

DEVELOPMENT AGREEMENT

This Development Agreement (the “**Agreement**”) is made this ___ day of January, 2023 (“**Effective Date**”), by and between the City of Margate (“**City**”), a municipal corporation in the State of Florida (“**State**”) and SiFi Networks Margate LLC, a Delaware limited liability company (“**SiFi**”) (each of City and SiFi, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, SiFi desires to install a fiber optic network System (as defined below) in the City’s public rights-of-way, and the City desires to allow such a System for community benefit;

WHEREAS, the City has agreed to grant to SiFi all necessary rights to access and use the Public Way to install, operate, and maintain the System; and

WHEREAS, the City Commission finds that this Agreement serves both a municipal and public purpose, and is in the best interest of the health, safety, and welfare of the City’s residents and businesses.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree as follows:

SECTION 1

1. **Definition of Terms.**

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

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

“**Boundary**” means the legal boundaries of the City as of the Effective Date.

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

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

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

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

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

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

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

“FON” means SiFi’s fiber optic network built by utilizing a combination of Microtrenching (as defined below), blown fiber, aerial, and/or other conventional techniques, as well as electronics to enable multi gigabit technologies.

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

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

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

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

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

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

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

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

obligated to make the System available to such Primary Premises described in (i) through (iv) in this definition, and Substantial Completion determination shall not be impacted as a result.

“Public Way” shall mean the surface of, and the space above and below, any now existing or future: public street, road, highway, parkway, driveway, lane, path, court, sidewalk, bridge, alley, boulevard, traffic signals, lamp post, public way, or other public right of way or easement, including public utility easements, dedicated utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by, granted or dedicated to or under the jurisdiction of the City within the Boundary. For the avoidance of doubt, the term “Public Way” shall also mean any easement now or hereafter held by the City within the Boundary for the purpose of public travel, or for utility or public service use dedicated for compatible uses and shall include all other easements or rights of way held by the City within the Boundary.

“Reasonable Care” means applying then-current industry standard methods and equipment to repair, maintain, replace, or construct new or existing City improvements of any type or manner whatsoever, including but not limited to, streets, curbs, gutters, ramps, and sidewalks where the use of such industry standard methods and equipment to avoid damage to the System.

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

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

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

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

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

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

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

SECTION 2

2. Grant of License.

2.1

Grant of License for System in Public Way.

2.1.1 **SiFi Granted a License to Public Way.** This Agreement sets forth the basic terms and conditions upon which SiFi is granted a license to install the System in the Public Way. The particular terms and location of each portion of the System shall be specified in the applicable permit, including but not limited to encroachments, licenses, or other forms of plan review and approval or authorization, as described in Section 3.2 (Permits and General Obligations). Subject to this Agreement and the terms and conditions of any permits, including but not limited to encroachments, licenses, or other forms of plan review and approval or authorization, the City hereby grants and conveys to SiFi a license to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain in, on, over, under, upon, across, or along any Public Way, the System including, wires, cables, facilities, Cabinets, components, materials, apparatus ducts, conduits, connectors, vaults, manholes, manhole covers, pedestals, appliances, splitters, pots, attachments, and other related property or equipment as may be necessary or appurtenant to the System, within the Boundary, and all extensions and additions thereto. SiFi shall have the right, subject to City approval of the applicable permit, which approval shall not be unreasonably withheld, delayed, or conditioned, except for those conditions necessary to protect public health, safety and welfare of persons and public property in the sole but reasonable discretion of the City Department of Environmental and Engineering Services (DEES) Director, to determine the final engineering design and location, including but not limited to depth, width, and height, of all equipment and other parts of the System. Both Parties agree to cooperate during the design and permitting process and SiFi must first disclose all engineering designs to the City for permit approval. Notwithstanding the foregoing, installation of the System and use of the Public Way is subject to the applicable permit for a specific location. It is understood that SiFi's right to place the System is a non-exclusive license, except for the Facilities, but that upon issuance of the applicable permit, the area specified therein shall be exclusive for the System, subject to the terms and conditions of this Agreement, and any current facilities located with the area specified therein. Further, SiFi's rights granted under this Agreement are irrevocable until the expiration or sooner termination of this Agreement and/or the permit as provided herein or therein. SiFi's rights granted under this Agreement are subject to any existing easements, authorized encroachments, existing public utilities, and infrastructure currently existing within the Public Way.

2.1.2 **Removal or Abandonment of the System upon Termination of Agreement.** Upon the expiration or termination of this Agreement, SiFi shall remove any above-ground portion of the System and shall reimburse the City for any costs associated with SiFi's failure to remove the above-ground portion of the System or restore City property to its original condition, minus reasonable wear and tear. Upon the expiration or termination of this Agreement, SiFi shall either remove from or abandon in place all above-ground portion of the System in the Public Way. Any

part of the System abandoned by SiFi as described in this Agreement shall become the property of the City. Within ninety (90) days or as soon as possible of the expiration or termination of this Agreement, SiFi must notify the City in writing of its intent not to abandon the System. Failure to provide such written notice within the time specified will be deemed an abandonment of the System.

