Supplemental Information Packet

April 21, 2022 - Agenda Item 13A – Attachment B – Agreement with SiFi Networks

Meeting of April 25, 2022

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available in the City Clerk’s Office, 501 Poli Street, Room 204, Ventura, during normal business hours as well as on the City’s Website – www.cityofventura.ca.gov

MASTER LICENSE AND ENCROACHMENT AGREEMENT FOR FIBER OPTIC INFRASTRUCTURE

THIS MASTER LICENSE AND ENCROACHMENT AGREEMENT FOR FIBER OPTIC INFRASTRUCTURE (hereinafter referred to as "Agreement") dated as of April __, 2022 (the “Effective Date”), is hereby entered into at San Buenaventura, California, by and between SiFi Networks Ventura LLC, a Delaware limited liability company, hereinafter referred to as "SiFi" and the CITY OF SAN BUENAVENTURA, a municipal corporation, hereinafter referred to as "City," each a “Party,” and collectively, “Parties.”

WITNESSETH

WHEREAS, SiFi is a private unregulated company in the business of developing, constructing and managing fiber optic infrastructure capable of providing wholesale transport for internet access; and

WHEREAS, City seeks to enable the deployment of fiber optic infrastructure for broadband for the City’s residents and businesses, in order to stimulate economic development, to encourage market competition, to enable Smart City technological advancements, and to support healthcare, education, transportation agencies, government organizations, local business, and residential neighborhoods; and

WHEREAS, SiFi has informed City that SiFi has certain plans relating to the installation of a City-wide fiber optic cable system and associated appurtenances (hereinafter referred to as the "System" and as more fully defined below), which may provide positive benefits to residents and businesses in the City of San Buenaventura through the provision of fiber optic network services, and SiFi requests permission to encroach on the public streets, public rights-of-way and other areas as more fully described herein; and

WHEREAS, SiFi will wholly own the System and will provide, through its own forces or contracts, for the design, development, construction, installation, operation, and maintenance of the System at its sole cost and expense; and

WHEREAS, City has broad powers with respect to maintain streets and sidewalks for the use of the public, regulating encroachments upon or obstructions in or to such sidewalks and streets, and providing for the removal of any such obstructions, and further may regulate such encroachments with a just relation to the object in view and with a reasonable tendency to preserve the public safety or convenience, all under a number of powers, including the police power (Cal. Const. art. XI, § 7), Gov’t Code §38755, and relevant case law; and

WHEREAS, City has set forth a process to regulate encroachments and excavations in public rights-of-way (hereinafter referred to as “Public Way”, “Right-of-Way” or “ROW” and as more fully defined below) and City utility easements, which can be found in City of San Buenaventura Municipal Code (“City Code”) Chapter 18.100; and

WHEREAS, City has the power to grant a non-exclusive license for encroachments in portions of the ROW; and
WHEREAS, pursuant to this Agreement executed by and between the Parties, City has agreed to grant to SiFi the right to install the System within the ROW of the entire area of the municipal corporation of the City of San Buenaventura as of the Effective Date, pursuant to City Code Chapter 18.100 and the agreed upon herein Specific Exemptions (as defined below); and

WHEREAS, City recognizes there is a clear public purpose and public benefit being served in encouraging and facilitating SiFi’s fiber optic infrastructure deployment plans; and

WHEREAS, City’s grant of the license provided for herein is based on the understanding that the Parties may enter into a Smart City Managed Services Agreement, or another similar agreement, that would allow the City to use the FON, for governmental internal data communication and non-retail purposes at a rate substantially lower than the then market rates for substantially similar services, as defined below.

NOW, THEREFORE, in consideration of the premises and promises hereinafter made, said Parties hereby agree as follows:

I. Definitions

The above recitals are, by this reference, hereby incorporated as if they had been set forth in the text of this Agreement.

“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 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 or vaults placed within the Public Way facilitating access to the equipment for the provision of Service throughout the System.

“City Encroachment Permit General Conditions” means the conditions posted on the City’s website.

“City-Standard-Construction-Details” means the City construction details posted on the City’s website.

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

“FON” means SiFi’s fiber optic network built utilizing a combination of blown fiber, aerial, and/or other conventional techniques.

“Microtrenching” means the process defined in Section III.F.

“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.
“Premises” means a house, multiple dwelling units, office or other building located within the Boundary of the City of San Buenaventura.

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

“Primary Premises” means all the Premises within the Boundary as of the Effective Date but excluding any Premises which SiFi is not obligated to Pass: (i) because of a lack of a right to access and use the Public Way due to the City not possessing the right, title, interest or authority to permit SiFi to use and occupy the Public Way in order for SiFi to Pass such Premises, or (ii) because SiFi’s lack of a right to access any non-City owned property within the Boundary necessary in order to Pass such Premises, or (iii) if there would be an incremental material cost to Pass such Premises that would be at least ten percent (10%) higher than the average cost to Pass the Primary Premises within the Boundary accessible by SiFi, or (iv) where such Premises already have a pre-existing fiber-based system passing them that offers internet access services to the public. SiFi shall not be required or obligated to make the System available to such Premises described in (i) through (iv) in this definition and such Premises shall not be deemed Primary Premises for the purposes of this Agreement.

“Public Way”, “Right-of-Way” or “ROW” shall have the same meaning as set forth in City Code Section 18.100.020.

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

“Specific Encroachment Permit” or “SEP” means each City approved specific encroachment permit requested by SiFi for each Work Zone using the City’s then-current form of encroachment permit application posted on the City website, and approved and issued by City.

“Specific Exemptions” means the agreed here exemptions, to Chapter 18.100 of the City Code, City-Standard-Construction-Details and City Encroachment Permit General Conditions approved by the City that allow SiFi to instead comply with the terms of this Agreement and the attached exhibits as and if modified by this Agreement.

“SPOC” means City designated single point of contact for SiFi in accordance with the terms of this Agreement.

“Substantial Completion” means the System has been installed such that it Passes each of the Primary Premises and the System is capable (but for the lack of a Drop) of serving each such Primary Premise.

“System” means all parts of the FON system in the City that is designed to support the delivery of fiber optic network services to the Primary Premises, 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.
“Work Zone” means each of the areas defined in Section III.A herein.

All capitalized terms used but not defined herein shall have the same meaning as set forth in City Code Chapter 18.100.

II. Grant of Encroachment

A. Licensed Area

City hereby grants and conveys to SiFi during the Term of this Agreement, and its licensees, successors, lessees, transferees, contractors, and assigns, the non-exclusive, limited, non-possessory, personal right of encroachment in the ROW, upon the terms set forth herein, to erect, install, construct, operate, repair, replace, reconstruct, remove, maintain, use, or retain in, on, over, under, upon, across, along, and through, certain portions of the ROW within the Boundary as authorized by Specific Encroachment Permits and the related drawings approved by City pursuant to City Code Section 18.100.180.F, the “Licensed Area”), solely, for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System (the “License Purpose”). SiFi may occupy and use the Licensed Area in the manner authorized by this License for the License Purpose, described in Section 1 herein, and for no other purpose. SiFi understands and agrees that this License Purpose shall not be exclusive of the right of any other person to use any portion of the ROW located within the Licensed Area for the same or similar purpose pursuant to any other license now or hereafter granted by City. City retains full possession of the Licensed Area and SiFi will not acquire any interest, temporary, permanent, irrevocable, possessory, or otherwise, by reason of this Agreement, or by the exercise of the permission given herein. SiFi will make no claim to any such interest.

This Agreement is subject to all easements, covenants, restrictions, reservations, exceptions, rights, conditions, ordinances and regulations in existence as of the date hereof as may be amended, subject to any Specific Exemptions described herein. It is understood that SiFi, at its own cost and expense, shall obtain such permission as may be necessary and consistent with any other prior rights still in effect.

Notwithstanding the foregoing, no portions of the System are permitted to be above ground unless otherwise approved by the City per the terms of this Agreement and the applicable SEP. Further, no Shelters may be placed in the Public Way and none may be placed on City-owned real property outside the Public Way unless the Parties first agree to the terms of a Lease Agreement for a Shelter.

SiFi agrees (i) to accept the Licensed Area in its present condition and “as is” with respect to matters that might affect the use of the Licensed Area, and (ii) that no other representation, statement, or warranty, express or implied, has been made by or on behalf of City as to the condition of the Licensed Area or as to the uses that may be made of the Licensed Area.

All of the rights and privileges conferred upon SiFi pursuant to this Agreement may be exercised by SiFi, its successors and permitted assigns, employees, agents, licensees, invitees, lessees, designated personnel, contractors, and all others authorized by them.
The System and all of its parts and components which are installed and constructed by SiFi in the Licensed Area shall at all times be and remain the property of SiFi, unless otherwise specifically indicated in this Agreement.

B. Term

This Agreement has an initial term of thirty (30) years (the “Initial Term”) from the Effective Date, and may be renewed by SiFi, in accordance with the paragraph below, on substantially the same terms unless the Parties agree otherwise in writing for an additional thirty (30) years term (“Subsequent Term”), for a total aggregate potential term of sixty (60) years (“Total Aggregate Term”). Upon expiration of the Total Aggregate Term, the Parties agree to reasonably negotiate a potential new master fiber optic infrastructure or similar agreement for the System. During these further negotiations, the Agreement shall continue in a holdover status on a month-to-month basis until either: i) a new Agreement is executed by both Parties (or other solution is agreed between the Parties), or ii) until either Party declares, in writing after no less than three (3) months of attempting to reach agreement, that further negotiation would not be in that Party’s best interest. Upon termination or abandonment, the obligations of the Parties regarding disposition of the System are covered below in Section VI.C.2 of this Agreement.

Renewal and Renewal Notice by City

SiFi may apply to renew the Permit but only if SiFi applies for the renewal no later than six (6) months before the expiration of the Initial Term or any Subsequent Term. The City will not unreasonably refuse to renew or condition or delay each renewal of this Agreement for Subsequent Terms, provided that, there are no grounds for non-renewal pursuant to City Code Section 18.100.120 and further provided SiFi has materially complied with the terms of this Agreement (or reasonably satisfied any deficiencies in material compliance in conformance with the terms of this Agreement. Further, in the case SiFi fails to apply for renewal within the applicable time period, City agrees to send a notice to SiFi before cancellation or termination due to non-renewal and provide SiFi another 30-day period in which to send a valid application of renewal and City will accept such application of renewal.

Minimum Build-Out

If 95% of Substantial Completion has not been achieved, except if due to a Force Majeure Event, during the first five (5) years of the Initial Term, the City may, at its discretion, not grant additional SEPs for the portions of the System that have not yet been built; provided however, nothing in this subsection requires the City to grant additional SEPs if SiFi fails or has failed to comply with the requirements City Code Chapter 18.100 and including any and all Specific Exemptions. However, the Agreement will otherwise remain in full force and effect for the System for the remainder of the Initial Term.

