



## **CITY COUNCIL AGENDA REPORT**

**MEETING DATE:** 11/15/2022

**DEPARTMENT:** Public Works

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### **SUBJECT:**

APPROVAL OF NONEXCLUSIVE PUBLIC FRANCHISE AGREEMENT WITH SIFI NETWORKS LAKE FOREST LLC

### **RECOMMENDED ACTION(S):**

1. Approve a Nonexclusive Public Franchise Agreement with SiFi Networks Lake Forest LLC for deployment of Citywide Fiber Optic to the Premises System.
  2. Authorize the City Manager, in consultation with the City Attorney, to make any non-substantive changes to the Franchise Agreement deemed necessary.
  3. Authorize the City Manager and/or her designee to execute all the necessary documents, in a form approved by the City Attorney.
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### **EXECUTIVE SUMMARY:**

In 2021, the City Council adopted Strategic Plan initiative #9, Broadband Feasibility Study. The intent was to study a City led initiative to explore additional internet access alternatives for the community in response to complaints received regarding a lack of competition. Subsequently, the City was approached by SiFi Networks ("SiFi"). SiFi proposes to build a high-speed internet open access network in the city using direct fiber optic connections to each property. SiFi has stated the new fiber optic system would provide residents with increased choices for internet service and provide 10-gigabit connectivity to residential homes and 100-gigabit to businesses and municipal facilities. Once installed, the network can connect any premise with fiber when the owner of the premise requests service from any of the Internet Service Providers ("ISPs") on the network. SiFi proposes to complete the installation of the fiber network within two to four years from the commencement of construction. SiFi secures 100% of the project funds prior to construction, ensuring the entire network will be built at once. The network would be installed at no cost to the City and at no obligation to the public.

The proposed Franchise Agreement would be for an initial term of 32 years and would be renewable for an additional 30 years. This would provide the applicant enough guarantee to secure long-term financing and facilitate stable, high-quality internet for decades. The proposed network build out is intended to provide competitive options for high-speed internet, with multiple ISPs available on the network. SiFi would also include connection points at any city location as requested by the City for future use. This could include connectivity to traffic signals, parks, City-owned facilities, etc. These fiber optic lines could be rented in lieu of the City building its own fiber optic lines. SiFi also offers low-cost internet programs available through its FiberCity® Aid supporting disadvantaged families program. If the Franchise Agreement with SiFi is approved, the City will incur no direct costs for the build out of the fiber optic network.

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## **BACKGROUND:**

The City has three goals included in its Strategic Business Plan:

Goal A: Our livable City is well-planned, attractive, and safe

Goal B: A city that is engaged, informed, and technologically current

Goal C: A city government that is fiscally sustainable and well-run with committed staff

In 2021, the City Council adopted Strategic Initiative #9, Broadband Feasibility Study. The intent of this initiative was to commission a study to determine how to increase competition amongst internet providers for the benefit of Lake Forest customers. The lack of ISP options to purchase internet services is a frequent resident complaint.

Shortly after the adoption of Strategic Business Plan and Initiative #9, the City was approached by SiFi. SiFi proposed to build a high-speed internet open access network in the city using direct fiber optic connections to each property at no cost to the City. SiFi is a global company that has deployed open access fiber networks internationally, including in over 30 cities in North America. Although the company has had a US presence since 2014, it is relatively new to California. SiFi is actively constructing its networks within Fullerton, Placentia, Rancho Cordova, and Simi Valley. It has also secured city council approval to construct in Bakersfield, Cathedral City, Downey, Escondido, Folsom, Fountain Valley, Kern County, Lancaster, Lynwood, Marysville, Oceanside, Palmdale, Pico Rivera, Pittsburg, Riverside, Ventura, and Yuba City. SiFi owns and operates all equipment within its backbone system and allows ISPs to provide service to each individual property within the city. As an open provider of fiber optic cable, SiFi

allows open access to any ISP for a fee, resulting in increased choices for consumers and increased competition to internet connectivity.

The concept proposed by SiFi is to privately fund the design and construction of a city-wide fiber optic network. The network would be built to include all residences, businesses, institutions, and City facilities within Lake Forest. Essentially, this proposed project would bring gigabit-level internet and data transfer speeds to every property in Lake Forest. SiFi would then wholesale network access of the fiber lines to ISPs with whom customers may subscribe. SiFi would own the backbone infrastructure but would not provide internet service directly to the public. Customers that subscribe to internet service that utilizes the SiFi infrastructure would contract with the ISP for service and billing, . Maintenance and repair of the physical fiber network is wholly the responsibility of SiFi.

If the SiFi arrangement is approved, existing ISPs that provide high-speed internet access in the community will continue to provide those services. However, not every home and business in the City currently has access to fiber optic infrastructure. Residents and businesses will have the option to continue with their existing ISPs or seek subscriptions with providers who access fiber from SiFi and receive a fiber service drop directly into their homes or businesses. The proposed franchise arrangement with SiFi is non-exclusive, as it does not prevent any other service providers from installing their own city-wide fiber optic networks or expanding their existing infrastructure to provide a similar service. From an economic development perspective, the concept of a privately funded and managed city-wide fiber network is a significant opportunity for strengthening Lake Forest's competitive advantage for retaining and attracting businesses, jobs, and private investment.

SiFi is not a registered state utility and therefore not afforded the typical protection that registered utility companies operating under the purview the California Public Utilities Commission receive. As a result, SiFi typically executes agreements with its host cities to obtain right-of-way access, establish the agreed upon permitting process, and memorialize any community benefits to be provided.