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

2.2 **Term of Agreement.** This Agreement shall become effective upon the execution and delivery of this Agreement by the Parties (the “**Effective Date**”). The term of this Agreement shall commence on Commencement Date and run until midnight on the date that is thirty (30) years after the Commencement Date (the “**Initial Term**”). Following the Initial Term, and subject to the System operating in accordance with this Agreement, this Agreement shall automatically renew for two additional terms of thirty (30) years each commencing on the thirtieth (30th) anniversary and on the sixtieth (60th) anniversary of the Commencement Date, respectively (each, a “**Renewal Term**,” and, collectively with the Initial Term, the “**Term**”) unless City or SiFi provides written notice to the other party of its intent not to renew at least one hundred eighty (180) days prior to end of the Renewal Term and thereafter at least one hundred eighty (180) days prior to end of the first Renewal Term. If either party elects to not renew this Agreement, the provisions of Subsection 2.1.2, above, will govern the disposition of the System.

2.3 **License to Occupy City Land for Shelter/Facilities.**

Only where the City identifies City-owned land that is available to accommodate the installation of Shelters will the City agree to grant to SiFi, and its licensees, successors, lessees, transferees, and assigns, an additional license to enter and occupy portions of City-owned land which will be outside of the public right-of-ways, including for up to two (2) specific locations for Shelters and Facilities as further described in Section 4.2 (Location of Shelters/Facilities) subject to a separate mutual written lease agreement between the parties at market rate which locations will be mutually agreed upon in good faith between the City and SiFi for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said Shelters and Facilities, including, without limitation, wires, cables, ducts, conduits, connectors, vaults, handholes, handhole covers, fencing, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the System and the Shelters.

2.4 **Permitting Process.**

2.4.1 During the Term, and so long as SiFi has made the Fixed Monthly Amounts as defined below the City shall provide good faith review of all applications for permits by SiFi and/or its contractors, to the extent reasonably possible and to the extent permits are necessary, including permits or other necessary items for construction work on the System within the Public Way. The City acknowledges and agrees that in order for SiFi to perform its obligations under this Agreement, time is of the essence in connection with permitting, licensing, and approval of the System. The City agrees to process all applications for permits by SiFi and/or its contractors in connection with this Agreement; provided that, should the City's number of business days for each subsection below materially exceed the number of days specified below for two consecutive months, City will notify SiFi and the Parties, in good faith, will enter into an amendment to this Agreement to increase the number of days below accordingly:

(i) The City shall to the extent reasonably possible within four (4) business days of submittal by SiFi and/or its contractors of an application or other request for a permit in connection with this Agreement provide written acknowledgment to SiFi and/or its contractor confirming receipt of such submittal; and

(ii) The City shall to the extent reasonably possible within 10 (10) business days of submittal by SiFi and/or its contractors of an application or other request for a permit in connection with this Agreement acknowledge in writing that such application is properly submitted and complete, or in the event such application is not properly submitted and complete, provide SiFi and/or its contractors with a detailed written explanation of any deficiencies. Upon curing any such deficiencies, the City shall undertake an expedited review of the application per the timelines specified herein or other request for permit by SiFi and/or its contractors in order to comply with this Section 2.4.1.

(iii) The City shall to the extent reasonably possible within thirty (30) business days of a reasonably sufficient submittal by SiFi and/or its contractors of an application or other request for a permit in connection with this Agreement provide written notification of initial review and provide in writing to SiFi and/or its contractors a detailed explanation of any additional information and/or correction(s) needed for the City to complete its review process and the timelines specified in this Section 2.4.1 shall reset upon submittal of such required information. In the event no additional information is needed, the City shall within such thirty (30) day period so notify SiFi and/or its contractors in writing.

(iv) The City shall to the extent reasonably possible within 20 (20) business days of a properly submitted and complete application by SiFi and/or its contractors of an application or other request for a permit in

connection with this Agreement provide final approval and issue any necessary approval or permits to SiFi and/or its contractors.

2.4.2 Permit applications shall be submitted by SiFi via the online form linked from the City's official website. The engineering details provided in Exhibit A are the typical details that will be primarily used to construct the System.

2.4.3 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, nor shall the City be liable for any loss or claim in the event the City does not meet the time periods as specified herein when processing SiFi's applications in good faith. 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. Furthermore, SiFi shall have no liability for and shall not be deemed to be in breach of any of its obligations hereunder, if the necessary permits, licenses or approvals are not issued or are issued but not timely by the City, unless the failure to issue or delay in issuing is the fault of SiFi. SiFi is solely responsible for any permit or approval from any other public agency that may be required for the work. This Section 2.4.3 does not apply to any required zoning, land use, or other regulatory approval from the City which may be required as a result of the final design for SiFi's work in the Public Way, which cannot be ascertained as of the Effective Date due to the lack of a final design.

2.5 **Invoices and Payments – Fixed Monthly Amounts.** Beginning with the first business day of the month following the first permit application submitted by SiFi, the City will invoice SiFi monthly for its actual costs described herein and in advance up to but not to exceed the amount of sixteen thousand six hundred sixty-six dollars (\$16,666.00) (collectively, the "Fixed Monthly Amounts") which amounts shall not exceed comparable market based costs and shall cover the City's actual costs, including SPOC related costs, for administration of the Efficient Permitting Process described in Section 2.4 above, plan check fees, encroachment permit fees, inspection fees, and any other applicable fees. The City agrees that should City actual costs hereunder materially exceed the Fixed Monthly Amounts for three consecutive months, City will notify SiFi and SiFi will negotiate, in good faith, an amendment to this Agreement to appropriately increase the cap of the Fixed Monthly Costs specified above. The City represents and warrants that such Fixed Monthly Amounts are and will be a fair market value and per City Code of all City costs incurred by the City in fulfilling its obligations under this Agreement. The City will continue to invoice SiFi for the Fixed Monthly Amounts until Substantial Completion. Each such monthly invoice shall be payable within thirty (30) days of receipt. SiFi agrees that a review will be performed annually, and agrees to increase the fixed cost amount to cover City costs in accordance with City Code.

