

1 Introduced July 26, 2022, by Councilman
2 Borchert, seconded by Councilman Tamborella,
3 (by request of Administration)

4 **Item No. 22-07-3441**

5
6 **ORDINANCE NO. 4092**

7
8 An ordinance authorizing the City of Slidell, acting through its Mayor, to enter
9 into a Rights-of-Way Use Agreement with Southern Light, LLC to facilitate Southern Light's
10 access to and use of the City's public rights-of-way for the construction, installation,
11 modification, relocation, repair, operation, and maintenance of Southern Light's fiber-optic
infrastructure.

12 WHEREAS, Southern Light, LLC is a telecommunications company that
13
14 desires to maintain and expand its fiber-optic infrastructure within the municipal boundaries
15
16 of the City of Slidell; and

17 WHEREAS, Southern Light, LLC desires to access and utilize the City's public
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19 rights-of-way for the construction, installation, modification, relocation, repair, operation,
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21 and maintenance of its fiber-optic infrastructure within said rights-of-way, and the City is
22 agreeable to same under the general terms set forth in the Agreement attached hereto as
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24 Exhibit A, which Agreement is in the nature of a non-exclusive franchise; and

25 WHEREAS, Article VII, Section 14(C) of the Constitution of the State of
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27 Louisiana provides that "[f]or a public purpose, the state and its political subdivisions . . .
28
29 may engage in cooperative endeavors . . . with any public or private association,
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31 corporation, or individual"; and

32 WHEREAS, the parties agree that the maintenance and expansion of
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34 Southern Light, LLC's fiber-optic infrastructure within the City's public rights-of-way in the
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36 municipal boundaries of the City will provide a public benefit and assist in the economic
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38 development of the area, and, through the allowance of same, the parties have a
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4 reasonable expectation of receiving benefits which are commensurate to the benefits
5 respectively conferred. Further, the non-exclusive franchise will result in growth
6 opportunities for Southern Light, LLC and monetary payments to the City.
7

8
9 NOW THEREFORE BE IT ORDAINED by the Slidell City Council that it does
10 hereby authorize the City of Slidell, acting through its Mayor, to enter into a Rights-of-Way
11 Use Agreement with Southern Light, LLC, under terms and conditions substantially similar
12 to those set forth in the attached Exhibit A. This Ordinance shall take effect immediately
13 upon adoption.
14
15

16
17 **ADOPTED** this 23rd day of August, 2022.
18

19 

20 Bill Borchert
21 President of the Council
22 Councilman at-Large

23 

24 Greg Cromer
25 Mayor
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27
28 

29 Thomas P. Reeves
30 Council Administrator
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DELIVERED	8/24/22
2:15 pm	to the Mayor
RECEIVED	8/29/22
12:50 pm	from the Mayor

**AN AGREEMENT FOR A NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN
SOUTHERN LIGHT, LLC AND THE CITY OF SLIDELL,
FOR THE PURPOSE OF CONSTRUCTING
AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE SYSTEM WITHIN
CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF SLIDELL, LOUISIANA**

This Agreement ("Agreement") is entered into on, effective the 1st day of September, 2022 (the "Effective Date"), by and between:

The City of Slidell, a Louisiana municipal corporation organized and existing under the laws of the State of Louisiana herein represented by George G. Cromer, its Mayor (hereinafter referred to as "City"), and

Southern Light, LLC, an Alabama limited liability company authorized to do business in the State of Louisiana through the Secretary of State, whose registered agent is CT Corporation, 3867 Plaza Tower Drive, Baton Rouge, Louisiana 70816, and its principal place of business in the State of Louisiana being 5712 Heebe Street, New Orleans, Louisiana, and represented herein by Kelly A. McGriff, by virtue of a Resolution of that company and of his authority as Vice President and Deputy General Counsel (hereinafter referred to as the "Company").

