

**City Council
Staff Agenda Report**

Agenda Item: 8f.

Agenda Subject: Discussion and possible action to approve a development agreement with SiFi Networks for implementation and installation of a fiber optic network system.

<p>Meeting Date: September 16, 2021</p>	<p>Financial Considerations: Budgeted: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p>	<p>Strategic Vision Pillar:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Financial Stability <input type="checkbox"/> Appearance of City <input type="checkbox"/> Operations Excellence <input checked="" type="checkbox"/> Infrastructure Improvements/Upgrade <input type="checkbox"/> Building Positive Image <input type="checkbox"/> Economic Development <input type="checkbox"/> Educational Excellence
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Background Information: Council received a presentation from SiFi Networks at the August 26 special council meeting. SiFi provided a draft agreement for council’s consideration at tonight’s meeting. The agreement SiFi has with city of Arlington is also in the packet for comparison. The city attorney is reviewing the agreement but will not have final comments in advance of the meeting.

Recommended Action/Motion:

If approving:

Motion to approve a development agreement with SiFi Networks for implementation and installation of a fiber optic network system, subject to city attorney review and approval.

If council does not desire to approve, council can take no action or motion to disapprove or deny entering into said agreement.

**Attachments: Proposed DWG Agreement
City of Arlington Agreement
Presentation**

DEVELOPMENT AGREEMENT

This Development Agreement (the “**Agreement**”) is made this ___ day of August, 2021 (“**Effective Date**”), by and between the Town of Dalworthington Gardens , Texas a municipal organization (“**Town**”) and SiFi Networks Dalworthington Gardens LLC, a Delaware limited liability company (“**SiFi**”) (each of Town and SiFi, a “**Party**” and collectively, the “**Parties**”).

RECITALS

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

WHEREAS, SiFi owns the rights to the FOCUS (as defined below) proprietary fiber optic cable System technology;

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

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree 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 Town permits encroachments and/or license and/or lease agreements for specified areas within the Public Way.

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

“**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.

“Drop” means the fiber optic cable run from the edge of the Public Way (as defined below) to the Premises Wall.

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

“FOCUS” means SiFi’s trademarked FOCUS™ system including the patented Wastewater Fiber Technology, know-how and other proprietary rights, comprising, among other things a combination of blown fiber, aerial, wastewater and other conventional techniques to enable multi gigabit technologies.

“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.

“Hazardous Materials” means (i) any hazardous or toxic wastes, substances, or materials, and any other pollutants or contaminants, which are regulated by any applicable local, state or federal laws.

“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 Town 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 Town 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 lack of a right to access any non-Town owned property within the Boundary in order to access such Premises, or (iii) if there would be an incremental material cost to connect such Premises would be at least ten percent (10%) higher than the average cost to connect accessible by SiFi Primary Premises within the Boundary, or (iv) where such Premises already have a pre-existing fiber service available to them and do not desire SiFi to connect such Premises. SiFi shall not be required or obligated to make the System available to such Primary Premises described in (i) through (iv) in this definition 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, freeway, 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 Town within the Boundary. For the avoidance of doubt, the term “Public Way” shall also mean any easement now or hereafter held by the Town 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 Town within the Boundary.

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

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

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

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

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

“Subscriber” means any Person (which for purposes of this definition shall include the Town) that 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) or four (4) years post Construction being commenced, whichever event occurs first; provided, however In the event that Substantial Completion is deemed to have occurred due to the expiration of four (4) years post

Construction being commenced, SiFi shall use commercially reasonable efforts to complete, subject to the conditions in the proviso above, such construction as is necessary to provide service to all Primary Premises within a commercially reasonable time.

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

SECTION 2

2. Grant of Authority.

2.1 Grant of Rights.

2.1.1 SiFi Rights to Public Way. This Agreement sets forth the basic terms and conditions upon which SiFi is granted authority 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 as described in Section 3.2 Permits and General Obligations. The Town hereby grants and conveys to SiFi the full right, power and authority 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 Town approval of the applicable permit, which approval shall not be unreasonably withheld, delayed, or conditioned, 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 Town 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 non-exclusive, 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. Further, SiFi’s rights granted under this Agreement and the particular permit are irrevocable until the expiration or sooner termination of this Agreement and/or the permit as provided herein or therein.

2.1.2 Abandonment of the System upon Termination of Agreement. Upon the expiration or termination of this Agreement, SiFi shall

have the right, but not the obligation, to remove from or abandon in place all or any part 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 Town. Within ninety (90) days or as soon as possible of the expiration or termination of this Agreement, SiFi must notify the Town in writing of its intent not to abandon the System. Failure to provide such written notice within the time specified will not be deemed abandonment. The System may only be abandoned and shall be deemed abandoned when so affirmatively confirmed in writing executed by SiFi.

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, 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 SiFi provides written notice to the Town of its intent not to renew at least one hundred eighty (180) days prior to end of the Initial Term and thereafter at least one hundred eighty (180) days prior to end of the first Renewal Term. If SiFi elects to not renew this Agreement the system will be deemed abandoned and shall become the property of the Town.

2.3 **License.**

(i) Town hereby grants and conveys, at no additional charge, to SiFi, and its licensees, successors, lessees, transferees, and assigns, a license (“**License**”) to enter and occupy portions of the Town’s Public Way and/or Town-owned land including for up to 2 specific locations as further described in Section 4.2, which locations will be mutually agreed upon in good faith between the Town and Licensee (the “**License Area**”), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System, including, without limitation, wires, cables, ducts, conduits, connectors, vaults, handholes, handhole covers, fencing, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the System and the Facilities (the “**Improvements**”). This License is subject to easements, covenants, conditions, and regulations in existence as of the date hereof.

(ii) Subject to easements, covenants, conditions, and regulations in existence as of the date hereof, SiFi shall be permitted to make such alterations to the License Area as are reasonably necessary to erect, install, construct, repair, replace, reconstruct, remove, maintain, operate, and use, the System including, without limitation, the Improvements, and adding and moving electrical lines and other utilities and apparatus. SiFi shall be responsible for all costs incurred in the alterations. All construction, installation, maintenance and repair of the License Area shall be conducted so as to interfere as little as practicable with Town’s use and operation of the Public Way. The installation of the System and alterations by SiFi in the License Area shall be done in a good and workmanlike manner by competent personnel or contractors, in conformity with all applicable permits, licenses, ordinances, laws and regulations, and free from any liens for labor or

materials. Any damage to the License Area caused by reason of the exercise of SiFi's rights hereunder shall be corrected within a reasonable time by SiFi at its sole cost and expense.

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

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

(v) The Improvements installed within the License Area by SiFi shall be made at no expense to Town. 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 Way at any time during the term of this Agreement.

(vi) Town, at its sole cost, shall operate, maintain and repair the Public Way so as to avoid damage or minimize adversely affecting the System and the License Area. Town shall not make any modifications to, or alter, the License Area without prior written notice to SiFi.

(vii) Town, its agents, or assigns, or any utility company or Town franchisee may at any time, enter upon the License Area, except for the Shelter locations, covered by this Agreement for the purpose of installing, maintaining, relocating, altering, enlarging, repairing, or inspecting any utility, facility, or public work thereon; provided that Town will be liable to and will indemnify SiFi for any damages to the System, Improvements and Facilities.

(viii) SiFi shall restore damaged or disturbed surfaces or underground utilities at or adjacent to the License Area to substantially the same as the original condition. Restoration shall be carried out immediately after construction. Any damage not repaired to the satisfaction of the Town shall be a cause to suspend any operations within the Town's limits by the party causing the damage until the repairs are satisfactory to the Town.

(ix) The System and all of its parts and components which are installed and constructed by SiFi in the License Area shall at all times be and remain the property of SiFi.

(x) Town shall not install or construct, or permit the installation or construction of, any structures, improvements or obstructions on, over, or under, the License Area that interfere with SiFi Network's access to, use and possession of the License Area, nor shall Town otherwise impede, disturb, interfere with, or restrict, SiFi's access to, use and possession of, the License Area.

(xi) The terms, conditions and rights contained herein shall be covenants running with the land and shall remain in effect for as long as the Agreement remains in effect. The terms and conditions contained herein shall bind, inure to the benefit of, and be enforceable by, Town and SiFi, and their respective successors and assigns (including, without limitation, any and all successors to Town in title to all or any portion of the Public Way).

2.4 **Exclusivity.** Until after the first anniversary of the Effective Date, the Town shall not solicit, accept offers from or enter into an agreement with any third party regarding any competing fiber optic cable system within the Town's Boundary, subject to any obligation or requirements imposed upon the Town in its capacity as a land use authority under federal or state

law or regulation. Notwithstanding the above, the Town may allow installation of fiber optic cables by any franchisee of the State's Public Utility Commission and/or an established internet service provider with an existing, as of the Effective Date, franchise agreement with the Town or with the State to operate within the Town.

2.5 **Efficient Permitting Process.**

2.5.1 During the Term, the Town shall provide efficient and diligent good faith review of all applications for permits by SiFi and/or its contractors, to the extent reasonably possible and to the extent permits are necessary, including permits or other necessary items for construction work on the System within the Public Way. The Town 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. Accordingly, the Town agrees to the process and timeframes below in connection with all applications for permits by SiFi and/or its contractors in connection with this Agreement:

(i) The Town shall within forty-eight (48) hours 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 Town shall within five (5) calendar 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 Town 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 Town shall within fifteen (15) calendar 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 needed for the Town to complete its review process. In the event no additional information is needed, the Town shall so notify SiFi and/or its contractors in writing.

(iv) The Town shall within twenty-one (21) calendar 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 final approval and issue any necessary approval or permits to SiFi and/or its contractors.

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

2.5.3 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. 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. 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 Town.

2.6 **Invoices and Payments – Fixed Monthly Amounts.** Beginning with the first business day of the month following the first permit application submitted by SiFi, Town will invoice SiFi monthly and in advance for the fixed amount of \$___ (collectively, the “Fixed Monthly Amounts”) which amounts shall cover Town’s costs for administration of the Efficient Permitting Process described in Section 2.5 above, plan check fees, encroachment permit fees, inspection fees, and any other applicable fees. Town represents and warrants that such Fixed Monthly Amounts are and will be a fair market value of all Town costs incurred by the Town in fulfilling its obligations under the Agreement. Town will continue to invoice SiFi for the Fixed Monthly Amounts until Substantial Completion. Each such monthly invoice shall be payable within thirty (30) days of receipt.

2.7 **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, Town agrees (i) that SiFi shall not be responsible and liable for any other or additional fees or payments to the Town in connection with this Agreement or the permitting process in excess of the Fixed Monthly Amounts, or (ii) that SiFi shall be exempt from and Town shall waive any assessment or taxes that otherwise would or might be levied by the Town for use of the Public Way. The Town 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 Town’s municipal code, ordinances or similar laws. The Town agrees that Town bonding and insurance requirements will be satisfied by bonds and insurance coverage provided as part of the encroachment permit application and supplied by the Construction Contractor (as principal) performing the construction of the System. Such bonds and insurance documentation to be supplied prior to the start of Construction. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 2.7 will survive expiration or termination of this Agreement.

2.8 **Relocation, Modification, or Alternations.** Excluding relocations requested by the Town pursuant to Section 7.2(v) and repairs or maintenance to the System, SiFi may not relocate, materially modify, or materially alter the System components any time after issuance of

the permit(s) for the System, except upon Town's written approval which approval will not be unreasonably withheld, delayed, or conditioned.

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 Town 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 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 Way at this time and that SiFi shall submit such designs specification, plan and associated details to the Town for approval when ready. The Town 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. SiFi is deemed to have approval to locate the System within the Boundary, subject to applicable permits including but not limited to encroachment, 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. Construction and installation of the System shall be performed in a reasonably safe manner using materials of good quality. All permits shall provide for and allow standard work hours daily from 7am to 7pm local time unless Town has different requirements which must be provided to SiFi in advance. All transmission and distribution structures and equipment installed by SiFi for use in the System in accordance with the terms and conditions of this Agreement shall be located so as to minimize interference with the Town's use of the Public Way and the rights of property owners who own property that adjoin any such Public Way SiFi will adhere to all Town building code requirements; provided, however in the event of an inconsistency or conflict between the rights and exceptions granted to SiFi pursuant to this Agreement and a Town building code provision, the Town building code provision will be interpreted in a manner that supports the objectives and intent of this Agreement. In the event Town building code provisions are amended or adopted after the date hereof, the terms of this Agreement shall control.

SECTION 4

4. Construction and Facilities.

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

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

Notwithstanding any Town building code provision to the contrary, the Town hereby approves each of the above referenced construction methods and the specifications in the exhibit and agrees to work cooperatively with SiFi in reviewing all other potential construction methods.

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

4.2

Location of Equipment/Facilities.

4.2.1 **Facilities.** During the Term, the Town shall provide SiFi, as needed, with access to and use of the Facilities for the installation and operation of up to two (2) SiFi's Shelters (approximately 1,000 square feet per location for each Shelter) subject to a separate lease, easement or another suitable agreement to be negotiated in good faith between the parties including payment by SiFi of fair market value for the use and occupancy of each such Shelter Facility on Town-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 Town prior to Construction in accordance with Town's permitting process. The Town and SiFi agree to cooperate in the selection of suitable sites for the Shelters and Cabinets. However, Town has sole and absolute but reasonable discretion to reject a proposed location; provided that, the Town will use reasonable efforts to offer suitable alternative locations.

4.3

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

SECTION 5

5. Oversight and Regulation by Town.

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

5.2 **Compliance with Applicable Laws.** SiFi and the Town 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.** Subject to local, state and federal law, including without limitation, the State's Freedom of Information Act ("FOIA"), the Town agrees that, without the prior written consent of SiFi, all information regarding the System, including plans, drawings, designs, conceptual renderings, cost information, specifications, photographs, reports, manuals, and other documents ("**Confidential Information**"), is proprietary and shall be kept confidential and shall not be disclosed to any Persons other than the Town's authorized employees, representatives, staff and consultants (collectively, "**Representatives**") with a need to know such information and such Confidential Information shall not be used to the detriment of SiFi. The Town shall cause its Representatives to observe the confidentiality obligations described herein and shall be responsible for any breach of these obligations by any of its Representatives. The Town agrees to assert applicable exemptions to any FOIA request for Confidential Information and to promptly notify SiFi if the Town receives a FOIA request relating to SiFi or the System. Promptly upon the written request of SiFi or the termination of this Agreement, the Town will return to SiFi or destroy (any such destruction shall be certified in writing by an officer of the Town) all copies of the Confidential Information and all other documents prepared by the Town that contain or reflect the Confidential Information. Notwithstanding anything to the contrary contained in this Agreement, the Town's obligations set forth in this Section 5.3 will survive expiration or termination of this Agreement.

SECTION 6

6. Insurance.

SiFi 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 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident 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. Builder’s Risk (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

E. Professional Liability with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy 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. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the SiFi must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the Town for review.

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 Town 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 Town to the extent necessary to cover any actual damages suffered by the Town.

6.2 Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Town. At the option of the Town, SiFi shall cause the insurer to reduce or eliminate such self-insured retentions as respects the Town, its officers, officials, employees, and volunteers; or SiFi shall provide a financial guarantee satisfactory to the Town 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 Town.

6.3 Other Insurance Provisions:

A. Additional Insured. The Town, 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. 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 Town, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, or volunteers shall be excess of the SiFi's insurance and shall not contribute with it.

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

If the project does not involve new or major reconstruction, at the option of the Town, 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 Town'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 Town.

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 Town 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 Town for all work performed by the Contractor, its employees, agents and subcontractors.

G. Verification of Coverage. SiFi shall furnish, upon request, the Town 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 Town 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 Town 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 and verify that the Contractor and all subcontractors maintain insurance meeting all the requirements stated herein, and SiFi shall require, to the extent possible, the Contractor and all the subcontractors to list Town 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. Town 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 Town. In addition to all other duties and obligations contained elsewhere in this Agreement, Town 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 Town departments, and serving as a communication and troubleshooting resource for SiFi.

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

(iii) Subject to Section 3.2, provide SiFi and its representatives with access to all Town property and all Town 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, with no additional charge by the Town, except for the Fixed Monthly Amounts payments, for such access following completion of construction. 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 efficient and diligent, as specified in Section 2.5, good faith review of all applications for permits submitted by SiFi or its representatives or contractors, including permits or other necessary items for construction work on the System within the Public Way.

(vi) In the event of emergency repairs by the Town or its contractors in the Public Way are necessary pursuant to Section 7.2(v) below, coordinate the repairs with SiFi, any utilities or other users of the Public Way, in order to facilitate prompt repairs, such coordination to be supervised by the SPOC and the SPOC shall keep SiFi continually apprised of the status of such repairs.

(vii) When reasonably able, Town will provide SiFi with a least thirty (30) days advance notice of any work in the Public Way that requires the relocation of the System pursuant to Section 7.2(v) below. In addition, where necessary, the Town will provide SiFi with an opportunity to access the System at the time of the excavation in the Public Way by others. Town shall, both by itself and through its contractors, indemnify SiFi for any damage to the System caused by work by or on behalf of the Town in the Public Way.

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 Town and relevant Town departments with respect to the construction of the System.

(ii) Comply with all requirements of Town 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 safe excavation notification system; and

(v) SiFi shall not be required to relocate for any routine curb and gutter and sidewalk maintenance and repair including without limitation repair of potholes, milling and repaving of roadways; provided that, Town and Town's contractors shall exercise reasonable care and shall be liable to SiFi for any damages to the System.

Except for the above paragraph and when work to be performed by the Town or its contractors is reasonably required to be within two inches (2") radius from the SiFi System in accordance with industry standards ("Conflict"), Town shall provide SiFi with not less than sixty (60) days written notice of such Conflict and Town shall provide all reasonable accommodations including excavating to the SiFi impacted facilities as reasonably requested by SiFi to allow and facilitate coordination with the Town contractor in order for SiFi to protect, or to temporarily or permanently relocate the impacted portion of the System; provided that, SiFi shall bear the direct reasonable cost for additional delays or costs incurred by the Town for such Conflict work. If SiFi fails to act on such notice of Conflict within sixty (60) days from receipt, Town will not be liable to SiFi for any resulting damages to the System. SiFi will endeavor to facilitate an introductory meeting between the Town and Service Provider(s) who use the Network to provide services to residential and business, and further will advise any such Service Provider(s) that the Town may require fees as required by law or regulation.

(vi) Provide response times in connection with repairs to be undertaken by SiFi and/or contractors retained by SiFi (as opposed to repairs to be undertaken by the Town) and to establish the necessary personnel levels for required dispatch, repair, inventory, maintenance, and service of the System commencing no earlier than Substantial Completion as follows:

(i) Depending upon the type of fault or the method of identification, the Town shall notify SiFi of a suspected fault and the generation of a service ticket. The Town shall issue to SiFi one of the following service ticket(s), for which SiFi shall provide the corresponding response time:

(1) Standard Response ("STANDARD")

a) Description: Construction in progress, capital improvement and other such projects impacting or potentially impacting the SiFi System and/or may impact the SiFi System, about which the Town is aware of in advance. Examples of such projects include mill and fill projects, side relocations, road reclamation projects, and other similar projects, provided that any such STANDARD repair is subject to the then current State's safe excavation laws and regulations.

b) SiFi's contractor's response time:
On-site within forty-five (45) business days

(2) Non-life-threatening Emergency Response
 (“NON-LTER”)

a) Description: Curb and gutter projects, and utility (including telecommunications) projects requiring relocation, repair, or replacement that are impacted by the SiFi System and/or may impact the SiFi System, provided that any such NON-LTER repair is subject to the then current State’s safe excavation laws and regulations.

b) SiFi’s contractor’s response time:
On-site within seventy-two (72) hours

(3) Life Threatening Emergency Response
 (“LTER”)

a) Description: Break or hit in the main gas, main electric, main water, or main sewer or storm line in the Public Way that has an immediate and direct impact to the traveling safety of the public in or around the Public Way, and wherein the Town’s ability to implement repairs are impacted by the SiFi System and/or Town repairs may impact the SiFi System.

b) SiFi’s contractor’s response time:
On-site within four (4) hours

(ii) Upon receipt of a service ticket as set forth herein, SiFi will use reasonable efforts to dispatch a technician to the specified fault location as identified by the Town. SiFi, working with the Town, will then make the determination as to whether the technician will proceed with the repair(s) if possible, wait for arrival of a Town contractor, if necessary, for investigation and/or repair of work, or leave the site.

SECTION 8

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

8.1. **SiFi Breach or Default.** In the event the Town believes that SiFi has not complied with or is otherwise in default with regard to any material term of this Agreement, the Town shall promptly notify SiFi in writing with specific details regarding the exact nature of the alleged noncompliance or default (a “**Town Breach Notice**”). Town agrees that it shall not issue a Town Breach Notice and shall not raise any claims for breach against SiFi, if such breach would not have occurred or such claim would not have been raised had the Town issued a permit(s) required and

when required, when SiFi has provided the reasonably required information for such a permit, to construct the System or any part thereof to SiFi or its contractor(s), or conduct by the Town that materially interferes with SiFi's ability to perform its obligations under the Agreement.

8.1.1 **SiFi's Right to Cure or Respond.** SiFi shall have forty-five (45) days from its receipt of a Town Breach Notice (the "**Initial SiFi Cure Period**") to:

(i) respond to the Town, 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, 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 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 noncompliance promptly and notifies the Town 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 ninety (90) days from SiFi's receipt of a Town Breach Notice (the "**Extended SiFi Cure Period**" and together with the Initial SiFi Cure Period, the "**SiFi Cure Period**").