2.6 **Fees, Expenses and other Charges.** Except as expressly set forth herein, each Party shall bear and be responsible for all of its own costs, fees and expenses incurred in executing and performing this Agreement. For the avoidance of doubt, because of the payment of the Fixed

Monthly Amounts, City agrees (i) that SiFi shall not be responsible and liable for any other or additional fees or payments to the City in connection with this Agreement or the permitting process in excess of the Fixed Monthly Amounts, including any assessment or fees that otherwise would or might be levied by the City separately for use of the Public Way, provided that SiFi shall be responsible for Federal, State and local taxes in connection with the System. The City agrees that this Agreement shall not require SiFi to comply with or otherwise be subject to any obligations or liabilities as a grantee of a franchise under the City's municipal code, ordinances or similar laws. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 2.6 will survive expiration or termination of this Agreement. SiFi shall, at its own expense, obtain and maintain in full effect throughout the Term a City business license, and shall require that each of its contractors and subcontractors obtain a City business license if required based on the work in the City.

2.7 **Relocation, Modification, or Alterations.** Excluding relocations requested by the City pursuant to this Agreement and repairs or maintenance to the System, SiFi may not relocate, materially modify, or materially alter the System components any time after issuance of the permit(s) for the System, except upon City's written approval which approval will not be unreasonably withheld, delayed, or conditioned, except as necessary to protect property, the public health and safety.

SECTION 3

3. **The System.**

3.1 **System Description.** SiFi will install the System within the Boundary using the Public Way. The System shall use fiber optic cable emanating from the Shelter to the applicable Cabinet in the Public 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 Way in order to make the delivery of Service over the System available to all Primary Premises within the Boundary, subject to the issuance of all required permits, regulatory approvals, and the terms and conditions of this Agreement. The Parties acknowledge and agree that there is no agreed design or configuration of the actual location of the System within the Public Way at this time and that SiFi shall submit such designs specification, plan and associated details to the City for approval when ready. The City will work with SiFi to approve the physical location of the fiber optic cable and other equipment and components of the System in, on, over, under, upon, across, or along the Public Way and from the Public Way to the Premises Wall.

3.2 **Permits and General Obligations.**

3.2.1 City and SiFi will act in good faith and cooperate to facilitate the successful completion of the entire project. SiFi shall submit to the City a proposed phasing plan and construction schedule showing each individual discrete project area. The City envisions 12 individual work areas and each work area will include its own set of engineered improvement plans signed and sealed by the Engineer of Record which include any typical details or standard plans approved by the City. Each work area will require its own permit with its own set of

conditions of approval. Proof of insurance coverage pursuant to this Section 3.2 must be submitted with each permit application. SiFi's contractor must have completed all microtrenching work, placement of fiber conduits and backfill materials and restoration and installation of lateral service connections to the edge of the Public Way within the approved project area work permit before beginning microtrenching work on the next approved and permitted project area, unless City approves, which approval shall not unreasonably delayed, conditioned or withheld, SiFi's contractor working in another permitted project area. City agrees to issue the next work area permit in accordance with Section 2.4 and such issuance is not dependent on the percentage of work completion described in the preceding sentence. The SPOC will inspect all construction work provided by SiFi's contractor to ensure the work is substantial in completion with the approved work zone improvement plans, work zone permit conditions of approval, ensure quality of workmanship in restoration of the Public Way, as well as to ensure the contractor is not negatively impacting the contractor is not negatively impacting surrounding residential and business communities during the course of construction. SiFi and its contractors agrees to maintain a clean, safe, and presentable worksite at all times. SiFi shall ensure that pedestrian crosswalks and sidewalks, other than when being constructed upon, are accessible and maintained in a safe and secure manner for public use.

3.2.2 SiFi is deemed to have approval to locate the System within the Boundary, subject to applicable permits, 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 Networks shall provide plans to the City for City approval for the issuance of permits to construct the System. The City agrees to expedite its review and approval of the plans and issuance of permits in accordance with section 2.4 of this Agreement. Construction and installation of the System shall be performed in a safe manner using materials of good and durable quality. All transmission and distribution structures and equipment installed by SiFi Networks for use in the accordance with the terms and conditions of this Agreement shall be located so as to minimize interference with the proper use of the Public Way and the rights of the property owners who own property that adjoin such Public Way.

3.2.3 SiFi networks must seek and obtain permits to work in streets that are not under the jurisdiction of the City. A Street Maintenance Responsibility Map will be provided by the City showing the ownership of roadways.

3.2.4 All permits open with the City shall be closed. One of the requirements for closing the permit is to provide as-built drawings in electronic GIS file for addition as a layer to the City's GIS database.

SECTION 4

4. Construction and Facilities.

4.1 Construction

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

(i)

slot cut Microtrenching as set forth in the specifications set forth in Exhibit A to this Agreement; or

(ii) In addition to notification of Call Before You Dig (“CBYD”) and potholing, the use of a ground penetration radar system as the primary method for identifying underground utilities prior to any Microtrenching. The GPR data shall be presented on the micro-trenching profiles to illustrate separation from City-owned utilities.

or

The City hereby approves each of the above referenced construction methods and the specifications in Exhibit A and agrees to work cooperatively with SiFi in reviewing all other potential construction methods. Approval of a construction method, does not equate to approval of any required permits or other regulatory requirements necessary for the System within the Public Way.

4.1.2 SiFi shall be solely responsible for all repairs, maintenance, and adjustments, and damage to the System, not caused by City’s negligence or willful misconduct.

