the Boundary in order to access such Premises, or (iii) if there would be an incremental material cost to connect such Premises that would be at least ten percent (10%) higher than the average cost to connect to Primary Premises accessible by SiFi 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 those types of Primary Premises described in (i) through (iv) in this definition.

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

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

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

“Service Provider” means any entity that enters into a contract with SiFi to provide Services over the System.

“Shelter” means the above ground facility that houses 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) that has entered into a then current agreement to receive or otherwise lawfully then currently receives Service.

“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, Improvements, Facilities, manholes, manhole covers, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the FON system.

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SECTION 2

2. **Grant of Authority.**

2.1 **Grant of Rights.**

2.1.1 **SiFi Rights to Public Right-of-Way.** This Agreement sets forth the basic terms and conditions upon which SiFi is granted all necessary authority, rights and license to install the System in the Public Right-of-Way as further described in Section 2.3 below. The particular terms and location of each portion of the System shall be specified in the applicable permit application as described in Sections 3.2, “Permits and General Obligations,” and 3.3, “Permitting Process.” Upon approval of this License Agreement by the City Council of the City of McKinney (“City Council”) and pursuant to approved permits, the City will grant SiFi the right to access the Public Right-of-Way to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain in, on, over, under, upon, across, or along any Public Right-of-Way the System including wires, cables, facilities, Cabinets, components, materials, apparatus ducts, conduits, connectors, vaults, manholes, manhole covers, pedestals, appliances, splitters, pots, attachments, and other related property or equipment as may be necessary or appurtenant to the System, within the Boundary, and all extensions and additions thereto subject to SiFi’s compliance with the technical requirements set out in Section 4.2, “Methods,” and the typical details contained in Exhibit A. SiFi shall, subject to City approval of the applicable permit application, determine the final engineering design and proposed locations of all equipment and other parts of the System in accordance with the technical requirements set out in Section 4.2, “Methods,” and the typical details contained in Exhibit A. Both Parties agree to cooperate during the design and permitting process and SiFi must first disclose all engineering designs, construction drawings, and plans to the City for permit approval. Installation of the System and use of the Public Right-of-Way is also subject to the applicable permit application for a specific location. It is specifically understood that this License Agreement is non-exclusive and is made subordinate to:

- (i) the then existing private use being made of the License Area by the owner of the property upon or across or adjacent to which the License Area is situated specifically including but not limited to mail boxes, flags, statuary, landscape materials, landscape irrigation, and landscape lighting;
- (ii) the then existing private use being made of the License Area by any private or public utility; and
- (iii) the right of the City to use the License Areas for any public purpose.

Nothing in this Agreement shall be deemed to grant, convey, create, or vest in SiFi a real property interest in any land, including any fee, leasehold interest, or easement.

2.1.2 **Abandonment and Removal of the System upon Cancellation, Expiration, Nonrenewal or Termination of Agreement.** Except as otherwise provided by this Section or this Agreement, upon the cancellation, expiration, nonrenewal or termination of this Agreement, SiFi shall remove from or abandon in place all or any part of the System in the Public Right-of-Way. Any part of the System abandoned by SiFi as described in this Agreement shall become the property of the City. Within thirty (30) days after the cancellation, expiration, nonrenewal or termination of this Agreement, SiFi must notify the City in writing if it intends not to abandon the System. Failure to provide such written notice within the time specified will be deemed abandonment. As provided by Section 8.6.1, SiFi shall remove any or all parts of the System as ordered by the City upon the cancellation, expiration, nonrenewal or termination of this License Agreement.

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

2.3 **License.**

(i) Pursuant to an approved Permit, City hereby grants to SiFi, and its successors, transferees, and assigns, the authority under a license to enter, access, and occupy portions of the City’s Public Right-of Way including up to two (2) specific locations for 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 up to one hundred (100) specific locations for Cabinets, the location of which Cabinets shall be selected by SiFi and subject to approval by the City (collectively, the “**License Area**”), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System including, without limitation, wires, cables, ducts, conduits, connectors, vaults, manholes, manhole covers, fencing, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the System (the “**Improvements**”). This License Agreement is subject to easements, covenants, conditions (other public and private uses), and regulations 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 Improvements and System components outside the Public Right-of-Way.

(ii) Subject to this License Agreement, easements, covenants, and conditions (other public and private uses) 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 provided that SiFi restores the License Area as nearly as possible to its pre-alteration condition. SiFi shall be responsible for all costs incurred in the alterations and the restoration of the License Area. All construction, installation, maintenance and restoration 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.

(iii) Any damage to existing improvements that are located within or about the License Area including, but not limited to, damages to utility lines, service lines, mail boxes, driveways, parking areas, water sprinkler systems, shrubs, trees, flowers, planting beds, and decorative landscaping or other improvements caused by reason of the exercise of SiFi's rights hereunder shall be corrected by SiFi at SiFi's sole cost and expense, shall be promptly completed in accordance with all applicable City Ordinances and regulations and within the timeframes provided by this Agreement or as otherwise provided by law. SiFi shall promptly after becoming aware notify City of any such damages and shall require that repairs be performed by a licensed and permitted plumber, electrician, contractor, or professional approved by the City. All repairs and replacements shall be "like for like" from the same manufacturer or supplier if possible and when not possible of equal or better quality and value without regard for any depreciation or normal wear and tear. In this regard, it is specifically understood and agreed that the damage to such improvements may not be discovered immediately, and that there may be a reasonable period of time before a claim for damage to certain of such improvements is asserted.

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

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

(vi) The Improvements installed within the License Area by SiFi shall be made at no expense to City. SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the System in the event the relocation or protection of the System is necessary due to changes in any Public Right-of-Way at any time during the term of this Agreement. For 811 location requests, SiFi shall also upon the request of the City, any private utility, or other person performing work in the License Area locate Improvements that are a component part of the System to reduce or eliminate damage thereto within a reasonable time period consistent with the response time for 811 location requests.

(vii) If the City determines it is necessary for the City to perform work in, make any modifications to, or alter the License Area and such work may impact the System, the City will

provide SiFi reasonable notice to temporarily remove or relocate the System or any of its parts and components which are installed and constructed by SiFi in said License Area, as determined by the circumstances, before commencing such work, or as otherwise provided by Texas law. If notice is not feasible under the circumstances, City will notify SiFi by the end of the next business day following the City's commencement of work. City and its contractors will use reasonable care to protect those portions of SiFi's System installed in the Public Right-of-Way. However, should SiFi fail or refuse to timely remove or relocate the System or any of its parts and components from that portion of the License Area where the City determines it necessary to perform work, City and City's contractors shall owe no duty to SiFi and have no liability for any damages resulting to SiFi's System and any of its parts and components.

(viii) SiFi acknowledges that City, its agents, or assigns, or any utility company or City franchisee may at any time, enter upon the Public Right-of-Way, the License Area and any other areas covered by this Agreement, for the purpose of installing, maintaining, relocating, altering, enlarging, repairing, or inspecting any utility, facility, or public work thereon.

(ix) SiFi shall restore damaged or disturbed surfaces, service lines, mail boxes, driveways, parking areas, water sprinkler systems, shrubs, trees, flowers, planting beds, and decorative landscaping or other improvements at or adjacent to the License Area as nearly as possible to its pre-work condition and consistent with all City Regulations. Restoration shall be carried out immediately after construction. Any damage not repaired to the satisfaction of the City shall be a cause to suspend any operations by SiFi within the Boundary until the repairs are satisfactory to the City. Any cost incurred by the City to correct impacted areas not addressed by SiFi in a timely manner will be reimbursable to the City by SiFi at the cost incurred by City. SiFi shall be responsible for any damage to underground utilities and will coordinate directly with the respective utility owners on reimbursement for related repairs.

(x) 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 save and except as provided in Section 2, above. SiFi is responsible for maintenance of the System and all of its parts and components at no cost to City.

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

2.4 **Intentionally Omitted.**

2.5 **Intentionally Omitted.**

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. The City agrees that City bonding and insurance requirements will be satisfied by bonds and insurance coverage provided as part of the Public Right-of-Way permit application and supplied by SiFi or the Construction Contractor (as principal) performing

the construction of the System. Such bonds and insurance documentation shall meet the minimum requirements established in this Agreement and be supplied prior to the issuance of the applicable permit. Prior to commencement of construction, SiFi shall also establish an escrow in the amount of One Million Dollars (\$1,000,000) to be used for the immediate restoration of the Public Right-of-Way, including cuts in the curb and sidewalk for drops and other work in the public right-of-way, which shall be in effect throughout the construction process and for a period of two (2) years following the completion of the last phase or component of construction to complete the System. The details and requirements of the escrow as well as the obligations of the Parties shall be set forth in the agreement governing the escrow to be executed by and between the City and SiFi as well as the agreement governing the escrow to be executed by and between the City, SiFi, and the financial institution holding the escrow account. SiFi shall require its general contractor to obtain Performance, Payment and Maintenance Bonds in accordance with City Regulations and Texas law. Notwithstanding anything to the contrary contained in this Agreement, 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. When the City determines it is necessary for the City to do work in the public right-of-way that may impact the System, the City will coordinate with SiFi to the extent reasonably possible on a process to allow SiFi, at its own 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 License Agreement and the City Regulations 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 SiFi's construction process as well as the temporary or permanent relocation, moving, or repair, when needed, of portions of the System.

2.8 **Calculation and Payment of License Fee.**

(i) For use and occupation of the Public Right-of-Way to construct, maintain and operate the System and in consideration thereof, SiFi shall pay a license fee as provided by this

Section while this License Agreement is in effect. From the commencement of Construction, SiFi shall pay the City each quarter a license fee in the amount of the greater of:

(A) Ten thousand dollars (\$10,000) as “Minimum Amount Due”; or

(B) Two dollars and ninety-nine cents (\$2.99), or the applicable adjusted rate if the rate has changed under section 2.8.1(ii), multiplied by the number of Connected Premises as of the last calendar day of each quarter.

(ii) Beginning October 1st of each year, the rate for the license fee under section 2.8.1(i)(B) shall be adjusted by an amount equal to one-half ($1/2$) the annual change, if any, in the most recent consumer price index (CPI), as determined by the U.S. Bureau of Labor Statistics or its successor agency.