WITNESSETH

The City and The Company do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words, and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

- 1.1** "City" means the City of Slidell.
- 1.2** "City Council" means the City Council of the City of Slidell.
- 1.3** "Gross Receipts" means Local Telecommunications Service Revenues on recurring Telecommunications Services that originate or terminate within the corporate limits of the City and shall include all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the Company or its affiliates from or in connection with any Telecommunications Services provided in accordance with this Agreement. Local Telecommunications Service Revenues on recurring Telecommunications Services that (i) originate within the corporate limits of the City and terminate outside the corporate limits of the City; or (ii) originate outside the corporate limits of the City and terminate inside the corporate limits of the City, are hereinafter referred to as "Alternate Source Revenues", with the outside jurisdiction being the "Alternate Source". Gross Receipts for Alternate Source Revenues shall be evenly apportioned among the City and the Alternate Source for purposes of calculating the Franchise Fee owed to the

City such that the aggregate fee paid by the Company to the City of Slidell and the Alternate Source shall not exceed 5% of the Gross Receipts of the Company. Gross Receipts shall not include revenues arising from or relating to Telecommunication Services that both originate and terminate outside the corporate limits of the City.

- 1.4 "Local Telecommunications Service Revenues" are defined as all revenues received by the Company from its customer for providing the transport of voice, data and/or video signals within the municipal limits of the City.
- 1.5 "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.
- 1.6 "Rights-of-Way" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or located within the City which shall entitle the City and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System. The term shall not include any right-of-way within the corporate boundaries of the City that is owned by the United States, the State of Louisiana, another political subdivision, or a private party, or the use of any infrastructure of any third party on, below, or above the City's Rights-of-Way.
- 1.7 "System" shall mean a system of fiber optic cables, conduit, carrier pipes, transmission lines, meters, repeaters, power sources equipment, a distributed antenna system (hereinafter "DAS") and/or small cell system serving one or more wireless service providers, and all other facilities associated with the operation of a fiber-optic transmission line by the Company in accordance with the terms and conditions contained in this Agreement, including, but in no way limited to operator-controlled, low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade WIFI. Except as may be otherwise set forth in this Agreement, the Company shall maintain ownership and responsibility for its System.
- 1.8 "Telecommunications" means the transmission, between or among points specified by the user, or information of the user's choosing (e.g., data, video, and voice and/or other services as may be authorized by appropriate federal and/or state regulatory agencies), without change in the form or content of the information as sent and received.
- 1.9 "Telecommunication Service(s)" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

1.10 "Telecommunication System" means the cables, wire, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, a distributed antenna system (DAS) and/or small cell system or System designated and constructed for the purpose of producing, receiving, amplifying, or distributing Telecommunications to or from locations within the City of Slidell.

1.11 "Franchise Fee" means the fee paid by a Provider to the City for locating and maintaining facilities in the Rights-of-Way.

SECTION 2. Grant of Authority. The City hereby grants to the Company the non-exclusive and limited authority to construct, install, maintain, operate, modify, relocate, repair and/or replace its fiber-optic infrastructure within and along the Rights-of-Way in the City of Slidell (referred to as the "System", as defined *supra*). The Company shall obtain the approval of the City Engineer of the location of the System before constructing, expanding, or extending the System within the City pursuant to this Agreement and shall provide the City Engineer with all pertinent information reasonably requested by him/her in connection with the approval request. The grant of authority provided in this section shall also cover all prior System installations by the Company in the City's Rights-of-Ways.