III. Obligations

A. SiFi’s Obligations

SiFi agrees and acknowledges that by signing this Agreement, SiFi shall be bound by all provisions of City Code Chapter 18.100 of City Encroachment Permit General Conditions and of
City-Standard-Construction-Details, as any or all may be amended from time to time subject to the Specific Exemptions. For convenience, a copy of City Code Chapter 18.100 in force as of the Effective Date is set forth in EXHIBIT C, attached hereto and made a part hereof.

**Work Zones and SEPs**

Within eighteen (18) months of the Effective Date, SiFi will identify to City the approximately twenty (20) areas; provided that the actual number is design-dependent and subject to approval by City Engineer, which shall not be unreasonably withheld, delayed or conditioned, into which the total Licensed Area will be reasonably divided by SiFi for the construction of the System (“Work Zones”). Before beginning any construction in a Work Zone, SiFi will request and obtain an SEP for each planned Work Zone which will constitute an expansion of the System’s then-current footprint. The SEP application shall be submitted on the City Encroachment Permit Application, as may be amended from time to time, and shall include the construction and scope detail, and a traffic control plan (TCP). The TCP shall utilize the then-current California Manual on Uniform Traffic Control Devices (CA-MUTCD), unless the City requires specific TCPs on arterials such as Main Street, Victoria, Telephone, Telegraph, Ventura Avenue, and Foothill Road. The City will review and act on the SEP for each Work Zone as obligated per Section III.G and IV.4.2.

**Blanket Annual Maintenance Permits**

SiFi may also apply to City for a blanket annual maintenance permit to cover ongoing maintenance of the System and for the portion of each Drop in the Public Way that does not require a TCP within such Work Zone for the applicable year using the City Encroachment Permit Application referenced above for each work zone completed. The City will review and act on the maintenance permit request as obligated per Section III.G and IV.4.2.

**List of Specific Exemptions to City Code Chapter 18.100, City Encroachment Permit General Conditions and City-Standard-Construction Details**

The Parties agree that the following requirements of City Code Chapter 18.100, City-Standard-Construction-Details and City Encroachment Permit General Conditions shall not apply to SiFi or are modified as specified below and that the City hereby grants the following Specific Exemptions to SiFi and shall not hold SiFi liable or make any claims against SiFi for non-compliance with those requirements that are subject to Specific Exemptions from City Code Chapter 18.100:

(a) Sec. 18.100.170. - Additional conditions of a permit authorizing construction or excavation work— Limitations on excavations in recently resurfaced streets. SiFi is hereby granted a waiver and City agrees that SiFi shall be able to construct and maintain the System on recently resurfaced public streets as more specifically described in Sec. 18.100.170.A.

(b) Section 18.100.080 - Permits: Issuance: Fees. For the period specified in Section IV, SiFi is hereby granted a waiver of any fees and payments for permits in the ROW other than those specified in the Agreement.

(c) Section 18.100.170.A - Resurfacing: Seal and slurry. This section of the City Code will apply unless the resurfacing is above Microtrenching, in which case the
Microtrenching standards specified in Section III.F shall apply.

(d) Section 18.100.180 – Performance of construction or excavation work (and City General Conditions for Encroachment Permits). SiFi shall only be required to comply with plans and specifications and techniques specifically outlined in this Agreement and any SEP including any related attachments and exhibits as approved by the City consistent with the terms of this Agreement and to the extent there is any conflict, this Agreement will control.

**Specific Exemptions from City Encroachment Permit General Conditions**

(e) City Encroachment Permit General Condition No. 14 (Work Hours are from 7 am to 5 pm) This conditions shall apply except that City agrees that construction work hours will be 7 am to 7 pm local time on residential streets only unless City has different reasonable requirements from time to time which must be provided to SiFi in advance.

(f) City Encroachment Permit General Condition Nos. 35 & 37 – (Concrete repairs) Concrete (under Paving). These City Encroachment Permit General Conditions will apply unless the resurfacing is above Microtrenching, in which case the Microtrenching standards specified in Section III.F shall apply.

(g) City Encroachment Permit General Conditions on Trenching (Nos. 29-32). (Trenching and Backfill). This section of the City’s standard conditions will apply unless the resurfacing is above Microtrenching, in which case the Microtrenching standards specified in Section III.F shall apply.

(h) City Encroachment Permit General Condition No. 31 – minimum clearance for pipes, 7-1.410 - Repaving by City, are waived and replaced with the Specific Techniques Approved under Section III.F below including but not limited to Microtrenching.

**Specific Exemptions from City Standard Construction Details:**

(i) City-Standard-Construction-Details #101 Cross Gutter

Notwithstanding City-Standard-Construction-Details #101, SiFi, in its reasonable discretion, will be allowed to cut through steel dowels; provided that, City Engineer or a licensed third party engineering firm certify that SiFi’s remediation method is suitable for the robustness of the spandrel.

(j) City-Standard-Construction-Details #102 Sidewalk Detail

Notwithstanding City-Standard-Construction-Details #102, SiFi will be allowed to perform lateral cuts across sidewalks without having to replace the complete section between cold joints; provided that, when cold joints line up with Curb and Gutter, which in is usually the case, then SiFi will endeavor to cut the cold joint where possible so long as it aligns with the System’s specific lateral location.

(k) City-Standard-Construction-Details #107 Curb & Gutter

Notwithstanding City-Standard-Construction-Details #107, SiFi will be allowed to Microtrench along the street side of the gutter pan edge.
(l) City-Standard-Construction-Details #112 Trench Backfill

Notwithstanding City-Standard-Construction-Details #112, trench backfill spec does not apply to and above the Microtrench.

Other Specific Exemptions

(m) any other Section of City Code Chapter 18.100 or the City’s Encroachment Permit General Conditions or the City-Standard-Construction-Details applicable to SiFi that explicitly conflicts with the language of this Agreement or the construction plans or specifications and techniques used by SiFi and specifically approved by the City in writing in accordance with this Agreement and/or an SEP, shall not apply and shall be superseded by, this Agreement and exhibits and shall also be considered a Specific Exemption.

No City Expense. The System installed within this the Licensed Area by SiFi shall be made at no expense to City.

B. Notice of Work

Except in the event of an emergency (which shall include any loss of service on the System), SiFi shall provide notice to City at least forty-eight (48) hours prior to any intended access of the Licensed Area. In the event of an emergency (which shall include any loss of service on the System), SiFi shall provide notice to City as soon as practicable and, if at all possible, prior to accessing the Licensed Area or within twenty-four (24) hours thereafter. SiFi shall comply at all times with the then-current California Manual on Uniform Traffic Control Devices (CA-MUTCD).

Before commencing any work authorized by this Agreement, SiFi shall notify the City Engineer, or designee, of the time of commencing the work and provide the name, address, telephone number, and license number of the contractor, if any, who will perform the work.

C. Changes to System

Minor Alterations. Subject to easements, covenants, conditions, ordinances and regulations in existence as of the date hereof, SiFi shall be permitted to make such minor alterations to the System in the Licensed Area as are reasonably necessary to erect, install, construct, repair, replace, reconstruct, remove, maintain, operate, and use, the System including, without limitation, adding and moving electrical lines and other utilities and apparatus (“Minor Alterations”). SiFi shall be responsible for all costs incurred in the Minor Alterations. For Minor Alterations requiring a physical presence by SiFi in the ROW during the Initial Term or until Substantial Completion, an expedited SEP must be applied for and granted by City prior to SiFi initiating work.

Construction and Maintenance. All construction, installation, maintenance and repair of the Licensed Area shall be conducted so as to interfere as little as possible with City's use and operation and the public use of the Licensed Area. The installation of the System and alterations by SiFi in the Licensed Area shall be performed 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 and all mechanics’ liens, materialmen’s
liens, and other liens for any work or labor done, services performed, or materials and appliances
used or furnished for or in connection with any operation of SiFi, any repair, alteration, or
addition which SiFi may make or permit or cause to be made, or any work or construction by,
for, or permitted by SiFi on or about the Licensed Area. SiFi shall at all times promptly and fully
pay and discharge any and all claims on which any such liens may or could be based, and shall
indemnify City against all such liens, claims of liens, and suits or other procedures pertaining
thereto. SiFi agrees to serve City with a notice of any repair, alteration, or addition to the
Licensed Area, including any of the improvements now or hereafter located on the Licensed
Area, at least five (5) days in advance of the commencement of work upon such repair,
alteration, or addition in order that City may post appropriate notices of non-responsibility.
Any damage to the Licensed Area caused by reason of the exercise of SiFi’s rights hereunder
shall be corrected by SiFi at its sole cost and expense within seven (7) calendar days, unless
longer time period is approved by the City Engineer. SiFi shall, within fourteen (14) days from
the date on which SiFi is notified by City or otherwise becomes aware of graffiti, take
commercially reasonable efforts to remove such graffiti from the System in the Licensed
Area. If SiFi fails to do so in a manner reasonably acceptable to the City within such
fourteen (14) days, City may take steps to remove the graffiti and invoice SiFi for the
reasonable costs of such removal work. In its Licensed Area, to the extent it is within SiFi’s
reasonable control, SiFi shall not commit, nor allow to be committed, any waste or spillage,
nor maintain or allow to be maintained any hazard or nuisance thereon.

D. Existing Facilities and Utilities; Relocation

Changes in ROW. 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 ROW at any time during the Total Aggregate Term of this
Agreement.

Removal or Relocation. SiFi agrees that if any portion of the System interferes with the
future surface use of the street by the general public SiFi will, at SiFi’s own expense, remove
or relocate to a location reasonably satisfactory to the City Engineer such portion of the
System.

If any City improvement to the ROW requires the relocation or removal of any portion of
the System, provided City has made reasonable efforts to avoid such relocation or removal
of the System, SiFi shall relocate or remove the affected portion of the System as directed
by the City Engineer at SiFi’s sole expense, except as otherwise provided by State laws.
When such relocation is so required, the City Engineer shall give SiFi a written demand,
specifying that the encroachment shall be relocated within the ROW to a satisfactory
location provided by the City Engineer and a reasonable time within which the encroachment
shall be relocated or removed. If SiFi fails to comply with such instructions within a
reasonable time (as described in the next paragraph below), the City may relocate or
remove the affected portion of the System at the expense of SiFi. In all instances of such
relocation or removal, the City will act in good faith to coordinate with any other City contractor
to ensure most cost effective relocation to SiFi.
Notwithstanding anything to the contrary above, no relocation of the System will be required for or due to City's standard maintenance, repair or replacement of curb and gutter pan and sidewalks.