4.1.3 Right of way construction hours are in accordance with Section 35-0.6, City Of Margate Code of Ordinances, as amended. (Attachment 3). City acknowledges the following SiFi work schedule:

7AM - 9AM Toolbox talks / Prep / Move to site, etc.

9AM - 4PM Microtrenching / Reinstatement/Handholes / Laterals, etc.

4PM - 7PM Site clean-up, etc.

7PM off-site. All material stockpiles, equipment, and contractor equipment to be completely removed from the public right-of-way by 4 p.m.

No construction will be undertaken within school zone within active school zone hours.

After the first three occurrences by SiFi’s contractor of a failure to comply with the above work hours, the City will have the right to assess SiFi a \$500 penalty on any day a violation of the stated work hours occurs. No work shall occur on Sunday and Federal holidays. If the contractor violates this provision more than three (3) times in a single week, the City may call a meeting with the executives of SiFi and its contractor to discuss and agree on a strategy to prevent future violations from occurring, up to and including dismissal of the offending contractor.

4.1.4 SiFi will maintain and staff a toll-free telephone line and customer service primary answering point to answer questions and address concerns and complaints from the public during the course of this construction project. SiFi's contact will work with City Communications for social media posts, website project updates and notifications to residents.

4.1.5 SiFi shall during the course of construction of this project, maintain a work crew dedicated to completing construction punch list work and repairs prepared by the City's inspector from the previous day's work.

4.1.6 The installation of the System (and any relocated installations) will be constructed with a micro-trench fill material which is compatible with standard pavement reconstruction grinding machine operations to avoid damage to the microtrench installation during City grind and overlay street projects and to minimize relocation of the SiFi facilities. Such micro-trench fill material will be approved for use by the City, unless the City Engineer provides evidence after additional actual use and experience and documentation that such microtrench fill is not millable, displays failure points, creates any type of monolithic structure/chunking of surrounding material, other performance related issues, or other performance failure of such micro-trench fill material.

4.2 **Location of Shelters/Facilities.**

4.2.1 **Facilities.** Only where the City identifies City-owned land that is available to accommodate the installation of Shelters shall the City provide SiFi, as needed, with access to and use of the Facilities for the installation and operation of up to two (2) SiFi's Shelters (approximately 1,000 square feet per location for each Shelter) subject to a separate lease agreement to be negotiated in good faith between the parties including payment by SiFi of fair market value for the use and occupancy of each such Shelters Lease Area on City-owned land.

4.2.2 **Shelters and Cabinets Locations.** SiFi agrees to provide engineering designs including intended locations of the Shelters and Cabinets required for the System to the City prior to Construction in accordance with City's permitting process. Shelters and Cabinets shall be screened with landscaping provided by SiFi. Such shelters shall be designed in a manner to limit any adverse visual and aesthetic impacts on adjacent properties, and the adjacent rights-of-way.

SECTION 5

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

5.1 **Oversight of Construction.** The City shall have the right to oversee and inspect the Construction of the System in the Public Way. The City shall have the authority, for all work occurring in the Public Way to issue a Stop Work Order to SiFi's contractor for material, but not limited to and in all cases in reasonable professional discretion of the SPOC, failure to abide by work zone permit conditions of approval, non-conformance with approved improvement plans, and failure to complete punch list work and repairs under the following circumstances:

(a) City will provide SiFi and their contractor notice of non-compliance with (i) construction inconsistent with approved plans or (ii) safety violations which includes operation of vehicles and traffic control measures that the SPOC determines in their reasonable professional discretion, is serious enough to order the work stopped and/or, (iii) failure to complete punch list work and repairs.

(b) SiFi will have two (2) working days to cure and remedy the items stated in notice of non-compliance, or if the problem cannot be cured in two working days, to have met with the City and come to a good faith agreement on a compliance plan.

(c) Upon completion of the required compliance measures and notification to the SPOC, SPOC will inspect the work and/or contractor operations to approve, which approval shall not be unreasonably, in their professional discretion delayed, conditioned, or withheld.

(d) If non-compliance still exists, in the SPOC's reasonable professional discretion, City will issue a stop work notice to be effective on the next working day for the portion of the work area affected by the notice of non-compliance, which will continue in force and effect until the items stated in the notice of non-compliance have been corrected and approved by the SPOC, which approval shall not be unreasonably, in their professional discretion delayed, conditioned, or withheld.

(e) SiFi's contractor shall have an English speaking foreman on site at all times during the performance of the work.

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

5.3 **Treatment of Confidential Information.** SiFi acknowledges City of Margate is a Municipal corporation under the laws of the State of Florida, subject to Florida Public Record Law. SiFi will not provide confidential information to City.

5.4 **PUBLIC RECORDS** This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. SiFi understands the broad nature of these laws and agrees to comply with Florida's public records laws and laws relating to records retention. In compliance with Section 119.0701, Florida Statutes, SiFi agrees as follows:

- a. SiFi agrees to keep and maintain public records in SiFi's possession or control in connection with SiFi's performance under this Agreement. SiFi additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.
- b. SiFi shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to City.
- c. Upon request from City custodian of public records, SiFi shall provide City with a copy of the requested records or allow the records to be inspected or copied within

a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- d. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City.
- e. Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of SiFi or keep and maintain public records required by City to perform the service. If SiFi transfers all public records to City upon completion of this Agreement, SiFi shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SiFi keeps and maintains public records upon completion of this Agreement, SiFi shall meet all applicable requirements for retaining public records. All records stored electronically by SiFi shall be delivered to City, upon request from the City's Custodian of Records, in a format that is compatible with the City's information technology systems.
- f. Any compensation due to SiFi shall be withheld until all records are received as provided herein.
- g. SiFi's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by City.