SECTION 3. Franchise Fee. The Franchise Fee due from the Company to the City hereunder shall be five percent (5%) of the Company's Gross Receipts on recurring System-based Local Telecommunications Services Revenues for Services originating or terminating within the City of Slidell, payable quarterly. If authorized by federal and state laws and/or regulation, specifically including the final approval by the Louisiana Legislature as well as the Louisiana Public Service Commission, the City may, by ordinance of the City, increase the Franchise Fee collectible pursuant to this Agreement, provided that Company shall receive written notification at least forty-five (45) days prior to the first public hearing in connection with said ordinance, and further, if an ordinance is adopted by the City increasing the Franchise Fee, said increase shall not become effective until six (6) months after the effective date of the adoption of said (increase) ordinance, and further provided that said increase shall apply to each and every entity (but only if said entity is conducting business in the Telecommunications industry, in whole or in part, as Company) that has entered into a franchise agreement with the City after the Effective Date of this Agreement, but said increase shall not be applicable to renewals of (pursuant to options within) franchise agreements with an entity (no matter what business said entity performs) originally entered into prior to the Effective Date of this Agreement.

3.1 Nature of Franchise Fee Payments. The City and the Company agree that the Franchise Fee and other payments to be made pursuant to this Agreement are not a tax and are not in the nature of a tax, but are in addition to any and all taxes of general applicability or other fees or charges which the Company shall be required to pay to the City, and the Company shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments made pursuant to this Agreement or from or against any taxes of general applicability or fees or damages which the Company is required to pay to the City. The payment of a Franchise Fee by the Company in no way limits the right of the City to charge fees for any permits the Company is required to obtain for any

construction project.

- 3.2 Due Date; Late Fees. The Franchise Fee levied by this Agreement shall be due and payable on the last day of the month following the end of each calendar quarter. If the Franchise Fees due are not paid on or before the twentieth (20th) day of the second month following the end of each calendar quarter, there shall be collected, with the Franchise Fee, interest upon said unpaid amount of one and one-quarter (1.25%) percent per month, and, in addition, there shall be collected a penalty equivalent to five (5%) percent per month, not to exceed twenty five (25%) percent in aggregate, of the fee due, when such Franchise Fee is not paid on or before the twentieth (20th) day of the second month following the calendar quarter for which the fee is due. Both interest and penalty shall be computed from the first day of the month following the calendar quarter for which the fee is due. Consistent with Section 7 of this Agreement, the Company shall provide the City with documentation sufficient to support the Company's calculation of the Franchise Fee. Unless otherwise designated in writing by the City, all Franchise Fees shall be made to the City, Attn: Finance Director, at P.O. Box 828, Slidell, Louisiana 70459.

SECTION 4. Duration and Term. The right-of-way use agreement granted hereunder shall be for an initial term of ten (10) years (the "Initial Term") commencing on the effective date of this Agreement, unless otherwise lawfully renewed, revoked, or terminated as herein provided. Upon the expiration of the Initial Term, this Agreement shall automatically renew thereafter for up to two (2) consecutive five (5) year terms (each a "Renewal Term") unless one party provides written notice of termination to the other at least ninety (90) days prior to the end of the then current term, in which case the Agreement shall terminate at the end of the then current term.

- 4.1 Continuing Obligation. In the event the Company continues to operate all or any part of the Telecommunications System after the Term expires or is terminated, and before any renewal of the franchise by the City, then the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all Franchise Fees and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement. No new installations may be made during such any such period, however.
- 4.2 System Rights Upon Termination/Expiration. Notwithstanding Section 4.1, unless otherwise maintaining a valid authorization to maintain its System/Telecommunications System in the City's Rights-of-Way, upon termination of this Agreement, including by way of expiration, the Company, at the City's request and within a reasonable timeframe required by the City, shall remove the Company's installations, equipment, and improvements from the City's Rights-of-Way, failing which, at the City's option, (i) such installations, equipment, and improvements shall become the property of the City, without any compensation therefore; or (ii) the City may remove such installations, equipment, and improvements on its own and pursue the Company for the costs and expenses

incurred in connection therewith.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said Rights-of-Way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting of this right-of-way use agreement and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Louisiana to regulate the use of its Rights-of-Way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this right-of-way use agreement and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