Except for the above paragraph and when work to be performed by the City or its contractors is reasonably required to be within two inches (2") radius from the SiFi System in accordance with industry standards (“Conflict”), City shall provide SiFi with not less than thirty (30) days written notice of such Conflict and City shall provide all reasonable accommodations including excavating to the SiFi impacted facilities as reasonably requested by SiFi to allow and facilitate coordination with the City contractor in order for SiFi to protect, or to temporarily or permanently relocate the impacted portion of the System; provided that, SiFi shall bear the direct reasonable cost for (i) relocating the affected portion of the SiFi System; and (ii) additional delays or costs incurred by the City for such Conflict work. If SiFi fails to act on such notice of Conflict within thirty (30) days from receipt, City will not be liable to SiFi for any resulting damages to the System. If the City receives less than 30 days’ notice of work that needs to be performed, including but not limited to emergency, exigent or reasonably necessary work, City shall provide notice to SiFi of such in a reasonable timeframe, including but not to limited to those situations set forth in this subsection (iv).

In determining what is a reasonable time for the purposes of this section, the City Engineer shall take into consideration the nature of the encroachment, the urgency of the need for its removal, the cost of its removal, the difficulty of its removal, the value of the intact property to the owner, and other facts peculiar to the particular situation.

E. Restoration of ROW

SiFi shall restore damages or disturbances caused by SiFi to surfaces, underground utilities or any other portion of the ROW to substantially the same as the original condition, unless City Engineer permits otherwise. Restoration shall be carried out as soon as possible after construction.

F. Specific Techniques Approved

To the extent there is any conflict between the techniques specified below and any attachment or exhibit to this Agreement or the City Code or the City Standard Construction Details, this Subsection F shall prevail. City acknowledges and agrees that SiFi intends to use varying construction techniques as shown Exhibit B for the System construction and deployment, which may include, any of the following shall be an approved technique and deemed a Specific Exemption to the extent of such conflict:

(i) Traditional open trench and/or directional boring per City Standard Construction Details;

(ii) “Microtrenching” which shall mean cutting a narrow trench using a slot cut with a dry cut machine and, after installing a duct, the trench is reinstated with a cover of cementitious slurry fill at a depth that is to be a minimum of two (2) inches into the subgrade of the roadway, typically of up to sixteen inches (16”), with a minimum cover from the top of the duct to top of the asphalt of twelve inches (12”) only for those streets identified in the attached hereto Exhibit D - Special Situations Streets, and eight inches (8”) for all other streets, as set forth in the specifications set forth in EXHIBIT B (Construction Specifications) to this Agreement, attached
hereto and made a party hereof; and/or

(iii) Techniques ancillary to or related to the foregoing. City agrees to work cooperatively with SiFi in reviewing other potential construction, which other construction methods City may agree to in its sole discretion, through a signed addendum to this Agreement.

(iv) Structural backfill material shall be of reasonable commercial quality per City Standard Construction Details.

(v) Access to and from the FAB and or Toby Box to extend the Drop to a Premise does not require permits from the City.

(vi) Any Specific Exemptions identified in this Agreement.

G. SiFi will encourage its contractors to employ local City and county labor as part of their construction crews.

H. City Obligations

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

(i) Provide a SPOC responsible to address all issues related to construction of the System through Substantial Completion of the System within the ROW, providing coordination with and act as a liaison to City departments, and serving as a communication and troubleshooting resource for SiFi.

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

(iii) Provide SiFi and its representatives with full access as authorized by this Agreement, City Code and SEPs to the Licensed Area for the License Purpose, with no charge by the City for such access through Substantial Completion or the Initial Term expiration date, whichever comes first and thereafter by charging only the applicable Permit fees but no access or any other fees.

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

(v) Provide expedited, diligent, good faith review of all applications for permits, SEPs, submitted by SiFi or its representatives or contractors, including permits or other necessary items for construction work on the System within the ROW subject to the timeframes set forth in Section 4.2.

(vi) In the event emergency repairs to the System or the ROW are necessary, coordinate the repairs with SiFi, any utilities or other users of the ROW, in order to facilitate prompt repairs.

(vii) City will provide SiFi with a least thirty (30) days advance notice of any work in the ROW that requires the relocation of the System. In addition, when the City deems
appropriate, the City will provide SiFi with an opportunity to access the System at the time of the excavation in the ROW by others. City shall, through its contractors, indemnify SiFi for any damage to the System caused by work by others on behalf of the City in the ROW provided SiFi provides field markings for all “Dig Alert” or “Underground Service Alert” in accordance with state law.

I. Qualified Low-Income Subscribers Support

SiFi, through its FiberCity® Aid Program, will provide internet service providers (“ISPs”) providing services over the System with a reduced wholesale rate to encourage and enable such ISPs, subject to ISPs participation, to provide low-cost gigabit internet service to a number of qualified low-income subscribers, by applying subscriber qualification criteria established by the City in its discretion, not to exceed 4,500 of all residential Primary Premises.

IV. Fees and Taxes

In recognition of the clear public purpose and public benefit being served in encouraging and facilitating SiFi’s fiber optic infrastructure deployment, SiFi will not be obligated to pay any compensation to City for its use of ROW, or pay any City fees or charges for permits or SPOC services, except as expressly set forth herein.

SiFi is solely responsible for timely payment of all taxes, fees, or other charges which arise from SiFi’s activities in the ROW. The Parties do not intend by this Agreement, to the extent legally permissible, that SiFi shall pay possessory interest taxes or assessments on SiFi’s use of the ROW. Notwithstanding the foregoing, SiFi understands and acknowledges that City cannot guarantee or predict what taxes or assessments SiFi may or may not be subject to as a result of the issuance of this Agreement or the conduct of SiFi’s operations, and further, should any taxation authority conclude that SiFi should pay any possessory interest tax or assessment as a result of SiFi’s use of the ROW, SiFi, and not City, shall be responsible for paying such taxes or assessments. In addition, this Agreement does not exempt SiFi from City’s ordinary business taxes.

4.1 In order to facilitate City’s performance of the obligations described in Section 4.2 below, commencing with the date of first SiFi permit submittal, SiFi shall maintain continuously by the Regular Monthly Replenishment and, if any, the Additional Replenishment, as each is defined and described below in this Section 4.1, on deposit with the City an amount not to exceed Thirty Thousand Dollars per month in the aggregate ($30,000) (“Monthly Deposit Amount”). The Monthly Deposit Amount shall be applied by the City to the payment of actual direct costs, fees and charges incurred by the City for single point of contact (“SPOC”) costs and City staff time associated with the administration of the Efficient Permitting Process described in Section 4.2 below, plan check, inspections, SPOC related expenses, and any other applicable charges (collectively, the “Monthly Reimbursable Amounts”). The Monthly Reimbursable Amounts shall also include, and will be used to pay for, any building permit fees, encroachment permit fees or other regulatory permit fees due at the time of permit issuance (“Permit Fees”); provided that the City and SiFi will, in good faith and preferably prior to the first permit application by SiFi, develop a procedure for the withdrawal of funds from the Monthly Deposit Amount to pay the Permit Fees and SiFi and its
construction contractor shall comply with said procedure. City represents and warrants that such Monthly Reimbursable Amounts will include all City’s direct costs, provided that, such direct costs are reasonable and are not discounted or at a premium, compared to costs charged for similar services by the City, incurred by the City in fulfilling its obligations under the Agreement. If the City reasonably determines that the amount of the Monthly Deposit Amount will be exceeded in any given month, the City shall notify SiFi in writing of that determination and provide reasonable justification for it along with the estimated additional amount that SiFi must deposit with the City subject to an itemized electronic invoice to ACCOUNTS@SiFiNetworks.com. Upon receipt of such notification and invoice and unless SiFi has reasonable grounds to object, SiFi shall deposit the additional amount specified therein with the City within ten (10) business days of the date thereof (“Additional Replenishment”). If SiFi fails to deposit any such additional amount with the City, the City’s obligations to review and process SiFi’s permits shall be suspended until such time that the additional amount is deposited with the City. On a monthly basis on the last business day of each calendar month, the City shall send to SiFi at ACCOUNTS@SiFiNetworks.com, copies of all invoices and other documents and information which the City prepares or receives with regard to all Monthly Reimbursable Amounts paid from the Monthly Deposit Amount during the previous month, along with a report detailing the previous and current balance in the Monthly Deposit Amount and SiFi will replenish cash in the Monthly Deposit Amount within ten (10) business days thereafter (“Regular Monthly Replenishment”); provided that, any funds remaining from the Monthly Deposit Amount at the end of a given month will roll over to the next month and offset the amount of the Monthly Deposit Amount for such month. SiFi will continue to maintain the Monthly Deposit Amount until completion of construction of the System after which time any remaining amounts in the Monthly Deposit Amount will be returned to SiFi. Upon Substantial Completion, (i) SiFi shall no longer have an obligation to maintain the Monthly Deposit Amount and City will have no obligation to continue to provide SPOC services, and (ii) City will promptly return any remaining balance in the Monthly Deposit Amount, however, SiFi will remain obligated to pay the applicable permit application fees for future permits.

4.2 Efficient Permitting Process.

As long as the SiFi is in material compliance with its obligations under Section 4.1, the City shall provide expedited, diligent review of all applications for permits, to the extent permits are necessary, including permits or other necessary items for construction work on the System within the ROW as described herein below. The SPOC, in addition to any other responsibility specified in this Agreement, will be responsible for facilitating and expediting the plan check, permitting process, inspections and communicating with SiFi and its contractors and the general public at the City’s request regarding the construction process and progress. The City acknowledges and agrees that in order for SiFi to perform its obligations under this Agreement, time is of the essence in connection with permitting and approval of the System. Accordingly, the City agrees to the process and timeframes below in connection with all applications for SEPs by SiFi in connection with this Agreement:

(i) The City shall within two (2) working days of submittal by SiFi of an application for an SEP in connection with this Agreement provide written acknowledgment to SiFi confirming receipt of such submittal; and
(ii) The City shall within five (5) working days of submittal by SiFi 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 with a detailed written explanation of any deficiencies. Upon curing any such deficiencies, the City shall undertake an expedited review of the application or other request for permit by SiFi in order to comply with this Section 4.2.1.

(iii) The City shall within ten (10) working days of submittal by SiFi 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 a detailed explanation of any additional information needed for the City to complete its review process. In the event no additional information is needed, the City shall so notify SiFi in writing.

(iv) The City shall within twenty-one (21) working days of submittal by SiFi of an application or other request for a permit in connection with this Agreement provide final decision, and if approved, issue any necessary approval or have a permits ready for SiFi to pull the permit as long as all information by SiFi has been provided as requested.