8.1.2 Town Rights and Remedies.

(i) Except as provided in Sections 8.1.2(ii), (iii) and (iv) below which shall control in connection with the events described therein, 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 Town may:

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

(b) seek money damages from SiFi; or

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

- (ii) In the event of termination of this Agreement and subject to a prior written consent from SiFi, the Town shall within thirty (30) days of the effective date of such termination elect to either (i) purchase the System by paying to SiFi by wire transfer of immediately available funds within sixty (60) days of the effective date of the termination a sum equal to SiFi's costs of designing, financing and constructing the System for use in the Town plus ten percent (10%) of such costs and upon such payment neither Party shall have any liability or obligation under this Agreement; or (ii) permit SiFi continue all network operations necessary to maximize use of the existing FON in accordance with this Agreement, the Town shall however have authority over all extensions of the FON in the Public Way. In the event Town elects to permit SiFi to continue all network operations, such permission may include mutually agreed and executed amendment of this Agreement, including but not limited to a requirement for additional compensation to be mutually agreed upon by Town and SiFi.
- (iii) Notwithstanding anything to the contrary in this Agreement, in no event shall the Town be permitted to terminate this Agreement if the Town is in breach of or default under this Agreement.

8.2 **Town Breach or Default.** In the event SiFi believes that the Town has not complied with or is otherwise in default with regard to any term of this Agreement, SiFi shall promptly notify the Town in writing with specific details regarding the exact nature of the alleged noncompliance 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 Town is materially prejudiced by such failure.

8.2.1 **Town's Right to Cure or Respond.** The Town shall have forty-five (45) days from its receipt of a SiFi Breach Notice (the “**Town Cure Period**”); provided that the Town Cure Period for a failure of the Town to review permit applications and issue a permit(s) necessary to construct the System as required under Sections 3.2 and 7.2.1(iv) (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 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 Town'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 Town Cure Period, so long as the Town 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 Town Cure Period shall be extended for a reasonable amount of time to permit such cure but not to exceed ninety (90) days from the Town's receipt of a SiFi Breach Notice (the "**Extended Town Cure Period**"); provided further, however, no Extended Town Cure Period shall apply to a Permit Issuance Breach.

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

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

(ii) seek money damages from the Town; or

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

8.3 **Additional Rights to Terminate.**

8.3.1 At any time prior to commencing Construction or in the event the Town fails to comply with the requirements of the Agreement, SiFi shall have the immediate right, at its option, upon written notice to the Town to terminate this Agreement and shall be entitled to any and all other rights and remedies available to it at law or in equity.

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

8.4 **Indemnification.**

8.4.1 The Town agrees to indemnify, defend, and hold harmless SiFi and its affiliates and their respective directors, officers, managers, members, equity and debt holders, partners, employees, contractors, agents and representatives and their heirs, successors and assigns at the Town's sole expense from and against any and all claims, suits, and demands of liability, loss, cost, expense or damage, including reasonable attorney's fees (collectively, "Damages"), arising out of third party claims resulting from (i) breach of this Agreement in any material respect by the Town or (ii) the

Town's willful misconduct or gross negligence in its performance of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the indemnity obligations set forth herein will survive expiration or termination of this Agreement. The defense obligation shall be required whenever any claim, action, complaint, or suit asserts as its basis the acts or omissions of the Town, its officers, agents, and/or employees, whether or not the Town, its officers, agents, and/or employees are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Town shall not be liable for the defense or indemnification of the SiFi Indemnitees for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the SiFi Indemnitees.

8.4.2 SiFi shall defend, indemnify and hold the Town, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner which actually or allegedly arise out of or are incident to any alleged acts, omissions, negligence or willful misconduct of SiFi, its officials, officers, employees, agents, and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all attorney's fees and other related costs and expenses except where caused by the active negligence, sole negligence, or willful misconduct of the Town its officers, officials, employees and volunteers. SiFi shall defend, at its own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Town, its directors, officials, officers, employees, agents or volunteers. SiFi shall pay and satisfy any judgment, award or decree that may be rendered against the Town or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. SiFi shall reimburse the Town, its officials, officers, employees, 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 Town its officials, officers, employees, agents or volunteers.

8.5 **Limitation of Liability.** EXCEPT WITH RESPECT TO A BREACH OF THE TOWN'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 one million dollars (\$1,000,000) or the amount of available applicable insurance coverage. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 8.5 will survive expiration or termination of this Agreement.

SECTION 9

9. Disputes.

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

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

SECTION 10

10. Miscellaneous Provisions

10.1 Assignment. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective successors and assigns as provided herein. The Town 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, without the consent of the Town 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 Town with a fully executed copy of the assignment, sale or transfer document, signed by both SiFi and assignee/purchaser/transferee, indicating the assignee's/purchaser's/ transferee's assumption of all of SiFi's performance duties, liabilities and obligations under this Agreement. SiFi shall not be relieved of its performance duties, liabilities or obligations under this Agreement until Town 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. SiFi may not otherwise assign this Agreement or the System without Town's consent, Town's consent not to be unreasonably withheld, conditioned, or delayed. Upon any such assignment, sale, transfer, or novation, SiFi shall be released from all obligations and liabilities under this Agreement from and after the date of such assignment. SiFi shall give the Town fourteen (14) days' advance notice of such assignment, sale, transfer or novation disclosing the identity of the Person to whom it has been assigned, transferred, sold or novated. The Town agrees from time to time 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, SiFi will not be held in default under, or in breach or noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of this Agreement), where such noncompliance or alleged defaults occurred or were caused by any of the following events (each a "**Force Majeure Event**"): failure by the Town to issue permit(s) required to construct the System or any part thereof to SiFi or its contractor(s), failure by the Town to comply with this Agreement, conduct by the Town that materially interferes with SiFi's ability to perform, 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 SiFi'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 SiFi's ability to perform its obligations under this Agreement.

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

IF TO THE TOWN:
Dalworthington Gardens Town Hall
2600 Roosevelt Dr.
Dalworthington Gardens , TX 76016
Attn: _____
Email: _____

IF TO SIFI:
SiFi Networks Dalworthington Gardens 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 Town and SiFi with respect to the subject matter hereof. This Agreement supersedes all other agreements whether written, verbal, or otherwise between SiFi and the Town 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 and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State as applicable to contracts entered into and performed entirely within the State, 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 Town 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 Town may have under federal or state law unless such waiver is expressly stated herein.

10.10 **No Rights to the System.** The Town 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 provided in Section 8.1.2 (iii) and Section 8.1.2 (iv) above, 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 Town 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 Town and have been duly authorized by all necessary action on the part of Town, (b) this Agreement has been duly executed and delivered by the Town and it constitutes a legal, valid and binding agreement of the Town enforceable against the Town 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 Town and its performance hereunder and thereunder will not violate any law, ordinance, rule, or regulation applicable to the Town.

10.11.2 SiFi represents and warrants to the Town 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 TOWN UNDER THIS AGREEMENT, SIFI MAKES NO REPRESENTATIONS OR WARRANTIES TO THE TOWN 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 Town.

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

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

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

through any date mean, unless otherwise specified, from and including or through and including, respectively.

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

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

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

[Signature page follows]

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

TOWN OF DALWORTHINGTON GARDENS ,

A political subdivision of the State of Texas

Dated: _____, 2021

By: _____

Name: Laurie Bianco

Title: Mayor

Approved as to form:

By: _____

Name: _____

Title: Town Solicitor

**SIFI NETWORKS DALWORTHINGTON
GARDENS LLC,**

a Delaware limited liability company

Dated: _____, 2021

By: _____

Its: _____

EXHIBIT A
SPECIFICATIONS, SHELTERS, CABINETS

Resolution No. 21-115

A resolution authorizing the execution of a Fiber Optic Network Development License Agreement with SiFi Networks Arlington LLC to install, own, maintain, operate, and control a citywide fiber optic network system

WHEREAS, residents are increasingly utilizing internet service for numerous aspects of daily life, including conducting business, attending school, and accessing health care; and

WHEREAS, City desires that reliable high-speed internet be available and accessible to residents and businesses throughout the City; and

WHEREAS, on September 29, 2020, representatives from SiFi Networks (“SiFi”) delivered a presentation to the City Council regarding the prospect of a fiber optic network deployed city-wide to provide high-speed internet in the community; and

WHEREAS, this Fiber Optic Network Development License Agreement (“Agreement”) grants a nonexclusive license to SiFi to install, operate, and maintain a fiber optic network in the public right-of-way to facilitate Internet Service Providers making high-speed internet available throughout the City to residents and businesses who become subscribers; and

WHEREAS, City has determined that the fiber optic network installed under this Agreement will directly establish a public purpose for the City and its residents; and

WHEREAS, the City has found that the Agreement provides adequate compensation to the City for SiFi’s use and occupation of the public right-of-way to install, operate, and maintain the fiber optic network while this Agreement is in effect; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City Manager or his designee is hereby authorized to execute a Fiber Optic Network Development License Agreement with SiFi Networks Arlington LLC to install, own, maintain, operate, and control a citywide fiber optic network system.

II.

A substantial copy of the Fiber Optic Network Development License Agreement is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 18th day of May, 2021, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:


ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY 

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

SiFi Networks Arlington LLC
Wilmington, DE United States

Certificate Number:
2021-757889

Date Filed:
05/26/2021

Date Acknowledged:
06/14/2021

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Arlington, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

21-115
Installation of a Fiber Optic Network System as defined in Fiber Optic Network Development License Agreement

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	SiFi Networks America Ltd	London England United Kingdom	X	

5 Check only if there is NO Interested Party.

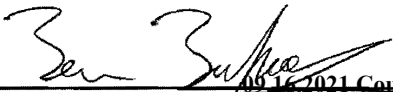
6 UNSWORN DECLARATION

My name is Ben Bawtree-Jobson, and my date of birth is April 30, 1987.

My address is 105 Foulk Road, Suite 500, Wilmington, DE, 19803, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in London, England ~~County, State of California~~, on the 26th day of May, 2021.
(month) (year)


06/16/2021 Council Packet Pg. 123 of 203
Signature of authorized agent of contracting business entity
(Declarant)

FIBER OPTIC NETWORK DEVELOPMENT LICENSE AGREEMENT

This Fiber Optic Network Development License Agreement (the “**Agreement**” or “**License Agreement**”) is made this 18 day of May, 2021 (“**Effective Date**”), by and between the City of Arlington, Texas, a municipal corporation (the “**City**”) and SiFi Networks Arlington 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, including the City's Right-of-Way Management Chapter and Right-of-Way Permitting and Construction Manual, as amended; and

WHEREAS, SiFi owns the rights to FOCUS (as defined below) proprietary fiber optic cable system technology;

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;

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

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.

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 and/or license and/or lease agreements for specified areas within the Public Right-of-Way.

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

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

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

“Connected Premise” means any Premise that is hard-wired to the System and where a Person at such Premise is a 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 edge of the Public Right-of-Way (as defined below) to the Premises Wall.

“FOCUS” means SiFi’s trademarked FOCUS™ system including the know-how and other proprietary rights, comprising, among other things a combination of blown fiber and other conventional techniques to enable multi gigabit technologies.

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

“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 governmental 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 lot containing separate living units for two families, located within the Boundary.

“Microtrenching” means the process of cutting a trench with a dry cut machine or other applicable equipment and reinstating with cementitious slurry fill or with like material consistent with the site of the trench.

“Multiple Dwelling Unit” means a dwelling or group of dwellings on one lot containing separate living units for three or more families located within the Boundary.

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

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

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

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

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

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

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

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

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

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

SECTION 2

2. Grant of Authority.

2.1 Grant of Right of Access.

2.1.1 SiFi Right of Access 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 as described in Section 3.2 Permits and General Obligations. Upon approval of this License Agreement by the 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. SiFi shall, subject to City approval of the applicable permit, determine the final engineering design and proposed locations 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, 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 for a specific location. This License Agreement is nonexclusive and is made subordinate to the right of the City to use the License Areas for any public purpose. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in SiFi a real property interest in 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, or termination of this License Agreement.

2.1.3 Pilot Project.

(i) Prior to the Construction Commencement Deadline, SiFi shall complete a pilot microtrenching construction project (“Pilot Project”) to the satisfaction of the City as provided by this Section. SiFi will commence construction of the Pilot Project not later than ninety (90) days following the Effective Date, as defined in Section 2.2, and complete construction of the Pilot Project not later than thirty (30) days after commencing construction. SiFi will obtain all permits required for the Pilot Project in accordance with all applicable City regulations.

(ii) The City and SiFi will collaborate to determine the scope of the Pilot Project that sufficiently addresses the City’s needs to properly evaluate the microtrenching process that SiFi plans to use for construction of the System, including: the distance of microtrenching, not to exceed one continuous distance of two thousand (2,000) linear feet; the location or locations of the Pilot Project; the surface or surfaces where microtrenching will occur, e.g. asphalt street, concrete street, parkway behind the curb, or other locations; installation of conduit; the microtrenching of one or more intersections; as well as other aspects of the complete or full microtrenching process, such as mobilizing, ground penetrating radar, locating existing utilities, microtrenching, filling the trench, and constructing the site of the drop at the curb or adjacent to the street.

(iii) Upon completion of the Pilot Project, the City will promptly inspect the location or locations and notify SiFi within thirty (30) days as to whether the

Pilot Project was completed to the satisfaction of the City. If the Pilot Project is not completed to the satisfaction of the City, the City will have the right to terminate this Agreement upon providing written notice to SiFi.

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 SiFi and City (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 other terms and provisions of this Agreement or in accordance with law. Thereafter, this Agreement will automatically renew for up to six (6) successive ten (10) year terms (each, a "Renewal Term"), unless, at any time prior to the upcoming Renewal Term, the City has issued a City Breach Notice to SiFi under Section 8.1 for not complying with or otherwise being in default with regard to any term of this Agreement, in which case SiFi shall obtain the consent and approval of the Arlington City Council prior to any Renewal Term becoming effective. SiFi may provide written notice to the City of its intent not to renew at least one hundred eighty (180) days prior to end of the Initial Term and thereafter at least one hundred eighty (180) days prior to the end of any Renewal Term. Nothing in this Section shall be construed to require the City to enter into a new agreement with SiFi if this License Agreement is cancelled, is terminated, is 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 for up to ten (10) specific locations (i) 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 (ii) Cabinet locations, which shall be selected by SiFi and subject to approval by City (collectively, the "License Area"), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System and Shelters, 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, and conditions in existence as of the date hereof. If the City determines that the Public Right-of-Way cannot accommodate any proposed Shelters, Cabinets or other portions of the System, SiFi will acquire all necessary easements and use privilege agreements to install such equipment outside the Public Right-of-Way.

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

permits, licenses, ordinances, laws and regulations, and free from any liens for labor or materials. Any damage to the License Area caused by reason of the exercise of SiFi's rights hereunder shall be corrected by SiFi at its sole cost and expense, shall be completed in accordance with all applicable City regulations, including the Right-of-Way Permitting and Construction Manual, as amended, and shall be completed within the timeframes provided by this Agreement or as otherwise provided by law.

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

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

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

(vi) In the event that the City determines it is necessary for the City to do work in, make any modifications to, or alter, the License Area and such work may impact the System, the City will provide to SiFi reasonable notice, as determined by the circumstances, before commencing such work, or as otherwise provided by law. If notice is not feasible under the circumstances, 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 any utilities or facilities in the Public Right-of-Way. Portions of SiFi's System installed in the Public Right-of-Way constitute such a utility or facility.

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

(viii) SiFi shall restore damaged or disturbed surfaces or underground utilities at or adjacent to the License Area as provided by the City's Right-of-Way Permitting and Construction Manual, as amended, or other applicable regulation.

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

(x) SiFi shall obtain all necessary easements and use privilege agreements for the System 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 Reserved

2.5

Permitting Process.

2.5.1 The City acknowledges the importance to SiFi of an efficient, diligent, and expedited permitting process. The City will comply with all applicable laws and act in accordance with its standard procedures in reviewing and processing all applications for permits 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. City will work with SiFi to establish a procedure by which the City can expedite all City review processes, including permits and inspections for the System. Nothing in this License Agreement exempts SiFi from any permitting regulations or processes.

(i) The City shall, within thirty (30) calendar days of a fully and technically complete submittal by SiFi and/or its contractors of an application for a permit in connection with this Agreement, 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.

(ii) In the event that the City does not provide a response on a fully and technically complete application in accordance with Section 2.5.1(i):

(A) such action does not constitute a breach, default, or noncompliance under this Agreement for which a remedy is available under Section 8.2;

(B) such action does not result in the application being deemed approved; and

(C) the only remedy available is an extension of the Construction Completion Deadline as provided by Section 4.1.

2.5.2 Permit applications shall be submitted by SiFi in substantially the form as set forth in Exhibit A (approved form of permit application) or using the then-current City application form. The engineering details provided in Exhibit B are a sample of typical details that may or may not change during the final engineering design process.

2.5.3 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; provided that no permit, license, or other land use approval of any other approval requested by or required of SiFi shall be unreasonably withheld, conditioned or delayed.

2.6 Reserved

2.7 **Fees, Expenses, Bonds, 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. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 2.7 will survive expiration or termination of this Agreement. Prior to the commencement of construction, SiFi shall establish an escrow in the amount of one million dollars (\$1,000,000) to be used for restoration of the public right-of-way, which shall be in effect throughout the construction process and for a period of two (2) years following the completion of construction. 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 the Right-of-Way Management Chapter, as amended. SiFi and its contractors shall comply with all insurance, bonding, and escrow requirements approved in this Agreement. SiFi or its contractors shall provide a two-year warranty for all work in the public right-of-way, including cuts in the curb and sidewalk for drops and other work in the public right-of-way.

2.8 **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 Agreement, the City's Right-of-Way Management Chapter, as amended, or other applicable law. SiFi understands that the City regularly conducts different types of work in the public right-of-way, including, but not limited to: (1) emergency situations that endanger the health, safety, or welfare of the public or property, which must be addressed immediately and completed within a matter of minutes or hours; (2) routine repairs to streets, curbs, sidewalks, and other portions of the public right-of-way, which are completed within a matter of hours or days; as well as (3) long-term projects involving straightening, widening or reclamation of streets, as well as placement or replacement of water, wastewater, or storm water facilities, which are planned months in advance and completed over the course of multiple days, weeks or months. Each instance of City work in the public right-of-way is unique and will be considered on a case-by-case basis regarding the extent to which the City can reasonably coordinate with SiFi on a process to allow SiFi to move, relocate, or repair, when needed, portions of the System that may be impacted by such work. SiFi, its contractors, and agents must daily clean up and haul off debris and waste materials from the site related to the construction process as well as the temporary or permanent relocation, moving, or repair, when needed, of portions of the System.

2.9 License Fee.

2.9.1 Calculation and Payment of License Fee

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

(A) three thousand five hundred dollars (\$3,500) (“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 2.9.1(ii), multiplied by the number of Connected Premises as of the last calendar day of each quarter.

(ii) Beginning April 1st of each year, the rate for the license fee under Section 2.9.1(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 Federal Bureau of Labor Statistics or successor agency.

(iii) Starting with the first quarter following commencement of Construction, and for each quarter thereafter while this Agreement is in effect, SiFi will, within fifteen days (15) after the last day of each quarter, submit a report to City with: the total number of Connected Premises as of the last calendar day of the quarter; the applicable rate at the time under Section 2.9.1(i)(B), as adjusted under Section 2.9.1(ii), along with a calculation of the amount due under that rate; and a statement regarding whether SiFi will pay a license fee in the amount of the Minimum Amount Due under Section 2.9.1(i)(A) or the rate under Section 2.9.1(i)(B), as adjusted under Section 2.9.1(ii), in accordance with this Agreement. Within thirty (30) days after last day of each quarter, SiFi shall remit payment to the City of the license fee, as described and calculated under this Section 2.9.1.

(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 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.

2.9.2 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 2.9.1. 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 2.9.2(ii) and any other provisions of this Agreement related to the calculation and payment of license fees under Section 2.9.1.

(iii) City may, at any time, make reasonable inquiries to SiFi pertaining to its operation of the System within the City of Arlington. 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 Arlington.

(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 providing 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 Arlington, 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 2.9.1, 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, the Ordinances of the City, the City's Public Right-of-Way Permitting and Construction Manual, the City's Design Criteria Manual, and all applicable rules and 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's Right-of-Way Permitting and Construction Manual, as amended, 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 Right-of-Way Permitting and Construction Manual, as amended.

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

(vii) SiFi will comply with applicable provisions of the City's Right-of-Way Permitting and Construction Manual, as amended, regarding proximity to drainage facilities, sanitary sewer, water mains, and other water utility infrastructure.

(viii) 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.

(ix) 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:

- the System, Shelters, and facilities located on the City property shall not be endangered, obstructed, or injured;
- SiFi may access the System, Shelters, and facilities;
- the System and facilities are left with the amount of cover originally installed to allow safe operation of the System;
- the System, Shelters, and facilities are left with the sufficient support; and
- SiFi's use of the System, Shelters, and facilities for the purposes set forth herein is not unreasonably impaired or interfered with.

(x) 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.

(xi) Prior to construction and as needed throughout the construction process, SiFi shall notify all property owners and businesses adjacent to the planned System construction project. All notices should identify at a minimum a person who can be contacted for information regarding the planned System construction activities. SiFi shall provide to the City at the time of permit submittals, evidence regarding its notification efforts with property owners and businesses.

(xii) 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 the applicable state 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 City approval for the issuance of permits to construct the System.

SECTION 4

4. Construction.

4.1 Construction of the System. 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 2.5.1(i), 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;

(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.

4.1.1 The City acknowledges that SiFi and its contractors intend to use varying construction techniques (each, a “Construction Method”) for the System Construction and deployment, including:

(i) Traditional open trench and/or directional boring;

(ii) Slot cut Microtrenching;

(iii) the use of a ground penetration radar system as the primary method for identifying underground utilities prior to any Microtrenching; and/or

(iv) Techniques ancillary to or related to the foregoing.