SECTION 7. Reports; Inspection. Throughout the Term of this Agreement, the Company shall maintain complete and accurate books of account and records of the business, ownership, and operations of the Company with respect to the Telecommunications System in a manner that allows the City at all times to determine whether the Company is in compliance with the Agreement. Should the City reasonably determine that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section. All financial books and records which are maintained in accordance with generally accepted accounting principles shall be deemed to be acceptable under this Section. The Company shall also maintain and provide such additional books and records as the City deems reasonably necessary to ensure proper accounting of all payments due the City. The City's designated representatives shall have the right to inspect, examine or audit during normal business hours and upon reasonable (not less than ten (10) days) advance written notice to the Company under the circumstances, all documents, records or other information which pertain to the Company and its affiliates with respect to the Telecommunications System, its operation, its employment and purchasing practices, Telecommunication Service(s) distributed over the Telecommunication System, and with respect to the Company's obligations pursuant to this Agreement. All such documents shall be made available at Company's office or in such other place that Company may agree upon in writing in order to facilitate said inspection, examination, or audit, provided, however, that if such documents are located outside of the City, then the Company shall pay the reasonable expenses incurred by City's designated representatives in travelling to such location.

SECTION 8. Standards of Service.

- 8.1 Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the Rights-of-Way and with the rights and reasonable convenience of property owners who own property that adjoins any of such rights-of-way.
- 8.2 Restoration of Rights-of-Way. If during the course of the Company's construction, operation, or maintenance of the System there occurs a disturbance of any rights-of-way by the Company, it shall, at its expense, replace and restore such Rights-of-Way to a condition comparable to the condition of the Rights-of-Way existing immediately prior to such disturbance to the satisfaction of the City. The work to be done under this Agreement, and the restoration of Rights-of-Way as required herein, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City Engineer.
- 8.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the Rights-of-Way, or remove from the Rights-of-Way, any property of the Company when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City. Should the Company refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Company.
- 8.4 Trimming of Trees and Shrubbery. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting, or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Company to the satisfaction of the City.
- 8.5 Safety and Permit Requirements. Construction, installation, repair, and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules, and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area. Further, the Company shall not generally be permitted to conduct any operations which require substantial

disruption to the City's existing roads or sidewalks or the traffic thereon;

- 8.6 Minimum Standards. All of the construction by the Company shall conform, at a minimum, to the minimum standards of the Company. In the event there is a conflict between the standards adopted by the Company and any applicable federal, state, or local standards, including ordinances adopted by the City, the stricter standard shall apply.
- 8.7 Maps; Plats. Company shall file with the City's Development-Planning Department true and correct maps and/or plats of all existing and proposed installations and the types of equipment and facilities installed or constructed, properly identified, and described as to the type of equipment and facility by appropriate symbols and marks and which shall include annotations of all public ways, streets, road, and conduits where the work is to be undertaken. Maps and/or plats shall be provided no less than fifteen (15) days before any installation of said equipment or facilities. Upon completion of said proposed installations, Company shall file with the City a set of "as built" plans and specifications of the completed System installations. In addition, Company will also submit all plans to the City's Development-Planning Department in electronic auto-cad and PDF formats.
- 8.8 Obstructions of Rights-of-Way. The Company shall not unnecessarily or for any unreasonable period of time obstruct or interfere with the public use of any of the streets, roads, highways, alleys bridges, public ways, or other immovable property owned or controlled by the City. Except in the case of an emergency, or with the approval of the City Engineer, no rights- of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work. The Company shall not so obstruct the Rights-of-Way so as to interfere with the natural, free, and clear passage of water through the gutters, drains, ditches, or other waterways. The Company shall not unnecessarily obstruct or impair traffic upon the Right of Way. The Company shall provide safe passageway for pedestrians, cyclists, and vehicles through, in, and around areas of construction and shall provide necessary and appropriate safety and traffic personnel in connection therewith.
- 8.9 Safety Requirements.
- A. The Company shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
 - B. The Company shall install and maintain the System in accordance with the requirements of all applicable regulations of the City, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the

City.