V. Insurance/Bonding

The City’s Insurance and bonding requirements as of the Effective Date are set forth in EXHIBIT A, attached hereto and made a part hereof, but are subject to change at the City’s discretion. City agrees that SiFi’s contractors shall be required only to carry insurance set forth in Exhibit A that is applicable to their scope of services.

VI. Miscellaneous

A. Assignment

SiFi shall have the right to assign or transfer this Agreement and the rights contained herein in its favor with the prior consent of City which shall not be unreasonably withheld. In order to assign or transfer; SiFi shall: a) provide at least sixty (60) days’ notice of such proposed transfer or assignment to City; b) provide suitable evidence of the creditworthiness and performance history of the proposed assignee or transferee within the notice timeframe; and c) cause SiFi as well as the assignee or transferee to execute an assignment and assumption in a form approved by the City. All obligations, responsibilities, and other requirements of SiFi, as set forth in this chapter, shall be binding on subsequent owners of SiFi through this Agreement and shall be binding on subsequent owners of the encroachment. This paragraph VI.A is a Specific Exemption from City Code Chapter 18.100.

B. Indemnity, Limitation of Liability.

In consideration for issuance of this Agreement, SiFi agrees to thoroughly investigate defend, indemnify, and hold harmless City and its officers, agents, employees, boards and commissions, and members thereof, and its successors and assigns, from and against any and all claims, lawsuits, liabilities, expenses, causes of action, losses, damages, or any judgment rendered against them or any sums paid out in settlement or otherwise, to the extent caused by and arising out of, growing out of, or in connection with, or relating in any manner to (i) any act or omission of SiFi, and its agents, employees, and subcontractors of any tier, and employees
thereof, related to this Agreement, use or occupancy of the Licensed Area and ROW, and operation and use of the System, or (ii) SiFi’s non-compliance with any applicable to SiFi federal or state laws including those referenced in Section VI.I below.

SiFi shall have sole discretion in selecting defense counsel for the indemnity described above; provided that, if City wishes to participate in such defense and notifies SiFi in writing prior to the commencement of such defense, SiFi shall select defense counsel reasonably acceptable to City, which acceptance shall not be unreasonably withheld, delayed or conditioned. For the avoidance of doubt, the counsel so selected shall be the only defense counsel for which SiFi shall be obligated to pay reasonable attorney’s fees related to such defense. SiFi shall not enter into any settlement affecting City without City’s prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

C. Default/Termination/Cancellation

1. This this Agreement or any SEP may be canceled by the City Engineer for any of the following reasons but only after providing written notice to and allowing SiFi thirty (30) days (i) to remedy any alleged deficiency or (ii) if such deficiency cannot reasonably be remedied within such period, to commence remedying any such alleged deficiency and diligently pursue, using reasonable business efforts, such remedy:

   (a) When the permitted work is not started within the time specified for Minimum Build-Out and/or is started but not diligently prosecuted to completion;

   (b) By failure on the part of SiFi to comply with any material requirements of this Agreement;

   (c) By failure on the part of SiFi to provide for the public safety; or

   (d) if SiFi has not completed any functional portion of the System by the expiration of the Initial Term.

The City Engineer may not cancel this Agreement or any SEP due to the above grounds (a) through (d) if SiFi’s deficiency was caused by the City’s failure to fulfill its obligations under this Agreement.

Any waiver by City of SiFi’s default of any requirement of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding default of the same or any other requirement of this Agreement.

Notwithstanding anything to the contrary in this Agreement, any SEP may be revoked by the City Engineer pursuant to Section 18.100 only for as long as the valid reason, caused solely by SiFi or SiFi’s contractors, for such revocation remains uncured; PROVIDED THAT, such termination/cancellation shall not apply to any already installed and functioning portion of the System and this Agreement shall remain in full force and effect therefor, pursuant to the last paragraph of Section II.B (“Minimum Build-Out”), above.

Action taken pursuant to the provisions of this section shall not constitute a bar to the criminal proceedings provided for in the City Code.

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2. Upon the termination or cancellation of this Agreement unless SiFi demonstrates to the City’s satisfaction that it has an alternative authority to occupy the Public Way, SiFi shall be obligated to and shall remove all of the above-ground portions of the System from the ROW. SiFi shall provide City with a record showing which parts of the System are abandoned upon termination no later than 15 days after termination. Notwithstanding the foregoing, if SiFi fails or refuses to remove any of the System from the Licensed Area within ninety (90) days, or such longer period authorized in writing by the City Engineer at their sole reasonable discretion, after the termination date, said System or portions thereof shall be deemed abandoned by SiFi, and the City shall have the right, but not the obligation, to remove, destroy, sell, or otherwise dispose of them with no further notice to SiFi. In addition, the City shall have the right to charge and recover from SiFi all costs and expenses incurred related to the removal, disposal, or sale of the above-ground portions of the System, and the restoration of the Licensed Area to the condition it was in prior to SiFi’s use of the Licensed Area. SiFi agrees to pay such expenses to the City upon demand. City shall not be required to seek and/or obtain judicial relief prior to removing and/or disposing of SiFi’s System from the Licensed Area, nor shall City be responsible for the value of said property.

3. This Agreement shall not terminate merely by reason of a change in any uses of the ROW or the present improvements or fixtures thereon.

D. Dispute Resolution

In case of dispute, the Parties agree that venue shall lie in the California state court of competent jurisdiction in Ventura County, California, and California law shall apply, without regard to conflict of law principles. Each Party shall bear their own fees and costs, including attorneys’ fees. By this paragraph, City does not waive any rights of enforcement or other remedies City may have under the City Code Chapter 18.100. The Parties hereby waive any state and federal laws that allow for a change of venue.

E. Savings Clause
If any term, provision or condition in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

F. Order of Precedence

In resolving any ambiguities as to the requirements in this Agreement, if there are any inconsistencies, the order of precedence shall be as follows: (1) a “Specific Exemption” set forth in this Agreement; (2) City Code Chapter 18.100; (3) this Agreement; and (4) Exhibits to this Agreement.

G. Agreement Notices

Any notice or document given or required to be given pursuant to this Agreement shall be in writing and delivered personally or by U.S. mail, first class, postage prepaid, or by certified mail with a courtesy copy by email. Notice sent by mail shall be addressed to each Party’s designated representative as set forth below. When addressed in accordance with this Section, such notice shall be deemed given upon deposit in the United States mail. In all other instances, notices shall be deemed given at the time of actual delivery.

Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner described in this Section.

SiFi’s Designated Representative

SiFi Networks Ventura LLC
103 Foulk Road, Suite 500
Wilmington, DE 19803
Email: NOTICES@SiFiNetworks.com

City’s Designated Representative

Phil Nelson, Public Works Director
501 Poli Street
Ventura, CA 93001
Email: pnelson@cityofventura.ca.gov

And
Name: Antoinette M. Mann
Title: City Clerk
Address: 501 Poli Street
City State Zip: Ventura, CA 93001
Email: amann@cityofventura.ca.gov

H. Force Majeure
1. Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause of force majeure, existing or future, beyond the reasonable control of such party, which includes, but are not limited to, government regulation or order, including without limitation, a court order, legislative enactment, or executive regulation or decree; acts of terrorism, riots, strikes or lockouts by third parties providing labor, material, or services under contract to a party; delays caused by the other party to this agreement; inability to procure critical materials; unforeseen catastrophic emergencies, epidemic, pandemic, or other phenomena of nature beyond the power of a party reasonably to foresee or to make preparation in defense against (“Force Majeure”). Force Majeure shall not, however, include actions of a government authority with respect to a Party’s compliance with applicable laws, franchises, authorizations or permits; any failure by a Party to obtain or maintain any franchise, authorization or permit, it is required to obtain or maintain; and any act, omission, delay, default or failure (financial or otherwise) of a subcontractor to a Party.

2. In the event of Force Majeure, the Party who first becomes aware of the event shall promptly give written notice to the other Party of such event. When either Party becomes aware of the end of the Force Majeure event, it shall give prompt written notice to the other Party.

I. Representations and Warranties of the Parties

1. Each Party, with respect to this Agreement: (a) has taken all corporate and/or governmental action necessary for the authorization, execution and delivery of such Agreement and to make such Agreement legal, valid and binding; (b) has no agreement or understanding with any third party that interferes with or will interfere with its performance of the Party’s obligations under this Agreement; and (c) is not interfering with any other party’s rights or contracts, or violating the terms of any agreements with other parties, by entering into and/or performing under the terms of this Agreement.

2. Each Party represents, warrants and covenants to the other Party that it shall perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any intellectual property rights of any third party.

3. The Parties are independent entities and are not to be, and shall not be, construed as joint venturers, partners, employer/employee, or agents one of the other, and neither shall have the power to bind or obligate the other, except as set forth in this Agreement.

4. Each Party represents and warrants to the other Party that SiFi shall develop, construct, operate and maintain the System at its sole cost and expense. The Parties’ intent in setting the SPOC Funding Minimum is to establish a fixed cost amount, subject to adjustments based on variations in Key Assumptions, that represents a reasonable estimate of City’s anticipated costs for processing permits under this Agreement. City hereby represents to SiFi that the SPOC Funding Minimum amounts, including any increase due to a variation in a Key Assumption, and all other fees, expenses, costs, and taxes as provided for in this Agreement represent full consideration, the receipt and sufficiency of which are hereby acknowledged by the City, for the transactions, covenants, and agreements set forth in this Agreement, which
consideration was agreed upon as the result of arms-length good faith negotiations between the City and SiFi.

5. SiFi hereby represents and warrants and covenants to City as follows:

(a) As of the Effective Date SiFi is a limited liability company organized and existing under the laws of the State of Delaware, and is a duly qualified to transact business and is in good standing in the State of California;

(b) Labor Standards. SiFi is aware of the requirements of California Labor Code sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq. (the “Prevailing Wage Laws”). SiFi agrees to comply with such Prevailing Wage Laws with respect to any work under this Agreement which constitutes, or is determined by the Department of Industrial Relations or by a court to be, a “public works” project under California law. Accordingly, SiFi shall also defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement and from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws in connection with this Agreement.

(c) As of the Effective Date has and for the Total Aggregate Term, SiFi will apply commercially reasonable efforts to have the financial, technical and legal capability to perform its obligations under this Agreement and its performance under this Agreement shall be in compliance with all applicable federal, state and local laws and government rules and regulations including telecommunications laws and Prevailing Wage Laws applicable to SiFi.