By listing these construction methods herein, City is not approving or endorsing such methods. City will evaluate on a case-by-case and location-by-location basis whether a proposed Construction Method is appropriate and consistent with applicable City ordinances and regulations. 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 B or elsewhere in this Agreement, all construction methods must be conducted in compliance with all applicable City ordinances and regulations, including but not limited to the Right-of-Way Permitting and Construction Manual, as amended.

4.1.2 SiFi shall be solely responsible for all repairs, maintenance, and adjustments, and damage to the System.

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

4.1.4 If, prior to the Construction Completion Deadline, an item is added to the agenda of a City Council meeting or a Council Committee meeting to discuss or consider changes to the City's microtrenching regulations as noted in Section 4.1.3, the City will notify SiFi once the agenda is final and posted. SiFi may submit its concerns to the Arlington City Council or provide public comment as allowed by law at City Council meetings regarding changes to the City's microtrenching regulations as well as recommendations on the effective date following passage of the new regulations.

4.2 Location of Equipment.

4.2.1 **License Area.** During the Term, the City shall provide SiFi with access to and use of the License Area, as provided by this Agreement, including space for the installation and operation of SiFi's Shelters (approximately 300 square feet per location), distributed Cabinets and other System equipment, components, parts, and other appurtenances for the System and related facilities, and from which the fiber optic cables will be deployed, subject to Section 2.3(i).

4.2.2 **Shelters and Cabinets Locations.** SiFi agrees to provide to the City engineering designs including intended locations of the Shelters and Cabinets required for the System as well as any other information required by Section 2.10 prior to Construction in accordance with City's permitting process. The City and SiFi agree to cooperate in the selection of suitable sites for the Shelters and Cabinets. However, City has sole and absolute but reasonable discretion to reject a proposed location; provided that, the City will use

reasonable efforts to offer suitable alternative locations. 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.

4.3 **System Connections to the Premises Wall.** SiFi will provide a terminated fiber to each Subscriber's Premises receiving a Drop in a manner to be determined by SiFi. The location and the method of the Drop will vary depending on the circumstances of the location of the Subscriber's Premises. For the avoidance of doubt, in the event SiFi cannot install fiber optic cable or other necessary equipment on private property because of a lack of a right to access the property, SiFi shall not be required to make the System available to such Premises when 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 and agrees that any information provided by SiFi to the City regarding the System, including plans, drawings, designs, conceptual renderings, cost information, specifications, photographs, reports, manuals, and other documents is considered by SiFi to be "confidential information". The City shall notify SiFi within five (5) business days after receiving any Texas Public Information Act request that seeks disclosure of information provided by or concerning SiFi, and 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 shall seek a written opinion from the Texas Attorney General; 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 applicability of exceptions to disclosure for such 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 shall survive termination of this Agreement for any reason whatsoever.

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 the SiFi, its agents, representatives, employees, or subcontractors. All contractors and their subcontractors shall obtain the required insurance, and no work shall be performed by SiFi or any of its contractors or subcontractors until and unless the required insurance is in place.

6.1 Minimum Scope and Limit of Coverage.

Coverage shall be at least as broad as:

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

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

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

D. Installation Floater: Coverage shall be written on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures and equipment that will be incorporated into the Work. Coverage shall 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 Liability with limits no less than \$2,000,000 per occurrence and aggregate. Coverage shall follow form over all primary policies and include drop-down provisions.

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

6.2 Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. City approval shall not be unreasonably withheld.

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 cancellation to the City. 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 hereby agrees 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 or not 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) 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 copies of all required insurance policies, including endorsements, required by these specifications, at any time.

G. Contractor/Subcontractors. SiFi shall require and verify that the Contractor and all subcontractors maintain insurance meeting all the requirements stated herein, 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, providing coordination with and acting as a liaison to City departments, and serving 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 supervised by the SPOC.

(iii) City will provide SiFi and its representatives with access to the License Area for which a permit has been issued to SiFi for the installation, inspection, and maintenance of the System and for any other reasonable business purpose with respect to the System, as provided by this Agreement, for such access through 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 will act in accordance with its standard procedures in reviewing and processing all applications for permits submitted by SiFi or its representatives or contractors, including permits or other necessary items for construction work on the System within the Public Right-of-Way.

(vi) In the event 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 the City of Arlington Right-of-Way Management Chapter, as amended, and other applicable law.

(vii) When reasonably able, City will provide SiFi with at least thirty (30) 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 shall work closely with the SPOC of the City and relevant City departments with respect to the construction of the System.

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

(iii) 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.

(iv) SiFi and its contractors shall: comply with Texas Utilities Code Chapter 251, as amended, or 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.

(v) SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the System or installation of temporary facilities: in the event that relocation of the System is necessary due to changes in any Public Right-of-Way; as provided by the Right-of-Way Management Chapter of the Code of Ordinances of the City of Arlington, as amended, or other applicable law; or whenever 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 SiFi, subject to applicable fees, costs, and charges, including standard permit application and inspection fees, to allow and facilitate SiFi the ability to temporarily or permanently relocate such portion of the System in or around the Public Right-of-Way in a manner sufficient to maintain the operation of the System pursuant to the terms of the Agreement. SiFi shall 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 sixty (60) 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 sixty (60) months following the commencement of

construction and throughout the duration of this Agreement. City acknowledges that SiFi does not have control over how many Service Providers provide Service over the System and, therefore, City agrees that if SiFi has applied reasonable efforts through a competitive solicitation process under this Section to enable more than one (1) Service Provider to provide Service over the System, SiFi's failure to have at least two (2) Service Providers providing Service over the System in the City while this Agreement is in effect does not constitute a breach of this Agreement. Such Service, which is the responsibility of the Service Providers, shall include internet services capable of symmetrical speeds of one (1) Gigabit per second (Gbps) or higher. Service Providers may also provide additional tiered packages of internet services with different higher or lower speeds. As portions of the System are completed, SiFi will ensure that the System is capable of providing Service to Subscribers in the areas where completed portions of the System are located while this Agreement is in effect.

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

(viii) SiFi shall coordinate with the SPOC to review existing and/or future City assets located within the System footprint to be connected to the System. SiFi shall connect the System and make it available to support and facilitate the delivery of Service to twenty-five (25) City buildings, facilities, and assets requested by City at no additional cost to City. The location and method of connections may vary depending on the location of City buildings, facilities, and assets. SiFi shall work cooperatively with Service Providers and City to facilitate the delivery of Service to City facilities at discounted rates acceptable to the City.

(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 fourteen (14) calendar days after written notice from City, except where such damage constitutes an emergency or endangers the health, safety, or welfare of the public or property, SiFi shall notify the City immediately and such repairs shall be completed no later than four (4) hours after notice. If SiFi fails or refuses to repair such damage or at the City's option in lieu of requiring SiFi to make such repair, the City may make such repairs at the sole cost and expense of SiFi, and charge to SiFi the cost and expense of making such repairs. In such case, City shall send SiFi an invoice for the total cost and expense and SiFi agrees to pay City within thirty (30) days of receipt of an invoice. If the City chooses to repair any damage in lieu of requiring SiFi to make such repair, the City will provide reasonable notice as determined by the circumstances prior to making such repairs, unless such notice is not feasible under the circumstances, in which case, City will notify SiFi by the end of the next business day following the City's commencement of repairs.

(x) Upon reasonable notice, as determined by the circumstances, at the request of the City and at SiFi's cost, SiFi shall remove and abate any portion of the System or any facility that is dangerous to life or property, as determined by the City. If SiFi 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 provided by the City's Right-of-Way Permitting and Construction Manual, as amended, or other applicable regulation.

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

SECTION 8

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

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

8.1.1 **SiFi's Right to Cure or Respond**. Except as provided by Section 8.1.4 or otherwise provided by law or regulation, or in case of an emergency or an event that endangers the health, safety, or welfare of the public or property, SiFi shall have thirty (30) days from its receipt of a City Breach Notice (the "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, that if the Parties agree in writing, the SiFi Cure Period may be extended for an additional sixty (60) days in the event that the default is curable but due to the nature of the

default or noncompliance, such default or noncompliance cannot be cured within the SiFi Cure Period.

8.1.2 City Rights and Remedies. Except as provided by 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 Cure Period, the City may:

- (i) seek money damages from SiFi; or
- (ii) in the event of the breach of, noncompliance with or default under any material term of this Agreement (a “Material Breach”), terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

The City’s exercise of its rights and remedies under this Section 8.1.2 shall not be deemed a waiver of any other right or remedy of City.

8.1.3 Material Breach. City and SiFi agree that the following nonexclusive list of events constitute a Material Breach of this Agreement:

- (i) SiFi shall fail to provide proof of insurance as required by this License Agreement or fail to carry the required coverages of insurance as required by this License Agreement.
- (ii) SiFi shall fail to commence construction by the Construction Commencement Deadline, except to the extent an extension of time is provided under Section 4; or SiFi shall fail to meet the construction schedule provided under Section 4.
- (iii) SiFi shall fail to complete construction by the Construction Completion Deadline, except to the extent an extension of time is provided under Section 4.
- (iv) SiFi shall fail to pay to City any fee or charge by the required deadline as provided in Section 2.
- (v) SiFi shall fail to comply with any obligation included in Section 7.2.
- (vi) SiFi shall fail to comply with any local, state, or federal law.
- (vii) SiFi shall assign, sell, transfer, or otherwise convey its rights or interest in this License Agreement or sublet 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.
- (viii) SiFi shall fail to comply with any obligation included in Section 2.10.
- (ix) SiFi shall fail to obtain City’s prior consent before proceeding with any work, where such prior consent is required under this Agreement.

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

8.1.5 **New Agreement.**

(i) This Section 8.1.5 applies when the 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 thirty (30) 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, that if the Parties agree in writing, the City Cure Period may be extended for an additional sixty (60) days in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the City Cure Period.

8.2.2 SiFi Rights and Remedies. If the City fails to cure any actual noncompliance or default as provided in Section 8.2.1(ii) above within the 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 Agreement, terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

8.3 Additional Rights to Terminate.

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

8.3.2 Prior to commencing construction of the System, SiFi must have provided assurances to the satisfaction of the City from reputable financial institutions, banks, or investment banking firms that SiFi will receive sufficient funding or financing on a timely basis in order to complete construction of the System according to this 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 CONTRACTS AND IS BOUND TO INDEMNIFY, DEFEND AND HOLD THE CITY AND ITS EMPLOYEES, CONTRACTORS AND AGENTS WHOLE AND HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES, COSTS AND EXPENSES TO PERSONS OR PROPERTY THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE USE, OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM, INSTALLATIONS AND IMPROVEMENTS OR HAZARDOUS SUBSTANCES OR FROM ANY ACT OR OMISSION OF ANY REPRESENTATIVE, AGENT, CONTRACTOR AND/OR EMPLOYEES OF SIFI, AND WHERE LAWFUL, BY REASON OR AS A CONSEQUENCE OF HAVING GRANTED PERMISSION TO SIFI TO USE AND MAINTAIN PUBLIC PROPERTY, UNLESS DAMAGE OR OTHER LOSS OR INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR

WILLFUL MISCONDUCT OF THE CITY, ITS EMPLOYEES, CONTRACTORS OR AGENTS. SIFI SHALL MAKE NO CLAIM OF ANY KIND OR CHARACTER AGAINST THE CITY FOR DAMAGES THAT IT MAY SUFFER 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 GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8.4.2. 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 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 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 USE, OCCUPANCY AND MAINTENANCE OF SIFI'S SYSTEM REGARDLESS OF WHETHER OR NOT THAT ACTION WAS MANDATED BY THE FEDERAL, STATE, OR LOCAL GOVERNMENT.

8.4.3 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 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 Agreement, the provisions of this Section 8.5 will survive expiration or termination of this Agreement.

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

8.6.1. Notwithstanding any other provision, at such time as this 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 as provided by the City's Right-of-Way Permitting and Construction Manual, as amended, or other applicable regulation, at the sole cost of SiFi. Such work, if required, shall be commenced within thirty (30) days of termination, cancellation, nonrenewal, or expiration of this License Agreement and shall be completed within ninety (90) days thereafter. In the event, upon termination, cancellation, nonrenewal, or expiration of this 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 as provided by the City's Right-of-Way Permitting and Construction Manual, as amended, or other applicable regulation, 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 that this Agreement is terminated, not renewed, or cancelled, there will be no refund of any amounts paid to the City under this Agreement and City shall retain all compensation paid in accordance with this Agreement. In the event of termination, nonrenewal, or cancellation by the City or SiFi, as the case may be, 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 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, 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) 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 Tarrant County, Texas, 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 with, 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 Northern District of Texas, or if there is no federal court jurisdiction, the state courts in Tarrant County, Texas.

SECTION 10

10. Miscellaneous Provisions

10.1 Assignment.

(i) SiFi may assign or transfer this Agreement in whole or in part, or sublet all or any part of the License Areas to any entity who is an Affiliate of SiFi without the City's prior written consent; provided however, that SiFi provides the City with at least thirty (30) days' notice prior to assignment or transfer. For purposes of this Section 10.1, 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 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 due under this License Agreement prior to assignment or transfer to an Affiliate.

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

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

(B) the proposed Assignee may be required by 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 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 due to any proposed transfer, assignment or subletting whether such transaction is approved, approved with conditions or denied within thirty (30) days of such approval or denial.

(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., 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 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 City and be promptly paid to City.

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 noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of this Agreement), where such noncompliance 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, governmental, administrative or judicial order, or other event that is beyond the Party's reasonable control. If a

Force Majeure Event occurs, SiFi may be entitled to additional time to fulfill certain obligations, but only to the extent specified in other sections of this Agreement. Notwithstanding any other provision to the contrary, the occurrence of a Force Majeure Event does not excuse SiFi from making timely payments of any fees or other amounts due to the City under this Agreement. Further, the occurrence of a Force Majeure event does not entitle SiFi to additional time to pay any fees or other amounts due to the City under this Agreement. If a Force Majeure event occurs, City will be entitled to additional time to fulfill its obligations. Notwithstanding the foregoing, each Party agrees to make a good faith effort to perform its obligations hereunder.

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 as otherwise provided by this Section, or by electronic mail to one or more specified e-mail addresses provide by the City, and addressed as follows:

IF TO THE CITY:
City Manager, City of Arlington
101 West Abram St.
Arlington, Texas 76010

and

City Attorney, City of Arlington
101 South Mesquite St., Suite 300
Arlington, Texas 76010

IF TO SIFI:
SiFi Networks Arlington 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 the State, irrespective of conflict of laws principles. This Agreement shall be entered into subject to the Charter and ordinances of City, as they may be amended from time to time.

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

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

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

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

10.11 **Representations and Warranties.**

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

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

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

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

10.13 **No Partnership.** Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the City and SiFi or any other relationship other than a contractual relationship as expressly set forth in this Agreement. Neither Party shall in any manner act or indicate to any third party that it 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.

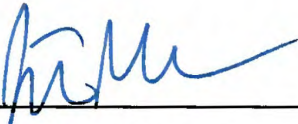
[Signature page follows]

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

CITY OF ARLINGTON,

a municipal corporation

Dated: June 16, 2021



Jennifer Wichmann
Deputy City Manager

Approved as to form:

ATTEST:

 6-15-21



Alex Busken, City Secretary


Teris Solis

City Attorney

SIFI NETWORKS ARLINGTON LLC,

a Delaware limited liability company

Dated: 10th June, 2021

By: 

Its: CEO



EXHIBIT A
CITY OF ARLINGTON
PUBLIC RIGHT-OF-WAY/EASEMENT CONSTRUCTION
PERMIT APPLICATION

Though the Contractor acting as an agent, the Service Provider shall perform all work in the public right-of-way/public easements in accordance with City ordinances, specifications, and standards as they apply to such work. No change shall be made to the plans under this permit without prior written approval from the City. The Service Provider/Contractor must obtain a permit prior to commencing work. Permits are valid for 90 days. Please allow at least three (3) business days for processing.

- THIS FORM MUST BE COMPLETELY FILLED OUT PRIOR TO APPROVAL OF PERMIT.
• Line locates for City Utilities must be obtained prior to construction. Give 2 Working Days Notice.
• The City of Arlington Right-Of-Way Permit Inspector must be notified at rowinspector@arlingtontx.gov at least 48 hours prior to beginning construction.
• (1) ONE PLAN SET must be attached. The City of Arlington cannot provide copies for the applicant.
• An approved Traffic Control Plan must be submitted with this ROW Permit Application. A Stormwater Pollution Prevention Plan and Trench Safety Plan may also be required, if applicable.
• A copy of this permit must be maintained on site at all times.

SERVICE PROVIDER:

The undersigned hereby makes application for a permit covering the proposed work at:

Project Work Dates: Start Date: Completion Date:

Beginning Street Address / Cross Streets:

Ending Street Address / Cross Streets:

In Right-of-Way In Easement

Purpose: Install New Service Repair Existing Facilities Other

Project Number (if applicable):

Service Provider: ONCOR Atmos Gas Time Warner/Charter/Spectrum ATT

Natural Gas Pipeline Zayo Other

(Print Company Name)
(If Other, the Company must register with the City prior to submitting a permit.)

City Project (Project Name/Number)

Service Provider Contact Name:

Service Provider Contact Number: Email:

Contractor Company Name:

Contractor Address:

Contractor Contact Name (Print):

Contractor Contact Number: Email:

Contractor Driver's License #:

I hereby certify that I have read and examined the application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local ordinances regulating construction, the performance of construction, or the use of land including ROW or structure.

SIGNATURE OF APPLICANT: DATE:

PERMIT NO.

EXHIBIT B

SPECIFICATIONS-SHELTERS-CABINETS
FIBER CITY TYPICAL SPECIFICATIONS
5/12/2021

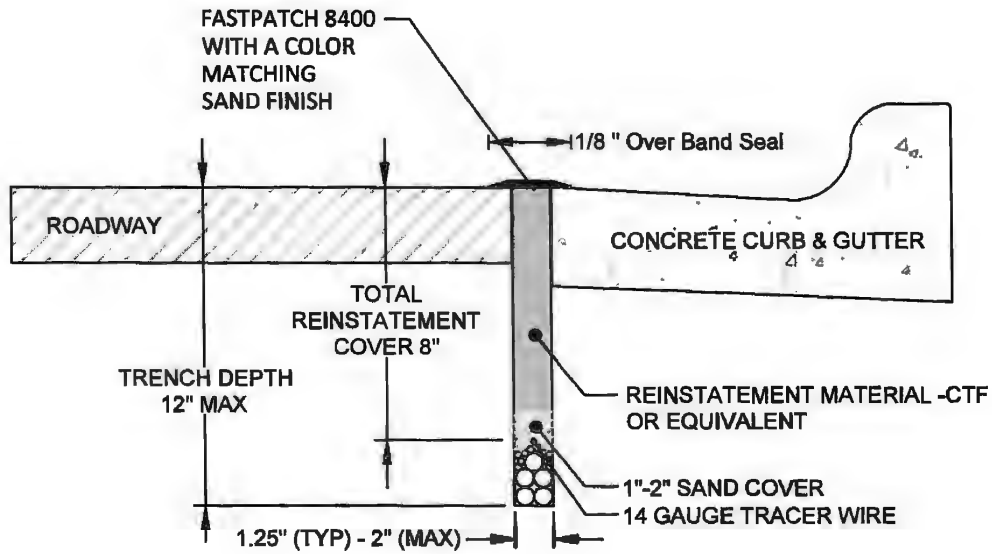
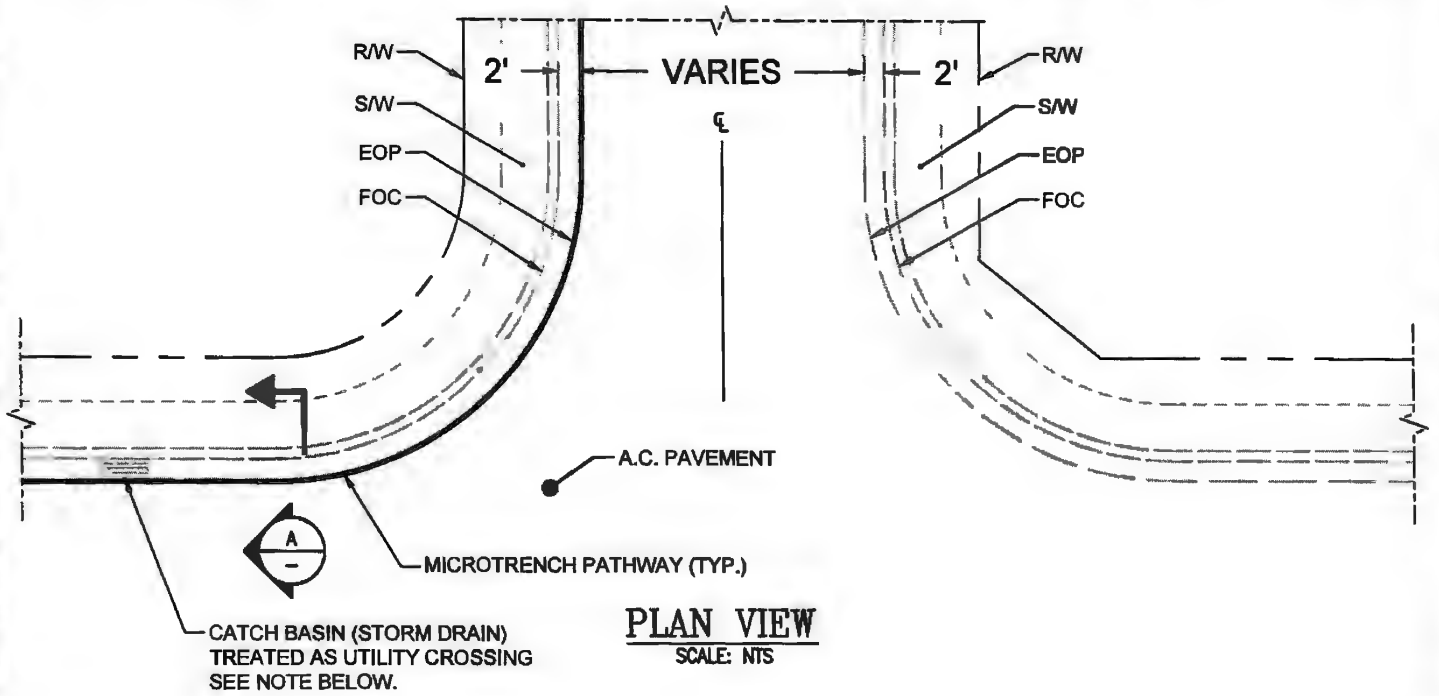