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

(A) The total number of Connected Premises as of the last calendar day of the quarter;

(B) The applicable rate at the time under section 2.8.1(i)(B), as adjusted under section 2.8.1(ii);

(C) A calculation of the amount due under the then current effective rate determined under section 2.8.1(iii)(B), above;

(D) A statement regarding whether SiFi will pay a license fee in the amount of the Minimum Amount Due under Section 2.8.1(i)(A) or the rate under Section 2.8.1(i)(B), as adjusted under section 2.8.1(ii) in accordance with this Agreement.

Within thirty (30) days after the last day of each quarter, SiFi shall remit payment to the City of the license fee, as described and calculated under this section 2.8.1.

(iv) SiFi shall pay a late payment charge equal to ten percent (10%) of the amount that was not paid when due in accordance with this License Agreement after fifteen (15) days’ notice to SiFi. Any amounts not paid when due shall also bear interest until paid at the lesser of the rate of two percent (2%) per month or the highest rate permitted by law after notice.

2.9 **Accounting Statements and Records.**

(i) SiFi shall keep City informed as to matters in connection with or affecting the construction, installation, reconstruction, removal, maintenance, operation and repair of the System.

(ii) Upon request by City, but not more frequently than two (2) times per calendar year, SiFi shall provide City with access at reasonable times and for reasonable purposes, to examine, audit, review, or obtain copies of the papers, books, accounts, documents, maps, plans and other

records of SiFi pertaining to this Agreement with respect to reporting, recording, and confirming the number of Connected Premises as well as the calculation and payment of license fees to the City under Section 2.8. SiFi shall cooperate in making available such records and otherwise assist in these activities. Additionally, upon approval by the City, SiFi may provide the City the ability to access remotely SiFi's books and records for purposes of conducting audits, reviews and/or examinations of SiFi's operations under this Section 2.9 and any other provisions of this Agreement related to the calculation and payment of license fees under Section 2.8.

(iii) City may, at any time, make reasonable inquiries to SiFi pertaining to its operation of the System within the City of McKinney. SiFi shall respond to such inquiries on a timely basis.

(iv) SiFi shall reimburse City for all reasonable travel expenses incurred by City in conducting audits, reviews and/or examinations of SiFi's operations. No such travel expenses will be incurred if SiFi maintains its books and records in any office located within the corporate limits of the City of McKinney.

(v) If during an audit or examination of SiFi's books, records or other filings, City discovers an underpayment due to the City, SiFi shall pay City all actual amounts of the underpayment as determined by the audit or examination, plus interest at ten percent (10%) annual percentage rate compounded monthly of the total amount past due. SiFi shall remit the amount of such underpayment to the City within thirty (30) days after the City provides notice to SiFi. City's right to audit or examine SiFi's books, records or other filings shall continue for three (3) years after the cancellation, termination, nonrenewal or expiration of this Agreement. SiFi agrees that this paragraph shall remain in effect for these purposes after the cancellation, termination, nonrenewal or expiration of this License Agreement.

(vi) Without any prior request, SiFi shall provide City with notices of all, if any, petitions, applications, communications and reports submitted by SiFi to the Federal Communications Commission, Securities and Exchange Commission, and the Texas Public Utilities Commission, or their successor agencies, relating to any matters affecting the use of the Public Right-of-Way or the System operations authorized pursuant to this Agreement. Upon written request from City, SiFi shall provide City with copies of all such documentation.

(vii) SiFi shall make available, within the confines of the City of McKinney, all of its books, records, contracts, accounts, documents and papers, with respect to the number of Connected Premises as well as the calculation and payment of license fees to the City under Section 2.8, for inspection by City officials and employees upon request.

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

(i) 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. This License Agreement, SiFi, as well as 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, and

the City's Regulations, including those governing public service providers, as they are now in effect or those which may hereafter be passed, adopted, or amended. As part of the permitting process, SiFi shall submit to the City detailed construction plans, specifications, drawings and maps 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 the 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.

(ii) 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 Regulations or other applicable regulations regarding traffic control plans and lane closures.

(iii) SiFi's contractor shall conduct all traffic control in accordance with the latest version of the Texas Manual on Uniform Traffic Control Devices as it may be amended from time to time.

(iv) SiFi's contractor 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 the City Regulations.

(v) SiFi 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.

(vi) 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 Engineering and Director of Public Works, SiFi may provide electronic files in a different electronic format, or transfer the files to the City via email or file transfer protocol (FTP).

(viii) SiFi will comply with applicable provisions of the City Regulations regarding proximity to drainage facilities, sanitary sewer, water mains, and other water utility infrastructure.

(ix) SiFi will construct the System and any associated facilities so that the ability to place driveways, sidewalks, parking lots, fences, irrigation systems and equipment, landscaping improvements or other similar structures will not be affected and SiFi hereby consents to such structures. SiFi shall not cause any change to the configuration of any City

park, Public Right-of-Way, or property including any planned expansions, unless otherwise approved by the City.

(x) 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, 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-owned 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 sufficient lateral support; and

(E) SiFi's use of the System, Shelters, and facilities for the purposes set forth herein is not unreasonably interfered with or otherwise impaired.

(xi) 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.

(xii) 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 of SiFi's planned construction activities. All notices should also identify at a minimum one person with SiFi 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 adjacent to the planned System construction project.

(xiii) At the time of execution of this License Agreement, SiFi has expressed that it does not intend to offer: "video service," pursuant to a State-Issued Certificate of Franchise Authority issued by the Texas Public Utilities Commission under Texas Utilities Code Chapter 66, as amended; or "local exchange telephone service," pursuant to a certificate issued by the Texas Public Utilities Commission under Texas Local Government Code Chapter 283, as amended. In the event that SiFi offers any of these services while this License Agreement is in effect, this License Agreement will automatically terminate and the relationship between the Parties will be governed by applicable Texas law

SECTION 3

3. **The System.**

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

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

3.3 **Permitting Process.**

3.3.1 The City will comply with all applicable laws and act in accordance with its standard procedures in reviewing and processing all applications submitted by SiFi and/or its contractors, including permits or other necessary items for construction work on the System within the Public Right-of-Way while this License Agreement is in Effect. Nothing in this License Agreement exempts SiFi from any permitting regulations or processes. The City's standard practice is a three (3) to six (6) week plan review of a fully and technically complete submittal by SiFi and/or its contractors of an application for a permit in connection with this Agreement, to review and provide a response to the person who made the submittal that the application is either approved or denied. An application for a permit that is not fully and technically complete is not subject to the response timeframe above. The time period for which a permit is valid depends on the type of permit application submitted and the permit issued. In the event the City does not provide a response on a fully and technically complete application in accordance with Section 3.3:

- (i) such action does not constitute a breach, default, or noncompliance under this License Agreement for which a remedy is available under Section 8.2;
- (ii) such action does not result in the permit application being deemed approved; and
- (iii) the only remedy available is an extension of the Construction Completion Deadline as provided by Section 4.1.

3.3.2 SiFi is responsible for coordinating all facility locates within the areas identified within each permit application. The City has no responsibility for coordinating any facility locates.

3.3.3 The engineering details provided in Exhibit A are a sample of the typical details that may or may not change during the final engineering design process.

3.3.4 Nothing herein shall be construed as a promise, warranty, or guarantee of approval of any permit, license, or other land use approval which may be required; provided that no permit, license, or other land use approval of any other approval requested by or required if SiFi shall be unreasonably withheld, conditioned or delayed.

3.3.5 Approved permitting by the City does not constitute approval by other regulatory entities such as the Texas Commission on Environmental Quality, Texas Department of Licensing and Regulation, Texas Department of Transportation, Union Pacific Railroad, Collin County, etc. SiFi is responsible for obtaining all required permits as necessary to complete their work.

SECTION 4

4. **Construction and Facilities.**

4.1 **Timeline.** SiFi will commence Construction on or before a date that is not later than twenty-four (24) months after the Effective Date (the "Construction Commencement Deadline"); provided however, in the event of a Force Majeure Event, the Construction Commencement Deadline shall be extended by the time impact resulting from the Force Majeure Event. In addition, SiFi will complete construction of the System on or before a date that is not later than sixty (60) months after the Construction Commencement Deadline (the "Construction Completion Deadline"); provided however, in the event of a Force Majeure Event, the Construction Completion Deadline shall be extended by the time impact resulting from the Force Majeure Event. If the City does not provide a response on a fully and technically complete application for a permit within the timeframe provided by Section 2.4.1, the Construction Completion Deadline may 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 within the City, according to the following schedule in relation to the first five anniversaries following the date that construction is commenced:

(i) by the first anniversary, SiFi will complete construction of the Passes for at least fifteen percent (15%) of the Primary Premises within the City, provided that the land area bounded by State Highway 5 (McDonald Street) on the west, U.S. Highway 380 (University Drive) on the north, Airport Drive on the east, and Industrial Boulevard on the south will be included;

(ii) 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;

(iii) 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;

(iv) 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

(v) 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 of its progress in meeting this construction schedule at least every three (3) months, or as otherwise requested by the City.

4.2 **Methods.** 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 the following specific technical requirements subject to the City's consent or approval obtained through the permitting process:

(i) Ground penetration radar system shall be used as the primary method for identifying underground utilities prior to any Microtrenching or subsurface directional boring;

(ii) All conduits placed below reinforced concrete surfaces and asphaltic surfaces typically found at streets and intersections must be installed with trenchless (subsurface directional boring) technology;

(iii) All conduits placed below reinforced concrete surfaces and asphaltic surfaces typically found at streets and intersections must also be installed as close as possible to a ninety-degree (90°) angle to the surfaces under which the conduit is so placed;

(iv) All other conduits must be placed in the grassy or landscape areas in the parkway situated behind the curb utilizing slot cut Microtrenching technology and must be placed a minimum of 12" deep, but in no case below any water service line;

(v) All conduits must be placed a minimum of 3' horizontally and 18" vertically from existing City utilities (water, sanitary and storm sewers, and street lighting);

(vi) Pull boxes and handholes must be placed at or below the surrounding surface level in the landscaped areas;

(vii) Utilities must be potholed or in the case of sewers televised at conduit crossings; and

(viii) All construction and installation must adhere to 1-5 as shown on marked up Standard Details 2030M, 2040M, and 2150M (attached hereto as Exhibit A).

