

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO: 5879

ORDINANCE COUNCIL SERIES NO: \_\_\_\_\_

COUNCIL SPONSOR: STEFANCIK/BRISTER

PROVIDED BY: LEGAL DEPARTMENT

INTRODUCED BY: MR. TANNER

SECONDED BY: MS. O'BRIEN

ON THE 5 DAY OF OCTOBER , 2017

ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO SOUTHERN LIGHT, LLC, FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE, ET AL WITHIN ALL PUBLIC RIGHTS-OF-WAY WITHIN ST. TAMMANY PARISH, LOUISIANA, AND AMENDING THE PARISH CODE APPENDIX RELATIVE TO FRANCHISES FOR ITS INCLUSION THEREIN.

WHEREAS, SOUTHERN LIGHT, LLC, a Alabama limited liability company (hereinafter referred to as the "the Company") desires to construct a fiber-optic transmission line, et al (System, as defined in Section 1.10 herein) within all certain public rights-of-way within St. Tammany Parish, Louisiana; and

WHEREAS, the Company agrees and recognizes that it is required to obtain consent in the form of a franchise agreement from St. Tammany Parish in order to construct the proposed fiber-optic transmission line and System within the unincorporated portions of St. Tammany Parish; and

WHEREAS, the St. Tammany Parish Council wishes to accommodate the Company's request and grant a franchise agreement for the construction of the proposed fiber-optic transmission line and System in accordance with the terms and conditions contained herein.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS:

The Council of St. Tammany Parish does hereby grant to Company a non-exclusive franchisee agreement granting the limited authority (as defined herein) to construct, install, maintain and operate a fiber-optic transmission line and System in St. Tammany Parish in and along all unincorporated rights-of-way of St. Tammany Parish, subject to the terms and conditions set forth in the following agreement:

**FRANCHISE AGREEMENT**

This Agreement is entered into by and between St. Tammany Parish Government, a political subdivision of the State of Louisiana and the governing authority of St. Tammany Parish, whose mailing address is P.O. Box 628, Covington, Louisiana 70434, herein appearing by and through Patricia P. Brister, Parish President, duly authorized by this Ordinance (hereinafter referred to as "STP"), and UNITI FIBER LLC a Delaware limited liability company authorized to do business in Louisiana, whose mailing address is 107 St. Francis Street, Suite 1800, Mobile, Alabama 36602, represented by and through Andrew M. Newton, the duly authorized President-Infrastructure and Operations (hereinafter referred to as the "Company").

**WITNESSETH:**

STP and 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 "Agreement" means this Franchise Agreement between STP and Company.

1.2 "Company" means Southern Light, LLC and/or (a) any parent, subsidiary or other entity which other entity has in common with Southern Light, LLC not less than 25% ownership; (b) any entity in which Southern Light, LLC owns more than 25% of all voting and/or non-voting equity interest; (c) any entity that acquires all or substantially all of the assets or stock of Southern Light, LLC or otherwise takes over the business of Southern Light, LLC; and/or (d) any entity that merges or consolidates with Southern Light, LLC, regardless of whether Southern Light, LLC is the surviving entity.

1.3 "STP" means St. Tammany Parish Government, a political subdivision of the State of Louisiana and the governing authority of St. Tammany Parish.

1.4 "STP Council" means the Council of STP.

1.5 "St. Tammany Parish" means the geographic, parochial boundaries of St. Tammany Parish as recognized by the State of Louisiana.

1.6 "Gross Receipts" means gross revenue on recurring Telecommunications Services that originate or terminate within the unincorporated limits of St. Tammany Parish, 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. Furthermore, Gross Receipts (that originate and/or terminate either outside of the Parish of St. Tammany and/or within an incorporated municipality within the Parish of St. Tammany, hereinafter referred to as the "Alternate Source") shall be evenly apportioned for purposes of calculating the Franchise Fee such that the aggregate fee paid by the Company to the Parish of St. Tammany and the Alternate Source shall not exceed 5% of the Gross Receipts of the Company.