- C. All structures and all lines, equipment, and connections in, over, under and upon the Rights-of-Way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.
- D. The Company shall maintain a force of employees at all times sufficient to provide safe, adequate, and prompt service for the System.

8.10 Least Disruptive Technology. The Company will perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the Rights-of-Way. The Company will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City. The City Engineer may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Company may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies.

SECTION 9. Performance Bond/Security Fund.

- 9.1 General Requirement. Prior to the execution of this Agreement, Company has deposited with the City an irrevocable, unconditional surety bond equal to One Hundred Thousand Dollars (\$100,000.00). Such amount constitutes Company's Performance Bond/Security Fund. Throughout the Term, and for one hundred twenty (120) days thereafter, (unless the City notifies Company that a reasonably longer period shall apply), Company shall maintain the Performance Bond/Security Fund in the amount specified in this Section. At any time during the Term, the City may, acting reasonably, require Company to increase the amount of the Performance Bond/Security Fund if it finds that new risk factors exist, such as the failure of Company to perform any of its obligations pursuant to this Agreement, which reasonably necessitate an increase in the amount of the Performance Bond/Security Fund.
- 9.2 Indemnification. The Performance Bond Security Fund shall indemnify the City, up to the full face amount of the Performance Bond/Security Fund, for; (i) any loss or damage to any structure or other Right-of-Way of the City during the course of any construction of the System; (ii) any other cost or loss or damage actually incurred by the City as a result of Company's failure to perform its obligations pursuant to this Agreement; and (iii) the removal and/or relocation of all or any part of the System from the Rights-of-Way of the City, as authorized by this Agreement.
- 9.3 Other Purposes. The Performance Bonds Security Fund shall also serve as security for:

- (A) the faithful performance by Company of all terms, conditions and obligations of this Agreement;
- (B) any expenditure, damage, or loss incurred by the City occasioned by Company's failure to comply with all ordinances, rules, regulations, orders, permits and other directives of the City pursuant to this Agreement;
- (C) payment of the Franchise Fee;
- (D) the payment of premiums for the liability insurance required pursuant to this Agreement;
- (E) the removal of the System from the Rights-of-Way at the termination of the Agreement;
- (F) the payment to the City of any amounts for which Company is liable pursuant to indemnity of the City by Company hereof which are not paid by Company's insurance;
- (G) the payment of any other amounts which become due to the City pursuant to this Agreement or law;
- (H) the timely renewal of the bond and/or letter of credit that constitutes the Performance Bond/Security Fund; and
- (I) any costs, losses or damages incurred by the City as a result of a default of Company's obligations under this Agreement.

9.4 Withdrawals from the Performance Bond/Security Fund. In accordance with the procedures set forth in Sections 9.5, and Section 10, the City, on thirty (30) days advance written notice to Company, may make withdrawals from the Performance Bond/Security Fund, and pay to the City such amounts for the satisfaction of obligations under Section 9.2 hereof, or for the purposes specified in Section 9.3 hereof. Withdrawals from the Performance Bond/Security Fund shall not be deemed a cure of the default(s) that led to such withdrawals. The City may not seek recourse against the Performance Bond/Security Fund for any costs or damages for which the City has previously been compensated through a withdrawal from the Performance Bond/Security Fund or otherwise by Company. Notwithstanding the foregoing, before making a withdrawal from the Performance Bond/Security Fund, the City shall provide advance written notice with specific details of the alleged breach/default by Company and provide Company a thirty (30) day cure period from the date of said notice, failure of which shall allow the City to proceed with said withdrawal.

9.5 Notice of Withdrawals. Within one (1) week after any withdrawals from the

Performance Bond/Security Fund, the City shall notify Company of the date and amount thereof, provided, however, that the City shall not make any withdrawals by reason of any breach for which Company has not been given advance written notice. The withdrawal of amounts from the Performance Bond/Security Fund shall constitute a credit against the amount of the applicable liability of Company to the City but only to the extent of said withdrawal.