Notwithstanding the foregoing, in those areas within the Boundary specifically including the downtown area where there are no parkways or grassy areas in which the conduits, pull boxes and handholes may be placed SiFi may be allowed to utilize directional boring and/or aerial installations on existing electrical poles where colocation is available provided that SiFi obtains the right at SiFi's sole cost and expense to collocate on such existing poles. A separate permit shall be required for construction of the System in and about the downtown area and all other areas where there are no parkways or grassy areas in which the conduits, pull boxes and handholes may be placed.

By listing the foregoing construction methods herein, City is generally accepting of such methods, however, 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 Regulations. City acknowledges that SiFi's primary citywide construction technique is Microtrenching though City has final approval over all construction methods proposed by SiFi and agrees to work cooperatively with SiFi and SiFi's contractors in reviewing all other potential construction methods. Construction will be conducted according to the specifications contained in the exhibits but is ultimately subject to City approval through the permitting process. Notwithstanding anything contained in Exhibit A or elsewhere in this License Agreement, all construction methods must be conducted in compliance with all applicable City Regulations. (Aerial installations, if any are permitted by City, will occur only where colocation is available and allowable on utility poles and where easement language supports the addition of SiFi's new infrastructure.) It is specifically agreed and understood that the construction methods set forth herein together with the specifications contained in Exhibit A hereto may be changed upon the written agreement of the Parties or as may be required to comply with applicable City Regulations without the need to amend any part of portion of this Agreement.

4.3 **Repairs, Maintenance and Damage.** SiFi shall be solely responsible for all repairs, maintenance, and adjustments, and damage to the System.

4.4 **Location of Equipment/Facilities.**

4.4.1 **Up to Two (2) Secured Locations.** During the Term, the City shall provide SiFi, as needed, with a license for access to and use of up to two (2) secure locations owned by the City for the installation and operation of up to two (2) oversized SiFi Shelters (approximately 1,000 square feet per location for each Shelter) subject to a separate license 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 oversize SiFi Shelter on City-owned land. SiFi's access to such secure locations shall be controlled by and through such separate license agreements.

4.4.2 **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 the City Regulations and permitting process. The City and SiFi agree to cooperate in the selection of suitable sites for the Shelters (approximately 1,000 square feet per location) and Cabinets. However, City has sole and absolute but reasonable discretion to reject a proposed location; provided that, the City will use reasonable efforts to offer suitable alternative locations. City has final

approval over the location and aesthetics of all Shelters, Cabinets, cable and equipment associated with the System within the Public Right-of-Way.

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

SECTION 5

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

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

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

5.3 **Treatment of Confidential Information.** The City acknowledges that all information regarding the System, including plans, drawings, designs, conceptual renderings, cost information, specifications, photographs, reports, manuals, and other documents provided to the City by SiFi is considered by SiFi to be "confidential and proprietary information." The City will notify SiFi within the time period established by the Texas Public Information Act after receiving a Texas Public Information Act request that seeks disclosure of information provided by or concerning SiFi or the System. The Parties shall reasonably cooperate to determine whether or to what extent the requested information may be released without objection and without seeking a written opinion of the Texas Attorney General. If SiFi takes the position that responsive information provided by or concerning SiFi is information not subject to release to the public pursuant to Texas Government Code § 552.110, or other applicable law, then the City agrees to seek a written opinion from the Texas Attorney General's Office; however, SiFi must submit written comments to the Texas Attorney General to establish reasons why the information should be withheld. The burden of establishing the confidential and proprietary nature of the information resides with SiFi. Should the Texas Attorney General issue an opinion that the requested information, or any part thereof, should be released, the City may release said information without penalty or liability. This Section 5.3 shall survive expiration or termination of this Agreement.

SECTION 6

6. **Insurance.**

SiFi or its contractors shall procure and maintain from the date of start of Construction for the duration of the term of the Agreement, insurance against claims for injuries to persons or

damages to property which may arise from or in connection with the performance of the work hereunder by SiFi, its agents, representatives, employees, or subcontractors. All contractors and their subcontractors shall obtain the required insurance set forth in this Section 6 to the extent applicable to their scope of services and no work shall be performed by SiFi or any of its contractors or subcontractors until and unless the required insurance is in place.

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

Coverage shall be at least as broad as:

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

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

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

D. **Builder’s Risk (Course of Construction)** insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. The coverage shall include materials, supplies, machinery, fixtures and equipment that will be incorporated into the work. Coverage shall also include property in the Contractor's 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 SiFi.

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

F. **Pollution Legal Liability** providing protection for environmental risks that directly result from SiFi’s use of the License Area and SiFi’s operation of any Cabinets, Chambers, or Shelter with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

G. **General Contractor’s Pollution Liability** providing protection for claims arising from pollution conditions directly resulting from the construction of the System

with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the Contractor or SiFi maintains broader coverage and/or higher limits than the minimums shown above for all policies, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor or SiFi. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City to the extent necessary to cover any actual damages suffered by the City or third parties.

6.2 Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City.

6.3 Other Insurance Provisions:

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

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

C. Notice of Cancellation. All policies required herein shall provide thirty (30) days' written notice of any reduction in coverage, cancellation or non-renewal to the City. SiFi shall provide City immediate written notice if the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, SiFi shall forthwith obtain and submit proof of substitute insurance.

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

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

F. Verification of Coverage. SiFi shall furnish the City with Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations

and Endorsement Page of the CGL policy listing all policy endorsements to City before the date of the start of Construction. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them or provide the required minimum insurance coverage required by this License Agreement. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

G. Contractor/Subcontractors. SiFi shall require and verify that the Contractor and all subcontractors maintain insurance meeting all the requirements stated in this Section 6 to the extent applicable to their scope of services, and SiFi shall require, to the extent possible, the Contractor and all the subcontractors to list City as an additional insured on insurance required from subcontractors.

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

SECTION 7

7. Parties' Obligations.

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

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

(ii) City will offer the full cooperation of all City departments with respect to relevant issues with respect to the System. Such cooperation will be overseen and coordinated by the SPOC.

(iii) City will provide SiFi and its representatives reasonable access to the License Area for which a permit has been issued to SiFi for the installation, inspection, and maintenance of the System and for any other reasonable business purpose with respect to the System, as provided by this License Agreement, for such access through the completion of construction. SiFi and/or any contractors it hires will be required to obtain all necessary permits and pay any related permit and inspection fees and comply with all other standard permit conditions of approval for future maintenance and/or repairs and/or alterations to its System located within the Public Right-of-Way once installed and operational.

(iv) City will participate in regular status meetings with SiFi for the coordination of all matters related to the System.

(v) City will comply with all applicable laws and act in accordance with its standard procedures in reviewing and processing all applications for permits submitted by

SiFi or its representatives or contractors, including permits or other necessary items for construction work on the System within the Public Right-of-Way.

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

(vii) When reasonably able, City will provide SiFi with at least thirty (30) calendar days' advance notice of any work in the Public Right-of-Way that requires the relocation of the System.

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 will also provide a single point of contact ("SiFi SPOC") for City, which SiFi SPOC will be responsible to address all issues related to the System, provide coordination with and act as a liaison to SiFi, and serve as a communication and troubleshooting resource for City.

(ii) The SiFi SPOC shall work closely with the SPOC of the City and relevant City departments with respect to the construction of the System.

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

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

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

(vi) SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the System or installation of temporary facilities in the event that relocation of the System is necessary due to changes in any Public Right-of-Way, the City Regulations or as any other applicable laws may require, or when the City has determined that relocation, change or alteration of the System is reasonably necessary due to the construction, operation, repair, maintenance or installation of the City or other governmental public improvements in the License Area. The Parties will cooperate in good faith in relation to the relocation of the System or facilities. The City agrees to provide all

reasonable accommodations as reasonably requested by the SiFi SPOC, subject to applicable fees, costs, and charges, including standard permit application and inspection fees, to allow SiFi the ability to temporarily or permanently relocate such portion of the System in or around the Public Right-of-Way in a manner sufficient to maintain the operation of the System pursuant to the terms of this Agreement. SiFi shall also be responsible for the cost of any such temporary or permanent relocation of any portion of the System. SiFi shall ensure that the System continues to provide Service at all times to Subscribers and customers during the process of relocating the System or installing temporary facilities.

(vi) Upon the City's request, SiFi will facilitate an introductory meeting between the City and Service Provider(s) who use the Network to provide services to residential and business locations, and further will advise any such Service Provider(s) that the City may require fees as required by law or regulation. SiFi will use reasonable efforts through a competitive solicitation process to enable more than one (1) Service Provider to have access to the Network to deliver Service to Primary Premises within twenty-four (24) months from commencement of construction. SiFi agrees to have at least one (1) Service Provider providing Service over the System to potential Subscribers in all areas where portions of the System are located not later than twelve (12) months following the commencement of construction and throughout the duration of this Agreement. Such Service, which is the responsibility of the Service Providers, shall include internet services capable of symmetrical speeds of one (1) Gigabit per second (Gbps) or higher. Service Providers may also provide additional tiered packages of internet services with different higher or lower speeds. As portions of the System are completed, SiFi will ensure that the System is capable of providing Service to Subscribers in the areas where completed portions of the System are located while this Agreement is in effect.

(vii) SiFi shall be responsible for repairing all portions of the System in the event of a fault or damage. SiFi shall respond and make any necessary repairs to the System or take any actions necessary to address a fault or damage no later than twenty-four (24) hours after notification, except where such fault or damage constitutes an emergency or endangers the health, safety, or welfare of the public or property, such repairs shall be completed no later than four (4) hours after notification.

(viii) The SiFi SPOC 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 City Assets requested by City at no additional cost to City. The location and method of connection(s) may vary depending on the location of City buildings, facilities, and City Assets. SiFi shall work cooperatively with Service Providers and City to facilitate the delivery of Service to City Assets at discounted rates acceptable to the City. If the City desires the use of SiFi's fiber optic infrastructure for City use, including but not limited to, the connection of City Assets over private network(s) or a "dark fiber" network, SiFi shall work directly with the City on the delivery of a managed data Service operated by either SiFi or the City over SiFi's fiber infrastructure.