1.7 "Local Telecommunications Service Revenues" are defined as all revenues received by the Company from its customer for providing the transmission or information of the user's choosing (i.e.: voice, data, video and/or other services) within the parochial limits of St. Tammany Parish.

1.8 "Ordinance" shall mean the Ordinance Granting a Non-Exclusive Franchise to Southern Light, LLC, for the Purpose of Constructing and Maintaining a Fiber-Optic Transmission Line within Certain Public Rights-Of-Way within St. Tammany Parish, Louisiana, as adopted by STP Council in approval of this Agreement.

1.9 "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.

1.10 "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 STP or location within the unincorporated portions of STP and the Tammany Trace, which shall entitle STP and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System. For purposes of this Agreement, the term "Rights-of-Way" shall specifically include the Tammany Trace; however, all rights herein related to the Tammany Trace shall be subject to any and all "railbanking" laws, rules, and/or regulations imposed by federal law (including but not limited to 16 U.S.C.A. section 1247(d) and the Notice of Interim Trail Use decided by the Surface Transportation Board on October 23, 1992 in the matter captioned "Illinois Central Railroad Company - Abandonment Exemption - in St. Tammany Parish, La" 1992 WL 307294, etc.) as currently existing or as hereafter amended.

1.11 "System" shall mean a system of fiber optic cables, conduit, carrier pipes, transmission lines, meters, repeaters, power sources equipment, and/or Telecommunication System serving one or more wireless service providers, and all other facilities associated with and/or appurtenant to the operation of a fiber-optic transmission line by the Company for the provision of Telecommunication Service(s), whether existing before or after the effective date of this Agreement, in accordance with the terms and conditions contained in this Agreement.

1.12 "Tammany Trace" shall mean STP's linear park consisting of twenty nine and 14/100 (29.14+/-) miles, more or less, in length, acquired by STP via two acts: (a) the Act of Sale with Illinois Central

Railroad Company last dated March 30, 1993 and recorded at Instrument No. 653125 in the Conveyance records of the Clerk of Court for the Parish of St. Tammany and (b) Cash Sale and Donation with Lucky 7 Irrevocable Trust dated December 30, 1992 and recorded at Instrument No. 843540 in the Conveyance records of the Clerk of Court for the Parish of St. Tammany.

1.13 "Telecommunications" means the transmission, between or among points specified by the user, or information of the user's choosing (e.g., data, video, voice and/or other services as may be authorized by appropriate federal and/or state regulatory agencies).

1.14 "Telecommunication Service(s)" means the offering of Telecommunications for a fee.

1.15 "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 St. Tammany Parish.

1.16 "Franchise Fee" means the fee paid by Company to STP for locating and maintaining the System in the Rights-of-Way.

SECTION 2. Grant of Authority. STP hereby grants to the Company the non-exclusive and limited authority to construct, install, maintain, repair and/or replace a fiber-optic System in and along the Rights-of-Way in St. Tammany Parish. The Company shall not expand or extend the System installed or constructed within STP pursuant to this Agreement without approval from STP, which approval shall be deemed given by STP's issuance of all necessary permits as required by law and/or this Agreement.

SECTION 3. Franchise Fee. Five percent (5%) of its annual Gross Receipts on recurring System-based Local Telecommunications Services revenues for Services originating or terminating within the St. Tammany Parish. 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, STP may, by ordinance of STP Council, increase the franchise fee collectible pursuant to this Agreement, provided that Company shall receive written notification at least ninety (90) days prior to the first public hearing in connection with said ordinance, and further, if an ordinance is adopted by STP increasing the franchise fee, said increase shall not become effective until one (1) year after the effective date of the adoption of said (increase) ordinance, and further provided that said increase shall apply to each and every entity entering into a franchise agreement with STP after the Effective Date (as defined below) of this Agreement.

3.1 Nature of Franchise Fee Payments. STP 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 STP, 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 STP. The payment of a franchise fee by the Company in no way limits the right of STP 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 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.