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## **DISCUSSION:**

Staff worked closely with the City Attorney's office to develop the proposed Franchise Agreement (Attachment 1). BB&K has negotiated many franchise agreements with SiFi and was familiar with the process and various laws governing these types of franchise arrangements. SiFi, via the proposed Franchise Agreement, is requesting non-exclusive access to the public right-of-

way to install fiber optic lines via micro-trenching technology. Micro-trenching is a small trench generally 2 to 4 inches wide at a depth between 12 to 26 inches that is expressly permitted by State law (SB 378) for the “installation of fiber for high-speed internet access.”

The initial term of the Franchise Agreement is for 32 years with one additional 30-year term extension. This term length provides the necessary assurances for the applicant to make the required private capital investment to install approximately 400 miles of fiber optic cable. This Franchise Agreement functions as a non-exclusive public franchise agreement in a similar form and function as the City’s existing franchise agreements with Southern California Edison. While not a traditional utility company, SiFi’s subsurface infrastructure would provide a new type of utility service to individual property-based customers, and the proposed Franchise Agreement term will ensure SiFi is able to amortize its significant initial capital investment in the fiber network.

Under the Franchise Agreement, the City would receive Franchise Fees from video programming services that are using the SiFi network in the same fashion the City currently receives fees from cable providers. Pursuant to Federal law, no franchise fees will be collected from the provision of internet service. However, the City will be able to receive franchise fees from certain video television services delivered over internet connection. For example, Cox communications pays the City a franchise fee not to exceed 5% of video programming gross revenues received from its Lake Forest customers. SiFi is not an ISP and does not provide services directly to the public. Any ISP using the SiFi FiberCity® network to provide video programming services to end users connected to the network are subject to the same state franchise fee regulations and compensation obligations to the City of Lake Forest.

Pending Franchise Agreement approval by the City Council, SiFi would concurrently work to secure the project funding and complete the design of the fiber network. SiFi estimates beginning construction in the last quarter of 2023, with the first residential and business ISP subscribers to begin receiving service in the third quarter of 2024 and completing the installation of the entire network by the end of 2025. Although SiFi anticipates completing the city-wide network installation within two years after the start of construction, the agreement allows for up to two years for the design, and up to four years for construction to account for unknowns during the construction process.

City staff would work closely with SiFi to coordinate the schedule of the City’s paving projects with the construction of the network. As much as feasible, the City would schedule regular maintenance to follow the construction. Like any other encroachment into the public right of way, all City costs associated with the design, plan check, installation, and inspection for the construction of the system would be directly reimbursed to the City.

Additional pertinent deal points in the Franchise Agreement include:

- Fiber will be installed within every street citywide
- The fiber network will be accessible to every property citywide within 48 months from commencement of construction. The design process should take approximately 12-24 months prior to construction.
- SiFi will have long term agreements in place with ISPs who wish to compete on the network for the community's business before construction commences.
- SiFi fully funds the entire FiberCity™ network project
- 100% of the FiberCity™ project funds are pre-allocated prior to construction, providing assurance that the entire network will be built at one time and not based on an individual neighborhood success before they construct the next phase to the next neighborhood.
- SiFi will cover all direct City costs, including staff time associated with plan checks, encroachment permit processing, and field inspections and any repairs associated with the installation of the fiber network.
- SiFi works with the City to deploy its low-cost internet programs available through its FiberCity® Aid supporting disadvantaged families program.

SiFi proposes to install service drops at locations designated by the City to connect to the fiber system for the City's exclusive use to connect City-owned facilities, parks, and other properties with gigabit-level network speeds. SiFi would provide these service drops under a separate "Smart City" or "Managed Services Agreement" ("MSA") if desired by the City. The MSA would be a separate agreement between SiFi and the City and require SiFi to provide use of the fiber network for the City to connect any city building, traffic signal, park, or other City-owned facility to a network in a secure manor at high speeds that the City's computer equipment dictates. SiFi would hold multiple workshops with staff to assess current, medium, and long-term municipal connectivity requirements to ensure the MSA includes enough network capacity. Each connection would be at a fee to be negotiated with the MSA, if desired by the City, and depending on the total quantity. Staff anticipates a connection fee would be in the range of \$25-\$50 per month for secure access to a direct fiber optic line.

SiFi proposes utilizing micro-trenching to install the fiber network in the City. Micro-trenching involves cutting a narrow trench approximately 2 to 4 inches

wide and 12 to 14 inches deep along the edge of the gutter, while maintaining access and traffic flow to the adjacent properties. Once the trench is cut, the fiber cabling is installed, and the trench is backfilled with cement slurry. Staff would work with SiFi to coordinate the proposed trenching with the City's paving program to minimize disruptions.



After the cement slurry has cured, SiFi would place a finish seal over the backfilled trench to match the color of the roadway surface. The installation process would have minimal impact to residential and commercial properties, as the trenching, conduit installation, and backfill takes place in a single day, with the finish seal installed shortly after.



Staff recommends the City Council approve the Franchise Agreement with SiFi for the installation of a city-wide fiber system. If approved, SiFi anticipates completing system buildout within two to four years with the first customers connected approximately eight months from commencement of construction.

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#### **FISCAL IMPACT:**

There is no cost to the City for deploying the system throughout the community or for the installation of the proposed city service drop locations. Plan check and inspection fees would be paid by SiFi on a reimbursable deposit basis. The FY 22-23 Operating Budget has sufficient funds for plan check and inspection costs for this year. Additional costs would be included with any future budget as needed. As a result, there is minimal fiscal impact associated with the recommended action.

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#### **ATTACHMENTS:**

Non-Exclusive Public Franchise Agreement with SiFi

Initiated By: Douglas Erdman, Assistant City Engineer

Submitted By: Thomas E. Wheeler, P.E., Director of Public Works/City Engineer

Approved By: Debra Rose, City Manager