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

(x) Upon reasonable notice, as determined by the circumstances, at the request of the City and at SiFi's cost, SiFi shall remove and abate any portion of the System or any facility that is dangerous to life or property, as determined by the City. If SiFi or SiFi's surety, after reasonable written notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of SiFi or SiFi's surety. If the City removes or abates any portion of the System or any facility under this Section 7.2, the City will notify SiFi twenty-four (24) hours prior to commencing such work, unless such notice is not feasible under the circumstances, in which case, City will notify SiFi by the end of the next business day following the City's commencement of such work. SiFi shall promptly restore any public and/or private improvements located within the License Area as required by the City Regulations.

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

7.3 **The "Collin McKinney Parkway Smart City Pilot"**. SiFi and City have discussed the concepts being considered and proposed by the McKinney Economic Development Corporation ("MEDC") to establish the high-capacity technology infrastructure crucial to modern economic development efforts that are supported by a dynamic workforce and new and innovative businesses. MEDC is working toward an initial pilot project for fiber and other ancillary technology infrastructure (smart street lighting, wireless, etc.) in conjunction with a City of McKinney capital improvement project for the expansion and construction of Collin McKinney Parkway. The main broadband related priority areas being considered for future projects by MEDC are the 121 corridor, the 380 corridor and the Highway 5 corridor. SiFi is interested in and

open to the concept of delivering fiber and other ancillary technology along Collin McKinney Parkway in conjunction with MEDC's proposed initial pilot project subject to the applicable details being identified and resolved.

SECTION 8

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

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

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

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

(ii) cure an actual default or noncompliance; provided, however, if the Parties agree in writing, the SiFi Cure Period may be extended for an additional thirty (30) calendar days in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the SiFi Cure Period. Any extension of the SiFi Cure Period shall require that SiFi promptly initiates reasonable steps to cure and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies City of the steps being taken and the projected date that they will be completed.

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

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

(ii) seek money damages from SiFi; or

(iii) in the event of the breach of, noncompliance with or default under any material term of this License Agreement (a "Material Breach"), terminate this

Agreement and seek any and all rights and remedies available to it at law or in equity.

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

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

(i) SiFi fails to provide, or fails to require a subcontractor to provide, proof of insurance as required by this License Agreement or SiFi or one of SiFi's subcontractors fails to carry the required coverages of insurance as required by this License Agreement.

(ii) SiFi fails to commence construction by the Construction Commencement Deadline, unless an extension of time is provided under Section 4.

(iii) SiFi fails to meet the construction schedule provided under Section 4.1, unless an extension of time is provided under Section 4.1.

(iv) SiFi fails to complete construction by the Construction Completion Deadline, unless an extension of time was provided under Section 4.1.

(v) SiFi fails to pay City any fee or charge in accordance with the City regulations or by the required deadline as provided in Section 2.

(vi) SiFi fails to comply with any obligation included in Section 7.2.

(vii) SiFi fails to comply with the City Regulations or any local, state, or federal law or regulation.

(viii) SiFi assigns, sells, transfers, or otherwise conveys its rights or interests in this License Agreement, in whole or in part, or sublets the License Area in whole or in part to another person, party or entity who is not an Affiliate of SiFi without obtaining the City's prior written consent.

(ix) SiFi fails to comply with any obligation included in Section 2.10.

(x) SiFi fails to obtain City's prior consent before proceeding with any work, when such prior consent is required under this License Agreement.

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

8.1.5. **Take-Over Rights.**

(i) This Section 8.1.5 only applies in the event City terminates this License Agreement on the following grounds:

(A) SiFi fails to complete construction of the System by the Construction Completion Deadline in accordance with Section 4.1 and subsequently fails to complete said construction within the SiFi Cure Period; or

(B) at any time after the Construction Completion Deadline, no internet, voice, data, or video service of any kind is capable of being provided over the System for a period in excess of thirty (30) days and SiFi fails to restore such capability within the SiFi Cure Period.

(ii) In the event that this License Agreement is terminated under this Section 8.1.5 prior to the expiration of the then current term, City shall promptly notify all of SiFi's lenders of such termination at the addresses provided by SiFi. If a lender cures all defaults giving rise to such termination as provided below, City shall enter into a new agreement for use of the System with such lender for the remainder of the term, subject to approval by the City Council, at the fees and other payments then payable under Section 2 hereof, and upon all of the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

(A) the lender entitled to the new agreement shall make written request to City for a new agreement within sixty (60) days after receipt by the lender of written notice from City of the date of termination of this License Agreement; and

(B) at the time of the execution and delivery of the new agreement, the lender shall pay to City all amounts specified in the notice of termination delivered by City which would have been due hereunder except for such termination and which are currently due except for such termination, and shall promptly cure all other defaults giving rise to such termination.

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

8.2.1 **City's Right to Cure or Respond.** The City shall have forty-five (45) calendar days from its receipt of a SiFi Breach Notice (the "**City Cure Period**"); to:

(i) respond to SiFi, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to

promptly resolve such contest and to the extent the Parties are unable to resolve such contest within thirty (30) days of the City's response, each Party shall be entitled to seek any and all rights and remedies available to it at law or in equity to resolve such contest; or

(ii) cure an actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the City Cure Period, so long as the City initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance 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) calendar days from the City's receipt of a SiFi Breach Notice (the "**Extended City Cure Period**").

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

(i) seek money damages from the City; or

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

8.3 **Additional Rights to Terminate.** 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 License Agreement, and SiFi must have received written notice from the City acknowledging that the assurances were made to the City's satisfaction. If SiFi does not provide assurances to the satisfaction of the City under this Section, the City may terminate this License Agreement, at its option, upon written notice to SiFi.

8.4 **Indemnification.**

8.4.1 SIFI HEREBY CONTRACTS AND IS BOUND TO INDEMNIFY, DEFEND, AND HOLD THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, VOLUNTEERS, CONTRACTORS AND AGENTS FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS, EXPENSES, LIABILITY, LOSSES, DAMAGES OR INJURIES, 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 OR AS A CONSEQUENCE OF CITY HAVING GRANTED PERMISSION TO SIFI TO USE AND MAINTAIN PUBLIC PROPERTY OR ANY ALLEGED ACTS, OMISSIONS, NEGLIGENCE OR WILLFUL MISCONDUCT OF SIFI, ITS OFFICIALS, OFFICERS,

EMPLOYEES, AGENTS, CONTRACTORS AND SUBCONTRACTORS (COLLECTIVELY THE “SIFI PARTIES”) ARISING OUT OF, RELATED TO, IN CONNECTION WITH, OR OCCASIONED BY THE USE, OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM, INSTALLATIONS AND IMPROVEMENTS OR HAZARDOUS SUBSTANCES OR 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 GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, ITS OFFICERS, OFFICIALS, EMPLOYEES, CONTRACTORS, AGENTS AND VOLUNTEERS. SIFI SHALL DEFEND, AT ITS OWN COST, EXPENSE AND RISK, ANY AND ALL SUCH AFORESAID SUITS, ACTIONS OR OTHER LEGAL PROCEEDINGS OF EVERY KIND THAT MAY BE BROUGHT OR INSTITUTED AGAINST THE CITY, ITS DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, AGENTS OR VOLUNTEERS. SIFI SHALL PAY AND SATISFY ANY JUDGMENT, AWARD OR DECREE THAT MAY BE RENDERED AGAINST THE CITY OR ITS DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS OR VOLUNTEERS, IN ANY SUCH SUIT, ACTION OR OTHER LEGAL PROCEEDING. SIFI SHALL REIMBURSE THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS AND/OR VOLUNTEERS, 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, OFFICERS, EMPLOYEES, AGENTS OR VOLUNTEERS.

8.4.2 SIFI ALSO HEREBY CONTRACTS AND AGREES THAT SIFI AND THE SIFI PARTIES SHALL MAKE NO CLAIM OF ANY KIND OR CHARACTER AGAINST THE CITY FOR DAMAGES THAT MAY BE SUFFERED BY REASON OF THE INSTALLATION, CONSTRUCTION, RECONSTRUCTION, OPERATION AND/OR MAINTENANCE OF ANY PUBLIC IMPROVEMENT OR UTILITY INSTALLED WITHIN THE PUBLIC RIGHT-OF-WAY, INCLUDING BUT NOT LIMITED TO, ANY WATER AND/OR SANITARY SEWER MAINS AND/OR STORM SEWER FACILITIES AND WHETHER SUCH DAMAGE IS DUE TO FLOODING, INFILTRATION, BACKFLOW AND/OR SEEPAGE CAUSED FROM THE FAILURE OF ANY SUCH INSTALLATION, NATURAL CAUSES OR ANY OTHER CAUSE, EXCEPT CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8.4.3 SIFI FURTHER CONTRACTS TO INDEMNIFY, DEFEND, AND HOLD CITY HARMLESS AGAINST ALL CLAIMS, DAMAGES, AND LIABILITIES OF WHATEVER NATURE, FORESEEN OR UNFORSEEN, UNDER ANY HAZARDOUS SUBSTANCE LAWS THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE SIFI PARTIES' INSTALLATION, CONSTRUCTION, RECONSTRUCTION, USE, OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(i) ALL FEES INCURRED IN DEFENDING ANY ACTION OR PROCEEDING BROUGHT BY A PUBLIC OR PRIVATE ENTITY AND ARISING FROM THE PRESENCE, CONTAINMENT, USE, MANUFACTURE, HANDLING, CREATION, STORAGE, TREATMENT, DISCHARGE, RELEASE, OR BURIAL ON THE LICENSE AREA OR THE TRANSPORTATION TO OR FROM THE LICENSE AREA OF ANY HAZARDOUS SUBSTANCE THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE INSTALLATION, CONSTRUCTION, RECONSTRUCTION, USE, OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM. THE FEES FOR WHICH SIFI SHALL BE RESPONSIBLE UNDER THIS SECTION SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE REASONABLE FEES CHARGED BY ATTORNEYS, ENVIRONMENTAL CONSULTANTS, ENGINEERS, SURVEYORS, AND EXPERT WITNESSES.

(ii) ANY DIMINUTION IN THE VALUE OF THE LICENSE AREA ATTRIBUTABLE TO THE BREACH OR FAILURE OF ANY WARRANTY OR REPRESENTATION MADE BY SIFI IN THIS AGREEMENT, OR CLEANUP, DETOXIFICATION, REMEDIATION, OR OTHER TYPE OF RESPONSE ACTION TAKEN WITH RESPECT TO ANY HAZARDOUS SUBSTANCE ON OR UNDER THE LICENSE AREA THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE INSTALLATION, CONSTRUCTION, RECONSTRUCTION, USE, OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM REGARDLESS OF WHETHER OR NOT THAT ACTION WAS MANDATED BY THE FEDERAL, STATE, OR LOCAL GOVERNMENT.