SECTION 4. Duration and Term. The right-of-way use agreement granted hereunder shall be for a term of twenty five (25) years (the "Term") commencing on the later of (a) the effective date of the Ordinance or (b) full execution of this Agreement by both parties (the "Effective Date"), unless otherwise lawfully renewed, revoked or terminated as herein provided.

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 STP, 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.

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 STP 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. STP does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. STP, 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 STP 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 STP, shall be in full force and effect and subject to the exercise thereof by STP at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of STP 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 STP pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of STP'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 STP at all times to determine whether the Company is in compliance with the Agreement. Should STP 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 STP deems reasonably necessary to ensure proper accounting of all payments due STP. STP'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 STP, then the Company shall pay the reasonable expenses incurred by STP's designated representatives in traveling 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, both during construction and/or operation thereafter, 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 STP. 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 reasonably and customarily specified or approved by the STP's Development and/or Public Works Departments, as such departments may be reorganized or revised from time to time.

8.3 Relocation at Request of the STP. 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 STP 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 STP. Should the Company refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification STP 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 STP for any damages, in such amounts as determined by STP, 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 STP.

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 STP 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.

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 STP, the stricter standard shall apply.

8.7 Maps; Plats. Company shall file with STP'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 STP a set of "as built" plans and specifications of the completed System installations. In addition, Company will also submit all plans to STP's Development-Planning Department in electronic auto-cad and PDF formats.

8.8 Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the STP Public Works Department, 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 Rights-of-Way. The Company shall provide safe passageway for pedestrians, cyclists and vehicles through, in, and around areas of construction.

8.9 No Interference. In operation of the System, Company shall not unreasonably interfere with the technical operation of any other telecommunications system in unincorporated St. Tammany Parish. Company shall not place any part of the System where same will interfere with any other existing utilities.

#### 8.10 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 STP, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of STP or of a public utility serving STP.

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.

8.11 Least Disruptive Technology. The Company is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the Rights-of Ways. The Company will be required to use trenchless technology wherever reasonably possible and also for any portion of construction or maintenance projects which lie in the Tammany Trace and/or beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved in writing by STP.

8.12 Installations on Tammany Trace. Any installations of the System on or along the Tammany Trace shall be installed (a) at a finished elevation equal to existing grade or (b) below grade with adequate cover/fill to match existing grade.

#### SECTION 9. Performance Bond/Security Fund.

9.1 General Requirement. Prior to the execution of this Agreement, Company has deposited with STP an irrevocable, unconditional surety bond equal to Fifty Thousand Dollars (\$ 50,000.00). Such amount constitutes Company's Performance Bond/Security Fund. Throughout the Term, and for one hundred twenty (120) days thereafter, (unless STP 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, STP 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 STP, 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 STP during the course of any construction of the System; (ii) any other cost or loss or damage actually incurred by STP 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 STP, 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 STP occasioned by Company's failure to comply with all rules, regulations, orders, permits and other directives of STP and STP issued 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 STP of any amounts for which Company is liable pursuant to indemnity of STP by Company hereof which are not paid by Company's insurance;

G. the payment of any other amounts which become due to STP 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 STP 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, STP, on thirty (30) days advance written notice to Company, may make withdrawals from the Performance Bond/Security Fund and pay to STP 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. STP may not seek recourse against the Performance Bond/Security Fund for any costs or damages for which STP 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, STP 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 STP to proceed with said withdrawal.

9.5 Notice of Withdrawals. Within one (1) week after any withdrawals from the Performance Bond/Security Fund, STP shall notify Company of the date and amount thereof, provided, however, that STP 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 STP but only to the extent of said withdrawal.

9.6 Replenishment. Within thirty (30) days after receipt of notice from STP 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 STP was improper, STP 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 canceled 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 canceled or not renewed by the surety until at least ninety (90) days' written notice to STP 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 canceled or not renewed by the issuer until at least sixty (60) days' advance written notice to STP 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, STP shall notify the Company in writing of the nature of the alleged noncompliance.