IF SIFI HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SIFI'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

| | |
|------------------------------|--------------------------------------------------------------------|
| Custodian of Public Records: | JENNIFER M. JOHNSON, CITY CLERK |
| Mailing address: | 5790 Margate Blvd., Margate, FL 33063 |
| Telephone number: | 954-935-5327 |
| Email: | jjohnson@margatefl.com |

SECTION 6

6. Insurance.

SiFi and its contractors, to the extent applicable to their respective scope of work, 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 the SiFi, its agents, representatives, employees, or subcontractors.

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. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. Coverage shall include blanket contractual liability and broad form property damage, premises, operations, explosion, collapse, underground hazard (commonly referred to as “X”, “C” and “U” coverages.

B. Automobile Liability: Insurance Services Office Form CA 0001 (any auto), with limits no less than \$1,000,000 per accident and \$2,000,000 in the aggregate for bodily injury and property damage.

C. Workers’ Compensation insurance as required by the State, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

D. Excess Liability Insurance. In an amount not less than \$5,000,000.00 applying in excess over all limits and coverages noted in paragraphs A, B and C above.

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

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

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.

6.2 Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. At the option of the City, SiFi shall cause the insurer to reduce or eliminate such self-insured retentions with respect to the City, its officers, officials, and employees; or SiFi shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim

administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

6.3 Other Insurance Provisions:

A. Additional Insured. The City, its officers, officials, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of SiFi including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of SiFi. General liability coverage can be provided in the form of an endorsement to the SiFi's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

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

C. Notice of Cancellation. SiFi shall provide prompt written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, SiFi shall forthwith obtain and submit proof of substitute insurance.

D. Builder's Risk (Course of Construction) Insurance. SiFi may, if requested by the City, submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery, and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery, or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

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

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

with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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

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

SECTION 7

7. Parties' Obligations.

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

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

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

(iii) Subject to Section 3.2, and upon reasonable notice, provide SiFi and its representatives with access to all City property and all City assets and infrastructure for which a permit has been issued to SiFi for the installation, inspection, and maintenance of the System and for any other reasonable business purpose with respect to the System, following

Substantial Completion, SiFi and/or any contractors it hires will be required to obtain encroachment permits and pay any related permit and inspection fees and comply with all other standard encroachment permit conditions of approval for future maintenance and/or repairs and/or alterations to its System located within the Public Way.

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

(v) Provide, good faith review of all applications for permits submitted by SiFi or its representatives or contractors, including permits or other necessary items for construction work on the System within the Public Way.

(vi) "For emergency, urgent, or timely repair work performed (or caused to be performed) by the City, the City agrees to take reasonable actions to protect any conflicting SiFi facilities, such reasonable protective actions to be considered in light of the facts and circumstances creating the need for the repair work. The City need only notify SiFi prior to repair work in the event a conflict is identified, and only if time allows based on the nature of the emergency repair and consideration of public safety. If the City deems relocation is necessary and City further deems that there is time to allow for such relocation, SiFi shall be notified of the requirement to relocate and it shall be SiFi's full responsibility to pay for and perform the relocation in a timely manner as required by the City. If SiFi fails to relocate, the City and its contractor will not be held liable in any way for damage to SiFi's facilities. If feasible, and there is sufficient time in light of the nature of the repair, as determined by the City Engineer, City will cooperate with SiFi to relocate the impacted facility in order to minimize damage. If, there is insufficient time to notify SiFi of a conflict with the repair, under no circumstances shall the City or its contractor be responsible or liable for any claim of damage to SiFi's facilities during emergency operations and/or for any claims related to such damage, including interruption of service delivery or any other consequential damages."

(vii) City shall require its contractors to exercise Reasonable Care when performing work in the Public Way to protect SiFi's System; provided, however, that City and City Contractors shall have no liability for damages resulting from proper following of Sunshine811 procedures when exercising Reasonable Care.

(viii) City agrees that SiFi shall have the right, subject to City approval on a case by case basis, to construct and maintain the System on recently resurfaced public streets, subject to roadway having been resurfaced no less than 12 months prior.

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

(x) City shall not install or construct, or permit the installation or construction of, any structures, improvements or obstructions on or over the System that interferes with SiFi Network's access to, use and possession of the System, nor shall City otherwise impede, disturb, interfere with, or restrict, SiFi's access to, use and possession of the System; however, this does not limit the City's ability to maintain its facilities, structures, or improvements as may be necessary to serve the public interest.

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

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

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

(iii) Maintain or provide for the maintenance of the System.

(iv) SiFi and its contractors shall register with the State's Call Before You Dig safe excavation notification system; and

(v) Relocation

a) The use of the words "conflict," "conflicts," "conflicting," or other forms of the word conflict, except for Conflict as defined in Section 7.2(vi), are defined and used to describe circumstances in which the City or City's contractors undertaking a project as described in subsection b below (a "City Project") exercising Reasonable Care would likely damage or destroy a portion of SiFi's installed facilities.

b) The City, typically through its public works department, often conducts several discrete categories of work which could occur in the Public Way which could potentially Conflict with the System, including but not limited to, (i) emergency repair work, including but not limited to, responses to waterline breaks and sinkholes, (ii) routine City maintenance projects, including but not limited to, pavement repairs and curb and gutter replacement, and (iii) City capital projects, including but not limited to, city-owned subsurface infrastructure improvements, street grind and overlay projects, street reconstruction, traffic signal and streetlight

system improvements, and public parkway hardscape and landscape improvements, curb and gutter and access ramps improvement, sidewalk widening or replacement and bridge widening or replacement (collectively (i) through (iii), "City Projects").