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

8.5 **Limitation of Liability.** 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's aggregate liability under this Agreement shall be limited to the higher of one million dollars (\$1,000,000) or the amount of available applicable insurance coverage. Notwithstanding anything to the contrary contained in this License Agreement, the provisions of this Section 8.5 will survive expiration or termination of this License Agreement.

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

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

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

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

SECTION 9

9. **Disputes.**

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

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

SECTION 10

10. Miscellaneous Provisions

10.1 Assignment.

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

(ii) SiFi will pay all costs and expenses due to City under this License Agreement prior to assignment or transfer to an Affiliate or any other Person who is not an Affiliate of SiFi.

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

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

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

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

(iv) SiFi shall pay and/or reimburse City for any costs incurred by the City arising out of or related to each request for the City's consent to any proposed transfer, assignment or subletting of the License Agreement in whole or in part or the License Area in whole or in part. Such payment is due at the time the request is submitted to City. SiFi shall reimburse the City for such costs before any proposed transfer, assignment or subletting is finalized by SiFi and regardless of whether the proposed transaction is approved or denied within thirty (30) days upon receipt of reasonable documentation of such costs.

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

10.2 **Force Majeure.**

If either Party is prevented, wholly or in part, by one or more of the events identified herein as being a Force Majeure event, from fulfilling its obligations under this Agreement, the obligations so prevented by the event of Force Majeure may be temporarily suspended and/or delayed during the continuance of that inability. The Party seeking to rely upon the existence of a Force Majeure event for any delay or failure to timely perform an obligation shall give written notice of the existence, extent and nature of the Force Majeure event to the other Party within 10 calendar days of the occurrence relied upon specifically identifying which provision of this Agreement is impacted by the Force Majeure event and how the Force Majeure event prevented the Party from fulfilling such obligation(s). Additionally, the Party so affected shall promptly, and without interruption, take reasonable steps to mitigate the Force Majeure impacts. The term "Force Majeure" as used in this Agreement means: labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, governmental, administrative or judicial order, or other event that is beyond the Party's reasonable control. Notwithstanding any other provision to the contrary, the occurrence of a Force Majeure Event does not excuse SiFi from making timely payments of any fees or other

amounts due to the City under this License Agreement. In addition, the occurrence of a Force Majeure event only excuses or delays the performance of those obligations specifically identified in this License Agreement as being subject to Force Majeure.

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 McKinney, Texas
P.O. Box 517
McKinney, Texas 75070

Attn: City Manager
Email: _____

WITH A COPY TO:

BROWN & HOFMEISTER, LLP
Attn: Mark S. Houser, City Attorney
740 E Campbell Road, Suite 800
Richardson, Texas 75081

IF TO SIFI:

SiFi Networks McKinney 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 5:00 p.m. local time on any business day in the place of receipt. Otherwise, any such notice, request or communication will be deemed not to have been received until the next succeeding business day in the place of receipt. Rejection or other refusal to accept or inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice.

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

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

10.6 **Governing Law.** This Agreement shall be deemed to be executed in the State of Texas and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Texas as applicable to contracts entered into and performed entirely within Collin County, Texas, irrespective of conflict of laws principles. This License Agreement is also entered into subject to the Home-Rule Charter and Code or Ordinances, City of McKinney, Texas.

10.7 **Modification.** This License 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 License 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 License Agreement in whole or in part.

10.8 **No Third-Party Beneficiaries.** Nothing in this License 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 License Agreement including a member of the public.

10.9 **No Waiver of Rights.** Nothing in this License 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 License 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 License Agreement. Except as otherwise provided by this License Agreement, SiFi shall, at all times, retain title to and ownership of the System and all future extensions of the System, and shall have the right to lease the System or parts thereof to a provider of internet, data, voice, video and other services. In this regard it is specifically understood that the Public Right-of-Way and Licenses Areas are not a part of the System.

10.11 **Representations and Warranties.**

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

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

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

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

10.13 **No Partnership**. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the City and SiFi or any other relationship other than a contractual relationship as expressly set forth in this Agreement. Neither Party shall in any manner act nor indicate to any third party that is acting as the agent of the other Party. SiFi shall at all times remain an independent contractor. Neither Party shall control or direct the day-to-day affairs of the other Party, or their mode or method of performing their respective obligations hereunder.

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

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

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

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

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

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

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

[Signature page follows]

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

CITY OF MCKINNEY,
a Texas home-rule municipal corporation

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

SIFI NETWORKS MCKINNEY LLC,
a Delaware limited liability company

By: _____

Its: _____

Date Signed: _____

EXHIBIT A

SPECIFICATIONS, SHELTERS, CABINETS

(Comprised of the following 23 pages.)

EXHIBIT

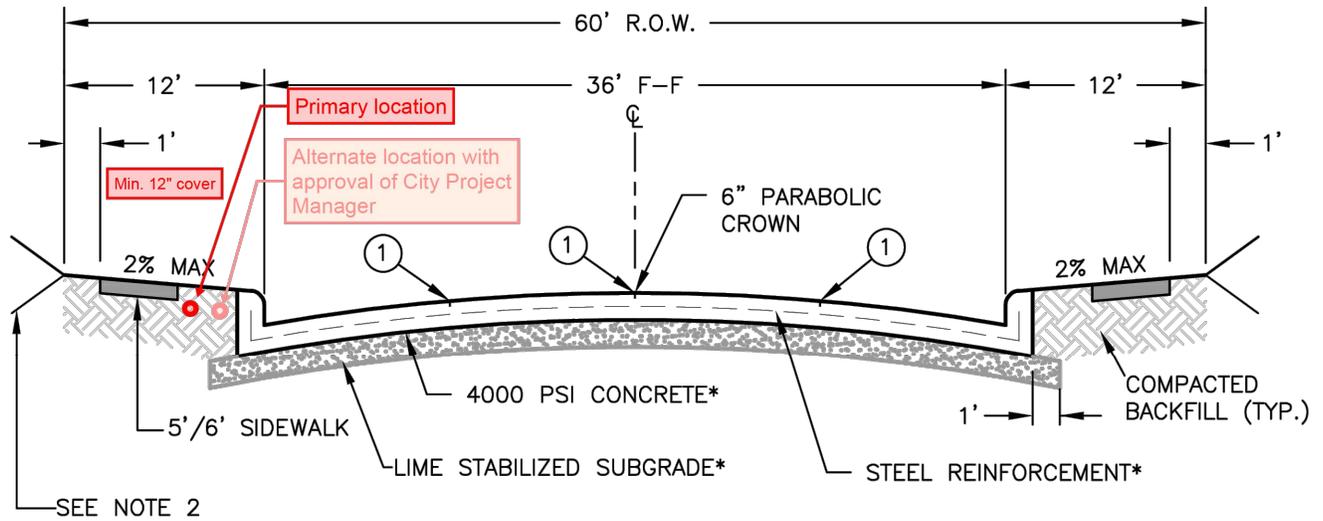
SPECIFICATIONS-SHELTERS-CABINETS
FIBER CITY TYPICAL SPECIFICATIONS
1/18/2023



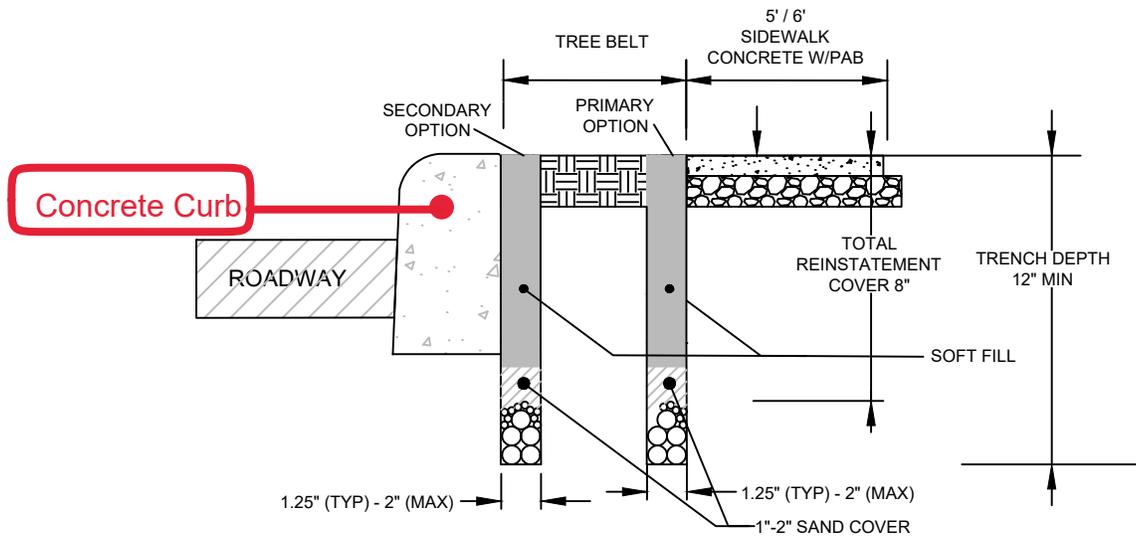
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COLLECTOR STREET UNDIVIDED THOROUGHFARE



COLLECTOR STREET (C2U)
N.T.S.