City Of Arlington	Lat Long Infrastructure
Name:	Name:
Position:	Position:
Date:	Date:
Signature:	Signature:

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Ⓒ Roadway W/ Curb & Gutter Variant B	5
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ROADWAY WITH A CURB RETURN



ROADWAY
WITH A CURB
RETURN

NO.	REVISIONS	BY	DATE

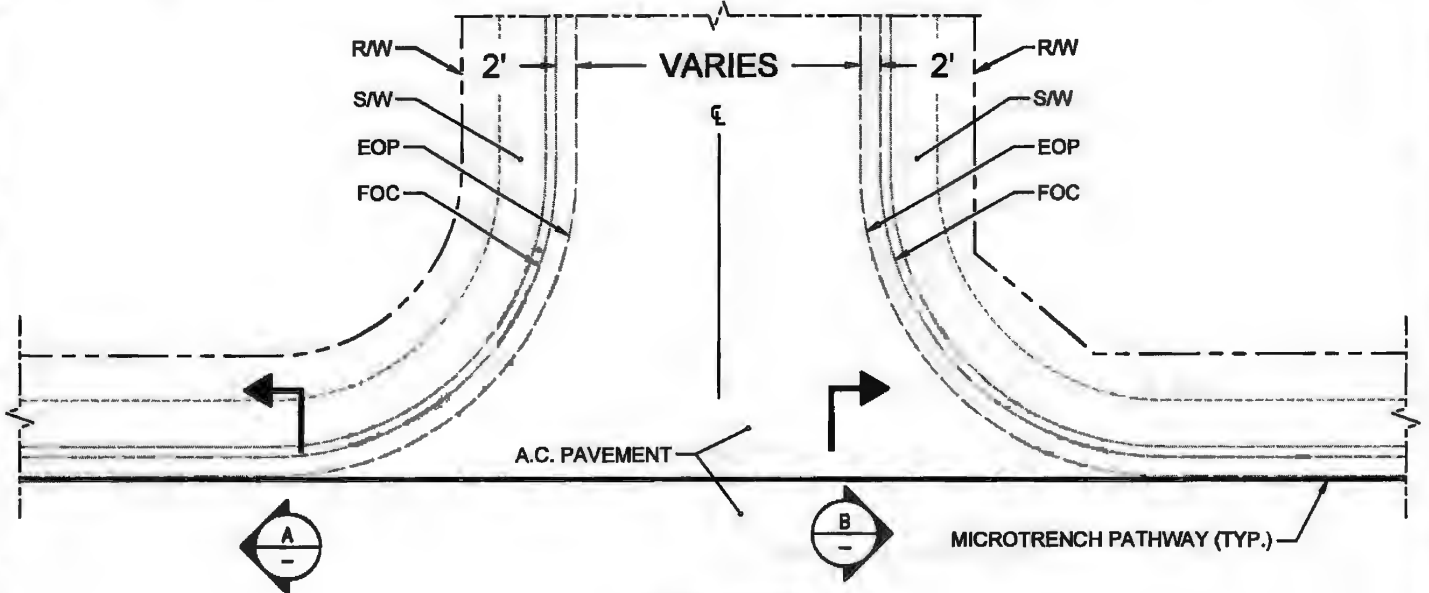
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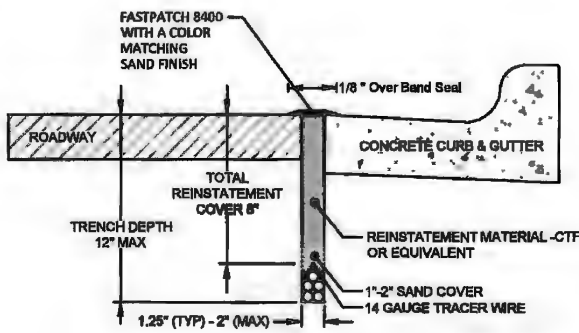


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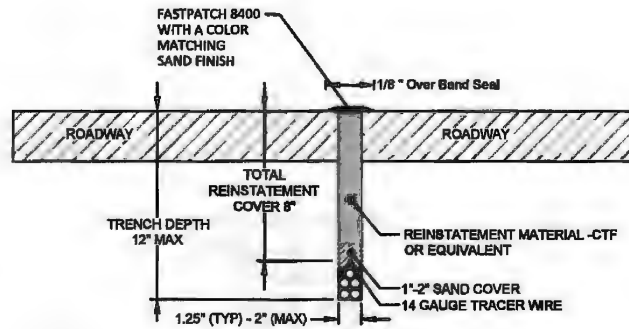
ROADWAY WITH CURB & GUTTER - VARIANT A



PLAN VIEW



SECTION VIEW A-A

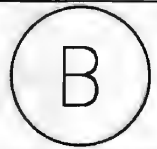


SECTION VIEW B-B



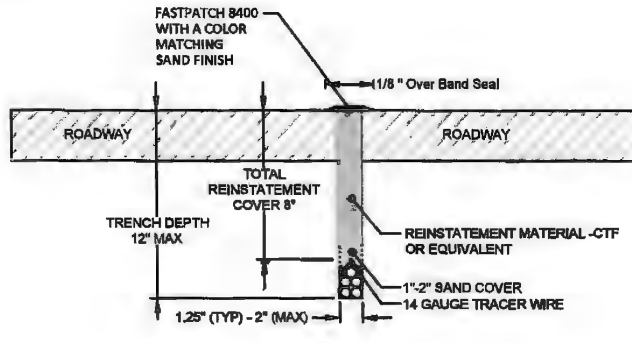
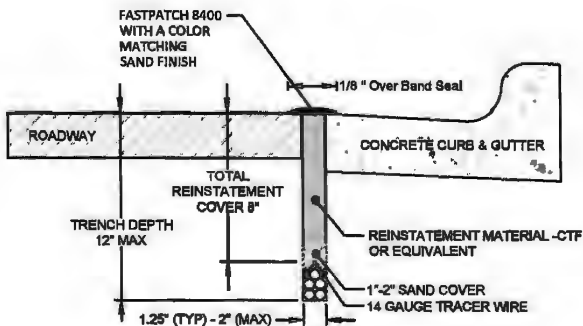
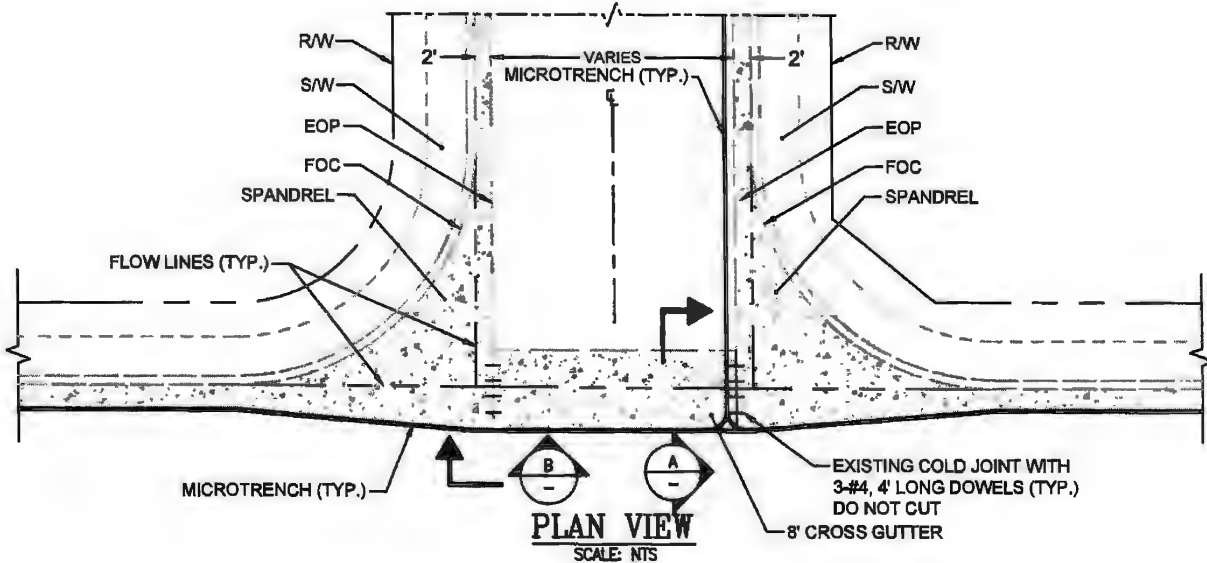
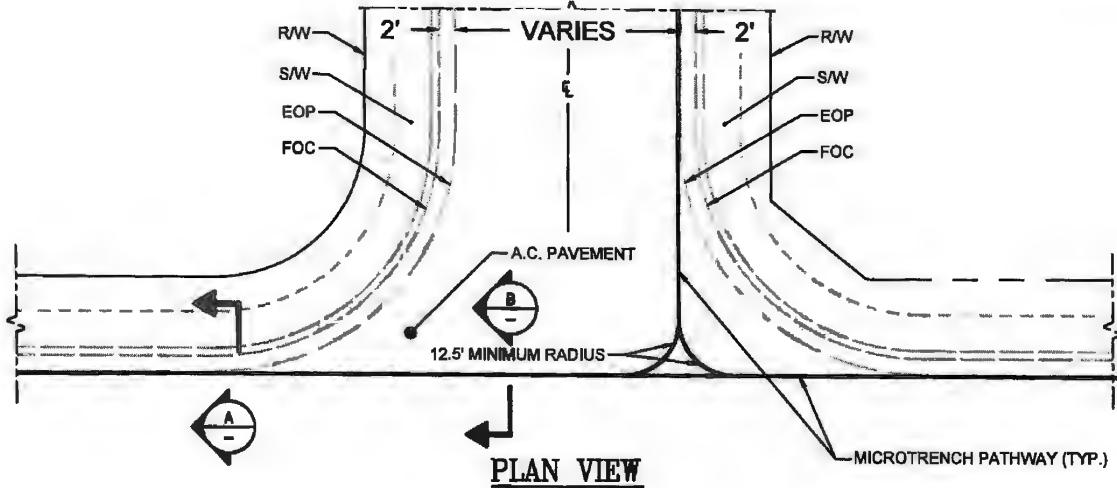
**ROADWAY
WITH A CURB
RETURN VARIANT A**

NO.	REVISIONS	BY	DATE
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PAGE# 4

ROADWAY WITH CURB AND GUTTER - VARIANT B



ROADWAY WITH A CURB RETURN VARIANT B

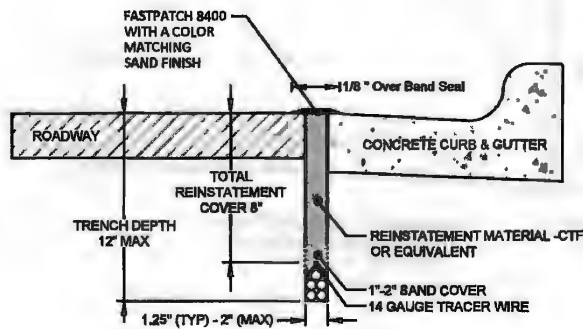
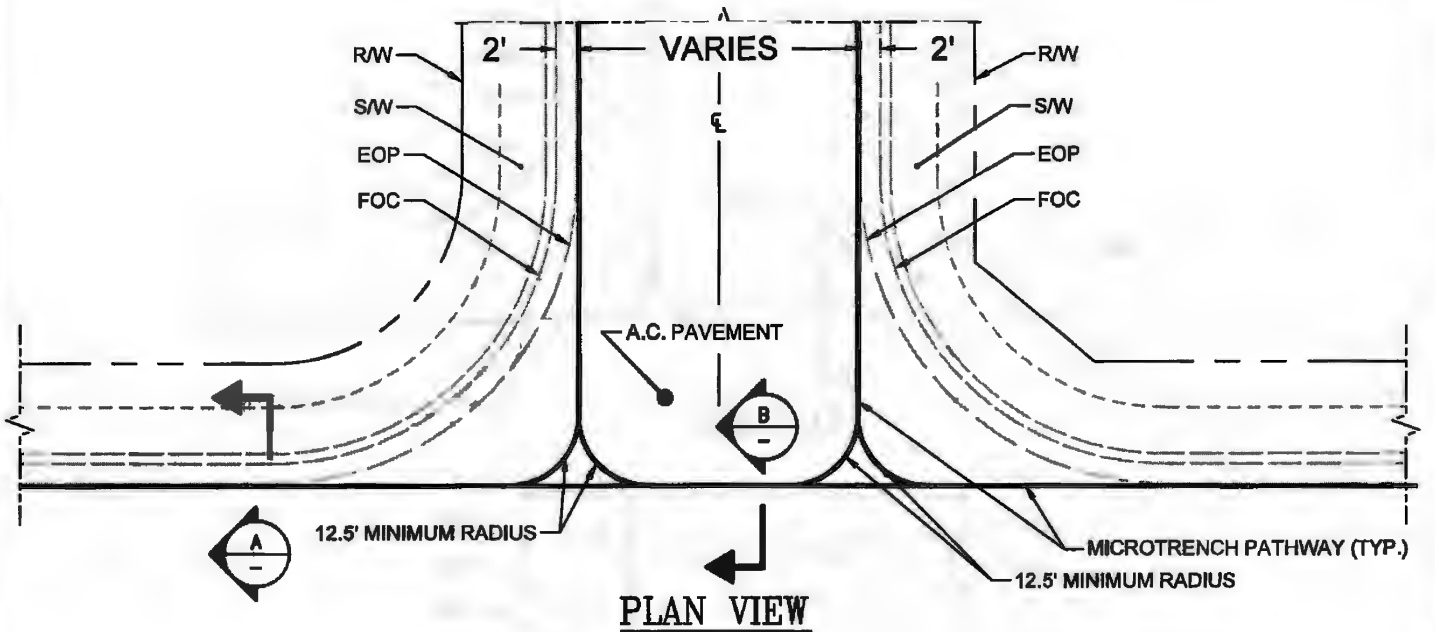
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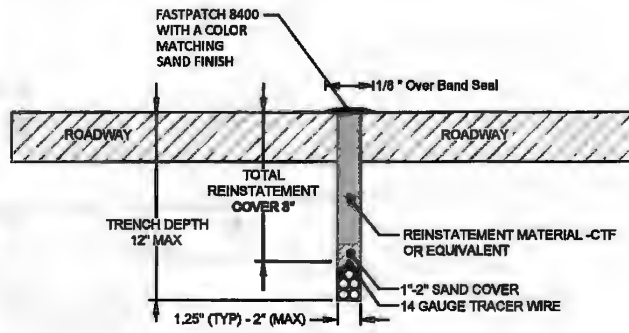
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C

ROADWAY WITH CURB AND GUTTER - VARIANT C



SECTION VIEW A-A



SECTION VIEW B-B



ROADWAY WITH A CURB AND GUTTER VARIANT C

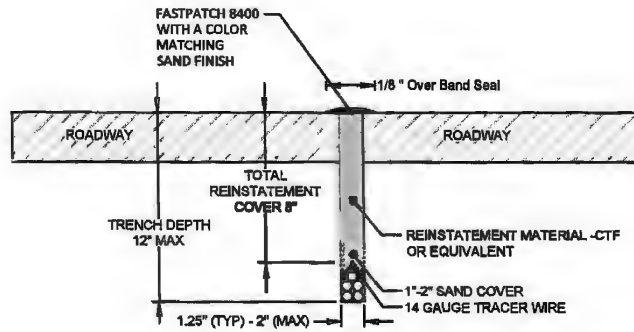
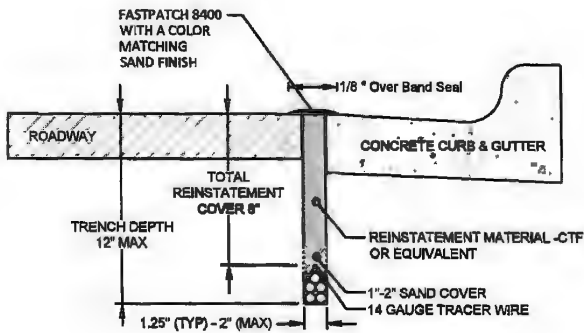
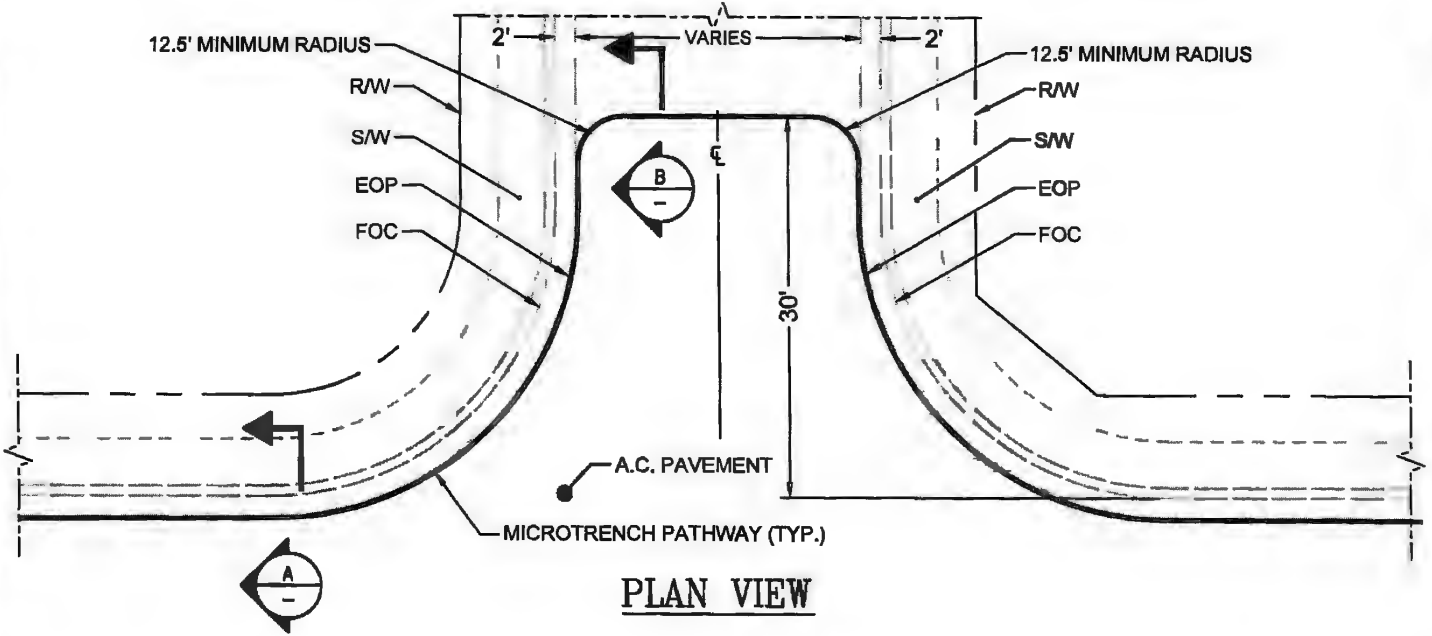
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ROADWAY CROSSING