(d) As of the Effective Date SiFi represents that (i) it is not a public utility; (ii) it does not hold and, to the best of its knowledge, is not legally required to hold any certificate of public convenience and necessity (CPCN), video services franchise issued pursuant to the Digital Infrastructure and Video Competition Act (DIVCA), or any other authorization from the California Public Utilities Commission or the Federal Communications Commission; (iii) it is not currently offering and does not intend to offer telecommunications, video or cable services within the Licensed Area, and (iv) it is not claiming and does not intend to claim any rights, privileges, or protections under state or federal law as a public utility, a provider of telecommunications services, a franchised telephone company under Public Utility Code Sections 7901 and 7901.1, or a holder of a video services franchise issued pursuant to the Digital Infrastructure and Video Competition Act, Pub. Util. Code 5800 et seq., and

(e) SiFi, if and when served, will promptly provide written notice to the City if any state or federal regulator or other person initiates a lawsuit or proceeding challenging or questioning the accuracy of any of the representations in (c) and (d) above or if SiFi intends to voluntarily change its regulatory status described in (d) above.

(f) Notice and Indemnification Related to Regulatory Compliance. In the event SiFi is found by any state or federal regulator to not be in compliance with then current applicable state or federal telecommunications laws, SiFi shall promptly notify the City in writing and obtain approvals or authorizations needed to come into compliance with such laws. If SiFi fails to come in to compliance with such laws within a
reasonable period as required or allowed by the applicable regulatory body, the City may suspend performance of its obligations, terminate the Agreement or require renegotiation to limit the scope of activities to those that are authorized by law. If SiFi provides notice to the City pursuant to section VI.I.4(e) that it intends to voluntarily change its regulatory status described in VI.I.4(d) above, the City may require renegotiation of this Agreement.

[SIGNATURE BLOCK ON NEXT PAGE]
IN WITNESS WHEREOF, the Parties have caused this Master Encroachment Permit to be executed as of the Effective Date.

ATTEST: 

CITY OF SAN BUENAVENTURA, a Municipal Corporation

By: 
Name: ____________________________
Title: ____________________________

By: 
Name: ____________________________
Title: Mayor ____________________________

APPROVED AS TO FORM: 

SiFi NETWORKS VENTURA LLC

By: 
Name: ____________________________
Title: Assistant City Attorney ____________________________

By: Ben Bawtree-Jobson 
Name: ____________________________
Title: CEO ____________________________

APPROVED AS TO CONTENT: 

By: 
Name: ____________________________
Title: City Manager ____________________________
EXHIBIT A
Insurance and Bonding Requirements

1. Insurance Requirements
2. Letter of Credit Requirements
1 Insurance Requirement
Required Coverage Types and Limits

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Coverage Limits</th>
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<tbody>
<tr>
<td>a)</td>
<td>Commercial General Liability (ISO CGL CG 00 01) - including coverage for bodily injury, property damage, products &amp; completed operations, and personal injury arising from the contractor’s activities.</td>
<td>$6 million &lt;br&gt;$7 million</td>
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<tr>
<td></td>
<td>Commercial General Liability (CGL) per Occurrence</td>
<td></td>
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<tr>
<td></td>
<td>Commercial General Liability Aggregate or Combined Single Limit</td>
<td></td>
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<tr>
<td>b)</td>
<td>Auto Liability for owned, hired and non-owned vehicles per Occurrence (or non-owned &amp; hired if contractor has no autos).</td>
<td>$2 million</td>
</tr>
<tr>
<td></td>
<td>Auto Liability Aggregate or Combined Single Limit</td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td>Worker's Compensation <em>with a Waiver of Subrogation in favor of the City Employer's Liability</em></td>
<td>Statutory Limits &lt;br&gt;$1 million</td>
</tr>
<tr>
<td>d)</td>
<td>Crime/Employee Dishonesty Policy</td>
<td>n/a</td>
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<tr>
<td></td>
<td><em>The Crime policy shall name The City of San Buenaventura as Loss Payee.</em></td>
<td></td>
</tr>
<tr>
<td>e)</td>
<td>Cyber Liability Policy with Network Security/Data Privacy Coverage</td>
<td>n/a</td>
</tr>
<tr>
<td>f)</td>
<td>Technology E&amp;O / Technology Professional Liability</td>
<td>n/a</td>
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1. Insurance Policy Provisions, Endorsements and other Requirements

**Consultant agrees to comply with the following additional requirements with respect to the insurance:**

g) Liability Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any officer, employee, agent, or volunteer of City. As such, a Primary and Non-Contributory Endorsement (with coverage at least as broad as ISO CG 20 01 04 13) is required on all liability policies.

h) Consultant waives its right of subrogation against the City. As such, a Waiver of Subrogation Endorsement is required on the Consultant's Worker's Compensation policy.

i) A "Blanket" Additional Insured Endorsement (a/k/a "automatic additional insured endorsement") attached to the Commercial General Liability policy covering premises liability, ongoing operations, product liability and completed operations is required. If a "Blanket" endorsement is not available, Consultant may submit a combination of the following endorsements:
An Additional Insured Endorsement covering Premises and Ongoing Operations CG 20 10 04 13 or its equivalent (CG 20 26, CG 20 33, or CG 20 38) AND an Additional Insured Endorsement covering Completed Operations CG 20 37 04 13.

j) Insurance Policies must be issued by an insurance company licensed to do business in the State of California with an AM Best rating of not less than A:VII.

k) Each insurance policy required above shall provide that coverage shall not be canceled, except with 30 days’ notice to the City.

l) The Description section of the Certificate must include the following language:
   The City of San Buenaventura, its officers, officials, agents, employees and volunteers shall be named as an additional insured under the General Liability and Auto Liability policies. All Liability policies are primary and Non-Contributory. Waiver of Subrogation applies to the Worker’s Compensation policy. 30 day notice of cancellation will be provided to the Certificate Holder.

m) A Certificate of Insurance must include the following language in the Certificate Holder section:
   City of San Buenaventura, its officers, officials, agents, employees and volunteers P O Box 99
   Ventura, CA 93002

n) Consultant will provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be submitted to the City within 10 days of renewal.

o) Consultant shall provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance and any required endorsements evidencing all of the coverages required. Any failure on the part of City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any other additional insured in this or any other regard.

p) Consultant shall ensure that coverage provided to meet these requirements is applicable separately to each insured, and that there will be no cross liability exclusions that preclude coverage for any legal action between Consultant and City, between Consultant and any other named insureds or additional insureds under the insurance policy, or between City and any party associated with City or City’s officers, officials, employees, agents, or volunteers.

q) Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. There shall be no cross-liability exclusion and no Consultant limitation endorsement. In addition, there shall be no endorsement or modification limiting the scope
of coverage for liability arising from pollution, explosion, collapse, underground property
damage, except for a provision or endorsement limiting liability arising from pollution to
liability caused by sudden or accidental pollution.

r) Any umbrella liability insurance over primary insurance provided to meet primary limits
shall apply to bodily injury, personal injury and property damage, at a minimum. Coverage
shall be as broad as any required underlying primary coverage and shall include a “drop
down” provision providing primary coverage for liability not covered by primary policies
but covered by the umbrella policy. Coverage shall be provided with defense costs payable
in addition to policy limits. Coverage shall have starting and ending dates concurrent with
the underlying coverage.

s) Coverage shall be written on an “occurrence basis” if such coverage is available, or on a
“claims made” basis if not available. When coverage is provided on a “claims made” basis,
Consultant shall continue to maintain the insurance in effect for a period of three (3) years
after this Agreement expires or is terminated. Such insurance shall have the same coverage
and limits as the policy that was in effect during the term of this Agreement and shall cover
Consultant for all claims made by City arising out of any errors or omissions of Consultant,
or the officers, employees or agents of Consultant during the time this Agreement was in
effect.

t) Consultant shall require all sub-Consultants or other parties hired by Consultant to perform
any part of the services required by this Agreement to purchase and maintain all of the
insurance specified above and submit evidence of all such insurance. Consultant shall
obtain certificates evidencing such coverage and make reasonable efforts to ensure that
such coverage is provided as required herein. No contract used by any Consultant, or
contracts Consultant enters into on behalf of City, will reserve the right to charge back to
City the cost of insurance required by this Agreement. When requested, Consultant shall
provide City will all agreements with sub-Consultants or others with whom Consultant
contracts with on behalf of City, and with all certificates of insurance obtained in
compliance with this paragraph. Failure of City to request copies of such documents will
not impose any liability on City, or its employees.

u) In the event any policy of insurance required under this Agreement does not comply with
these requirements or is canceled and not replaced, City has the right, but not the duty, to
obtain the insurance it deems necessary to meet the requirements of this Agreement, and
any premium paid by City for such insurance will be promptly reimbursed by Consultant,
or, if not promptly reimbursed, deducted from any compensation to be paid by City to
Consultant pursuant to this Agreement.

v) Requirements of specific coverage features, or limits contained in this Section are not
intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. Coverage shall not be limited to the specific location, individual, or entity designated as the address of the project or services provided for by this Agreement. Insurance coverage limits are subject to change based on the unique liability associated with each project over and above standard coverage limits at the discretion of the City’s Risk Manager or their designee.

w) Consultant shall provide immediate notice to City of any claim against Consultant or any loss involving Consultant that could result in City or any of City’s officers, employees, agents, or volunteers being named as a defendant in any litigation arising out of such claim or loss. City shall not incur any obligation or liability by reason of the receipt of such notice. However, City shall have the right, but not the duty, to monitor the handling of any such claim or loss that is likely to involve City.

x) In the event of any loss that is not insured due to the failure of Consultant to comply with these requirements, Consultant will be personally responsible for any and all losses, claims, suits, damages, defense obligations, and liability of any kind attributed to City, or City’s officers, employees, agents, or volunteers as a result of such failure.

I. Please note:

y) Automobile Liability insurance is not required if the Consultant and its employees does NO traveling in providing services for completion of the Agreement. (e.g. telecommuting). If the Consultant has employees but no vehicles registered to the business (personal vehicles only), the non-owned and hired automobile liability coverage should be included in the Consultant's Commercial General Liability policy.

z) Workers Compensation insurance is not required if the Consultant is a sole proprietor/partner/corporate officer with no employees. Otherwise, Worker’s Compensation is required under CA Labor Code Section 3700. A Workers Compensation Insurance Waiver is required stating Consultant is a sole proprietor/partner/corporate officer with no employees. This waiver is to be included with the other submitted documents.
Letter of Credit Requirements

Pursuant to the MASTER LICENSE AND ENCROACHMENT AGREEMENT FOR FIBER OPTIC INFRASTRUCTURE dated ___ (the “Agreement”), SiFi agrees that, prior to Commencement of Construction, a Letter Of Credit (“LOC”) in the amount of one million dollars ($1,000,000) will be executed and delivered to and for the benefit of the City of San Buenaventura by (Name of Bank) (“Bank”) in a form reasonably acceptable to the City and incorporated herein as security for the performance by SiFi of its obligations under the Agreement, which LOC will be enforceable in accordance with the terms and conditions therein stated. The LOC shall remain in force and effect until twelve (12) months SIFI performs all of its obligations under the Agreement and completes all work associated with all System encroachment permits. In case of an uncured material breach by SiFi under the terms of the Agreement, the City will present to the Bank for payment of the LOC a valid claim to the Bank with reasonably sufficient evidence of SiFi’s uncured breach of the Agreement.

