

**EXCLUSIVE NEGOTIATION AGREEMENT BETWEEN  
TOWN OF WESTERLY, RHODE ISLAND AND  
SIFI NETWORKS AMERICA LLC**

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of March, 2016 (the "Effective Date"), by and between SIFI NETWORKS AMERICA LLC a Delaware company ("SiFi") and the TOWN OF WESTERLY, RHODE ISLAND ("Town") (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 Town 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 Town and SiFi will cooperate in the development of a fiber-optic infrastructure business model in the Town.

**DEFINITIONS:**

**"Agreement"**: Shall refer to the contents of this document between both Parties.

**"Economically Viable"**: A project where, annually, and for the full term of the project and lease agreement, the revenue to the Town meets or exceeds the total annual cost of the project including lease agreement to SiFi.

**"Effective Date"**: The date of signature from both parties of this Agreement, 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 Town enabling the ability to receive a fiber-optic connection.

**"Negotiation Period"**: An initial six (6) month period from the Effective Date during which the Town and SiFi work together exclusively in good faith to develop and negotiate the delivery of an FTTx, after which exclusivity may be terminated by either Party upon thirty (30) days' written notice to the other Party. SiFi Networks' commitments under paragraph 3 below are no longer applicable once written notice is served.

**"Viable"**: A project where an initial retail rate of an up to 1 gigabit per second internet speed to residential subscribers shall not exceed \$85 per month per subscriber.

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Agreement to Negotiate**; The Town agrees to negotiate diligently and in good faith with SiFi during the Negotiation Period to assist in the development of a FTTx, as defined under paragraphs 2 and 4 herein, within the Town's jurisdiction utilizing the Town's public rights-of-way and facilities, and the development of an agreement for consideration for the implementation of the FTTx.
2. **Commitments from the Town**. The Town agrees that it will not solicit any competing FTTx offers from any organization for the duration of the Negotiation Period. In assisting SiFi, the Town shall also provide throughout the Negotiation Period a single point of contact for SiFi to facilitate coordination across Town departments and serve as a communications and troubleshooting resource.
3. **Commitments from SiFi**. SiFi agrees to invest the necessary resources, at their cost, to develop a FTTx business model for Town Council's consideration and approval during the Negotiation Period, or earlier if possible, based on the following items :
  - Data acquisition through community outreach campaigns
  - Feasibility Plan
  - Construction plan
  - Detailed design methodology
  - Self-sustaining Long Term Pro Forma Model
  - No Town tax increases towards cost of construction

- Guaranteed minimum revenue commitments from Internet Service Providers that will utilize the FTTx
- Guaranteed construction cost assurances
- Long term sustainability
- FTTx to pass, where commercially viable, 100% of the premises throughout the Town, allowing any premise to receive fiber-optic connectivity during the life of the project
- Residential Gigabit internet service available from day one
- Open Access and Service Platform

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

- Transfer of existing Town internet related services or leased circuits to the SiFi FTTx.
- Approval of FOCUS™ system
- Preferred number of ISP providers
- License terms
- Liability/Indemnification
- Performance Measures
- Municipal benefits

5. **Limitations of this Agreement.** By its execution of this Agreement, the Town 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 Town Council; or (2) any other acts or activities requiring the subsequent independent exercise of discretion by the Town. This Agreement does not constitute a disposition of property or exercise of control over property by the Town. Execution of this Agreement by the Town is an agreement to enter into a period of negotiations according to the terms herein reserving final discretion and approval by the Town as to any agreement for the establishment of the FTTx and all proceedings and decisions in connection therewith.

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 Town is deemed to be in breach, SiFi's remedy shall not exceed the full abortive cost, as noted in Section 8 of this Agreement. The non-breaching party shall also be entitled to recover its costs of suit and attorney's fees. The parties further agree to submit themselves to the jurisdiction of the courts in Washington County, State of Rhode Island.

7. **Notification.** In the event that the Town discusses or wishes to discuss deployment of an FTTx within the Town with another organization the Town must notify SiFi in writing within 5 business days.

8. **Abortive Cost.** The Town agrees to reimburse SiFi compensation for quantified work completed; that has been provided to the Town on a monthly basis in arrears that details staff assignments, hours worked, materials used and expended, and rates of pay; up to a maximum cap of \$100,000, in the event:

- a. If the Town, through Town Council or authorized Town staff action, elects not to proceed with SiFi, payment to be made within 30 days of decision not to proceed or within 30 days after the end of the term of the Agreement, whichever is lesser, so long as the FTTx project is deemed Viable.
- b. If the Town pursues other opportunities to develop a FTTx project with an organization other than SiFi during the term of this Agreement the full \$100,000 sum shall be payable to SiFi within 30 calendar days of notification from the Town being received.

c. If, at any time during the Negotiation Period, it is not evidenced as possible by SiFi for the project to be Economically Viable, no fees under this Agreement shall be due and payable by the Town.

- 9. **Decision to Proceed.** If the Town executes an agreement with SiFi for the deployment of an FTTx, no fees under this Agreement shall be due and payable. If the Town has previously paid abortive costs to SiFi at the time it executes an agreement for the deployment of an FTTx, any abortive costs paid from the Town to SiFi shall be reimbursed from SiFi to the Town
- 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 Town 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 Rhode Island.
- 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. **Materials and IP.** All materials, documentation, intellectual property, construction design and methodology surrounding the FTTx created and shared with Town shall remain under the ownership of SiFi.

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

**TOWN OF WESTERLY**

**SIFI NETWORKS AMERICA LLC**

Name: Derrik Kennedy

Name: Ben Bawtree-Jobson

Title: Town Manager

Title: CEO

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_