SECTION VIEW A-A



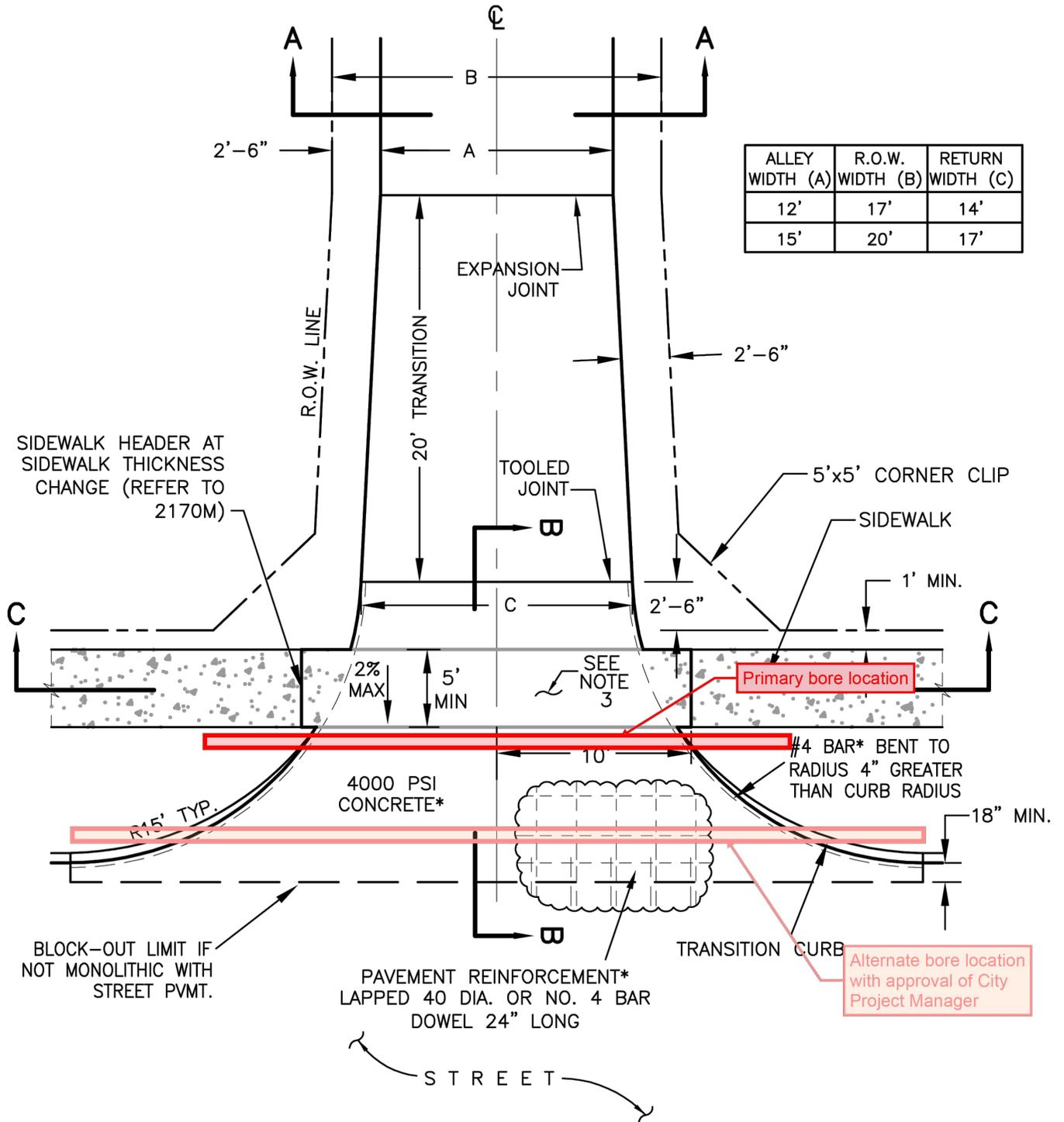
COLLECTOR STREET
UNDIVIDED
THOROUGHFARE

NO.	REVISIONS	BY	DATE

STD DWG
NOT TO SCALE



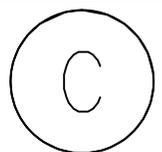
ALLEYS (BORE)



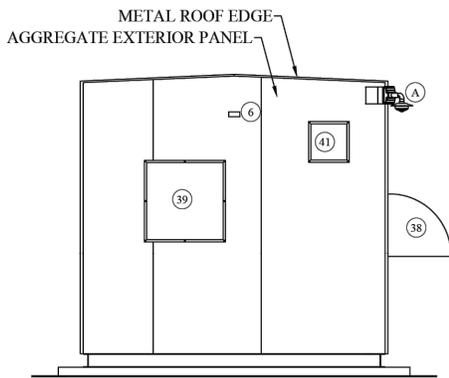
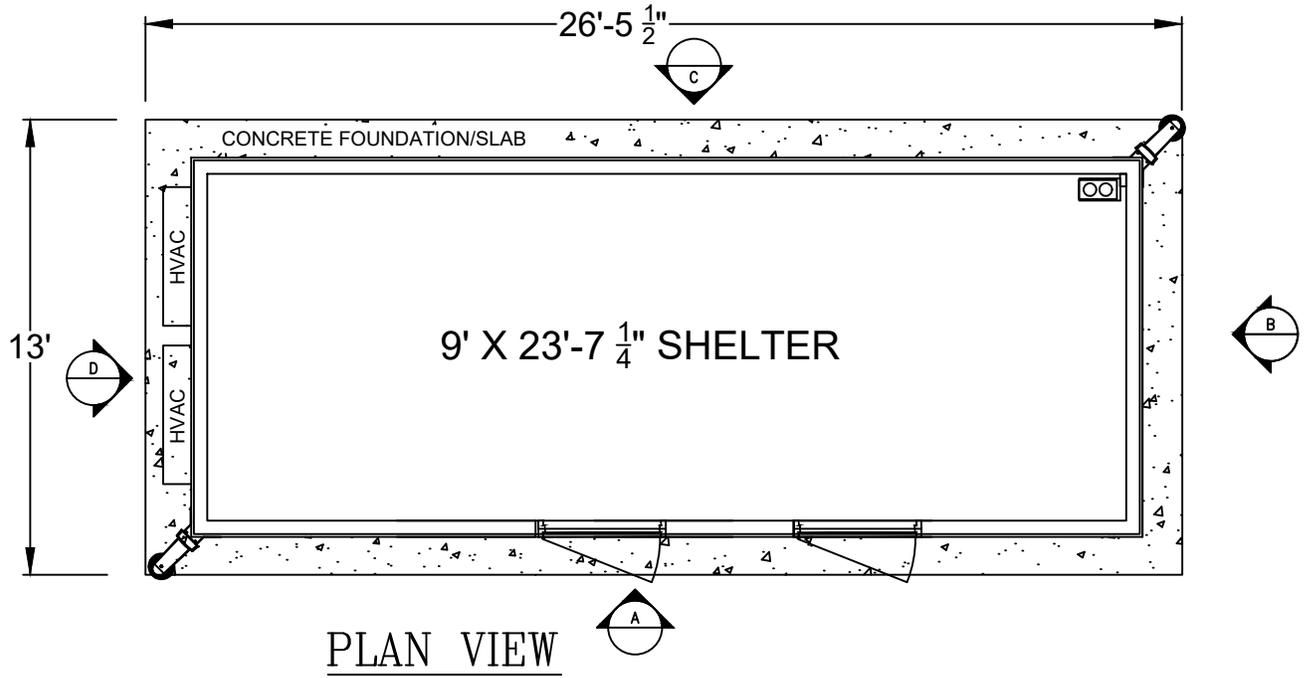
ALLEYS (BORE)

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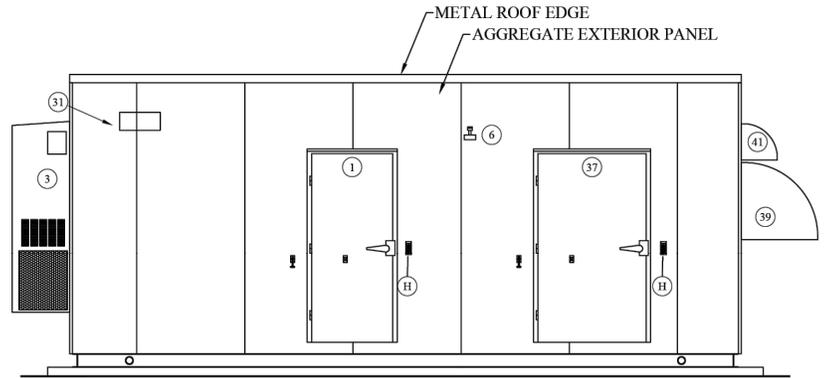
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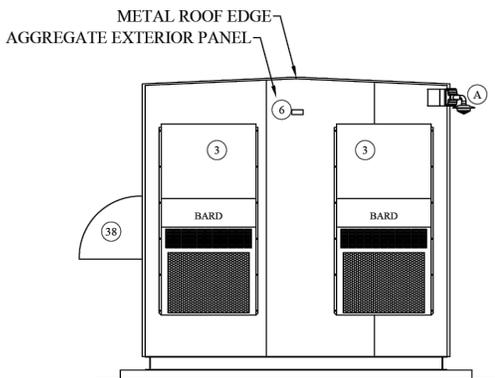
TYPICAL AGGREGATION SHELTER



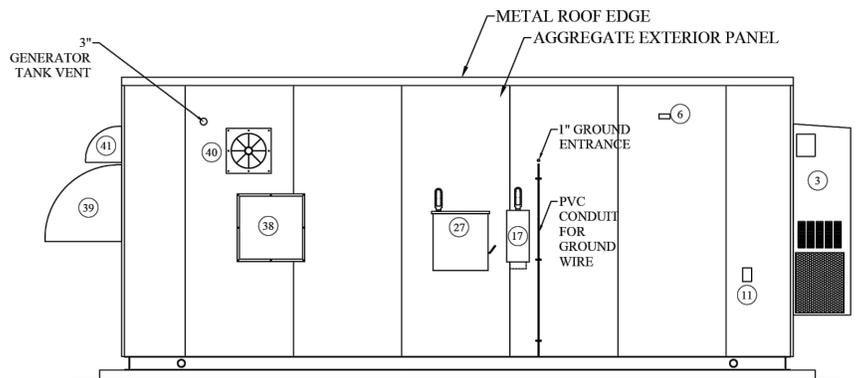
WALL "B"



WALL "A"



WALL "D"



WALL "C"