- c) Whenever there is a City Project which is in conflict, as reasonably determined by the City Engineer, in their sole discretion, with the SiFi FON System that requires the relocation of SiFi facilities, SiFi shall perform relocation of their conflicting facilities and shall be responsible for all costs. Under no circumstances shall the City be expected or required to relocate SiFi's facilities to undertake and perform a City Project in an encroachment area and if the City has prior knowledge of a conflict with sufficient time to notify SiFi of the conflict, the City will make reasonable efforts to notify SiFi of the conflict. Relocation will not be required for project areas where the City Project work is at a (i) depth of 4" or less from top of pavement or (ii) more than 2" from the System. There may be infrastructure elements/conditions within these areas - such as underground utility installation or soil conditions - that require relocation due to conflict and would not be excluded from the relocation requirement exemption outlined in the immediately preceding sentence.
- d) When relocation is required due to conflict, City and SiFi will coordinate, as appropriate, to enable SiFi to timely protect, relocate and/or repair SiFi's impacted facilities.
- e) For any relocation efforts required due to conflict, SiFi shall be responsible for any reasonable, and discrete, quantified costs borne by the City and/ or its contractors to coordinate the placement of the relocated SiFi facilities during a City Project. These costs include, but are not limited to, coordination time, project delays, and any other costs related to the relocation coordination.
- f) Other than emergency operations addressed separately, upon notification of a conflict, if SiFi chooses to relocate their impacted facilities to the reasonable satisfaction of the City Engineer, including, but not limited to, lowering the vertical elevation of their facilities to a depth that accomplishes 14" of cover above the SiFi facilities, there may be instances where the relocation depth will differ (deeper or shallower) due to a need to fully clear the conflict, with such depth as approved by the City Engineer. These

conflicts may include but are not limited to full pavement reconstruction at depths greater than 14" as recommended by City Engineer based on geotechnical report. SiFi and City will coordinate to allow SiFi to protect or temporarily or permanently relocate or repair the SiFi facilities as outlined in this document. In the event that SiFi cannot complete the relocation of the conflicting SiFi facility, the City will be held harmless by SiFi and the City and its contractor will not be responsible for any damage to the SiFi System or any claims from third party rights-of-way users and/or SiFi customers.

- g) For routine maintenance projects, SiFi at its sole expense shall work with the City, and City contractors, for SiFi to protect SiFi's facilities in place, and, if necessary, relocate SiFi's facilities to avoid any conflicts to allow for the maintenance, including, but not limited to, adjusting the location of SiFi's facilities to avoid formwork. Relocation shall include moving the facilities outside of the conflict to a City approved location and/or re-installation at a depth which provides for 14" of cover, or such other deeper location that may be necessary to remove the conflict. There may be instances where the relocation depth will differ (deeper or shallower) due to a need to fully clear the conflict, with such depth to be set as decided and accepted by the City Engineer at their reasonable professional discretion. To the extent that it has prior knowledge of a conflict involving routine maintenance project, the City shall provide SiFi with a minimum of 60 days of notification to relocate, and SiFi shall agree to relocate their facilities and shall provide the City with a revised plan (through encroachment permit process) showing the new location of their facilities within 30 working days from initial notice to relocate. Said SiFi relocation plans shall be prepared by a Florida Registered Civil Engineer and shall indicate whether SiFi will complete the relocation in advance of the project or if SiFi requests that the relocation of SiFi facilities shall be incorporated within the City's project schedule with SiFi responsible for all incremental coordination costs as noted in subsection c above. If SiFi does not relocate its conflicting facilities prior to City's construction start date or does not request coordination for relocation of its facilities within the City's project schedule, the City and its contractor will not be responsible for any damage to the SiFi facilities and will be held harmless by SiFi from all claims and liability related to

any damage to those same facilities. Should SiFi choose not to relocate as required herein due to a conflict, the City will allow SiFi access to repair or replace its damaged System facilities before the City contractor has completed the work. If SiFi does not relocate its facilities to avoid the conflict within the time specified, then SiFi shall (i) reimburse the City for any reasonable, quantified, and discrete, costs borne by the City, or its contractors, associated with demolition of the SiFi facilities during the project; (ii) shall have assumed the risk of damage to SiFi's facilities and System; and (iii) hold harmless, defend, indemnify and waive all claims against City and City contractors for damages to the facilities and System or interruptions of service to users of the System.

- h) For City's Capital Projects where SiFi's facilities conflict with planned City infrastructure projects (including but not limited to street pavement rehabilitation of various depths and concrete improvements, water, sewer, drainage, traffic signal, street lighting, sidewalk widening or replacement, bridge widening or replacement, facilities - excluding any replacement of the curb and gutter by the City and wheelchair access ramp construction addressed previously), the City and SiFi shall work together in good faith to address such conflict as described in this Amendment. If SiFi's facilities are in conflict with the project, SiFi at its sole cost shall relocate its facilities. The City shall provide SiFi with a detailed Scope of Work of the Capital Project at the commencement of the design phase of the project and notice to relocate the conflicting SiFi facilities. SiFi shall agree to relocate their facilities and shall provide the City with a revised plan (through the encroachment permit process) showing the new location of their facilities within sixty (60) working days from initial notice by the City that the project requires relocation. Said SiFi relocation plans shall be prepared by a Florida Registered Civil Engineer ("Engineer of Record") and shall indicate whether SiFi will complete the relocation in advance of the project or if SiFi requests that the relocation of SiFi facilities shall be incorporated within the City's project schedule with SiFi responsible for all incremental coordination costs as noted in subsection (e) herein above. If SiFi does not relocate its conflicting facilities prior to City's construction start date or does not request coordination for relocation of its facilities within the City's project schedule, the City and its contractor will not be responsible for any