10.2 Right to Cure or Respond. The Company shall have thirty (30) days from receipt of the notice described in Section 10.1: (a) to respond to STP 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 thirty (30) day period, initiate reasonable steps to remedy such default and notify STP 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 10.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 10.2, or in the event the alleged default is not remedied within thirty (30) days or by the date projected pursuant to 10.2(c) above, STP shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next available, regularly scheduled meeting of STP Council. STP 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 STP, after such meeting, determines that the Company is in default of any provision of this Agreement, STP 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) STP shall give written notice to the Company of its intent to revoke the Agreement on the basis of noncompliance by the Company. The notice shall set forth the exact nature of the noncompliance. The Company shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection. In the event STP has not received a satisfactory response from the Company, it may then seek termination of this Agreement at a public meeting. STP shall cause to be served upon the Company, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, STP 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 in St. Tammany Parish, Louisiana, which shall have the power to review the decision of STP) and to modify or reverse such decision as justice may require. Such appeal must be taken within thirty (30) days of the issuance of the determination by STP.

(3) STP may, in its sole discretion, take any lawful action which it deems appropriate to enforce the STP'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. STP 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 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 STP 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) 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 STP, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the System; 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 voluntary or involuntary dissolution of the Company.

SECTION 12. Prior to any excavation within the rights-of-way, the Company shall obtain a permit from STP pursuant to applicable ordinances and codes, 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 STP. 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 reasonable satisfaction of STP.

SECTION 13. Insurance.

13.1 The Company shall maintain in full force and effect, at its own cost and expense:

A. 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;

B. worker's compensation coverage in such amounts as required by the laws of the State of Louisiana; and

C. automobile liability insurance including owned, non-owned and hired vehicles in the amount of (i) \$ 1,000,000.00 for property damage per occurrence, (ii) \$ 1,000,000.00 for bodily injury per person and \$ 2,000,000.00 per occurrence; or (iii) in lieu of (i) and (ii) above, combined bodily injury and property damage of \$ 2,000,000.00 combined single limit.

”St. Tammany Parish Government” named as an additional insured on the liability insurance policies and the policies shall be endorsed to provide a waiver of subrogation in favor of ”St. Tammany Parish Government”. The insurances affected by this Agreement shall be written on a primary and non-contributory basis. All insurance policies shall provide that insurance shall not be canceled without thirty (30) days prior notice of cancellation given to STP, in writing. Company shall present evidence of said insurance coverages to the STP on or before the commencement of this Agreement, and thereafter annually on or before each policy expiration.

SECTION 14. Indemnity and Hold Harmless. The Company agrees to indemnify, defend, and hold harmless STP, 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 STP or for which STP may be liable, which arise from the installation, operation, maintenance, repair and/or replacement of the System by the Company, its employees, agents, or subcontractors, except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of STP. STP 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 STP 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. STP makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular Rights-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 STP 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 STP prior to the construction, installation, operation or maintenance of the System.

SECTION 17. Other Obligations. Obtaining a franchise 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 STP.

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 STP, the second priority to the State of Louisiana and its political subdivisions in the performance of their various functions, the third priority to the public generally, and thereafter, as between franchisees and other permit holders, as determined by STP 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 STP 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 STP shall be addressed as follows:

President Patricia P. Brister (or her successor in office)  
St. Tammany Parish Government  
P.O. Box 628  
Covington, LA 70434

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

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

With a Copy to:  
Jeffrey D. Schoen  
Jones Fussell, L.L.P.  
P.O. Box 1810  
Covington, LA 70434

SECTION 21. STP 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 Rights-of-Way within all unincorporated portions of St. Tammany Parish and also specifically including the Tammany Trace.

SECTION 23. Acceptance. The Company's acceptance of this Agreement shall be in writing in a form approved by STP Legal Department 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 STP Council, which said consent shall not be unreasonably delayed or denied.

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 and Attorneys 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. In the event of litigation, the prevailing party shall be entitled to the recovery of all reasonable attorneys fees and costs from the defaulting party, after final and non-appealable judgment.

SECTION 28. Burden of Proof. In any disagreement upon the terms and conditions of this Agreement, each party shall bear the requisite burden imposed by Louisiana law in proving compliance with, or breach of, each term and condition of this Agreement for all purposes.