- 9.6 Replenishment. Within thirty (30) days after receipt of notice from the City that any amount has been withdrawn from the Performance Bond/Security Fund letter of credit, as provided in Section 9 hereof, Company shall restore the Performance Bond/Security Fund to the amount specified in Section 9.1 hereof, provided that, if a court finally determines that said withdrawal by the City was improper, the City shall refund the improperly withdrawn amount to the Performance Bond/Security Fund or to Company such that the balance in the Performance Bonds Security Fund shall not exceed the amount specified in Section 9.1 hereof.
- 9.7 Not a Limit on Liability. The obligation to perform and the liability of Company pursuant to this Agreement shall not be limited by the acceptance of the Performance Bond/Security Fund required by this Section 9.
- 9.8 Form. The Performance Bond/Security Fund does, and any replacement bond shall, contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) days after completion of construction of the System and, notwithstanding the foregoing, shall in no case be cancelled or not renewed by the surety until at least ninety (90) days' written notice to the City of surety's intention to cancel or not renew this bond." Notwithstanding the preceding, the letter of credit portion of the Performance Bond/Security Fund shall not be cancelled or not renewed by the issuer until at least sixty (60) days' advance written notice to the City of the issuer's intention to cancel or not renew the letter of credit.

SECTION 10. Enforcement and Termination of Agreement.

- 10.1 Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance.
- 10.2 Right to Cure or Respond. The Company shall have 30 days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

10.3 Public Hearing. In the event the Company fails to respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within 30 days or by the date projected pursuant to 8.2(c) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the first available regularly scheduled meeting of the City Council. The City shall notify the Company in writing of the time and place of such meeting and provide the Company with an opportunity to be heard.

10.4 Enforcement. In the event the City, after such meeting, determines that the Company is in default of any provision of this Agreement, the City may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;
- D. Seek any other available remedy permitted by law or in equity;
- E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:
 - (1) The City shall give written notice to the Company of its intent to revoke the Right-of-way use agreement on the basis of noncompliance by the Company. The notice shall set forth the exact nature of the noncompliance. The Company shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Company, it may then seek termination of this Agreement at a public hearing to be held at the first available regularly scheduled meeting of the City Council. The City shall cause to be served upon the Company, reasonable advance written notice specifying the time and place of such hearing and stating its intent to seek such termination.
 - (2) At the designated meeting, the City shall give the Company an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Company may appeal such determination to the 22nd Judicial District Court for St. Tammany Parish, which shall have the power to review the decision of the City and to modify or reverse such

decision as justice may require. Such appeal must be taken within 30 days of the issuance of the determination by the City.

- (3) The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under this Agreement in lieu of revocation of the Agreement.

10.5 Impossibility of Performance. The Company shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

10.6 Remedies and Penalties Not Exclusive. All remedies and penalties under this Agreement are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance and both parties may avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Company by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Company by or pursuant to this Agreement shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition, or obligation itself.

SECTION 11. Default. Each of the following shall constitute a material default by the Company:

- (1) Failure to make any payments to the City required to be made as set forth in this Agreement;
- (2) Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Company;
- (3) Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;
- (5) Any breach or violation of any provision or section set forth in this Agreement;
- (5) The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all

or any material part of the System or the assets of the Company;

- (6) The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or
- (7) If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntarily or involuntary dissolution of the Company.

SECTION 12. Excavation and Installation. Prior to any excavation within the rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City.

SECTION 13. Insurance. The Company shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City. In addition, the Company shall obtain worker's compensation coverage as required by the laws of the State of Louisiana. The Company shall also obtain automobile liability insurance including owned, non-owned and hired vehicles in the amount of \$1,000,000 for property damage per occurrence, \$1,000,000 for property damage per occurrence and \$2,000,000 per occurrence, or in lieu of the above, combined bodily injury and property damage of \$2,000,000 combined single limit. The City shall be named as an additional insured on the policy, and the Company shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City.