damage to the SiFi facilities and will be held harmless by SiFi from all claims and liability related to any damage to those same facilities. Should SiFi choose not to relocate as required herein due to a conflict, the City will allow SiFi access to repair or replace its damaged System facilities before the City contractor has completed the work. If SiFi does not relocate its facilities to avoid the conflict within the time specified, then SiFi shall reimburse the City for any reasonable, quantified, and discrete, costs borne by the City, or its contractors, associated with demolition of the SiFi facilities during the project to the extent the City and City's contractor use Reasonable Care and comply with applicable Sunshine811 laws.

i) For all repairs to and relocations of SiFi facilities, temporary backfill and temporary asphalt patching work will be allowed only if the repairs and/or relocation is necessary for the City Project that includes asphalt or concrete paving operations to follow relocation within ten (10) working days.

(vi) SiFi, at its sole cost, shall repair the portions of the Public Way impacted by the construction of the System, in a manner that returns the Public Way to substantially the same condition that existed prior to SiFi impacting the Public Way due to construction, repair, or maintenance of the System.

SECTION 8

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

8.1. **SiFi Breach or Default.** In the event the City believes that SiFi has not complied with or is otherwise in default with regard to any material term of this Agreement, the City shall promptly notify SiFi in writing with specific details regarding the exact nature of the alleged non-compliance or default (a “**City Breach Notice**”). The failure to promptly provide such notice, however, shall not act as a waiver of any rights and remedies of the City hereunder unless and only to the extent that SiFi is materially prejudiced by such failure.

8.1.1 **SiFi’s Right to Cure or Respond.** SiFi shall have forty-five (45) calendar days from its receipt of a City Breach Notice (the “**Initial SiFi Cure Period**”) to:

(i) respond to the City, contesting the assertion of non-compliance or default and in such event, the Parties shall use commercially reasonable efforts to promptly resolve such contest

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

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

8.1.2 City Rights and Remedies.

(i) Except as provided in Sections 8.1.2(ii) below which shall control in connection with the events described therein, if SiFi fails to cure any actual non-compliance or default as provided in Section 8.1.1(ii) above within the SiFi's Cure Period, the City may:

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

(b) hire a contractor to complete repairs/work and SiFi to pay actual market costs plus overhead; or

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

(ii) In the event of termination of this Agreement City shall allow SiFi to continue all network operations necessary to maximize use of the existing FON in accordance with this Agreement. In the event City elects to permit SiFi to continue all network operations, such permission may include mutually agreed and executed amendments of this Agreement. In addition, prior to such termination by City, the City and SiFi shall meet in person or by video meeting, and both SiFi and the City shall both utilize good faith efforts to resolve any dispute. SiFi shall, at all times, retain

ownership of the System unless abandoned under Section 2.2.2 amendment of this Agreement, including but not limited to a requirement for additional compensation to be mutually agreed upon by City and SiFi.

8.2 **City Breach or Default.** In the event SiFi believes that the City has not complied with or is otherwise in default with regard to any term of this Agreement, SiFi shall promptly notify the City in writing with specific details regarding the exact nature of the alleged non-compliance or default (a “**SiFi Breach Notice**”). The failure to promptly provide such notice, however, shall not act as a waiver of any rights and remedies of SiFi hereunder unless and only to the extent that the City is materially prejudiced by such failure.

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

(i) respond to SiFi, contesting the assertion of non-compliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest and to the extent the Parties are unable to resolve such contest within thirty (30) days of the City’s response, each Party shall be entitled to seek the rights and remedies provided herein; or

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

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

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

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

8.3 **Additional Rights to Terminate.**

8.3.1 At any time prior to commencing Construction, in the event SiFi fails to obtain required financing, SiFi shall have the immediate right, at its option, upon written notice to the City to terminate this Agreement.

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

8.4 **Indemnification.**

8.4.1 SiFi shall indemnify and hold the City, its officials, employees, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner which actually or allegedly arise out of or are incident to any alleged acts, omissions, negligence or willful misconduct of SiFi, its officials, officers, employees, agents, and contractors/subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all attorney's fees and other related costs and expenses except where caused by the active negligence, sole negligence, or willful misconduct of the City its officials, employees, and agents as determined by a court of competent jurisdiction or by settlement. SiFi shall pay and satisfy any judgment, award or decree that may be rendered against the City or its officials, employees, or agents, in any such suit, action or other legal proceeding. SiFi shall reimburse the City, its officials, employees, and agents, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. SiFi's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City its officials, employees, and agents.

8.5 **Limitation of Liability.** EXCEPT WITH RESPECT TO A BREACH OF THE CITY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING ANY LOST SAVINGS OR HARM

TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY AND ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, MEMBERS, EQUITY AND DEBT HOLDERS, PARTNERS, EMPLOYEES, CONTRACTORS AND REPRESENTATIVES AND THEIR HEIRS, SUCCESSORS AND ASSIGNS, FROM CLAIMS FOR ANY SUCH DAMAGES. SiFi aggregate liability under this Agreement shall be limited to the higher of five million dollars (\$5,000,000) or the amount of available applicable insurance coverage. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 8.5 will survive expiration or termination of this Agreement.