The LOC shall become void 12 months after SIFI performs all of its obligations under the Agreement and completes all work associated with all System encroachment permits.
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MICROTRENCH PATHWAY (TYP.)

S/W  EOP  FOC

VARIES

R/W

S/W  EOP  FOC

A.C. PAVEMENT

LATERAL

SEE TYPICAL LATERAL DETAILS BELOW

CATCH BASIN (STORM DRAIN)

TREATED AS UTILITY CROSSING

SEE NOTE BELOW.

ROADWAY WITH A CURB RETURN

PLAN VIEW

SCALE: NTS

SECTION VIEW A-A

REINSTATEMENT MATERIAL -CTF

TOTAL REINSTATEMENT COVER 8"

1"-2" PEA GRAVEL COVER

CONCRETE CURB & GUTTER

ROADWAY

IF LATERAL FALLS AT AN EXPANSION JOINT CUT

EXPANSION JOINT AND PLACE CONDUIT UNDER CURB AND

FILL EXPANSION JOINT WITH TRENCH FILL CAP OF

SEALANT THAT MATCHES CONCRETE COLOR REPLACE

12" X 12" SECTION WITH ROCK-ASPHALT OR EQUIVALENT

MICROTRENCH

CURB

MICROTRENCH

MCROTRENCH

IF LATERAL FALLS AT LOCATION WITHOUT EXPANSION

JOINT TUNNEL UNDER CURB AND PLACE CONDUIT AND

BACKFILL WITH FLOWABLE FILL UNDER CURB REPLACE

12" X 12" SECTION WITH ROCK-ASPHALT OR EQUIVALENT

MICROTRENCH

CURB

MICROTRENCH

TYPICAL LATERAL DETAIL

AC ONLY

RESIDENTIAL & COLLECTOR STREETS

NO. 2

REVISIONS

STD DWG

NOT TO SCALE

11/11/2020

BY

RA

DATE

11/1/2020

A
MICROTRENCH PATHWAY (TYP.)

A.C. PAVEMENT

EOP

FOC

VARIES

R/W

S/W

LATERAL
SEE TYPICAL LATERAL DETAILS BELOW

SECTIONS VIEW A−A

SECTIONS VIEW B−B

FASTPATCH 8400 OR SAFETRACK RMP100

1'-2" PEA GRAVEL COVER

REINSTATEMENT MATERIAL - CTF

ROADWAY

CONCRETE CURB & GUTTER

TOTAL REINSTATEMENT COVER 8"

TRENCH DEPTH 12"

1.25" (TYP) - 2" (MAX)

IF LATERAL FALLS AT AN EXPANSION JOINT CUT
EXPANSION JOINT AND PLACE CONDUIT UNDER CURB AND
FULL EXPANSION JOINT WITH TRENCH FILL CAP OF
SEALANT THAT MATCHES CONCRETE COLOR REPLACE
12" X 12" SECTION WITH ROCK-ASPHALT OR EQUIVALENT

CURB

MICROTRENCH

THE TYPICAL LATERAL DETAIL

AC ONLY

RESIDENTIAL & COLLECTOR STREETS

STD DRAWING

NOT TO SCALE

11/11/2020

B

1

2

REVISIONS

APPROVED RELEASE

RA

11/11/2020
NOTE:
FIBER CONDUIT SHOULD TRY TO FOLLOW EXISTING EXPANSION JOINT IN THE PCC. IF CUTTING PCC PANELS, LAYOUT WITH CITY INSPECTOR ACCEPTANCE.
ROADWAY WITH CURB AND GUTTER - VARIANT C

NOTE:
FIBER CONDUIT SHOULD TRY TO FOLLOW EXISTING EXPANSION JOINT IN THE PCC. IF CUTTING PCC PANELS, LAYOUT WITH CITY INSPECTOR ACCEPTANCE.
ROADWAY CROSSING

SECTION VIEW A-A

SECTION VIEW B-B

ARterial Streets

Std dwg

Not to Scale
STANDARD CHAMBER/INLET PROTECTION

FEATURES:
• 24” X 36” X 36” (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 ¾” x 4”)
• (2) Winterized Cable Drop slide (1 ¾” x 1 ¾”)
• (1) Logo Disk

WEIGHT & SHIPPING:
• Cover Weight: 47 lbs
• Box Weight: 87 lbs
• Assembly Weight : 134 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

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LID TO INCLUDE
SIFI NETWORKS
FIBER City AND
PHONE NUMBER

Anti-Slip Tread Pattern

Covered Lift Pin

SHIELD X Cover

Embedded Racking (2 each side)

Logo

CHAMBER

40 9/8”
[1026]

28 3/4”
[733]

35 3/4”
[910]

24”
[610]

STANDARD CHAMBER/INLET PROTECTION
TYPICAL AGGREGATION SHELTER

10' X 20' SHELTER

WALL "A"

WALL "B"

WALL "C"

WALL "D"

AGGREGATE WALL PANEL - ALL SIDES (TYP.)
TYPICAL CABINET DETAILS

SIDEWALK, WIDTH VARIES BY LOCATION

30"x48"x36" CHAMBER

2'-0"

PRECAST CONCRETE PAD 48"x72"

NOKIA ALP-248 ELECTRONICS CABINET

30"x48"x36" CHAMBER

BOC

FOC

EOP

9'-6” MINIMUM

30"x48"x36" CHAMBER

ertzing area

for swing door

CLEARANCE AREA

FOR SWING DOOR

CLEARANCE AREA

FOR SWING DOOR

TOP VIEW

BASE VIEW

SIDE VIEW

PANEL VIEW

PRECAST CONCRETE PAD

EXISTING GRADE

PRECAST 6"

CONCRETE PAD

PRESENT OF

CONCRETE PAD

ELEVATION SHOWS AS EXAMPLE:

· 4' PARK/BEAUTY STRIP

· TYPE B1 6" CURB AND GUTTER

· ORIGINAL SLOPE 1/2" PER FOOT

TYPICAL CABINET DETAILS

11/11/2020

NOT TO SCALE
TYPICAL CABINET DETAILS

NOKIA ALP-248 ELECTRONICS CABINET

30"x48"x36" CHAMBER

PRECAST CONCRETE PAD 48"x72" (E) GRADE

TO MICRO-TRENCH MICRO-TRENCH ENTRY

UNDERGROUND POWER IN CONDUIT. TO POINT OF CONNECTION TO BE VERIFIED WITH UTILITY CO.

30"x48"x36" CHAMBER

POWER CONDUIT FOR POWER

POWER FEED CONDUIT (TYP.)

4" CONDUIT SCH. 80 HDPE

TO MICRO-TRENCH MICRO-TRENCH ENTRY

4" DIAMETER PENETRATION

9" DOWN FROM TOP OF CHAMBER

6" IN FROM CORNER OF CHAMBER

MICRO TRENCH ENTRY NOTE:

ELEVATION VIEW
**FEATURES:**
- 30” X 48” X 36” (open floor) (actual dimensions on drawing)
- CHAMBER – 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 ¾” x ¾”)
- (4) Winterized Cable Drop slide (1 ¾” X 1 ¼”)
- (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**

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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 back of curb 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 aesthetic look of the sidewalk without the need to replace whole concrete sidewalk sections.

FAB AT ROW

Hardscape Lateral Typical With FAB Installed At Back Of Curb & Conduit Installed To 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. A neat 6" core cut at the back of curb 10" deep will allow FAB (Fiber Access Box) to be installed for ease of duct retrieval on service installs. To reach the ROW a slot cut would be made to just below the concrete base. A small conduit would then be installed to the ROW from the FAB with slow bend and cap for future use on drop installs when extending the lateral duct to the property through the pre-installed conduit. This slot cut would be reinstated with and suitable fill in approval with DPW. This method would allow the FAB and conduit to be installed neatly with minimum reinstatement and would maintain the integrity and aesthetic look of the sidewalk without the need to replace whole concrete sidewalk sections.

FAB AT BOC
EXHIBIT C
City of San Buenaventura Municipal Code Chapter 18.100
As of the Effective Date

Chapter 18.100 - Encroachments and Excavations in Public Rights-of-Way and City Utility Easements

Footnotes:
--- (3) ---
Editor's note—Ord. No. 2002-7, § 1, adopted May 20, 2002, amended ch. 18.100 in its entirety, in effect repealing and reenacting said chapter to read as herein set out. The former ch. 18.100, §§ 18.100.010—18.100.050, pertained to street excavations and derived from Code 1971, §§ 8311—8315.

Sec. 18.100.010. - Purpose.
This chapter is adopted pursuant to the municipal affairs provision of the City Charter for the purpose of regulating encroachments and excavations on, over, or under public rights-of-way or city utility easements.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.020. - Definitions.
Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this chapter:

A. "Encroachment" means any construction work performed within a public right-of-way or city utility easement; any work other than construction work performed within a public right-of-way or city utility easement that obstructs or interferes with the use of the public right-of-way or city utility easement, and any structure or object that is placed or installed within a public right-of-way or within a city utility easement in a manner that obstructs or otherwise interferes with the use of the public right-of-way or city utility easement.

B. "Excavation" means removal of any macadam, concrete or other surface material covering a public right-of-way or city utility easement, and/or the removal of any earth material in or under the public right-of-way or city utility easement.

C. "Public Right-of-Way" means any city street, sidewalk, pedestrian path, bike path or any other "public way," as defined in the California Streets and Highways Code.

D. "City utility easement" means any easement that is owned and/or used by the city for city water facilities, city sewer facilities or city storm drain facilities.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.030. - Administration of chapter.
This chapter shall be administered by the director of the city department designated by the city manager to administer the chapter. The director of that department shall, in turn, delegate to an officer or employee within the department the authority and responsibility to issue the permits, make the determinations, and take all of the enforcement actions provided for in this chapter, subject to the overall direction and supervision of the director. The person delegated the authority and responsibility to perform these duties is referred to in this chapter as "the administrator."

(Ord. No. 2002-7, § 1, 5-20-02)

Exhibit C-1
Sec. 18.100.040. - Administrative review of a determination or action of the administrator.
A. Right of Administrative Review. Any person aggrieved by a determination made or action taken by the administrator pursuant to the provisions of this chapter may apply for administrative review of such determination or action by the director of the department designated to administer the provisions of this chapter.