SECTION 14. Indemnity and Hold Harmless. The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all

claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Company, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of the System, except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 15. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Company. This Agreement shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 16. Warranties and Representations. The Company hereby agrees, represents, and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules, and regulations. Furthermore, the Company further agrees, represents, and warrants that this Agreement is legal, valid, and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation, or maintenance of the System.

SECTION 17. Other Obligations. Obtaining a right-of-way use agreement pursuant to this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority, and the payment of fees required by any other City, parish, state or federal rules, laws or regulations, and the Company is responsible for all work done in the Rights-of-Way pursuant to this Agreement, regardless of who performs the work.

SECTION 18. Payment of Costs. The Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the Rights-of-Way due to the installation, repair, and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City.

SECTION 19. Priority of Use. This Agreement does not establish any priority for the use of the Rights-of-Way by the Company or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the Rights-of-Way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Louisiana and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of

Louisiana.

SECTION 20. Notice. Every notice or response required by this Agreement to be served upon the City or the Company shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Slidell
Attention: Mayor
P.O. Box 828
Slidell, LA 70459

With a copy to:
City of Slidell
Attention: City Attorney
P.O. Box 828
Slidell, LA 70459

The notices or responses to the Company shall be addressed as follows:

Southern Light, LLC
Attention: Kelly A. McGriff
107 St. Francis Street
Suite 1800
Mobile, AL 36602

SECTION 21. The City and The Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 22. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the Effective Date of this Agreement.

SECTION 23. Acceptance. The Company's acceptance of this Agreement shall be in writing in a form approved by the City attorney and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance of other requirements relating to commencement of construction as set forth in this Agreement.

SECTION 24. Assignment. The Company's interest in this Agreement shall not be sold, transferred, assigned, or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council.

SECTION 25. Miscellaneous. Words of any gender used in this Agreement shall be held

and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement or be used in interpreting the meanings and provisions of this Agreement.

SECTION 26. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 27. Governing Law, Venue, Jurisdiction, and Attorney's Fees. This Agreement shall be deemed to have been made in the State of Louisiana and the validity of the same, its construction, interpretation, enforcement, and the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the substantive laws of the State of Louisiana, without giving effect to any choice of law provisions arising thereunder. Any suit filed by a party to this Agreement to resolve a dispute or controversy regarding the matters which are the subject of this Agreement shall be filed in the 22nd Judicial District Court for the Parish of St. Tammany which shall have exclusive venue and jurisdiction for any such action.

SECTION 28. Severability Clause. If any part, section, or subdivision of this Agreement shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

SECTION 29. Repealer Clause. Reserved.

SECTION 30. Subsequent Action.

30.1 Compensation. In the event that, after the Effective Date any court, agency, commission, legislative body, or other authority of competent jurisdiction takes any action or enters any judgment which has a materially adverse effect as to the provisions of this Agreement, with respect to the City or Company and/or Franchise Fee payments to be made by Company pursuant to this Agreement, then Company and the City shall enter into negotiations to amend this Agreement in a manner not inconsistent with any such action or judgment so as to establish a fair and equitable relationship between the parties. In the event that either party fails to negotiate in good faith to produce an agreement which is reasonably acceptable to both parties within a reasonable period, then either party shall have the right, by notice to the other, to accelerate the Term of this Agreement and the franchise granted hereunder such that the Term and the franchise shall terminate on the date which is one half of the number of days between the date of such written notice and the termination date of this Agreement, but in no event shall the City be permitted to reduce the Term of this franchise by virtue of this Section such that the term of this franchise is less than ten (10) years.