SECTION 9

9. Disputes.

9.1 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 venue 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, shall be the appropriate state or federal court located in Broward County, Florida.

SECTION 10

10. Miscellaneous Provisions

10.1 Assignment. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective successors and assigns as provided herein. The City shall not be permitted to assign, sell or transfer this Agreement, or its rights and duties under this Agreement, without the prior written consent of SiFi, which consent shall not be unreasonably withheld, conditioned, or delayed. SiFi shall have the right to assign, novate, sell, encumber, or transfer this Agreement and the System or any part thereof, upon receiving the prior written consent of the City, which consent shall not be unreasonably withheld to SiFi's principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity which acquires all or substantially all of the SiFi's assets in the market by reason of a merger, acquisition, or other business reorganization, provided such assignee, purchaser, or transferee has all appropriate licenses, to the extent SiFi's licenses, permits and approvals cannot be assigned or transferred, for the operation, management, and maintenance of the facilities contemplated herein and sufficient financial resources to fulfill all applicable terms and obligations under this Agreement. At least thirty (30) days prior to the effective date, or as soon as practicable, of any such assignment, sale or transfer, SiFi shall provide City with a notice of its intent to assign the agreement along with a copy of the assignment, sale or transfer document, to be signed by both SiFi and assignee/purchaser/transferee, indicating the assignee's/purchaser's/ transferee's assumption of all of SiFi's performance duties, liabilities and obligations under this Agreement. SiFi shall not be relieved of its performance duties, liabilities or obligations under this Agreement until City is in receipt, of a fully executed copy of the document evidencing such assignment of the obligations herein and the assignee's/purchaser's/transferee's assumption of SiFi's performance duties, liabilities, and obligations under this Agreement. The City agrees, upon

request, to promptly deliver (and in no event later than ten (10) days after request by SiFi) to SiFi an estoppel certificate addressed to the assignee, buyer or transferee designated by SiFi, affirming for the benefit of such buyer, assignee or transferee the following (to the extent that the following are then true): the Agreement is in full force and effect; SiFi is not in default thereunder; and such other matters as such assignee, buyer or transferee may reasonably request.

10.2 **Force Majeure.** Except as otherwise expressly set forth in this Agreement, neither Party will be held in default under, or in breach or non-compliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to non-compliance or default (including termination, cancellation or revocation of this Agreement), where such non-compliance or alleged defaults occurred or were caused by any of the following events (each a “**Force Majeure Event**”): labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, failure of utility service necessary to construct the System, governmental, administrative or judicial order, or other event that is beyond the Party’s reasonable control. Force Majeure Events also include work delays caused by waiting for (i) utility providers to service or monitor their own utility infrastructure on which SiFi’s fiber optic cable and/or equipment may be deployed, as well as unavailability of materials and/or reasonably qualified labor to perform the work or (ii) third parties’ acts or omissions within the Public Way which materially interfere with the Parties’ ability to perform their obligations under this Agreement.

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

IF TO THE CITY:
City of Margate,
City Hall
5790 Margate Boulevard,
Margate, FL 33063
Attn: Cale Curtis, City Manager
Email: ccurtis@margatefl.com
WITH COPY TO

City Attorney’s Office
City of Margate
5790 Margate Boulevard,
Margate, FL 33063
Email: cityatty@margatefl.com

IF TO SIFI:
SiFi Networks Margate LLC
103 Foulk Road, Suite 500
Wilmington, DE 19803
Email: NOTICES@SiFiNetworks.com

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

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

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

10.6 **Governing Law.** This Agreement shall be deemed to be executed in the State of Florida and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of Florida as applicable to contracts entered into and performed entirely within Florida, irrespective of conflict of laws principles.

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

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

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

10.10 **No Rights to the System.** The City expressly agrees that, except as expressly set forth in this Agreement, it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the System, throughout the term of this Agreement. Except as otherwise provided herein, SiFi shall, at all times, retain title to and ownership of the System and

all future extensions of the System, and shall have the right to lease the System or parts thereof to a provider of internet, data, voice, video and other services.

10.11 **Representations and Warranties.**

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

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

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

WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

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

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

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

10.15 **Construction.** Each of the Parties acknowledge that each Party to this Agreement has been represented by counsel in connection with this Agreement. Legal or equitable principles that might require the construction of this Agreement or any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement and is expressly waived. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, and clauses are to Articles, Sections and clauses of this Agreement unless otherwise specified. Any singular term in this Agreement will be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

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

10.17 **Scrutinized Companies.** SiFi certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, Florida Statutes. In addition, SiFi agrees to observe the requirements of Section 287.135, Florida Statutes, for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, Florida Statutes, the City may immediately terminate this Agreement, for cause, if SiFi, its affiliates, or its subcontractors are found to have submitted a false certification; or if SiFi, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

10.18 **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.

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

[Signature page follows]

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

CITY OF MARGATE, FLORIDA

a municipal corporation in the State of Florida

Anthony N. Caggiano, Mayor

____ day of _____, 2023

ATTEST:

Jennifer M. Johnson, City Clerk

____ day of _____, 2023

Cale Curtis, City Manager

____ day of _____, 2023

APPROVED AS TO FORM:

David N. Tolces, Interim City Attorney

____ day of _____, 2023

SIFI NETWORKS MARGATE LLC,

a Delaware limited liability company

Dated: _____, 2023

By: _____

Its: _____

EXHIBIT A
SPECIFICATIONS, SHELTERS, CABINETS