B. Application for Administrative Review. Applications for administrative review of a determination made or action taken by the administrator pursuant to this chapter shall be in writing and shall be filed with the director no later than ten days following the date such determination or action was made or taken, or where written notice of such determination or action is required to be served, the date such notice is deemed served. If an application for administrative review is untimely, the director may, nevertheless, extend the time for filing the application for good cause shown. In addition to setting forth the request for administrative review, the application shall contain a brief statement of the reasons why the applicant believes that the administrator's determination or action does not comply with the provision of this chapter, and shall set forth the relief requested by the applicant from the determination or action.

C. Decision on Application for Administrative Review. Upon the filing of an application for administrative review of a determination made or action taken by the administrator pursuant to the provisions of this chapter, the director shall consider the application and render a decision either affirming the determination or action, or reversing or modifying the determination or action. Prior to rendering a decision, the director may, at the director's discretion, convene an informal hearing for the purpose of considering all evidence and other matters bearing on the decision, provided notice of the date, time and place of such hearing is served on the person applying for administrative review within a reasonable time prior to the hearing. After rendering a decision, the director shall promptly inform the administrator of the decision and cause notice of the decision to be served on the person who applied for the administrative review. The decision of the director shall be final and not subject to any further administrative review or appeals.

D. Stay of determination made or Action Taken by the Administrator Pending Administrative Review. Any determination made or action taken by the administrator pursuant to the provisions of this chapter, save and except for an order to stop work issued by the administrator, or the commencement or prosecution of work by the administrator to remove or remedy a condition in a public right-of-way or city utility easement that threatens the safety of life or property, shall be stayed pending a decision of the director on an application for administrative review of such determination or action.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.050. - Service of notices.

Any notice required to be served by the administrator on a person in accordance with the provisions of this chapter, shall be deemed served when sent by first class mail addressed to such person at the person's last known address. When a notice is served on a person applying for or issued a permit in the manner provided by this chapter, the address of that person shall be the address set forth on the permit application, unless the person has provided the administrator with written notice of a change of address.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.060. - Permit required.

Except as provided in this chapter, it is unlawful for any person to encroach upon a public right-of-way or city utility easement, or to make an excavation in a public right-of-way or city utility easement, unless and until a permit authorizing such encroachment or excavation has been issued in the manner provided by this chapter.

(Ord. No. 2002-7, § 1, 5-20-02)
Sec. 18.100.070. - Exceptions to permit requirements.

An encroachment permit is not required for the following encroachments or excavations on or in a public right-of-way or city utility easement:

A. An encroachment or excavation made by a city officer or employee acting within the course or scope of his or her duties or employment;

B. An encroachment or excavation for work required by a city public works contract;

C. An encroachment on a public sidewalk for a news rack when authorized by a news rack permit issued in the manner provided by this Division;

D. An encroachment for a public assembly, public meeting or other activity within a public right-of-way when authorized by a public event permit issued in the manner provided for by this Division;

E. An encroachment on a public sidewalk for an outdoor dining use made by the owner or operator of an adjoining dining establishment, when authorized by an outdoor dining permit issued in the manner provided by Division 24 of this Code;

F. An encroachment for landscaping, a decorative wall or a fence within the unimproved portion of a public right-of-way or city utility easement that is constructed or installed by the owner of adjoining residential property, when authorized by a director’s permit issued in the manner provided by Division 24 of this Code;

G. An encroachment for a sign or awning that is affixed to a commercial building adjoining a public right-of-way and that projects over the right-of-way, when the sign or awning conforms to the development standards in any applicable specific plan, conforms to and has been approved in the manner required by the sign regulations adopted in Division 24 of this Code, and has been constructed in a manner authorized by a permit issued pursuant to the building and construction regulations adopted in Division 12 of this Code;

H. An encroachment on a public sidewalk within the Downtown Specific Plan Area for a decorative plant container, when the plant container is authorized by the specific plan and conforms to any applicable standards or other requirements set forth in the specific plan;

I. An encroachment made pursuant to a license, other than city franchise, that has been approved by the city council and grants to the licensee a revocable permission to occupy or use a particular portion of a public right-of-way or city utility easement.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.080. - General application requirements for a permit.

Applications for a permit required by this chapter shall be filed with the administrator, shall be in a form and contain the information prescribed by the administrator, and shall be accompanied by a permit fee in an amount established by resolution of the city council.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.090. - Additional application requirements for a permit authorizing construction or excavation work—Applicant qualifications.

Where an application is filed for a permit required by this chapter which would authorize construction or excavation work within a public right-of-way or city utility easement, the applicant shall establish to the administrator's satisfaction that:

A. The applicant possesses a valid contractor's license issued pursuant to chapter 9, Division 3 of the California Business and Professions Code (commencing with section 7000) to perform the kind of work within the public right-of-way or city utility easement to be authorized by the permit; or,
B. The applicant owns the property adjoining that portion of the public right-of-way or city utility easement in which the work to be authorized by the permit will be performed, that such work will consist entirely of repairs to sidewalks, curbs, gutters or a driveway and/or the installation of landscaping within the parkway strips adjoining such public right-of-way, and that the work will be performed either entirely by the applicant or by the applicant in conjunction with unpaid assistants.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.100. - Additional application requirements for a permit authorizing construction or excavation work—Plans and specifications.
Where an application is filed for a permit required by this chapter that would authorize construction or excavation work within a public right-of-way or city utility easement, the application shall also be accompanied by plans and specifications that describe the location, nature, and extent of the work to be performed within the public right-of-way or city utility easement, and that establish to the administrator's satisfaction that the work will conform to the city's design criteria and improvement standards and/or all other applicable laws or regulations.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.110. - Action on permit applications—Approval and issuance of permit.
Where the administrator determines that an application for a permit required by this chapter is complete and that there are no grounds for denying a permit, the administrator shall approve the application and issue the permit for the term subject to all of the general and special conditions provided for by this chapter at such time as the applicant has provided proof of the insurance, provided the security and otherwise complied with all other general and special conditions required as conditions precedent to the issuance of the permit.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.120. - Action on permit applications—Denial of application.
A. Grounds for Denial. The administrator shall deny an application for a permit required by this chapter if the administrator determines that:

1. The encroachment or excavation proposed by the application is for the construction or installation of improvements or facilities within a public right-of-way or city utility easement that are not an authorized use of a public right-of-way or city utility easement;

2. The encroachment or excavation, if implemented in the proposed manner, would unreasonably interfere with use of public or private property adjacent to or contiguous with the public right-of-way or city utility easement in which an encroachment or excavation is planned; or

3. The encroachment or excavation, if implemented in the proposed manner, would threaten the safety of life or property.

B. Notice of Denial. Where the administrator determines to deny an application for a permit required by this chapter, the administrator shall promptly cause a notice of such determination to be served on the permit applicant. Such notice shall state the reasons for the determination, and shall set forth the applicant's right to apply for administrative review of the determination in the manner provided by this chapter.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.130. - Permit term.
Each permit issued pursuant to the provisions of this chapter shall be valid only for a period of time reasonably necessary to fulfill the purpose of the encroachment or perform the excavation work.

Exhibit C-4
authorized by the permit, as determined by the administrator and set forth in the permit as the permit term. On or before the end of the permit term, permittee shall remove the encroachment and/or complete the excavation work authorized by the permit, and restore the public right-of-way or city utility easement to the condition it was in prior to the encroachment or excavation, or such other condition prescribed by the permit, unless the term of the permit has been extended by the administrator for good cause shown. Prior to the end of the permit term, the administrator may revoke the permit for the reasons and in the manner provided for by this chapter.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.140. - General conditions of a permit—Comprehensive liability insurance.
A. Insurance Requirements. Except as otherwise provided in this section, no permit shall be issued pursuant to this chapter unless and until the permit applicant obtains a comprehensive general liability insurance policy from an insurance company that is licensed to do business in the state of California and has an A.M. Best rating of at least "B," and that provides insurance coverage for all liabilities arising out of or in any way related to the encroachment and/or excavation work authorized by such permit.
B. Amount of Insurance. The insurance required by this chapter shall be in the amount of at least $1,000,000.00, combined single limit, except that where the city's risk manager determines that work authorized by a permit issued pursuant to this chapter involves unusual risks that expose the city to liabilities in excess of $1,000,000.00, then such insurance shall be in an amount that the city's risk manager determines is necessary to fully cover the city's exposure to all such risks.
C. Form of Insurance. The insurance required by this chapter shall include an endorsement naming the city, the city's officers, employees and agents as additional insureds under the coverage afforded, shall be primary with respect to any other insurance available to the city, shall include a severability of interest (cross-liability) clause, shall require the insurer to provide the city at least 30 days prior notice of cancellation, and shall otherwise be in a form approved by the city's risk manager.
D. Acceptance of Homeowners Insurance in lieu of Comprehensive Liability Insurance. Where a permit is issued pursuant to the provisions of this chapter that authorizes an encroachment or excavation in a public right-of-way or city utility easement that is to be undertaken by a permit applicant who owns and resides on the property adjoining the portion of the public right-of-way or city utility easement in which the encroachment is to be made or the excavation work is to be performed, the permit applicant may comply with the insurance requirements of this chapter by filing with the administrator a copy of the applicant's homeowner's insurance policy with liability limits of at least $300,000.00, in lieu of the general liability insurance otherwise required by this section.
E. Proof of Insurance. Proof of insurance required by this chapter shall be in a form approved by the city's risk manager and shall be filed with the administrator prior to the issuance of a permit pursuant to this chapter.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.150. - General conditions of a permit—Compliance with traffic control plan.
As a further condition on the issuance of a permit pursuant to the provisions of this chapter, permittee shall undertake and carry out the encroachment or excavation authorized by such permit in accordance with the provisions of the California Manual of Traffic Controls for Construction and Maintenance Work Zones as published by the California Department of Transportation and/or any additions or modifications thereto now or hereafter adopted by the city.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.160. - Additional conditions of a permit authorizing construction or excavation work—Surety
bond or other security.

A. **Security Requirements.** Except as otherwise provided in this section, no permit shall be issued pursuant to the provisions of this chapter that authorizes construction or excavation work within a public right-of-way or city utility easement until permittee obtains and provides to the city a surety bond or other security guaranteeing permittee’s performance of all duties and obligations under such permit, including, in particular, the duty and obligation to restore the construction or work site to the same condition as it was in prior to commencement of the construction or excavation work, or such modified condition as approved by the administrator.

B. **Amount of Security.** The surety bond or other security obtained and provided by a SiFi at the time of the issuance of a permit authorizing construction or excavation work within a public right-of-way or city utility easement shall be in the amount of at least $5,000.00, except where the administrator determines that the work authorized by the permit is extensive and would expose the city to costs substantially exceeding $5,000.00 to remedy any breach of the permit requirements. Under such circumstances, the surety bond or other security shall be in an amount that the administrator determines is necessary to fully cover the city’s exposure to all such costs.