30.2 Procedure for Subsequent Invalidity.

- A. Declaration of Invalidity or Injunction. Except as provided in Section 30.1 hereof, in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of competent jurisdiction:
- a. declares this Agreement invalid, in whole or in part, or
 - b. requires the City or Company either to: (i) perform any act which is inconsistent with any provision of this Agreement or (ii) cease performing any act required by any provision of this Agreement, then Company or the City, as the case may be, shall promptly notify the other party in writing of such fact.
- B. Continued Compliance. After the occurrence of the events described in paragraph A. above, Company and the City shall continue to comply with all provisions of this Agreement, including the affected provision, until the validity of the declaration or requirement has been finally adjudicated or a court orders Company or the City to comply with such declaration or order, provided that either party may (but shall not be required to) comply with any court order which is not stayed during the pendency of any appeal leading to said final adjudication.
- C. Negotiations to Amend Agreement. Except as provided in Section 30.1 hereof, to the extent that any statute, rule, regulation, ordinance or any other law is enacted, adopted, repealed, amended, modified, changed or interpreted in any way during the term of this Agreement so as to (a) declare the Agreement invalid, in whole or in part, or (b) require Company or the City either to: (i) perform any act which is inconsistent with any provision of this Agreement, or (ii) cease performing any act required by any provision of this Agreement, Company and the City shall enter into good faith negotiations so as to modify this Agreement and/or regulate the System, as applicable, to reflect such enactment, adoption, repeal, amendment, modification, change or interpretation and Company agrees to comply with any such modifications or regulations arising out of such negotiations. In the event that either party fails to negotiate in good faith to produce an agreement which is reasonably acceptable to both parties within a reasonable period, then either party shall have the right, by notice to the other, to accelerate the Term of this Agreement and the franchise granted hereunder such that the Term and the franchise shall terminate on the date which is one half of the number of days between the date of such notice and the termination date of this Agreement, but in no event shall the City be permitted to reduce the Term of this franchise by virtue of this paragraph such that the Term of this franchise is less than ten (10) years.

SECTION 31. Franchise Not a Joint Venture. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

SECTION 32. No Coercion. The Company enters into this Agreement willingly and without coercion, undue influence, or duress. The Company has reviewed each and every obligation, term, and condition of this Agreement and hereby certifies that none of the obligations, terms or conditions imposed upon it by this Agreement are commercially impractical.

SECTION 33. System is Economically and Technically Feasible and Viable. The Company, after thoroughly considering all foreseeable economic and business risks, currently believes that the provision of all such services, facilities and equipment as required for this Agreement are economically and technically feasible during the Term.

SECTION 34. Captions. The captions given to various provisions of this Agreement are for purposes of convenience only and are to have no impact upon the interpretation of any such provisions.

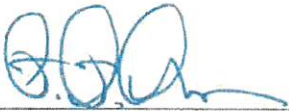
SECTION 35. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument. A scanned or electronically reproduced copy of this fully executed Agreement shall have the same legal effect as an original signed version of this Agreement.

SECTION 36. Non-Discrimination. The parties agree not to discriminate in their respective employment and services practices, and shall fulfill their obligations under this Agreement without regard to race, color, age, religion, sex, national origin, veteran status, genetic information, political affiliation, or disability.

SECTION 37. Legal Provisions. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall forthwith be amended to make such insertion or correction.

(Signature Pages to Follow)

City of Slidell, Louisiana

By: 
George G. Cromer
Its: Mayor

State of Louisiana
Parish of St. Tammany

Sworn and subscribed before me on the 1st day of September, 20 22.


Notary Public

My Commission Expires: _____

Thomas S. Schneidau
Notary Public
State of Louisiana
Roll No. 33359/Notary ID No. 91626
My Commission is for life.

Southern Light, LLC

By: 
Kelly A. McGriff
Its: Vice President and Deputy General Counsel

State of Alabama
County of Baldwin

Sworn and subscribed before me on the 2nd day of September, 2022.


Notary Public

My Commission Expires: 11/3/24