TYPICAL
AGGREGATION
SHELTER

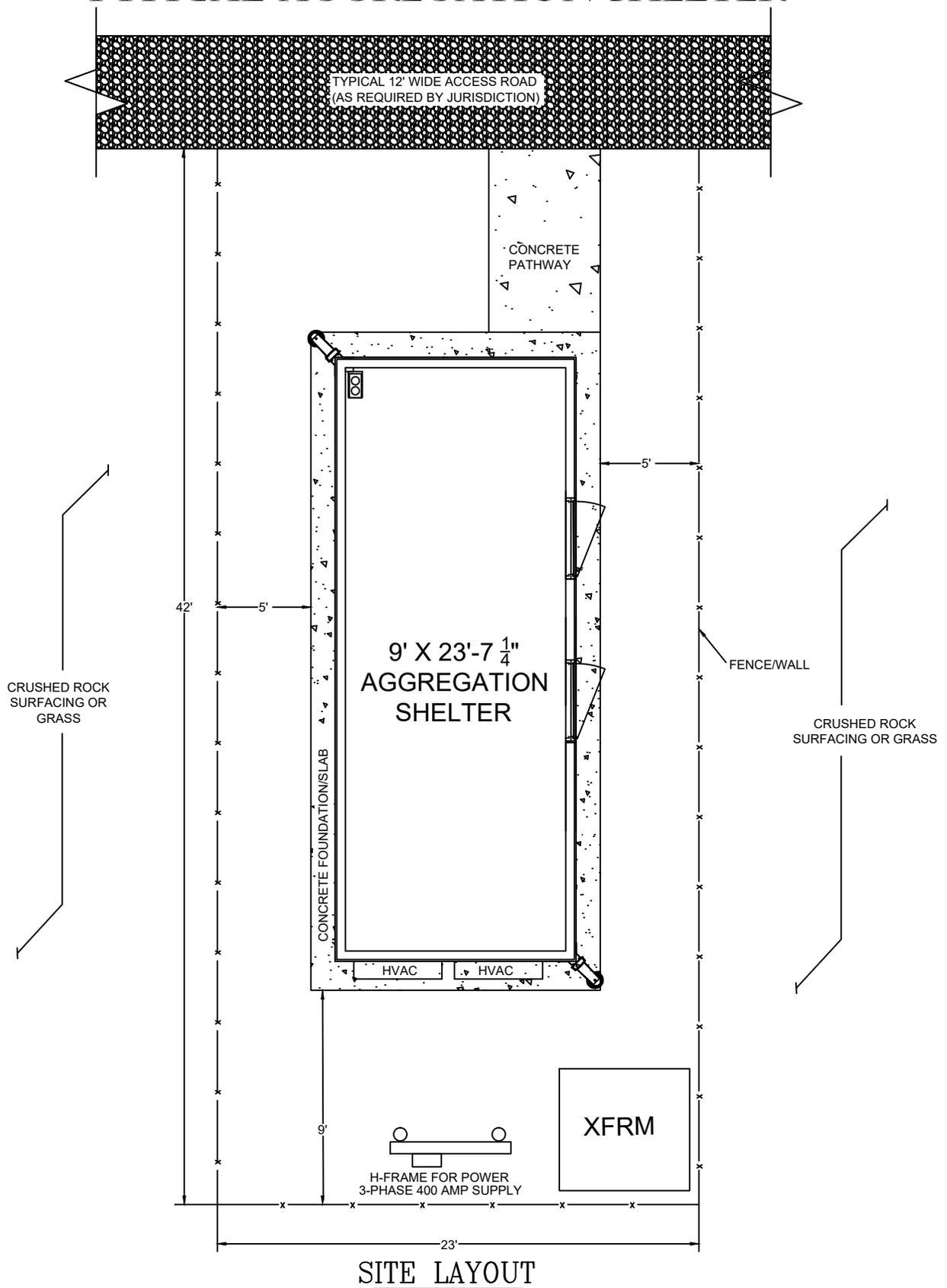
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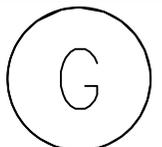


TYPICAL AGGREGATION SHELTER

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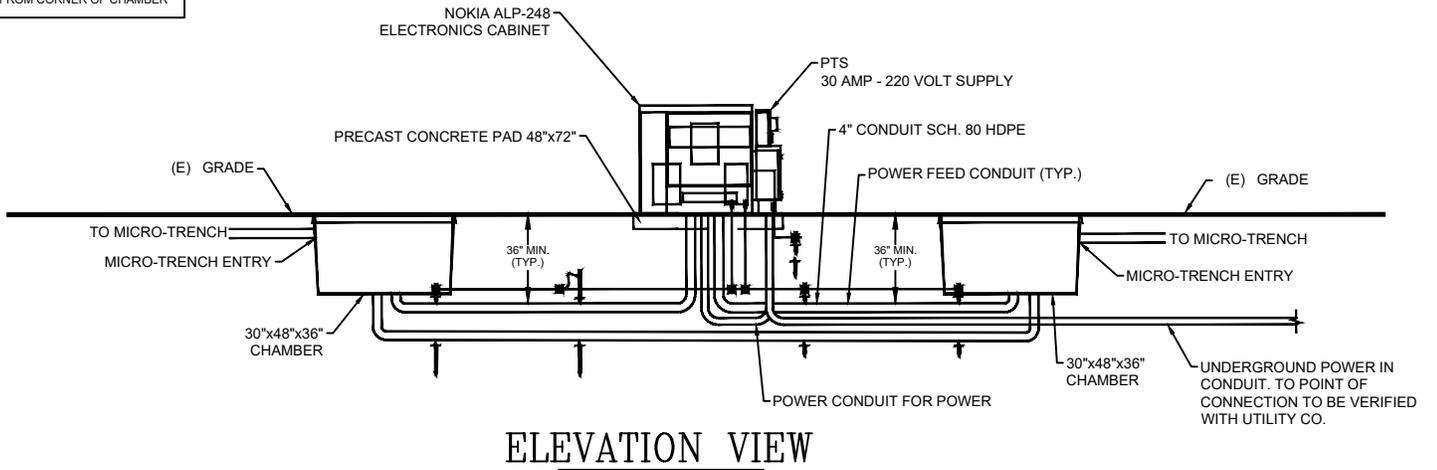
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NOT TO SCALE



TYPICAL CABINET DETAILS

MICRO TRENCH ENTRY NOTE:
 • 4" DIAMETER PENETRATION
 • 9" DOWN FROM TOP OF CHAMBER
 • 6" IN FROM CORNER OF CHAMBER

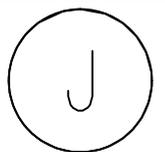


TYPICAL CABINET DETAILS

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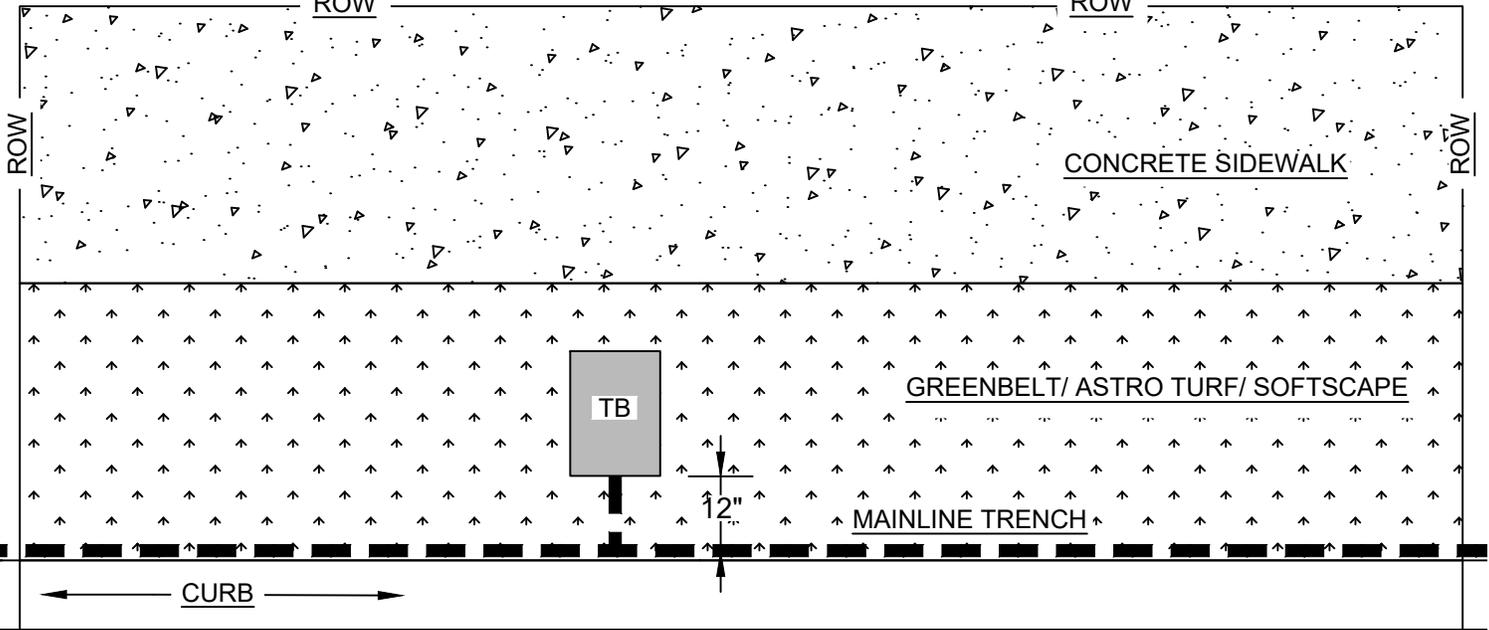
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PRIVATE PROPERTY

ROW

ROW



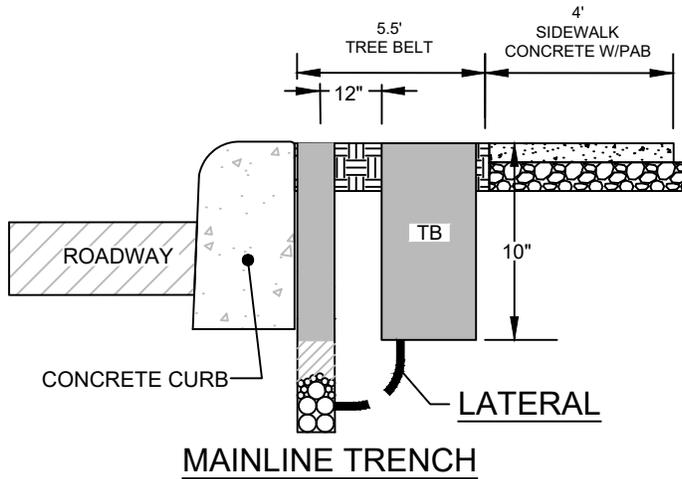
CONCRETE SIDEWALK

GREENBELT/ ASTRO TURF/ SOFTSCAPE

MAINLINE TRENCH

CURB

ROADWAY



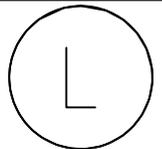
SECTION VIEW F-F



**TOBY BOX PLACEMENT
IN SOFTSCAPE
WITH MAINLINE
TRENCH AT BACK OF
CURB**

NO.	REVISIONS	BY	DATE

STD DWG
NOT TO SCALE



PRIVATE PROPERTY

ROW

ROW

ROW

ROW

GREENBELT/ ASTRO TURF/ SOFTSCAPE

TB

MAINLINE TRENCH

12"

CURB

ROADWAY

TREE BELT CURB TO R.O.W.