C. **Form of Security.** The surety bond or other security obtained and provided by a permittee at the time of issuance of a permit authorizing construction or excavation work within a public right-of-way or city utility easement shall be conditioned on permittee’s compliance with all requirements of this chapter, including all orders of the administrator pertaining thereto, and shall otherwise be in a form approved by the city attorney. In lieu of a surety bond, a permittee may obtain and provide to the city a cash deposit, certificate of deposit naming the city as the payee thereof, or such other kind of security acceptable to the administrator, provided such alternate security is accompanied by an agreement stating that the security is being pledged to guarantee performance of permittee’s duties and obligations under the permit issued to SiFi pursuant to this chapter, which agreement shall also be in a form approved by the city attorney.

D. **Exceptions to security requirements.** A surety bond or other security shall not be required where a permit has been issued pursuant to this chapter that:

1. Authorizes construction or excavation work within a public right-of-way or city utility easement that has an estimated cost or value less than $5,000.00, as determined by the administrator; or,

2. Authorizes construction or excavation work within a public right-of-way that is performed by a public utility or cable television company pursuant to a state or city franchise.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.170. - Additional conditions of a permit authorizing construction or excavation work—Limitations on excavations in recently resurfaced streets.

A. **Limitation on Street Excavations.** Except as otherwise provided in this section, no permit shall be issued pursuant to the provisions of this chapter that authorizes an excavation in a public street that was resurfaced with an emulsified asphalt "slurry" or asphalt "cape seal" within the previous two years, or with asphalt concrete within the previous five years.

B. **Underground boring and other alternatives.** A permit may be issued authorizing installation of underground utilities and other underground facilities within a recently resurfaced public street, if such work can be accomplished by boring under the street section or by the use of other trenchless technologies. However, before a permit will be issued authorizing underground boring, other methods for accomplishing the purpose of such work including, without limitation, relocating utility facilities to sidewalks, parkways or areas within the public-right-of-way other than the street, have been considered and determined by the administrator not to be feasible. Any additional costs for relocating utility facilities outside of the public street or for boring under the public street will be borne by permittee.

C. **Excavation where trenchless technologies or other alternatives are not feasible.** A permit may be issued authorizing an excavation in a recently resurfaced public street for underground utilities or other underground facilities only in the most unusual circumstances where the administrator determines that

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relocation or underground boring is not feasible. Under such circumstances, permittee shall comply with the city's construction standards for excavating in recently resurfaced streets, pay all costs associated with such excavation, and provide such additional security to ensure the integrity of the surfaced street as may be reasonably required by the administrator.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.180. - Additional conditions of a permit authorizing construction or excavation work—Performance of construction or excavation work.

As a further condition on the issuance of a permit pursuant to this chapter that authorizes construction or excavation work within a public right-of-way or city utility easement, permittee shall design, undertake and complete such work in the following manner:

A. All public improvements constructed or installed within a public right-of-way pursuant to such permit shall be designed, constructed and installed in accordance with the city's design criteria and improvement standards.

B. Upon commencing of the construction or excavation work authorized by the permit, the work shall be prosecuted with due diligence in a manner that does not unnecessarily obstruct or interfere with a public street, public utilities or other facilities located within a public right-of-way or city utility easement. This provision will be strictly construed.

C. At the time of making an excavation in a public right-of-way or city utility easement, and at all times thereafter until the excavation has been filled and the surface restored to its original condition or such modified condition as required by the permit, warning lights shall be placed and maintained at each end of the excavation, and at distances of not more than 50 feet along the line thereof, from sunset to sunrise of the following day.

D. All gas or water service pipes or main pipes, all private sewer or storm laterals and all other conduits of any nature whatsoever that are placed within a public right of way or city utility easement shall be buried to a depth of at least two feet below the surface of the public right-of-way or city utility easement.

E. Upon completion of construction or excavation work authorized by such permit, the public right-of-way or city utility easement in which such work was performed shall be restored to the same condition as it was prior to the commencement of such work, or to such modified condition as expressly approved by the administrator. All surplus soils or waste materials removed from the public right-of-way or city utility easement shall be deposited or disposed of in a manner that complies with applicable federal, state, and city laws and regulations.

F. At the conclusion of construction or excavation work authorized by such permit, permittee shall file with the administrator such "as-built" plans and specifications as may be required by the administrator depicting any new improvements or facilities or any modifications to existing improvements or facilities that were constructed or installed in the public right-of-way or city utility easement pursuant to such permit. In addition, where an excavation has been made in the public right-of-way or city utility easement, a compaction report on all back-filled portions of the excavation shall be filed with the administrator, when required by the administrator.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.190. - Special conditions of a permit.

When acting on a permit required by this chapter, the administrator may condition issuance of the permit on compliance with any special requirements that the administrator determines are necessary to ensure that the proposed encroachment or excavation will be accomplished in a manner that protects the safety of persons or property and does not unreasonably interfere with the use by the city or general public of any public right-of-way or city utility easement and/or any public or private property adjoining or

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in the neighborhood of the public right-of-way or city utility easement in which the encroachment or
excavation is to be made.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.200. - Stop notice.
A. Determination of Administrator to Order Work to be Stopped. Whenever the administrator determines
that an encroachment or excavation made within a public right-of-way or city utility easement pursuant
to a permit issued in the manner provided by this chapter has been undertaken or is being carried out
in a manner that threatens public safety, unreasonably interferes with the use of such public right-of-
way or city utility easement or any property adjoining or in the neighborhood thereof, or damages or
threatens to damage other facilities located within the public right-of-way or city utility easement in a
manner not authorized by the permit, the administrator may order the work stopped by service and
posting of the notice required by this section.

B. Service of Notice of Order to Stop Work. Upon determining to order the stoppage of work undertaken
or being carried out pursuant to a permit issued in the manner provided by this chapter, the
administrator shall cause a written notice of the order to be served on permittee and on any person
known to the administrator to be engaged in such work if such person is someone other than permittee.
In addition to setting forth the order of the administrator to stop work, such notice shall contain a brief
description of the reasons why such work is being ordered stopped and the action, if any, that may be
taken in order that the work may be resumed, shall contain a statement of the right of permittee to
apply for administrative review of the order in the manner provided by this chapter, and shall advise
the person upon whom the notice is served that unless authorized by the administrator, any further
work performed pursuant to such permit may subject such person to the criminal or civil penalties
provided for by this chapter.

C. Posting Order to Stop Work. Upon determining to order the stoppage of work undertaken or being
carried out pursuant to a permit issued in the manner provided by this chapter, the administrator shall
cause written notice of such order to be posted in a conspicuous place within the public right-of-way
or city utility easement in which such work is being performed whenever the administrator, at the
administrator's sole discretion, determines that the posting of such notice is practicable. In addition to
setting forth the order of the administrator to stop work, such notice will state that it is a misdemeanor
for any person to perform any further work without authorization of the administrator or to remove or
deface the posted notice of such order.

D. Effect of an Order to Stop Work. No person served with a notice of the administrator to stop work
undertaken or carried out pursuant to a permit issued in the manner provided by this chapter will cause
or permit any such work to be performed after service of such notice.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.210. - Permit revocation.
A. Determination by the Administrator to Revoke a Permit. Whenever the administrator determines that
an encroachment or excavation within a public right-of-way or city utility easement made pursuant to
a permit issued in the manner provided by this chapter has been undertaken or is being carried out in
a manner that violates the terms and conditions of the permit, or that the permit was issued based on
an application or plans and specifications that contained a material misrepresentation of fact, the
administrator, may revoke the permit, by service of the notice required by this section.

B. Service of Notice of Order Revoking a Permit. Upon determining to order the revocation of a permit
issued in the manner provided by this chapter, the administrator shall cause written notice of such
order to be served on permittee. In addition to setting forth the order of the of the administrator revoking
the permit, such notice shall contain a brief description of the reasons why the permit is being revoked
and shall contain a statement that permittee has the right to apply for administrative review of the order
in the manner provided by this chapter.

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C. **Effect of Order Revoking a Permit.** A permittee served with a notice of the order of the administrator revoking a permit issued pursuant to this chapter shall promptly terminate the encroachment or excavation authorized by the permit, and restore the public right-of-way or city utility easement in which such encroachment or excavation was undertaken or carried out to the same condition as it was in prior to commencement of the encroachment or excavation, or such modified condition as may be approved by the administrator.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.220. - Removal and restoration work.
A. **Determination of the Administrator to Undertake Removal and Restoration Work.** Where the administrator determines that an encroachment or excavation was made in a public right-of-way or city utility easement without a permit required by this chapter, in violation or contrary to the terms and conditions of a permit or order issued pursuant to this chapter, or in any manner that endangers the safety of persons or property, the administrator may remove such encroachment, refill such excavation, and/or otherwise restore such public right-of-way or city utility easement to the same or substantially the same condition as it was in prior to the commencement of such encroachment or excavation, all for the account of and at the cost of permittee or other person responsible for the encroachment or excavation, after serving the notice required by this section.

B. **Notice of Intent to Undertake Removal and/or Restoration.** Upon determining to remove an encroachment, refill an excavation and/or perform other restoration work in a public right-of-way or city utility easement, the administrator shall cause written notice of such determination to be served on permittee or other person responsible for the encroachment or excavation. In addition to setting forth the administrator's decision to perform such work, the notice shall include the reasons for the removal or restoration work and state that the work will be performed for the account of and at the cost of permittee or other person responsible for the encroachment or excavation. Except where the work to be performed by the administrator is necessary to remove or remedy a condition that threatens the safety of life or property, the notice shall allow permittee or other person responsible for the encroachment or excavation to immediately undertake removal or restoration work at such person's sole cost and expense, provided the work is completed by the person within a reasonable time as determined by the administrator and as set forth in the notice.

C. **Liability for Cost of Restoration.** permittee or other person responsible for the encroachment or excavation that results in the performance of removal or restoration work by the administrator in the manner provided by this section shall, upon completion of the work, be liable to the city for the full cost thereof. In addition, where a surety bond or other security was provided to the city as a condition of a permit authorizing construction or excavation work within a public right-of-way or city utility easement, the city will exercise all rights it has under the surety bond or other security to recover all costs of such work up to the full amount of the surety bond or other security.

(Ord. No. 2002-7, § 1, 5-20-02)

Sec. 18.100.230. - Violations.
Any violation of the provisions of this chapter shall be punishable either as an infraction or by a civil penalty in the manner and in the amount provided for in Division 1 of this Code; except that a violation of an order to stop work, an order revoking a permit, or the removal or defacement of a notice of such order posted by the administrator in the manner provided by this chapter shall be punishable as a misdemeanor.

(Ord. No. 2002-7, § 1, 5-20-02)
EXHIBIT D
Special Situation Streets

SIFI Deeper Embedment for Fiber Optic Cable Streets

Exhibit D