ROADWAY CROSSING

NO.	REVISIONS	BY	DATE

STD DWG

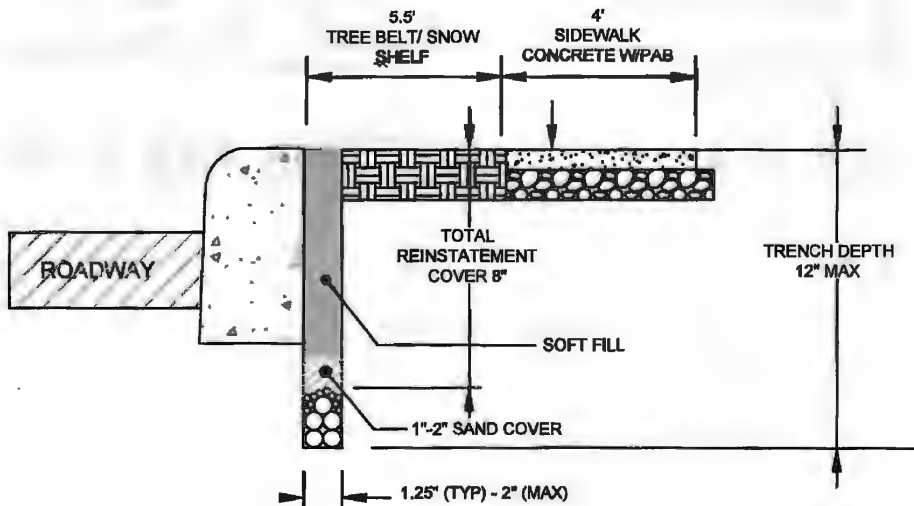
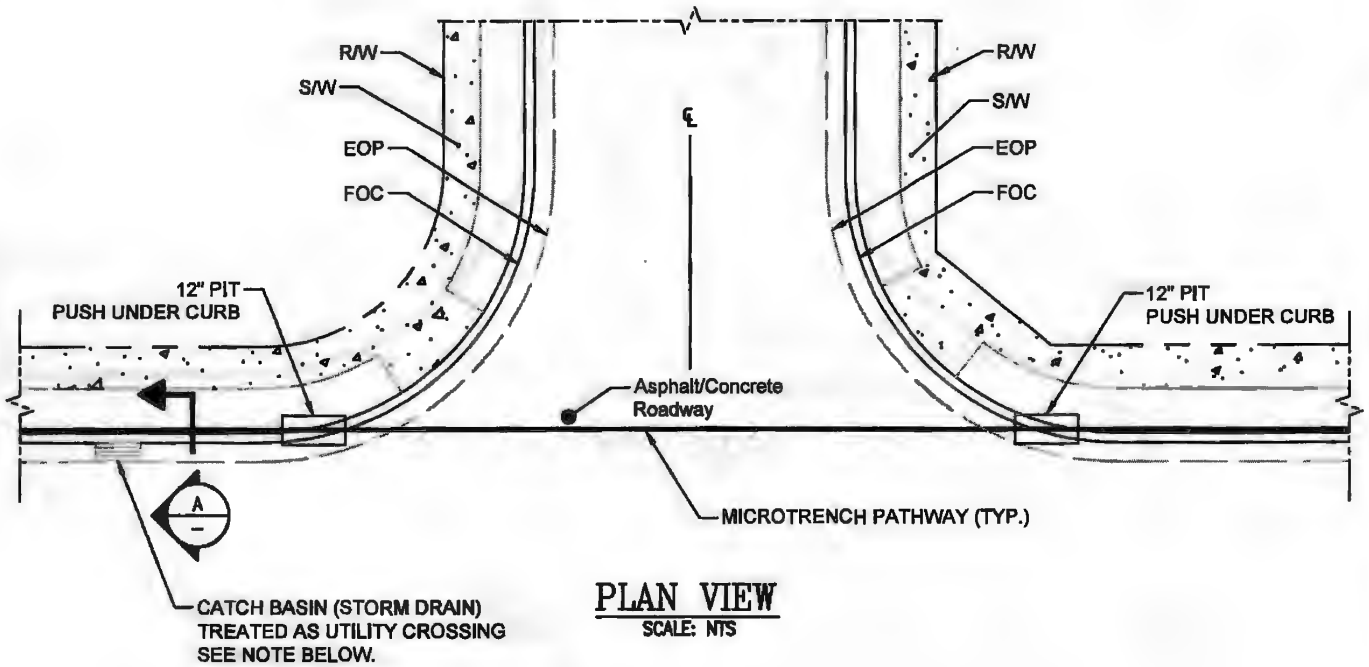
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ASPHALT/CONCRETE ROAD CROSSING FROM BACK OF CURB

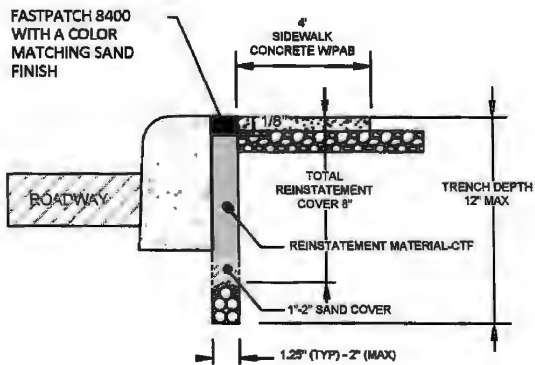
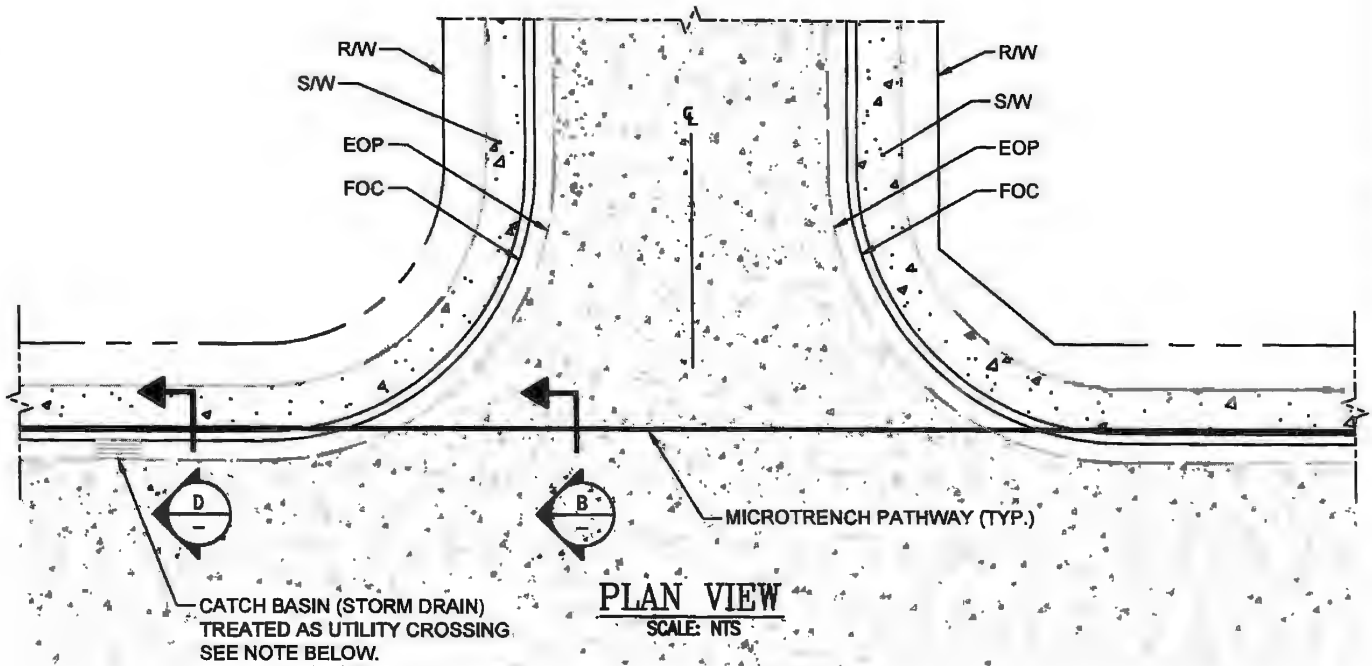


ASPHALT/CONCRETE ROAD CROSSING FROM BACK OF CURB

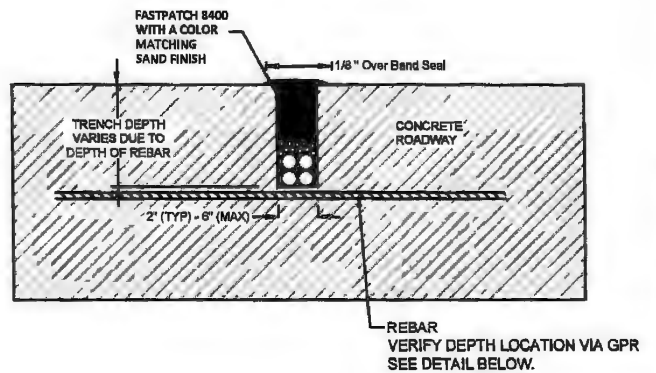
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NOT TO SCALE			



CONCRETE ROAD CROSSING FROM BACK OF CURB



SECTION VIEW D-D



SECTION VIEW B-B



CONCRETE ROAD
CROSSING FROM
BACK OF CURB

NO.	REVISIONS	BY	DATE

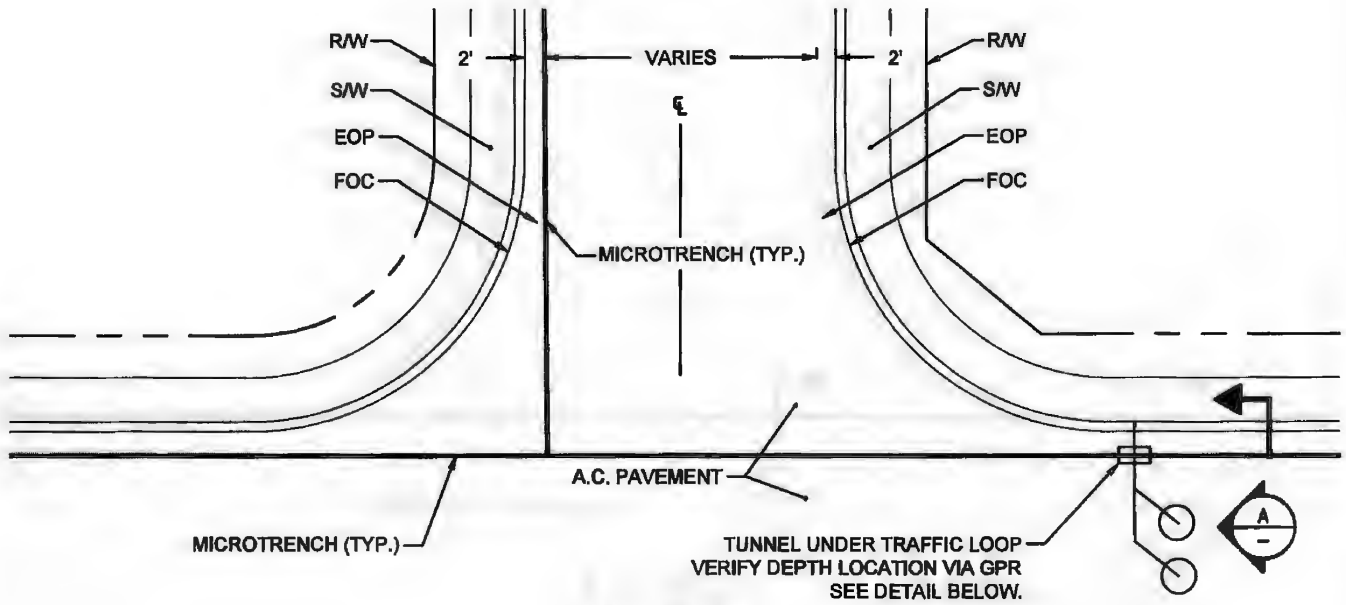
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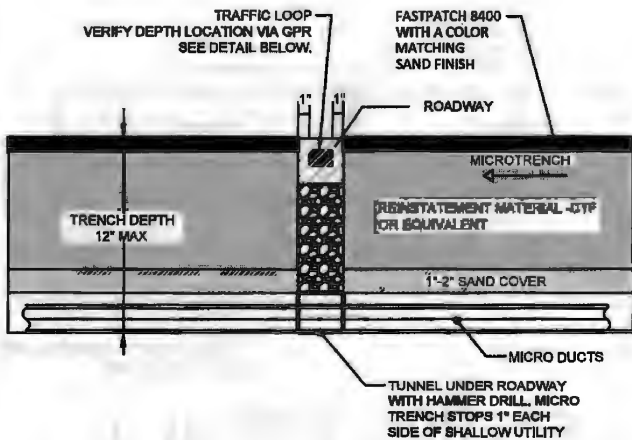


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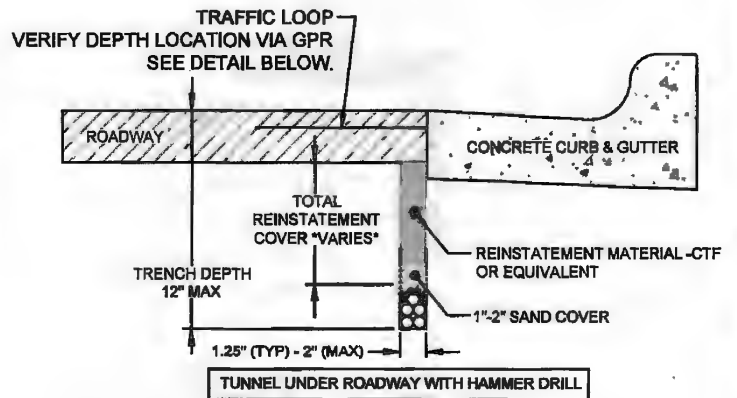
Micro Trench/Traffic Loop



PLAN VIEW
SCALE: NTS



PROFILE



SECTION VIEW A-A



MICRO TRENCH/TRAFFIC LOOP

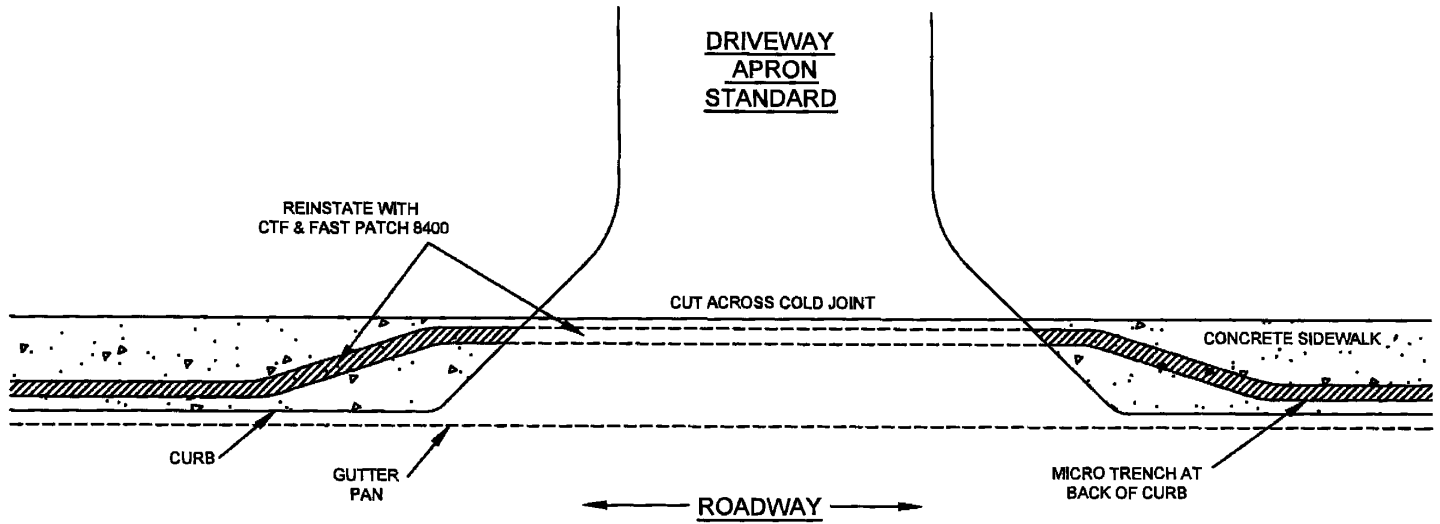
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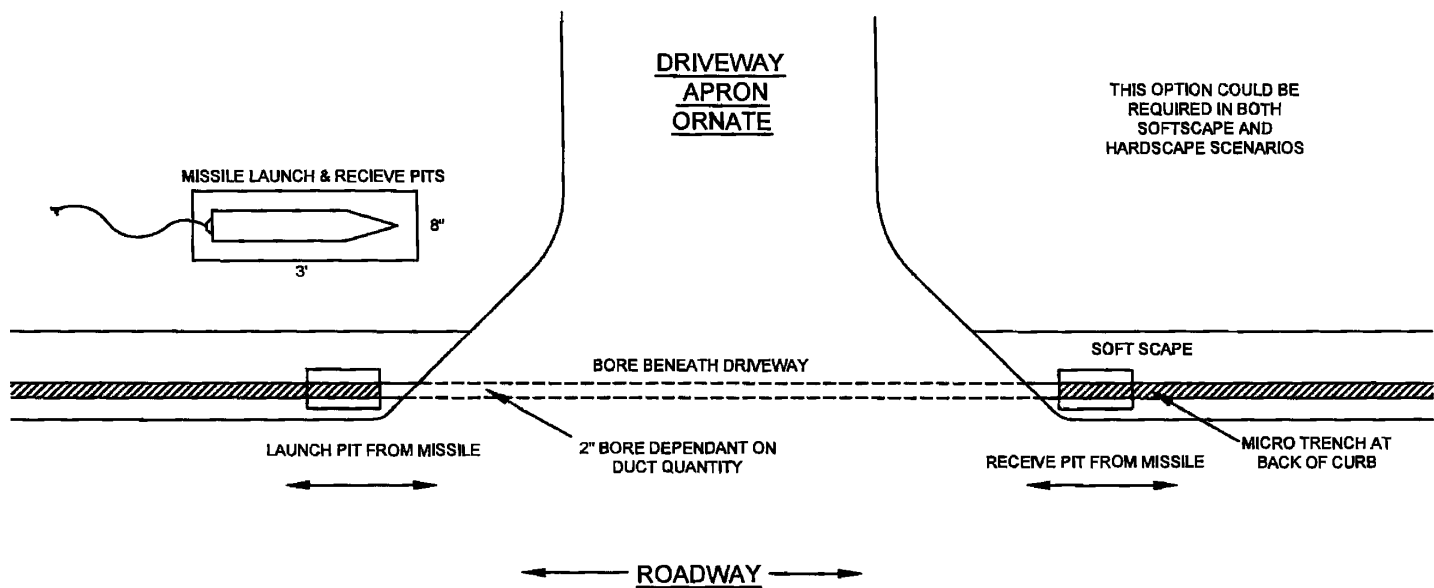


DRIVEWAY APRON VARIANTS

VARIATION A

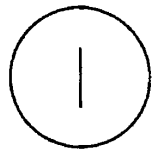


VARIATION B



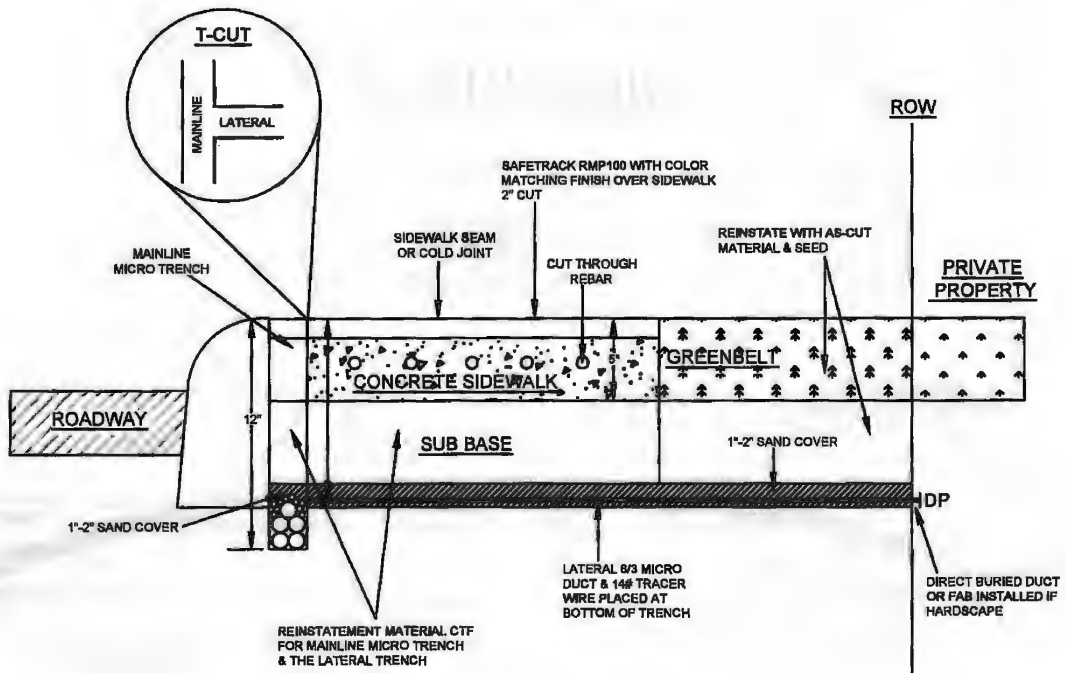
DRIVEWAY APRON CROSSING

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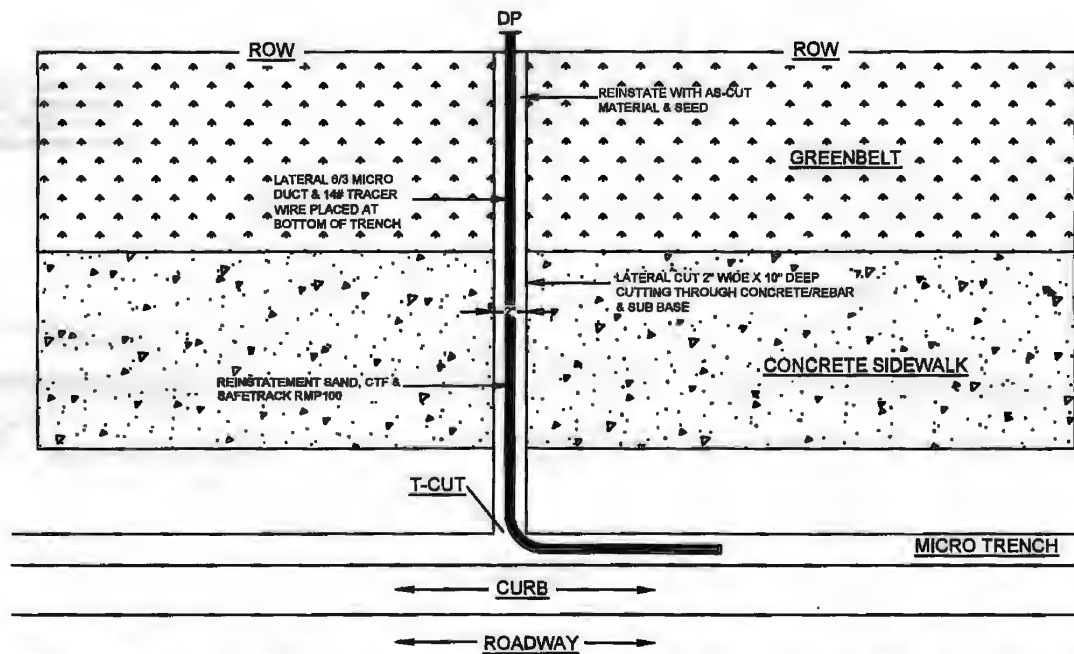