SECTION 29. 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 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 STP or Company and/or Franchise Fee payments to be made by Company pursuant to this Agreement, then Company and STP 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 STP be permitted to reduce the Term of this franchise by virtue of this Section such that the term of this franchise is less than fifteen (15) 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 STP 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 STP, 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 STP 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 STP 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 STP 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 STP 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 STP be permitted to reduce the Term of this franchise by virtue of this paragraph such that the Term of this franchise is less than fifteen (15) years.

SECTION 31. Effective Date. This Agreement shall become effective only upon receipt of a written unconditional acceptance by the Company of the terms and conditions contained herein within thirty (30) days of the passage of the Ordinance.

SECTION 32. 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 33. 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 impracticable.

SECTION 34. 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 35. 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.

BE IT FURTHER ORDAINED that this non-exclusive franchise to Southern Light, LLC be, and it is hereby approved for inclusion, as an amendment to the parish code appendix relative to franchises, as per law.

REPEAL: All ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this Ordinance are hereby declared to be severable.

EFFECTIVE DATE: This Ordinance shall become effective immediately upon final adoption.

MOVED FOR ADOPTION BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

WHEREUPON THIS ORDINANCE WAS SUBMITTED TO A VOTE AND RESULTED IN THE FOLLOWING:

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

THIS ORDINANCE WAS DECLARED DULY ADOPTED AT A REGULAR MEETING OF THE PARISH COUNCIL ON THE 2 DAY OF NOVEMBER , 2017 ; AND BECOMES ORDINANCE COUNCIL SERIES NO \_\_\_\_\_.

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STEVE STEFANCIK, COUNCIL CHAIRMAN

ATTEST:

\_\_\_\_\_  
THERESA L. FORD, COUNCIL CLERK

\_\_\_\_\_  
PATRICIA P. BRISTER, PARISH PRESIDENT

Published Introduction: SEPTEMBER 27 , 2017

Published Adoption: \_\_\_\_\_, 2017

Delivered to Parish President: \_\_\_\_\_, 2017 at \_\_\_\_\_

Returned to Council Clerk: \_\_\_\_\_, 2017 at \_\_\_\_\_

**ACCEPTANCE OF NON-EXCLUSIVE FRANCHISE**

TO THE COUNCIL OF THE PARISH OF ST. TAMMANY:

The grantee, Southern Light, LLC, a Alabama limited liability company authorized to do business in Louisiana, whose mailing address is 107 St. Francis Street, Suite 1800, Mobile, Alabama 36602, does hereby accept the Franchise approved by the Parish of St. Tammany in Ordinance No. \_\_\_\_\_ enacted the \_\_\_\_\_ day of \_\_\_\_\_, 2017, granting Southern Light, LLC a franchise to construct, install, maintain, repair and/or replace the System (as defined in Section 1.10 of the Agreement) a fiber-optic system in and along the rights-of-way (specifically including the Tammany Trace) in St. Tammany Parish, pursuant and subject to the terms, condition and limitations as set forth in the Agreement.

**SOUTHERN LIGHT, LLC**

BY: \_\_\_\_\_  
ANDREW M. NEWTON  
Its: President-Infrastructure and Operations

STATE OF ALABAMA  
COUNTY OF MOBILE

I, Kelly A. McGriff, a Notary Public, in and for said County in said State, hereby certify that Andrew M. Newton whose name as President-Infrastructure and Operations of SOUTHERN LIGHT, LLC, a Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officers and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Kelly A. McGriff, Notary Public  
Mobile County, Alabama  
My Commission Expires: \_\_\_\_\_

### **Ordinance Administrative Comment**

**ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO SOUTHERN LIGHT, LLC, FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE, ET AL WITHIN ALL PUBLIC RIGHTS-OF-WAY WITHIN ST. TAMMANY PARISH, LOUISIANA**

The Parish seeks to enter into a franchise agreement with Southern Light, LLC for use of the Parish's rights-of-way within unincorporated St. Tammany Parish in consideration of a franchise fee to be collected.