12"

ROADWAY

CONCRETE CURB

TB

10"

LATERAL

MAINLINE TRENCH

SECTION VIEW I-I

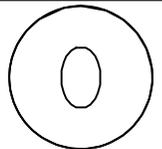


TOBY BOX PLACEMENT IN
SOFTSCAPE WITH MAINLINE
TRENCH
AT BACK OF CURB &
GREENSPACE FROM CURB TO
PROPERTY LINE

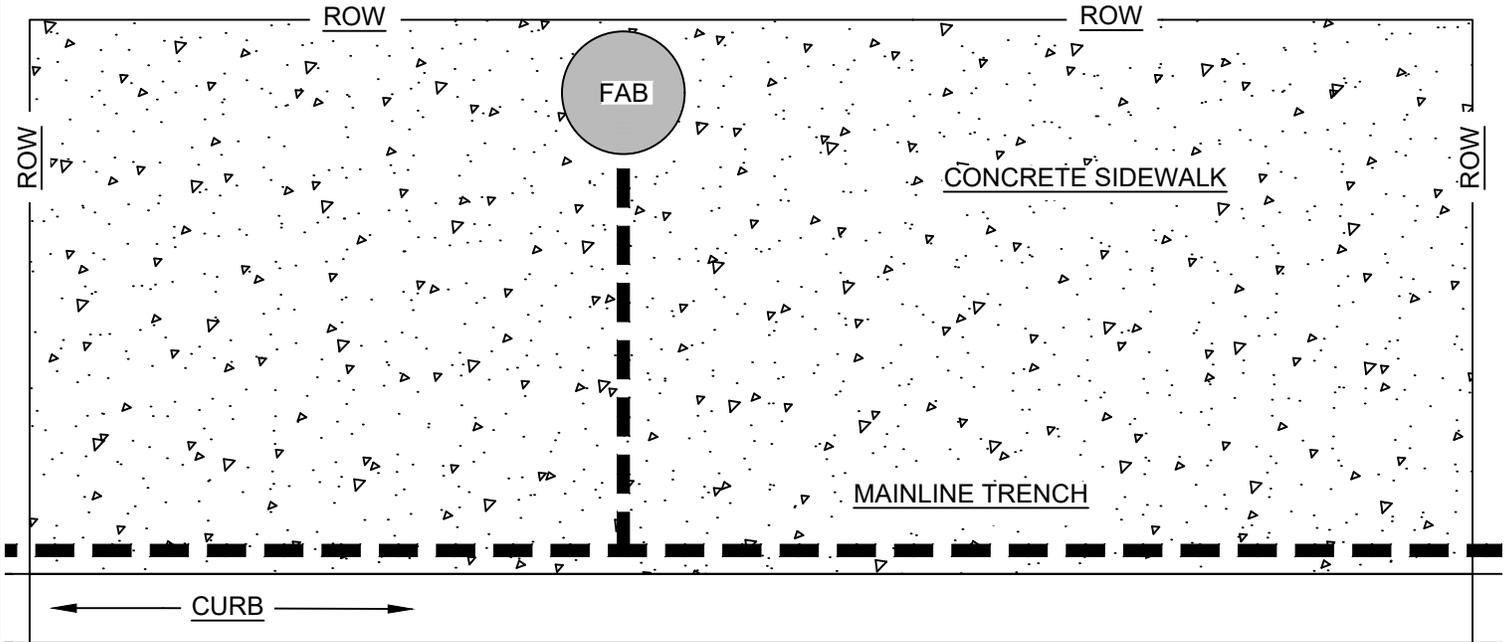
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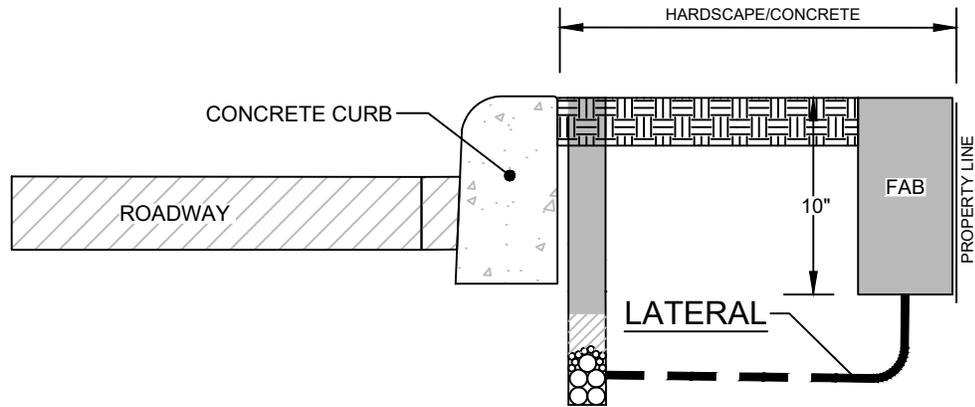
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PRIVATE PROPERTY



ROADWAY



MAINLINE TRENCH

SECTION VIEW J-J

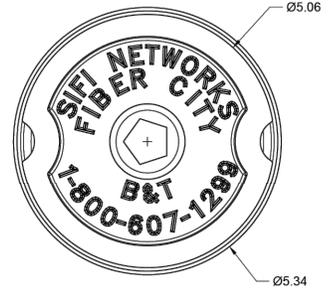
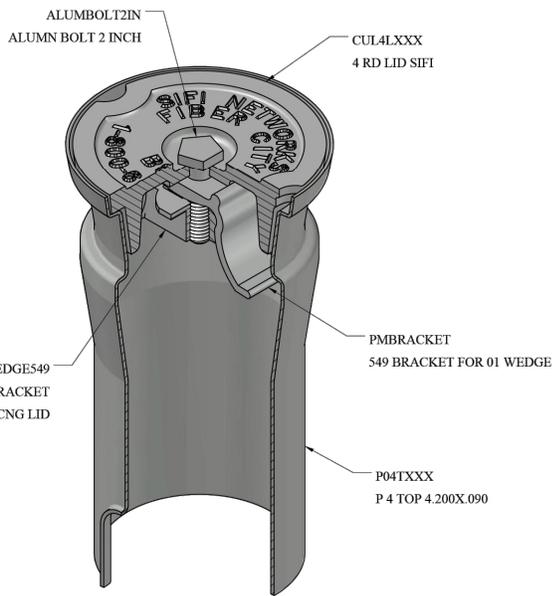
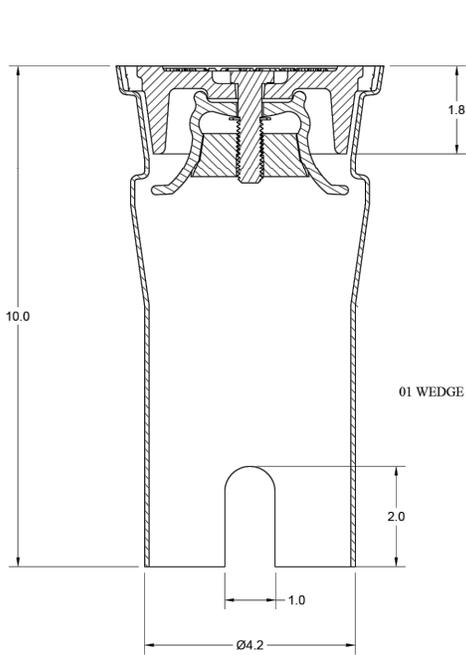


**FAB (FIBER ACCESS BOX)
 PLACEMENT IN HARDSCAPE WITH
 MAINLINE TRENCH AT BACK OF
 CURB & HARDSCAPE/CONCRETE
 FROM CURB TO PROPERTY LINE**

NO.	REVISIONS	BY	DATE

STD DWG
 NOT TO SCALE





NOTES- ALL EDGES HAVE A 1/16 RADIUS TOLERANCE ± .0625

REV.	DATE	COMMENT

 BINGHAM & TAYLOR
CONCEPT_SIFI_L

BOX CONCEPT SIFI, LOCKING
 PROGRAM BY: J. Butcher
 DATE: 10/22/20
 WEIGHT: 5.3 lbs

APPROVED BY:	DATE:
APPROVED BY:	DATE:

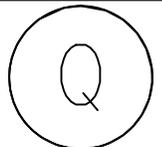
- NOTES:
1. ENTIRE ANNULAR SPACE BETWEEN BOX AND 6" DIAMETER CORE HOLE SHALL BE FILLED WITH GROUT.
 2. LID IS MADE FROM CAST IRON PER ASTM A-48, CLASS 30.
 3. PLASTIC LEGS ARE PUSHED OUTWARD WHEN PENTABOLT IS TIGHTENED. THIS SECURES THE LID TO THE BOX.



**FAB (FIBER ACCESS BOX)
SPECIFICATION SHEET**

NO.	REVISIONS	BY	DATE

STD DWG
 NOT TO SCALE





Subscriber Underground Access Chamber – 250mm

A universal modular chamber for housing subscriber terminations at customer demarcations.

Features

- 250mm depth Hand Hole
- Narrow Footprint - Optimised for Narrow trenching
- 250mm Depth with radius optimised for Microduct routing
- Cost-Effective
- Modular Construction
- Simple to Install
- High Load Bearing Strength
- Up to 2x Microduct Couplers (2 Subscribers)
- Capable of housing Optical connectivity demarcations

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



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	