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LATERALS FROM BACK OF CURB OPTIONS DETAIL A



LATERALS FROM BACK OF CURB OPTIONS DETAIL B



LATERALS FROM BACK OF CURB OPTIONS

NO.	REVISIONS	BY	DATE

STD DWG

NOT TO SCALE



STANDARD CHAMBER/INLET PROTECTION

FEATURES:

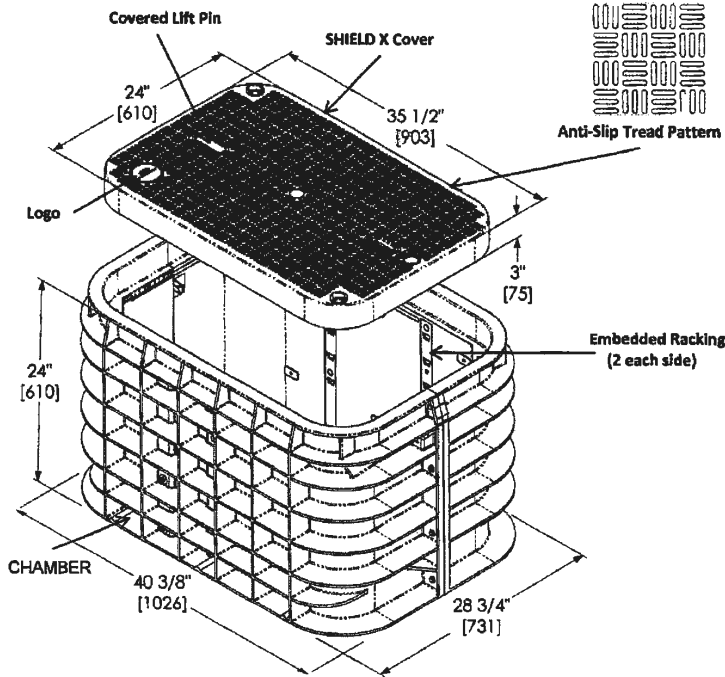
- 24" X 36" X 24" (open floor) (actual dimensions on drawing)
- CHAMBER - SHIELD X COVER- Tier 22 Load Rated (ANSI/SCTE 77: 2013)
- (2) Cover locking Auger bolts, Hex (9/16") or Penta (7/8") head with washer
- (2) Non-Seizing Fastening System, Field Replaceable
- (4) Embedded Composite Rack Support
- (2) Lifting slot equipped with stainless steel pin (slot is approximately 2 3/4"x3/4")
- (2) Winterized Cable Drop slide (1 1/4" X 1 1/4")
- (1) Logo Disk

WEIGHT & SHIPPING:

- Cover Weight: 47 lbs
- Box Weight: 55 lbs
- Assembly Weight : 102 lbs

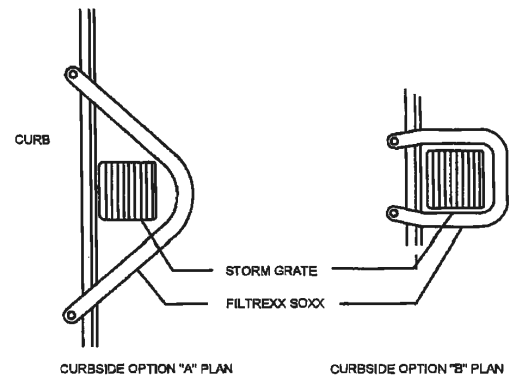
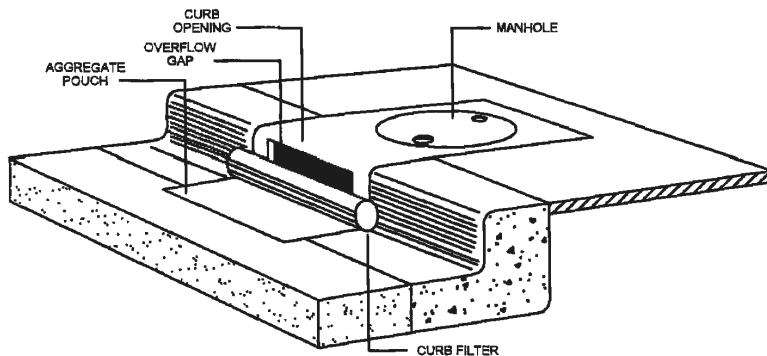
PERFORMANCE TESTING:

- ANSI/SCTE 77: 2013 - TIER 22 Rated (33,750 lbs)
- AS3996 - Class C
- EN124 Class B125
- ASTM C1028-07 & AS-4586 (Slip Resistance)
- 10,000 Hour Xenon-Arc Exposure (No fiber-bloom)
- ASTM D635-06 (Flammability)



Inside Dimensions		
Length	Width	Depth
34 3/8" [873]	22 3/4" [578]	21" [533]

EXCESS SOXX MATERIAL TO BE DRAWN IN AND TIED OFF TO 2X2 WOODEN STAKE (TYP.)

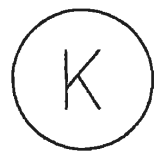


INLET PROTECTION

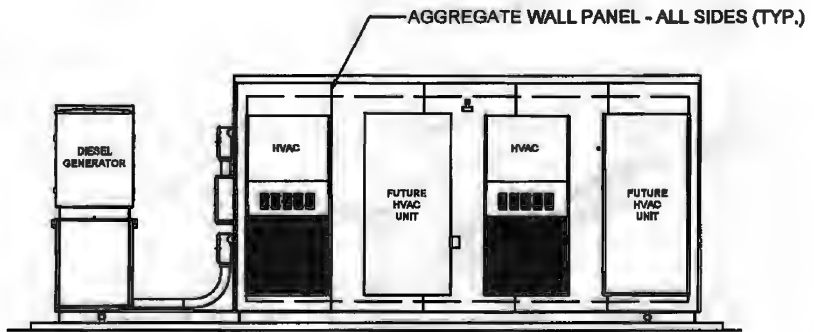
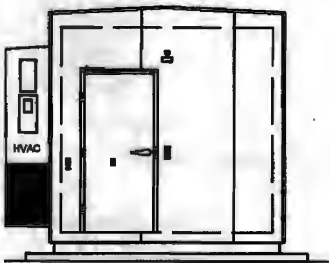
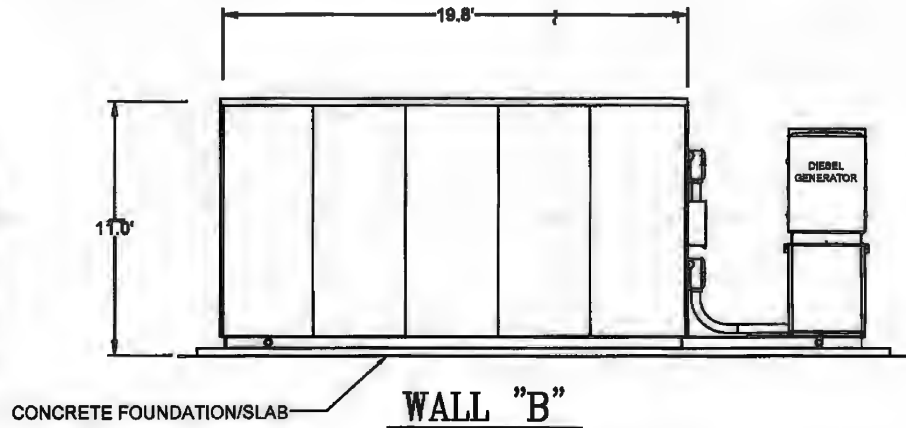
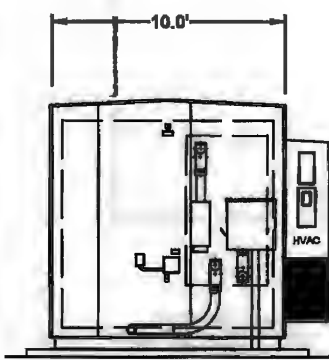
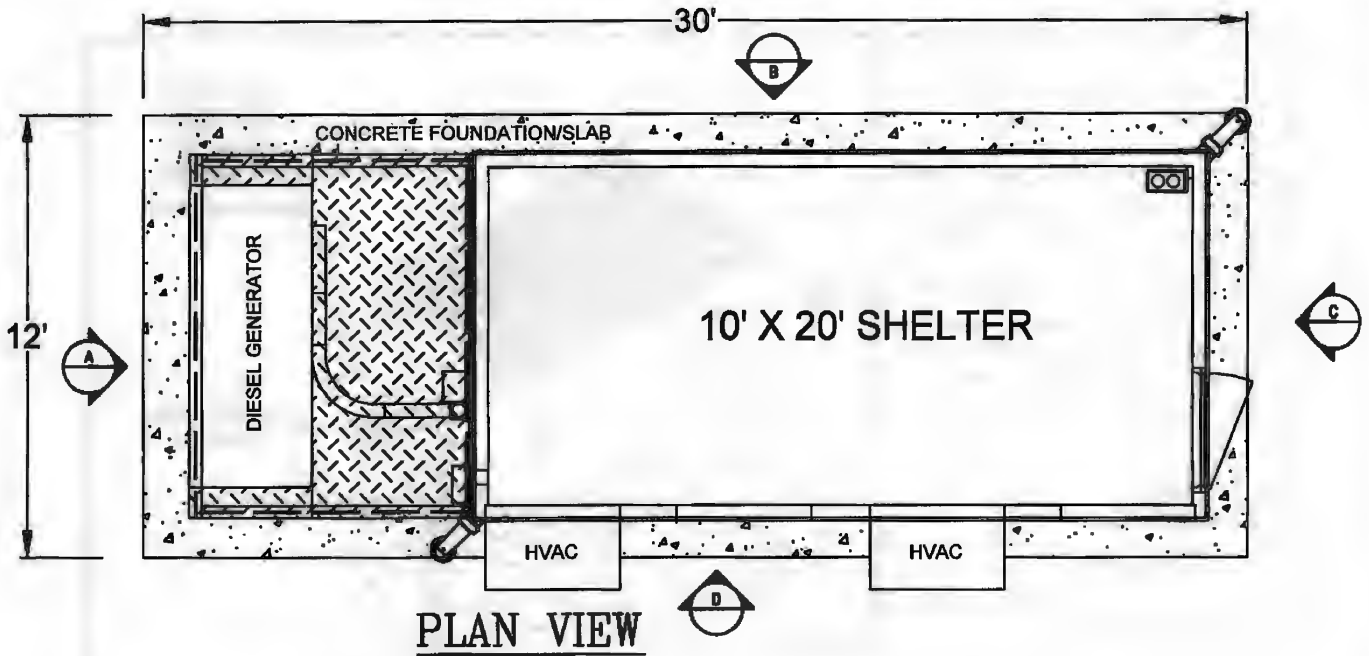


STANDARD CHAMBER/INLET PROTECTION

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



TYPICAL AGGREGATION SHELTER



TYPICAL AGGREGATION SHELTER

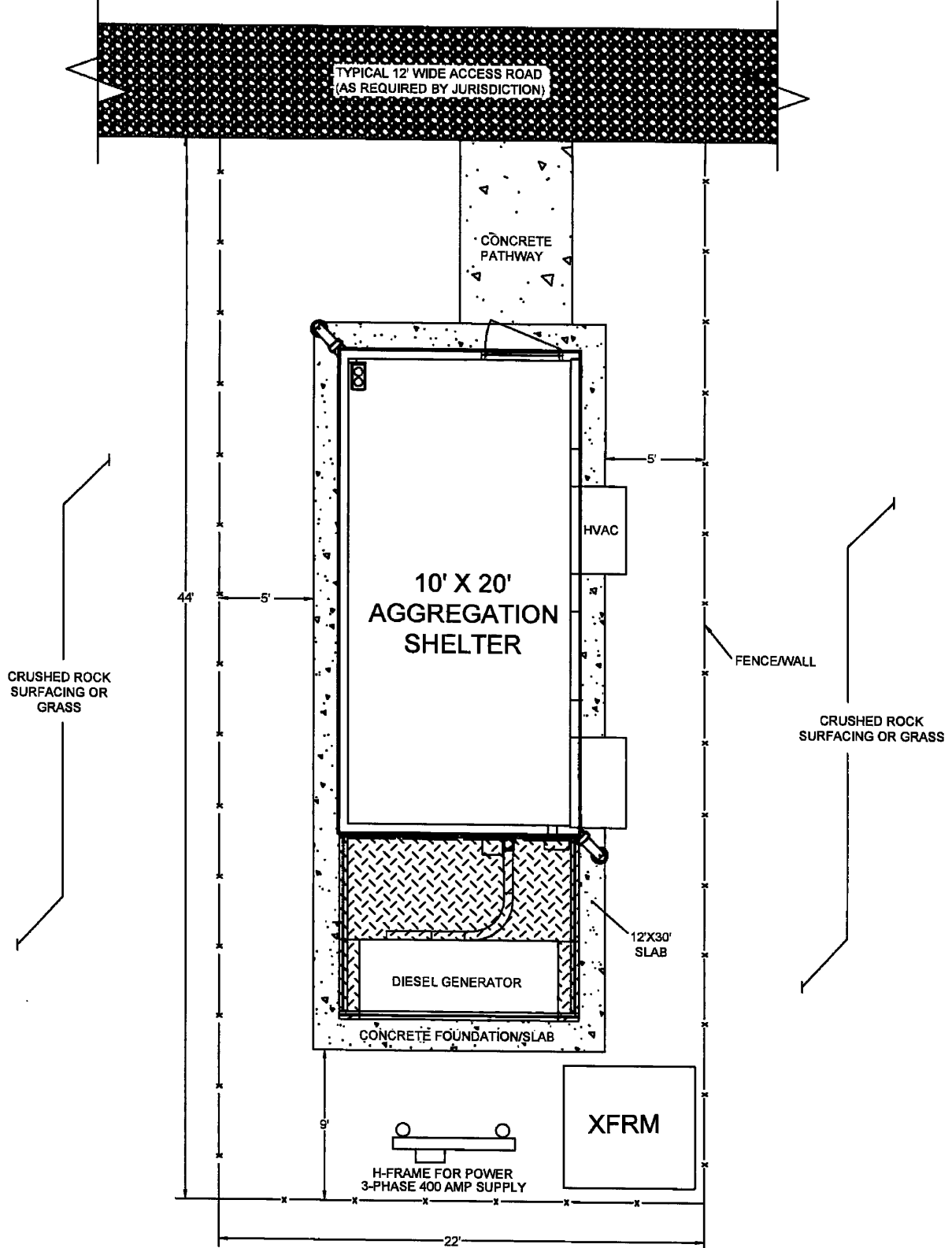
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STD DWG

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TYPICAL AGGREGATION SHELTER



SITE LAYOUT



TYPICAL AGGREGATION SHELTER

NO.	REVISIONS	BY	DATE



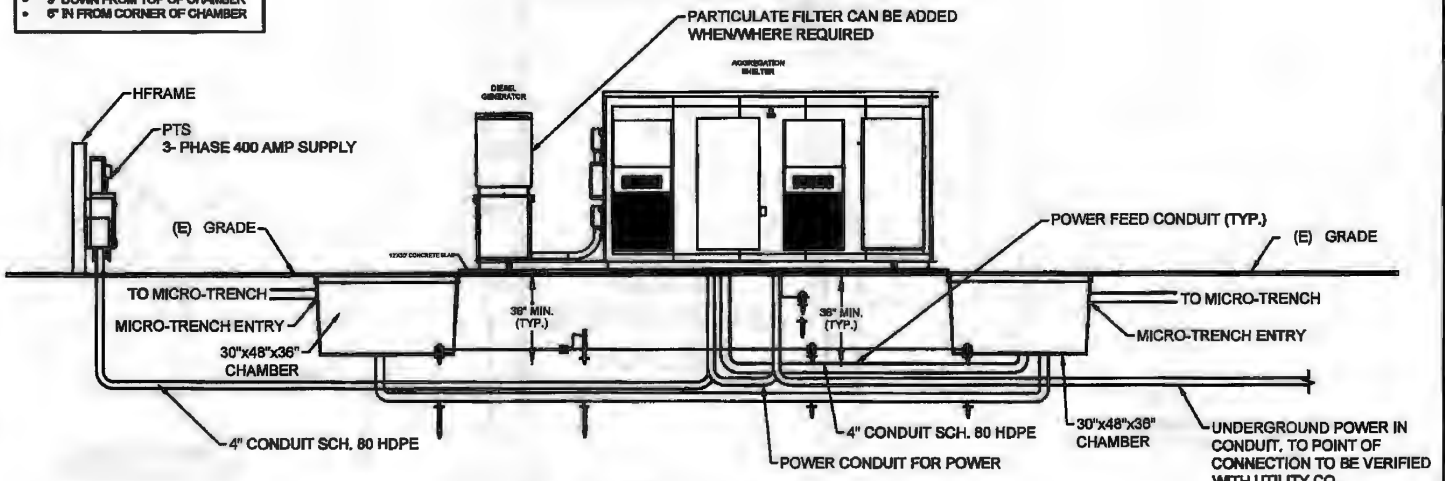
STD DWG

NOT TO SCALE

TYPICAL AGGREGATION SHELTER ELEVATION VIEW

MICRO TRENCH ENTRY NOTE:

- 4" DIAMETER PENETRATION
- 3" DOWN FROM TOP OF CHAMBER
- 6" IN FROM CORNER OF CHAMBER

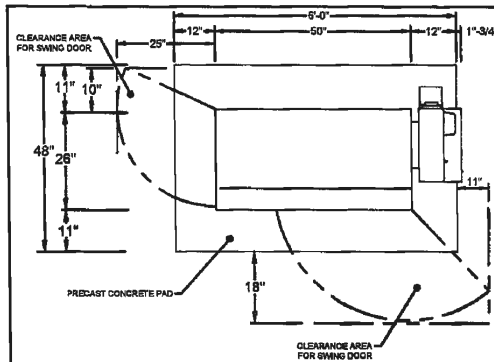
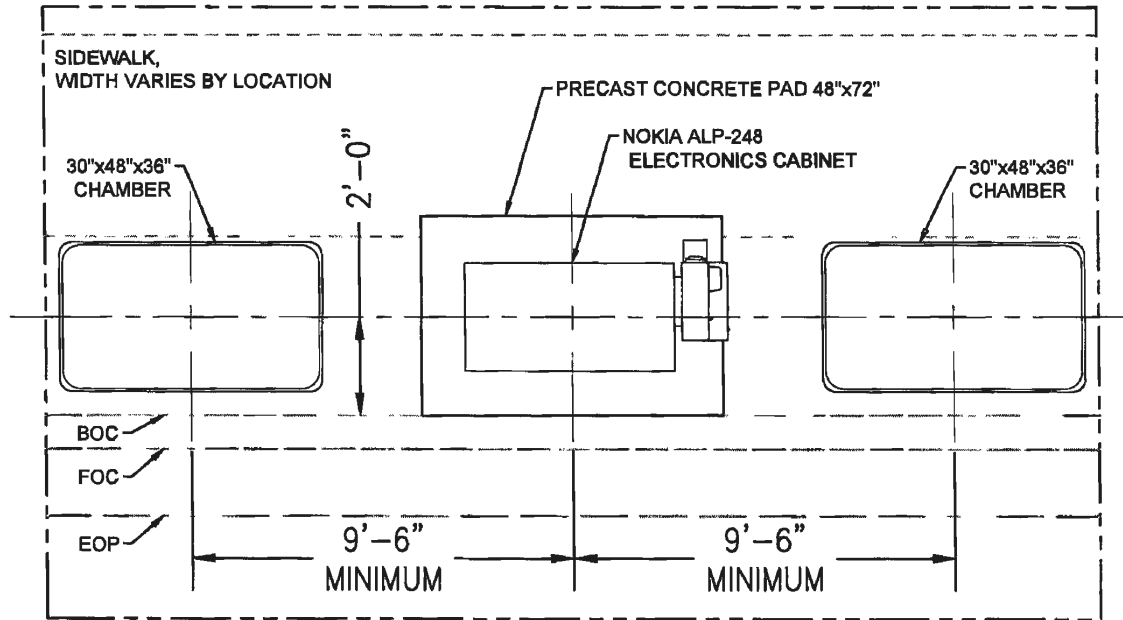


TYPICAL AGGREGATION SHELTER ELEVATION VIEW

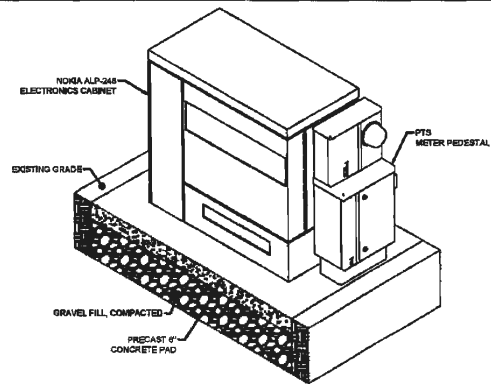
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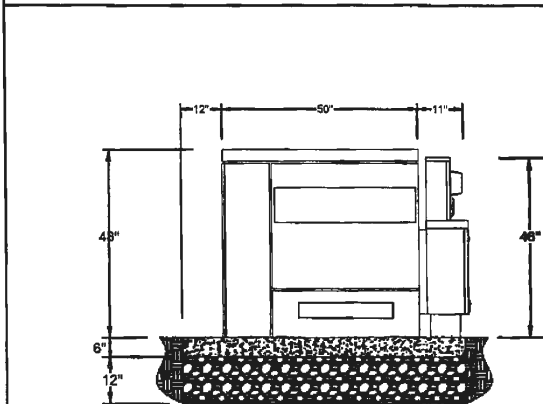
TYPICAL CABINET DETAILS



