

**FINAL - EXCLUSIVE NEGOTIATION AGREEMENT BETWEEN
CITY OF GRAND JUNCTION, COLORADO AND
SIFI NETWORKS AMERICA LLC**

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement") is entered into this 21st day of October, 2016 (the "Effective Date"), by and between SIFI NETWORKS AMERICA LLC a Delaware company ("SiFi") and the CITY OF GRAND JUNCTION, COLORADO ("City") (individually, a "Party," and collectively, the "Parties").

RECITALS

- A. SiFi is an infrastructure developer who fund, build, operate and maintain fiber-optic infrastructures that allows service providers to provide next generation services, including Gigabit internet connectivity, to communities.
- B. The City is a municipal corporation seeking to provide technological advancements within its jurisdiction to enhance the quality of life, competitive environment and economic platform for its residents and businesses.
- C. The Parties agree and acknowledge that the purpose of this Agreement is to establish a period of negotiation during which time the City and SiFi will cooperate and endeavor to develop a fiber-optic infrastructure business model for the City and SiFi.

DEFINITIONS:

"Agreement": Shall refer to the contents of this document.

"Effective Date": The date of signature by both parties, or the later of the two dates of which both parties have signed this Agreement.

"FTTx": A fiber optic infrastructure that passes premises throughout the City enabling a fiber-optic connection.

"Exclusive Negotiation Period": An initial six (6) month period from the Effective Date during which the City and SiFi work together exclusively in good faith to develop and negotiate a business model for the delivery of an FTTx, after which exclusivity may be terminated by either Party upon thirty (30) days' written notice to the other Party.

"Viable": means an FTTx project extending fiber to substantially every premise in the City with an initial retail rate of a 1 gigabit per second internet speed to residential subscribers not to exceed \$80 per month per subscriber and contended 1 gigabit per second internet speeds to business subscribers not to exceed \$300 per month per subscriber (slower speeds may be offered at lower retail rates) and by year 5 of the project, mutually agreed upon projections incur no cost to the City that cannot be covered through market penetration the revenues of the network and provide some revenue or quantifiable revenue potential to the City.

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Agreement to Negotiate.** The City agrees to negotiate diligently and in good faith with SiFi during the Exclusive Negotiation Period to assist in the development of a FTTx, as defined and described herein, within the City's jurisdiction utilizing the City's public rights-of-way and facilities, and the development of an agreement for consideration for the implementation of the FTTx. This negotiation shall be separated into two milestones, with continuation of negotiation past the first milestone being wholly contingent on a Viable first milestone being achieved, and upon approval of a majority of the City Council to continue past the first milestone.
2. **Commitments from the City.** The City agrees that it will not solicit any competing FTTx offers from any organization for the duration of the Exclusive Negotiation Period. The City shall also provide throughout the Exclusive Negotiation Period a single point of contact for SiFi to facilitate coordination across City departments and serve as a communications and troubleshooting resource. City shall give direction, by and through the designated point of contact, within 30 calendar days of the delivery of Milestone 1 results to continue to Milestone 2 or to terminate the Agreement with SiFi.
3. **Commitments from SiFi.** SiFi agrees to invest the necessary resources, at SiFi cost, to develop a FTTx business model for City's consideration and possible approval during the Exclusive Negotiation Period, or earlier if possible, based on the following items:

Milestone 1:

- Demand Survey
- Desktop design and construction plan
- Network architecture

- Financial analysis
 - Self-sustaining Long Term Pro Forma Model

Milestone 2:

- Letters of intent from interested internet service providers
- Long term cost assurances
- FTTx to pass, where reasonably practical given cost and return on investment, , 100% of the premises throughout the City, allowing any premise to receive high speed broadband connectivity during the life of the project
- Open Access and Service Platform
- Detailed Engineering review
 - Public Works build plan meetings
 - Physical Survey
 - Smart City requirements
 - Selection of appropriate backhaul connectivity
- Final Proposal

SiFi Networks' commitments under this paragraph 3 are no longer applicable once written notice of termination is served.

4. **Topics for Negotiation.** The Parties contemplate that the topics for negotiation during the Exclusive Negotiation Period will include, but not be limited to, the following:

- Transfer of existing City internet related services or leased circuits to the SiFi FTTx
- Approval of FOCUS™ system
- Preferred number of ISP providers
- Lease/License terms
- Liability/Indemnification
- Performance Measures
- Municipal benefits
- Project phasing/defining substantial build-out
- Type of network (GPON, active Ethernet, software-defined networking capabilities)

5. **Limitations of this Agreement.** By its execution of this Agreement, the City is not committing itself to or agreeing to undertake: (1) execution of an Agreement for the FTTx with SiFi or any other vendor, absent approval by the City Council; or (2) any other acts or activities requiring the subsequent independent exercise of discretion by the City. This Agreement does not constitute a disposition of property or exercise of control over property by the City. Execution of this Agreement by the City is an agreement to enter into a period of negotiations according to the terms herein reserving final discretion and approval by the City as to any agreement for the establishment of the FTTx and all proceedings and decisions in connection therewith. By entering into this Agreement SiFi does not waive any protections that it has or may assert to its proprietary information.