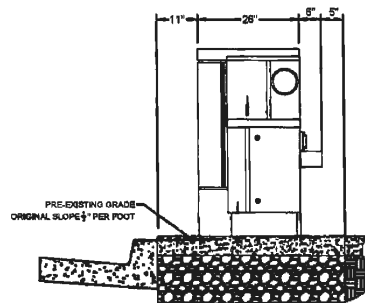
TYPICAL CABINET DETAILS



BASE VIEW



SIDE VIEW



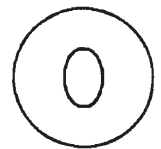
PANEL VIEW

ELEVATION SHOWN AS EXAMPLE:
 • 4" PARALLELITY STRIP
 • TYPE S1 6" CURB AND GUTTER



TYPICAL CABINET DETAILS

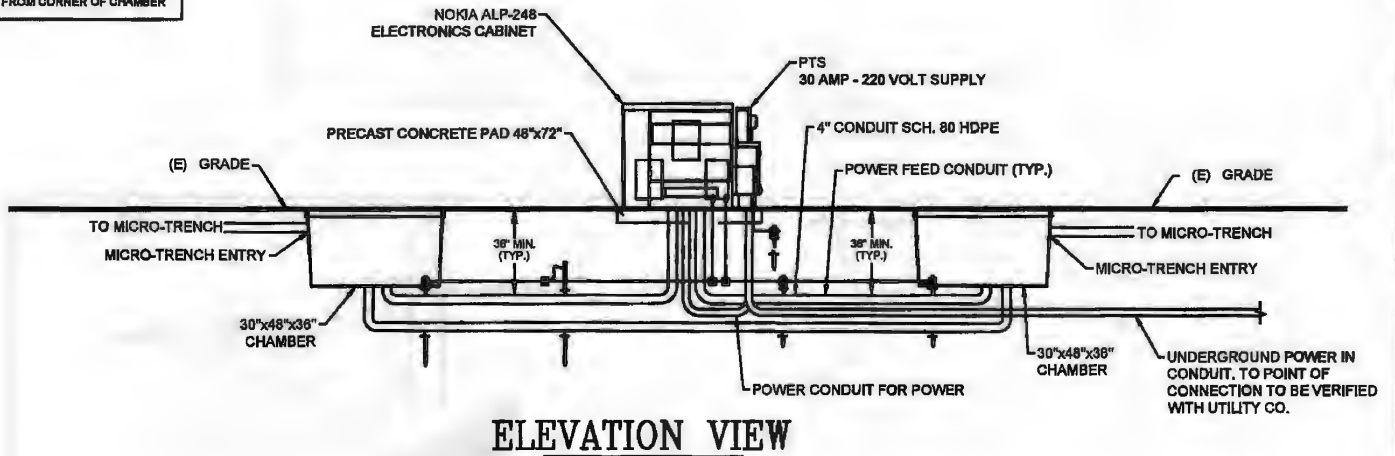
NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



TYPICAL CABINET DETAILS

MICRO TRENCH ENTRY NOTE:

- 4" DIAMETER PENETRATION
- 8" DOWN FROM TOP OF CHAMBER
- 8" IN FROM CORNER OF CHAMBER



TYPICAL CABINET DETAILS

NO.	REVISIONS	BY	DATE

STD DWG

NOT TO SCALE



CABINET & AGGREGATION SHELTER

FEATURES:

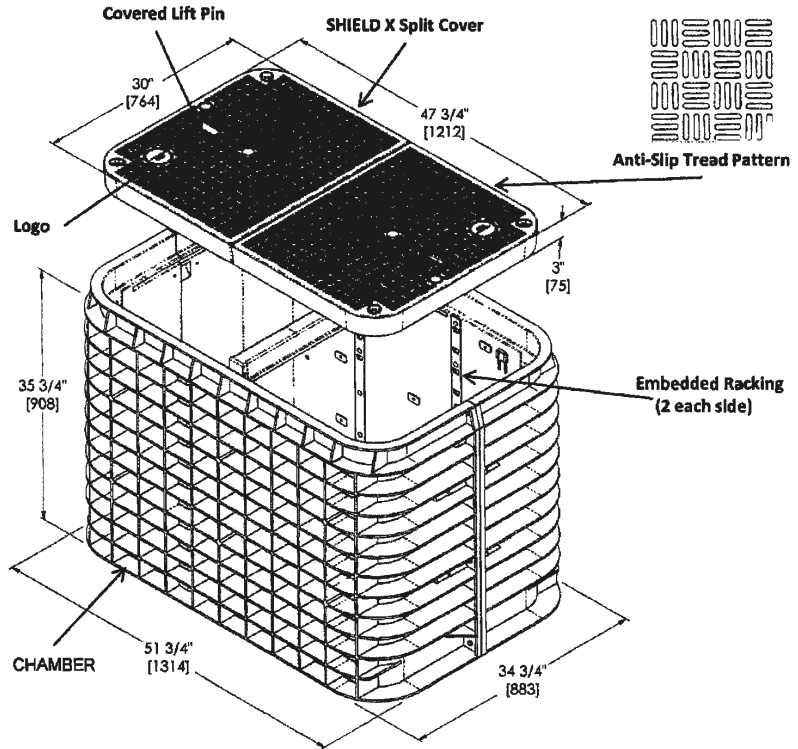
- 30" X 48" X 36" (open floor) (actual dimensions on drawing)
- CHAMBER — SHIELD X Split COVER- Tier 22 Load Rated (ANSI/SCTE 77: 2013)
- (4) Cover locking Auger bolts, Hex (9/16") or Penta (7/8") head with washer
- (4) Non-Seizing Fastening System, Field Replaceable
- (4) Embedded Composite Rack Support
- (1) Lifting slot equipped with stainless steel pin (slot is approximately 2 3/4"x3/4")
- (4) Winterized Cable Drop slide (1 1/2" X 1 1/2")
- (1) Galvanized Center Beam
- (2) Logo Disk

WEIGHT & SHIPPING:

- Cover Weight: 50 lbs (Per Half)
- Box Weight: 129 lbs
- Assembly Weight : 229 lbs

PERFORMANCE TESTING:

- ANSI/SCTE 77: 2013 - TIER 22 Rated (33,750 lbs)
- AS3996 – Class C
- EN124 Class B125
- ASTM C1028-07 & AS-4586 (Slip Resistance)
- 10,000 Hour Xenon-Arc Exposure (No fiber-bloom)
- ASTM D635-06 (Flammability)

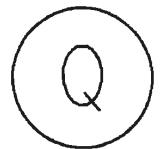


Inside Dimensions		
Length	Width	Depth
46 1/2" [1180]	28 3/4" [730]	32 1/2" [832]



CABINET & AGGREGATION SHELTER

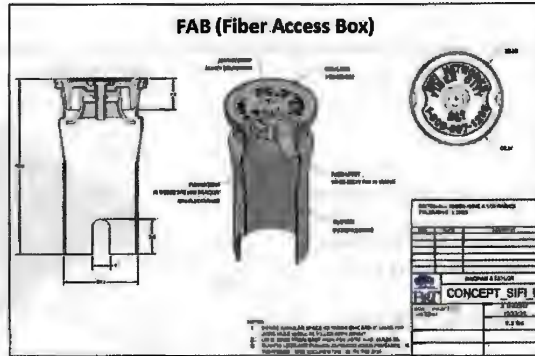
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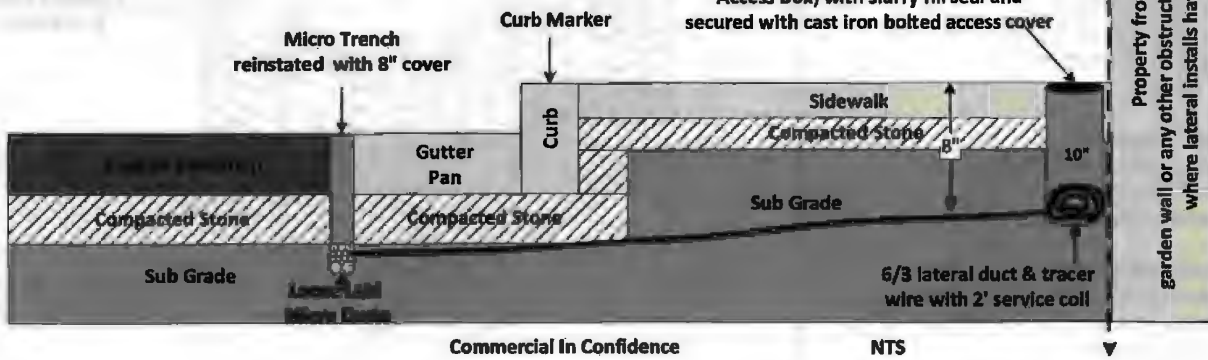
FAB DETAILS

Hardscape Lateral Typical With FAB Installed At ROW Obstruction

Lateral duct installation can either be installed by cutting a narrow micro trench from above, across the gutter pan curb & sidewalk & cold joint, or boring from the street beneath the gutter pan, curb & sidewalk. A neat 6" core cut at the edge of ROW 10" deep will allow FAB (Fiber Access Box) to be installed for ease of duct retrieval on service installs. This core cut would allow the FAB to be installed neatly with minimum reinstatement and would maintain the integrity and asphetic look of the sidewalk without the need to replace whole concrete sidewalk sections.



6" diameter core cut 10" deep with 5.4" diameter pedestrian rated FAB (Fiber Access Box) with slurry fill seal and secured with cast iron bolted access cover



Commercial In Confidence

NTS

FAB AT ROW



FAB DETAILS

NO.	REVISIONS	BY	DATE

STD DWG	
NOT TO SCALE	



PAGE# 20



FASTRAC CTF-RTU

Rapid Setting Mortar Mix

DESCRIPTION

Fastrac CTF-RTU is a one-component, shrinkage compensated, proprietary blend of cements, aggregates, and performance enhancing chemical additives. This rapid setting repair mortar is mixed with water on site, used for reinstatement of microtrenching, small-scale horizontal concrete repairs, and form and pour vertical applications that require high early strength gain. It is fully extendable for larger repairs.

FEATURES/BENEFITS

- Very rapid setting; structures can be opened to vehicular traffic in 2-3 hours
- Non-gypsum based with volume stability
- Excellent resistance to freeze/thaw outstanding durability
- Shrinkage compensation minimizes cracking from drying shrinkage
- Can be dyed to match surface

PACKAGING

- 60lb bag
- 3000lb bulk bag

YIELD

Approx. 0.45-cu.ft. /60 lb. bag when mixed with the recommended amount of water.

WHERE TO USE

- Microtrenches
- Concrete and asphalt streets
- Airport runways
- Concrete slab replacement
- Repair of Bridges
- Parking decks
- Horizontal concrete surfaces
- Interior or exterior

SHELF LIFE

12 mos. properly stored

STORAGE

Store and transport in clean, dry conditions

APPLICATION TEMPERATURE RANGE

- 40°F to 90°F

HOW TO APPLY

Surface Preparation (See ICRI guidelines)

For repairs, perform surface preparation in accordance with ICRI Technical Guidelines. Concrete must be sound and fully cured (28 days). Remove all unsound concrete and roughen the surface for better bonding. Remove all laitance, oil, grease, curing compounds, and other contaminants that could prevent adequate bond. Saw cutting slurry should be removed. The concrete substrate should be saturated surface dry (SSD), without standing water, before application. Apply the mixed material onto the prepared SSD substrate by trowel or screed. Minimum application thickness is 1/2-in. Finish the completed repair, as required without overworking the surface.

Reinforcing Steel

Remove all oxidation and scale from the exposed reinforcing steel in accordance with ICRI Technical Guideline No. 03730 "Guide for Surface Preparation for the Repair of Deteriorated Concrete Resulting from Reinforcing Steel Corrosion."

Mixing

Mix with required amount of cool, potable water for desired application characteristics, from 6.0 to 7.0 U.S. pints per 60lbs. (27.2kg) bag. Conduct field trials to verify proper consistency, yield and a thoroughly mixed product. Can be extended with coarse aggregate up to 100% by weight. *An additional 1.0 pint can be added to increase flow for microtrenching. Will result in reduced compressive strength and slower set times.

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REINSTATEMENT SPECIFICATION SHEETS

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STD DWG			
NOT TO SCALE			



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FASTRAC CTF-RTU

FasTrac Accelerator

The addition of FasTrac Accelerator is recommend at temperatures below 50°F.
 Pour the recommended volume of clean, potable water [$> 34^{\circ}\text{F}$ ($- 1^{\circ}\text{C}$)] into the mixing container.
 Add the appropriate amount of FasTrac Accelerator into the water and mix until it has dissolved.
 For quicker opening times, FasTrac Accelerator may be used between 50°F-60°F.
 Use of the recommended amount of FasTrac Accelerator, at temperatures lower than 60°F, will ensure that both the designed 3 hour compressive strength and 3 hour open time to vehicular traffic are achieved.

Working time- Approx. 15-25 min

Set time – min, at 72°F (22°C), ASTM C 266
 Initial.....20-30 minutes
 Final.....30-40 minutes

Shrinkage – ASTM C 157
 28 day......03%

Compressive strength – 2"x2" cubes, ASTM C109
 3 hr.....3,500 psi (24.1 MPa)
 1 day.....5,000 psi (34.5 MPa)
 28 days.....7,500 psi (51.7 MPa)

Shear Bond Strength – ASTM C882
 24 hr.....2,000 psi (13.8 MPa)
 7 day.....3,000 psi (20.7 MPa)

Curing

Cure immediately after finishing. Use a curing compound that complies with ASTM C 309. In extreme heat, keep the patches covered and damp

Clean up

Clean tools, and equipment with clean water immediately after use. Cured materials must be removed mechanically.

Health and Safety

Make certain the most current versions of product data sheet and are being used.

Risks

Product contains portland cement and sand (crystalline silica); it can cause skin and eye irritation. Ingestion or inhalation of dust may cause tract irritation. This contains free respirable quartz, which has been listed as a suspected human carcinogen by NTP and IARC. Repeated or prolonged overexposure to free respirable quartz may cause silicosis or other serious and delayed lung injury.

Precautions

KEEP OUT OF THE REACH OF CHILDREN. Prevent contact with skin and eyes. Prevent inhalation of dust. DO NOT take internally. Use only with adequate ventilation. Use impervious gloves, eye protection and if the TLV is exceeded or is used in a poorly ventilated area, use NIOSH/MSHA approved respiratory protection in accordance with applicable federal, state and local regulations.

First Aid

In case of eye contact, flush thoroughly with water for at least 15 minutes, and seek medical attention. In case of skin contact, wash affected areas with soap and water. If the irritation persists seek medical attention. Remove and wash contaminated clothing. If inhalation causes physical discomfort, remove to fresh air. If the discomfort persists, breathing difficulty occurs, or if swallowed seek medical attention. Refer to Material Safety Data Sheet (MSDS) for further information.

Proposition 65

This product contains material listed by California as known to cause cancer, birth defects, or other reproductive harm.

VOC Content
 0 lbs/gal or 0 g/L

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FASTRAC CTF-RTU

LIMITED WARRANTY NOTICE

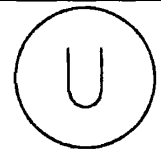
Every reasonable effort is made to apply exacting standards both in the manufacture of "FasTrac CTF-RTU" product and in the information, which we issue concerning these products and their use. We warrant our products to be good quality and will replace or, at our election, refund the purchase price of any products proved defective. Satisfactory results depend not only on quality products, but also upon many factors beyond our control. Therefore, except for such replacement or refund, Western Material and Design, LLC makes no warranty or guarantee, express or implied, including warranties of fitness for a particular purpose or merchantability, respecting its products, and Western Material and Design, LLC shall have no other liability with respect thereto. Any claim regarding product defect must be received in writing within one year from the date of shipment. No claim will be considered without such written notice or after the specified time interval. User shall determine the suitability of the products for the intended use and assume all risks and liability in connection therewith. Any authorized change in the printed recommendations concerning the use of our products must bear the signature of the Western Material and Design, LLC technical manager.

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SAFETRACK™ RMP 100

Micro-Trench Infill System

Product Description

SAFETRACK™ RMP 100 (MTI) is a cold, liquid applied, self-compacting, flexible roadway reinstatement system based on Stirling Lloyd's (now part of GCP Applied Technologies) unique Esselac™ resin technology. Its fast cure and overall versatility make this product ideal for underground small cell and optical fiber installations.

Use

The SAFETRACK™ RMP 100 system has been designed for the infill and final reinstatement of micro-trenches in both asphalt and concrete. The material is used to reinstate the microtrench and finish with an overband to provide a neat termination and prevent the ingress of water into the fabric of the roadway.

Surface Preparation

The vertical faces of the trench and adjacent surfaces to be treated must be clean and dry. Use a stiff brush to clean off trench walls followed by oil free and dry compressed air to clear the trench of all dirt, standing water and loose material. Dry with a drying lance or with compressed air that is oil free. Pay particular attention to aiming the air or air/ gas mixture at the cut face on both sides of the trench to ensure proper cleaning of the trench. Repeat blowing out and cleaning the trench as needed.

Application Equipment

SAFETRACK™ RMP 100 can be easily applied by hand or by pump. Please contact your GCP representative for details.

Application

Application training is provided by GCP and application should be in accordance with our detailed "Application Guidelines" which are available to Authorized Contractors or upon request.

Coverage

SAFETRACK™ RMP 100 - 0.134 cubic feet per US gallon. Theoretical yield per pail and standard BPO Catalyst (Hardener Powder or Liquid): Approximately 3.6 US gallons. Yields and consumption rates are theoretical and make no provision for waste.

Product Advantages

- Rapid cure - fast return to service with short drive-on times
- Cold applied, no hot trades
- Free flowing - no compaction required
- Excellent mechanical interlock
- Does not deform under traffic load
- Custom on-site coloring - Dye can be added for creating an orange dig-safe indicating layer as well as the ability to match the color of the substrate
- Minimal adhesive sensitivity to moisture

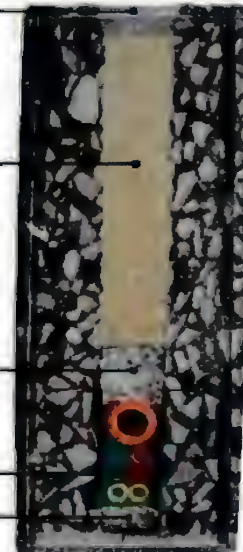
SAFETRACK™ RMP 100
(Pigmented Asphalt Grey)

SAFETRACK™ RMP 100 (Indicating Layer) has the ability to be custom dyed orange as an indicator layer. It can also be dyed to match the installed substrate for aesthetic purposes. RMP 100 takes up the exact shape of the cut surface and bonds the road back together with a bond strength typically in excess of the asphalt cohesive strength.

Protection & Isolation Layer (optional)

Fibre Optic Cable Ducts

Protection & Isolation Layer



SAFETRACK RMP 100 SPECIFICATION SHEETS

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SAFETRACK™ RMP 100 Application

Temperature Range¹ 23 to 120°F

Temperature ² / Substrate	Typical Working Life	Typical Cure Time ³
95 °F	7 minutes	10 minutes
86 °F	10 minutes	20 minutes
77 °F	13 minutes	35 minutes
68 °F	15 minutes	50 minutes
59 °F	12 minutes*	40 minutes*

* Based on the use of extra hardener powder. Please contact your local GCP representative for advice.

¹ For temperatures outside this application range please contact your local GCP representative.

² Based on material and substrate having similar temperatures.

³ SAFETRACK™ RMP 100 can be overlaid with SAFETRACK™ RMP 100 before it is fully cured.

ASTM Testing

Test Method	ASTM	Result
Compressive Strength	D695	>1000 psi
Tensile Strength	D 638/ D 412	Min. 160 psi
	D 638/ D 413	>24%
Pull Off Strength	D 4541	Concrete: > 485 psi
		Asphalt: > 375 psi
Initial Skid Resistance Value	E 303	Min. 65
Void Content		< 1%
Installation Temperature Range		23F - 120F

Overcoating

SAFETRACK™ RMP 100 can be overlaid with the second pass of SAFETRACK™ RMP 100 as soon as the initial cure has taken place. There is no maximum overlaying time as the material chemically bonds to that already in place.

Color

- Asphalt Grey
- Neutral
- Orange (for "dig-safe" indicating layer)
- Custom Ordered

Cleaning

All tools and equipment should be cleaned with acetone after use, before the material is allowed to cure..

Packaging & Storage

Resin: 3.57 US Gal pail
 BPO Hardener Powder: Varies
 BPO Liquid Hardener: 5 Gallon Pails

All components of the SAFETRACK™ RMP 100 system should be stored in cool, dry, protected conditions, out of direct sunlight and in accordance with the relevant Health & Safety regulations. Storage temperature must not exceed 77 °F (25°C). Do not store any component near naked flames or foodstuffs.

Stored in unopened containers, under the correct conditions, Safetrack™ RMP 100 and the hardener powder have a shelf life of six months. The BPO liquid hardener has a shelf life of 12 months. If the components are stored at higher temperatures the shelf life will be reduced. Please contact us for further details / advice.

Safety and Handling

Read and understand the product label and Safety Data Sheet (SDS) for each system component and cleaning material and safety instructions for pumping equipment. All users should acquaint themselves with this information prior to working with the products and follow the precautionary statements. SDSs can be obtained by contacting your local GCP representative or office, by calling GCP toll free at 1-866-333-3SBM (3726) and in some cases from our web site at gcpat.com

General Information

SAFETRACK™ RMP 100 is part of a wide range of specialist highway maintenance, waterproofing, surfacing and repair materials manufactured and supplied by GCP Applied Technologies. If you require any further information on this or any other of our products, please contact us or visit our website gcpat.com



GCP's SAFETRACK™ 200 Pump Applicator

gcpat.com | Customer Service: 1-866-333-3726

We hope the information here will be helpful. It is based on data and knowledge considered to be true and accurate, and is offered for consideration, investigation and verification by the user; but we do not warrant the results to be obtained. Please read all statements, recommendations, and suggestions in conjunction with our conditions of sale, which apply to all goods supplied by us. No statement, recommendation, or suggestion is intended for any use that would infringe any patent, copyright, or other third party right.

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In Canada, GCP 294 Clements Road, West, Ajax, Ontario, Canada L1S 3C6.

GCPO083

STL-001-0618



gcp applied technologies



**SAFETRACK RMP 100
 SPECIFICATION
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SAFETY DATA SHEET
Safetrack MTI
 According to EC Regulation No 1272/2008 (CLP)

1. Identification

Product identifier

Product name Safetrack MTI

Recommended use of the chemical and restrictions on use

Application Construction Chemicals

Uses advised against This product must not be handled in a confined space without adequate ventilation.

Details of the supplier of the safety data sheet

Supplier GCP Applied Technologies
 152 Rockwell Road
 Building A
 Newington, CT
 06111
 USA
 860-866-5008
 860-866-5106
 northamerica.stirlinglloyd@gcpat.com

Emergency telephone number

Emergency telephone For Chemical Emergency (Spill, Leak, Fire, Exposure or Accident) - Call CHEMTREC (Day/Night) on:- Within USA & Canada : 1-800-424-9300 Outside USA & Canada ; +1 703-527-3887

2. Hazard(s) identification

Classification of the substance or mixture

Physical hazards Flam. Liq. 3 - H226
Health hazards Skin Irrit. 2 - H315 Skin Sens. 1 - H317
Environmental hazards Not Classified

Physicochemical The product is flammable. Heating may generate flammable vapors.

Label elements

Pictogram



Signal word Warning

Hazard statements H226 Flammable liquid and vapor.
 H315 Causes skin irritation.
 H317 May cause an allergic skin reaction.



**SAFETRACK RMP 100
 SPECIFICATION
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Safetrack MTI

Precautionary statements
 P210 Keep away from heat, sparks, open flames and hot surfaces. No smoking.
 P261 Avoid breathing vapor/ spray.
 P280 Wear protective gloves/ protective clothing/ eye protection/ face protection.
 P332+P313 If skin irritation occurs: Get medical advice/ attention.
 P370+P378 In case of fire: Use foam, carbon dioxide, dry powder or water fog to extinguish.
 P403+P235 Store in a well-ventilated place. Keep cool.
 P501 Dispose of contents/ container in accordance with national regulations.

Contains MIXTURE OF ALKYL ESTERS OF 2-ALKYL 2-PROPENOIC ACID, BUTYL METHACRYLATE -norm

Other hazards

This product does not contain any substances classified as PBT or vPvB.

3. Composition/Information on Ingredients

Mixtures

METHYL METHACRYLATE CAS number: 80-62-6	5-10%
Classification Flam. Liq. 2 - H225 Skin Irrit. 2 - H315 Skin Sens. 1 - H317 STOT SE 3 - H335	
MIXTURE OF ALKYL ESTERS OF 2-ALKYL 2-PROPENOIC ACID CAS number: 103-11-7	1-5%
Classification Skin Irrit. 2 - H315 Skin Sens. 1 - H317 STOT SE 3 - H335	
BUTYL METHACRYLATE -norm CAS number: 97-88-1	1-5%
Classification Flam. Liq. 3 - H226 Skin Irrit. 2 - H315 Eye Irrit. 2 - H319 Skin Sens. 1 - H317 STOT SE 3 - H335	

The full text for all hazard statements is displayed in Section 16.

4. First-aid measures

Description of first aid measures

Inhalation Remove affected person from source of contamination. Keep the affected person warm and at rest. Get prompt medical attention.



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Safetrack MTI

- Ingestion** Do not induce vomiting. If vomiting occurs, the head should be kept low so that vomit does not enter the lungs. Rinse mouth thoroughly with water. Give a few small glasses of water or milk to drink. Never give anything by mouth to an unconscious person. Get medical attention immediately.
- Skin Contact** Remove affected person from source of contamination. Remove contaminated clothing. Rinse immediately with plenty of water. Get medical attention promptly if symptoms occur after washing.
- Eye contact** Remove any contact lenses and open eyelids wide apart. Continue to rinse for at least 15 minutes and get medical attention.

Most important symptoms and effects, both acute and delayed

- Inhalation** Vapors in high concentrations are anesthetic. Symptoms following overexposure may include the following: Headache. Fatigue. Dizziness. Central nervous system depression.
- Ingestion** May cause nausea, headache, dizziness and intoxication.
- Skin contact** Prolonged or repeated contact with skin may cause irritation, redness and dermatitis. The product contains a sensitizing substance. May cause sensitization or allergic reactions in sensitive individuals.
- Eye contact** Irritation of eyes and mucous membranes.

Indication of immediate medical attention and special treatment needed

- Notes for the doctor** No specific recommendations. It is important to remove the substance from the skin immediately.

5. Fire-fighting measures

Extinguishing media

- Suitable extinguishing media** Extinguish with the following media: Foam. Dry chemicals, sand, dolomits etc. Water spray, fog or mist.
- Unsuitable extinguishing media** Do not use water jet as an extinguisher, as this will spread the fire.

Special hazards arising from the substance or mixture

- Specific hazards** The product is flammable. Heating may generate flammable vapors. Closed containers can burst violently when heated, due to excess pressure build-up.
- Hazardous combustion products** Fire or high temperatures create: Toxic gases/vapors/fumes of: Carbon monoxide (CO). Carbon dioxide (CO2). Nitrous gases (NOx).

Advice for firefighters

- Protective actions during firefighting** Cool containers exposed to flames with water until well after the fire is out.
- Special protective equipment for firefighters** Wear positive-pressure self-contained breathing apparatus (SCBA) and appropriate protective clothing.

6. Accidental release measures

Personal precautions, protective equipment and emergency procedures

- Personal precautions** Eliminate all sources of ignition. No smoking, sparks, flames or other sources of ignition near spillage. Provide adequate ventilation. Wear suitable protective equipment, including gloves, goggles/face shield, respirator, boots, clothing or apron, as appropriate.

Environmental precautions



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Safetrack MTI

Environmental precautions Avoid discharge to the aquatic environment.

Methods and material for containment and cleaning up

Methods for cleaning up Stop leak if possible without risk. DO NOT touch spilled material! Absorb spillage with non-combustible, absorbent material. Collect and place in suitable waste disposal containers and seal securely. Label the containers containing waste and contaminated materials and remove from the area as soon as possible. If involved in a fire, shut off flow if it can be done without risk.

Reference to other sections For personal protection, see Section 8. See Section 11 for additional information on health hazards. For waste disposal, see section 13.

7. Handling and storage

Precautions for safe handling

Usage precautions During curing, the product will release small quantities of irritating vapors. Keep away from heat, sparks and open flame. Avoid inhalation of vapors/spray and contact with skin and eyes. Provide adequate ventilation. Do not use in confined spaces without adequate ventilation and/or respirator. Persons susceptible to allergic reactions should not handle this product.

Conditions for safe storage, including any incompatibilities

Storage precautions Store in tightly-closed, original container in a dry, cool and well-ventilated place. Keep away from heat, sparks and open flame. Protect from light. Take precautionary measures against static discharges.

Storage class Flammable liquid storage.

Specific end uses(s)

Specific end use(s) The identified uses for this product are detailed in Section 1.

8. Exposure Controls/personal protection

Control parameters

Occupational exposure limits

METHYL METHACRYLATE

Long-term exposure limit (8-hour TWA): ACGIH 50 ppm
 Short-term exposure limit (15-minute): ACGIH 100 ppm
 ACGIH = American Conference of Governmental Industrial Hygienists.

Exposure controls

Protective equipment



Eye/face protection The following protection should be worn: Chemical splash goggles.

Hand protection Wear protective gloves made of the following material: Rubber (natural, latex). Neoprene. Polyvinyl chloride (PVC). The most suitable glove should be chosen in consultation with the glove supplier/manufacturer, who can provide information about the breakthrough time of the glove material.

Hygiene measures Promptly remove any clothing that becomes contaminated. Wash promptly if skin becomes contaminated. Wash at the end of each work shift and before eating, smoking and using the toilet. When using do not eat, drink or smoke.



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Safetrack MTI

Respiratory protection No specific recommendations. Respiratory protection must be used if the airborne contamination exceeds the recommended occupational exposure limit.

9. Physical and Chemical Properties

Information on basic physical and chemical properties

Appearance Viscous liquid. Opaque liquid. Suspension.
Color Colour as described by Product Name.
Odor Characteristic.
Initial boiling point and range ~ 100°C @ °C @ 760 mm Hg
Flash point ~ 25-27°C Closed cup.
Upper/lower flammability or explosive limits Lower flammable/explosive limit: 2.0% Upper flammable/explosive limit: 13.0%
Solubility(ies) Insoluble in water. Insoluble in organic solvents.
Auto-ignition temperature ~ 430°C

10. Stability and reactivity

Reactivity Polymerisable material. Reactions with the following materials may generate heat: Acids. Alkalis. Amines. Organic peroxides/hydroperoxides. Strong oxidizing agents. Strong reducing agents.
Stability Stable at normal ambient temperatures and when used as recommended.
Possibility of hazardous reactions Polymerizes easily with evolution of heat.
Conditions to avoid Avoid heat, flames and other sources of ignition. Protect from light.
Materials to avoid Avoid contact with oxidizers, acids, aluminium, zinc, amines, peroxides, aluminium- and iron-chlorides.
Hazardous decomposition products Oxides of carbon. Thermal decomposition or combustion may liberate carbon oxides and other toxic gases or vapors.

11. Toxicological information

Information on toxicological effects

Acute toxicity - oral
ATE oral (mg/kg) 9,345.06
Acute toxicity - dermal
ATE dermal (mg/kg) 130,434.78
Acute toxicity - Inhalation
ATE inhalation (vapours mg/l) 608.7

Inhalation Gas or vapor in high concentrations may irritate the respiratory system.
Ingestion May cause discomfort if swallowed. May cause stomach pain or vomiting. Headache. Diarrhea.



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Safetrack MTI

Skin Contact Liquid may irritate skin. May cause sensitisation by skin contact.
Eye contact May cause eye irritation. Vapor or spray in the eyes may cause irritation and smarting.

12. Ecological information

Toxicity The product components are not classified as environmentally hazardous. However, large or frequent spills may have hazardous effects on the environment.

Persistence and degradability

Persistence and degradability The product is not readily biodegradable.

Bioaccumulative potential

Bio-Accumulative Potential The product does not contain any substances expected to be bioaccumulating.

Mobility in soil

Mobility The product hardens to a solid, immobile substance.

Other adverse effects

Other adverse effects None known.

13. Disposal considerations

Waste treatment methods

Disposal methods Cured product can be peeled from the inside of the bucket, if required, to leave a clean, re-usable container. Empty containers should be disposed of in accordance with Local Authority guidelines. Cured product can be disposed of as industrial waste. Unused resin and powder catalyst must be treated as hazardous waste.

14. Transport information

UN Number

UN No. (TDG)	1866
UN No. (IMDG)	1866
UN No. (ICAO)	1866
UN No. (DOT)	1866

UN proper shipping name

Proper shipping name (TDG)	RESIN SOLUTION
Proper shipping name (IMDG)	RESIN SOLUTION
Proper shipping name (ICAO)	RESIN SOLUTION
Proper shipping name (DOT)	RESIN SOLUTION

Transport hazard class(es)

TDG class	3
TDG label(s)	3
IMDG Class	3
ICAO class/division	3



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Revision date: 8/22/2018

Safetrack MTI

Transport labels



Packing group

TDG Packing Group	III
IMDG packing group	III
ICAO packing group	III
DOT packing group	III

Environmental hazards

Environmentally Hazardous Substance
No.

Special precautions for user

EmS F-E, S-E

Transport in bulk according to Annex II of MARPOL 73/78 and the IBC Code Not applicable.

15. Regulatory Information

Major Accident Hazard Legislation

16. Other information

General information This SAFETY DATA SHEET refers to all colours/variants of this product. This product is intended for use for the application set out in the technical data sheet only. The Risk Phrases shown below relate to the individual components in Section 3 and NOT to the Product. The Risk Phrases for the Product are shown in Section 2.

Revision comments Change from previous version : Revised to Comply with Regulation (EC) No.1907/2006 Annex II

Revision date 8/22/2018

Hazard statements in full
H225 Highly flammable liquid and vapor.
H226 Flammable liquid and vapor.
H315 Causes skin irritation.
H317 May cause an allergic skin reaction.
H319 Causes serious eye irritation.
H335 May cause respiratory irritation.

This information relates only to the specific material designated and may not be valid for such material used in combination with any other materials or in any process. Such information is, to the best of the company's knowledge and belief, accurate and reliable as of the date indicated. However, no warranty, guarantee or representation is made to its accuracy, reliability or completeness. It is the user's responsibility to satisfy himself as to the suitability of such information for his own particular use.

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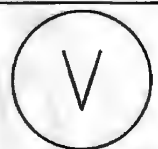


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Dalworthington Gardens, TX

FIBERCITY®



Who is SIFI NETWORKS

SiFi Networks is North America's leading fiber optic developer of privately funded, turn-key, networks for the entire community.

Our goal is to help eliminate the digital divide in urban America. SiFi's unique model allows select cities to have a next generation network at zero of the costs associated with building, operating or maintaining a network.

*Shawn Parker
VP, Government Affairs
SiFi Networks*



The FIBERCITY®

- SiFi Networks develop long term FttH/smart city projects
- Financially sustainable with no municipal taxpayer subsidy towards a FiberCity® project
- SiFi Networks build each FiberCity® based on an Open Access model where multiple Service Providers compete
- As SiFi Networks is the developer and not a competing ISP, this ensures a neutral level playing field for Service Providers on the FiberCity® network
- Any city who wishes to be considered for a FiberCity® investment requires their respective city council to enter into a Development Agreement.



The Financial INVESTMENT



Backed by APG's Smart City Infrastructure Fund.



A Long-term Pension Fund Investment



The Fund is Managed by Whitehelm Capital



No Taxpayer Investment

A Tailored Solution FOR THE CITY

- Significantly enhancing intra-building data connectivity
- City staff can have a secure, gigabit connection to any city facility from their home or city location to enable remote working
- All city and all public buildings/facilities can be connected with speeds up to 100 gigabits
- Interconnecting traffic lights, security cameras and street lighting to support municipal effectiveness and public engagement
- City can add Wi-Fi points to create public/business Wi-Fi districts
- Energy and waste management efficiency through detection of leaks and spills, and the monitoring of waste and pollution levels



Construction METHODOLOGY

- Minimal social disruption using advanced micro-trench construction, ensuring minimal lane closures
- City is broken down into a handful of work zones, which pre-approved permits are raised against to ensure efficient processing
- Ground Penetration Radar is used for the thousands of miles of construction to detect underground utilities, with all utility assets recorded and handed to city for your records
- 24x7 dedicated field service crews remain in the city for the life of the project – providing long term employment opportunities



**City Council
Staff Agenda Report**

Agenda Item: 8g.

Agenda Subject: Discussion and possible action regarding Project #2021-02, the Tarrant County Community Development Block Grant program for Ambassador Row, to include but not limited to any change order approval.

<p>Meeting Date:</p> <p>September 16, 2021</p>	<p>Financial Considerations:</p> <p>Budgeted:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p>	<p>Strategic Vision Pillar:</p> <p><input type="checkbox"/> Financial Stability</p> <p><input type="checkbox"/> Appearance of City</p> <p><input checked="" type="checkbox"/> Operations Excellence</p> <p><input checked="" type="checkbox"/> Infrastructure Improvements/Upgrade</p> <p><input checked="" type="checkbox"/> Building Positive Image</p> <p><input type="checkbox"/> Economic Development</p> <p><input type="checkbox"/> Educational Excellence</p>
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Background Information: This will be a recurring item for Project #2021-02, the 47th Year CDBG project for Ambassador Row.

Tarrant County has officially received plans for the City’s CDBG project. Staff is awaiting next steps from the County.

Recommended Action/Motion: No action needed at this time.

Attachments: None

**City Council
Staff Agenda Report**

Agenda Item: 8h.

Agenda Subject: Discuss and possible action regarding amendments to the FY 2021 budget in amounts not to exceed \$10,000.00.

<p>Meeting Date: September 16, 2021</p>	<p>Financial Considerations: Unknown but won't exceed \$10,000</p> <p>Budgeted: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p>	<p>Strategic Vision Pillar:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Financial Stability <input type="checkbox"/> Appearance of City <input checked="" type="checkbox"/> Operations Excellence <input type="checkbox"/> Infrastructure Improvements/Upgrade <input type="checkbox"/> Building Positive Image <input type="checkbox"/> Economic Development <input type="checkbox"/> Educational Excellence
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Background Information: This is a standing agenda item that will appear on all future agendas. The idea is provide an item whereby staff can discuss needs that come up after the agenda posting deadline. These would only be items that, without council approval, would otherwise put operations on hold.

Recommended Action/Motion: If action needed: Motion to approve an amendment to the FY 2021 budget in an amount not to exceed [state dollar amount] for the purpose of [state specific purpose].

Attachments: None

**City Council
Staff Agenda Report**

Agenda Item: 8i.

Agenda Subject: Discussion and possible action on matters pertaining to the park playground grant, including but not limited to, dedicating the park land for park purposes in perpetuity.

<p>Meeting Date:</p> <p>September 16, 2021</p>	<p>Financial Considerations:</p> <p>Budgeted:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p>	<p>Strategic Vision Pillar:</p> <p><input type="checkbox"/> Financial Stability</p> <p><input checked="" type="checkbox"/> Appearance of City</p> <p><input checked="" type="checkbox"/> Operations Excellence</p> <p><input checked="" type="checkbox"/> Infrastructure Improvements/Upgrade</p> <p><input type="checkbox"/> Building Positive Image</p> <p><input type="checkbox"/> Economic Development</p> <p><input type="checkbox"/> Educational Excellence</p>
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Background Information: Staff is working with the Park Board to submit the playground grant to Texas Parks and Wildlife by the October 1 deadline. This agenda item was written broadly in the event other action is needed that surfaces after the packet has been distributed.

One requirement that has surfaced is that the park land must be dedicated for park purposes in perpetuity. Staff cannot find documentation of this and is requesting council take action on this. A resolution can be created to document the action and submitted with the grant application.

Recommended Action/Motion: Motion to dedicate Gardens Park for park purposes in perpetuity.

Attachments: Page 1 of grant application

General Information

Instructions:

About:

The Local Park Grant Program assists local units of government with the acquisition and/or development of public recreation areas and facilities throughout the State of Texas. The Program provides 50% matching grants on a reimbursement basis to eligible applicants. All fund assisted sites must be dedicated as parkland in perpetuity, properly maintained and open to the public.

This year we are offering three grant programs: the Small Community Grant Program, the Non-Urban Outdoor Grant Program, and the Urban Outdoor Grant Program. We will not offer the Indoor Program this year.

Eligible applicants include political subdivisions of the State of Texas legally responsible for providing public recreation services to their citizens. This includes cities, counties, river authorities, municipal utility districts, and other special districts. If you have questions regarding eligibility please contact the [Local Park Grants Staff](#).

We have developed technical assistance to help guide you through your application process. We have added links to this assistance throughout the application. It is also available on the Recreation Grants Online Resources Page [HERE](#).

We will be hosting a grant writing webinar on July 14th, 2021 at 1:30 PM. Please subscribe to our newsletter [HERE](#) to receive the sign-up link. The webinar will be recorded and posted online for later viewing. You can watch a recording of last year's webinar [HERE](#).

We expect most 2022 awards in the Non-Urban Outdoor and Urban Outdoor Grant Programs to be funded by the federal Land and Water Conservation Fund, administered by the National Park Service. Please be aware that these federal grants may require a lengthy environmental and historic compliance process to occur after the award is announced and before a grant agreement can be secured. Construction may not occur until a grant agreement is in place.

DEADLINE

The application deadline is: **October 1, 2021 at 5pm CST**

Once you have completed your application, you must **SUBMIT** it - otherwise it will not be routed to staff for scoring and review. **You will not be able to submit after 5:00 PM on the day that it is due.** For instructions on submitting your application see the RGO 2020 Quick Start Guide in 'Resources' area of this website [located HERE](#).

IMPORTANT!

Unique Entity Identifier (formerly DUNS Number) - REQUIRED

Sponsors: Federal law (2 CFR Part 25) mandates that all entities applying for Federal financial assistance must have a valid Unique Entity Identifier (formerly DUNS) and have a current registration in the Central Contractor Registry (CCR).

SAM Number (REQUIRED)

Sponsors: Register in SAM online at <https://www.sam.gov>. Once registered in SAM, entities must renew and revalidate their SAM registration at least every 12 months from the date previously registered. Entities are

General Information

strongly urged to revalidate their registration as often as needed to ensure that SAM is up to date and in synch with changes that may have been made to Unique Entity Identifier and IRS information.

Application Documents to Review Before Completing the Application

All required documents are available in the 'Resources' area of this website ([located HERE](#)), and fillable-downloadable forms will be available in the appropriate sections within the application.

Click the link(s) below for population requirements and scoring criteria for each of the individual programs:

[Non-Urban Outdoor](#)

[Urban Outdoor](#)

[Small Community](#)