6. **Default and Termination.** Failure or delay by any Party to timely perform any material term or provision of this Agreement shall constitute a default under this Agreement. If the Party who is claimed to be in default by another Party commences to cure, correct, or remedy the alleged default within ten (10) calendar days after receipt of written notice specifying such default and thereafter diligently completes such cure, correction, or remedy, such Party shall not be in default under this Agreement. If the Party in default fails to commence to cure the default within ten (10) calendar days following written notice thereof and/or fails to thereafter diligently prosecute such cure to completion, a "breach" of this Agreement by the defaulting Party shall have occurred. Upon a breach of this Agreement, a Party that is not in default shall have the right to exercise and pursue any right and remedy authorized under this Agreement by serving written notice thereof to the other Party.

The Party claiming that a default has occurred shall give written notice of default to the other Party, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. However, an injured Party shall have no right to exercise any remedy for a default under this Agreement without first delivering written notice of the default.

Any remedy for a proven default or breach of this Agreement by any party shall be limited to actual damages incurred or sustained by the non-breaching party. In the event the City is deemed to be in breach, SiFi's remedy shall not exceed City the full Abortive Cost, as provided in Section 8 of this Agreement. The non-breaching party shall also be entitled to recover its costs of suit and attorney's fees, except that SiFi expressly waives its right(s) to sue the City for default on or termination of this Agreement where the City has paid to SiFi the cap amount of the Abortive Cost applicable to the

Milestone during or for which the default or termination is alleged. The parties further agree to submit themselves to the jurisdiction of the courts in the State of Colorado.

7. **Exclusive Negotiation.** The City Staff shall not discuss deployment of an FTTx within the City with another organization during the term of this Agreement. If the City Staff is approached by another organization on the subject of an FTTx, the City, by and through its point of contact, must notify SiFi in writing within 5 business days.
8. **Abortive Cost.** The City agrees to compensate SiFi for performance of work contemplated under this Agreement up to a cap of \$50,000 for quantified work completed during Milestone 1 and, if continuation to Milestone 2 is approved by a majority of the City Council, a cap of \$200,000 for Milestone 2; provided that SiFi details staff assignments, hours worked, materials used and the total monthly expenditure(s) incurred:
 - a. If the City, through City Council or authorized City staff action, elects not to proceed with SiFi, payment to be made within 30 days of decision not to proceed after Milestone 1, 2 or end of the term of the Agreement, whichever the lesser, providing the FTTx project is deemed Viable. The City is not responsible for costs incurred under this agreement if the project is deemed not Viable.
 - b. If the City pursues other opportunities to develop a FTTx project with an organization other than SiFi during the term of this Agreement all costs incurred by SiFi shall be payable to SiFi within 30 calendar days of submission of a verified invoice from SiFi to the City detailing the abortive costs.

In no event can SiFi claim more than \$200,000 for compensation under this Agreement.

9. **Decision to Proceed.** If the City executes an agreement with SiFi for the deployment of an FTTx, within six (6) months of the Effective Date no fees under this Agreement shall be due and payable. The six-month period may be extended by mutual written agreement of both parties. If the development and/or deployment of the FTTx is subject to or the subject of an initiative or referendum, either party may agree to extend or terminate this Agreement in accordance with paragraphs 6 and 8.
10. **No Third Party Beneficiaries.** None of the terms or provisions of this Agreement are intended to benefit any person or entity other than the City and SiFi. No affiliate of SiFi has any rights pursuant to this Agreement.
11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
12. **Entire Agreement.** This Agreement contains the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.
13. **Authority.** The persons executing this Agreement on behalf of the Parties warrant and represent that they are duly authorized to do so.
14. **Notification/points of contact:** Notices pursuant to this Agreement shall be delivered to the City and SiFi representatives named here, who shall serve as the designated point of contact:

For the City:
Scott Hockins
scotth@city.org
970-244-1484

For SiFi:
Ben Bawtree-Jobson
ben@sifinetworks.com
973-285-3386

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date set forth above.

CITY OF GRAND JUNCTION

SIFI NETWORKS AMERICA LLC

Name: Greg Caton

Name: Ben Bawtree-Jobson

Title: City Manager

Title: CEO

Signed: 

Signed: 

Date: 10/24/16

Date: 10/24/16