

MINUTES OF A REGULAR MEETING OF THE MAYOR AND COUNCIL OF THE CITY OF GONZALES, STATE OF LOUISIANA TAKEN ON JUNE 4, 2018, 8:00 A.M. AT CITY HALL, 120 S. IRMA BLVD.

MEMBERS PRESENT:

Mayor Barney Arceneaux  
Councilman Neal Bourque  
Councilman David Guitreau

Councilman Kirk Boudreaux  
Councilman Tyler Turner

MEMBERS ABSENT: Harold Stewart

ALSO PRESENT:

Scot Byrd, City Clerk  
Lisa Babin, Administrative Secretary  
Sherman Jackson, Police Chief

Erin Lanoux, City Attorney  
Resa Tureau, Finance Director

Motion by Councilman Neal Bourque, seconded by Councilman Tyler Turner to approve the City Council Meeting Minutes taken May 14, 2018.

YEAS: Councilman Neal Bourque, Councilman David Guitreau, Councilman Kirk Boudreaux, Councilman Tyler Turner

NAYS: NONE ABSENT: Councilman Harold Stewart

Motion by Councilman Kirk Boudreaux, seconded by Councilman Tyler Turner to adopt Resolution No. 2867: A Resolution to levy the millage rates on property within the City of Gonzales subject to ad valorem taxation for the year 2018 as follows:

Millage:	
Gonzales - General Fund	5.28
Gonzales - Fire Department	3.27

YEAS: Councilman Neal Bourque, Councilman David Guitreau, Councilman Kirk Boudreaux, Councilman Tyler Turner

NAYS: NONE ABSENT: Councilman Harold Stewart

Mayor Arceneaux announced a Notice of Consideration of action regarding Hotel Occupancy Tax:

NOTICE IS HEREBY GIVEN that the City of Gonzales, State of Louisiana, will meet on Monday, July 9, 2018, at 5:30 p.m. at City Hall, 120 S. Irma Blvd., Gonzales, Louisiana, at which time there will be consideration of action regarding the levy and collection of a hotel occupancy tax equal to two percent (2%) of the rent or fee charged for the occupancy of hotel rooms located within the City of Gonzales dedicated and used for the purpose of financing, construction, maintenance, and operation of an event and conference center for the City of Gonzales.

Motion by Councilman Neal Bourque, seconded by Councilman David Guitreau to introduce Ordinance No. 4066:

AN ORDINANCE AMENDING THE CODE OF ORDINANCE  
APPENDIX A FRANCHISES (CHANGE) TO ADD ARTICLE X TO READ:

FRANCHISE AGREEMENT BETWEEN  
THE CITY OF GONZALES, LOUISIANA  
AND  
SOUTHERN LIGHT, LLC

WHEREAS, Southern Light, LLC (hereinafter “Franchisee”) has asked City of Gonzales, (hereinafter “the

City”), to issue the nonexclusive Franchise to provide a fiber-optic transmission lines including a Distributed Antenna System (“DAS”) and/or a Small Cell System serving one or more wireless service providers within the City of Gonzales, within the incorporated part of the City; and

**WHEREAS**, the City has conducted proceedings in which Southern Light has participated, to identify the future related needs and interests of the community; to consider the financial, technical, and legal qualifications of Southern Light and to determine whether Southern Light plans for constructing and operating their Systems is reasonable; and

**WHEREAS**, this Franchise Agreement embodies part of the services and facilities necessary to satisfy the city’s related needs and interests to the extent it specifies those services and facilities required in the franchise territory covered by this Franchise; and

**WHEREAS**, the City is willing to issue such a Franchise, conditioned on Southern Light’s acceptance of the terms and conditions thereof; and

**WHEREAS**, Southern Light is willing to accept the Franchise subject to such terms and conditions, and to abide by those terms and conditions:

**NOW, THEREFORE**, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged,

## **1. Definitions.**

(a) Services. As used in this Franchise Agreement, the term “Services” means the provision of high capacity private transport between customer locations Ethernet, wavelength and data transmission on fiber-optic cable;

(b) Franchise Agreement. This contract and any amendments, exhibits, or appendices hereto.

(c) Franchisee. Refers to Southern Light and its lawful and permitted successors and assigns.

(d) Books and Records. Means any recorded information relating to the System or its management, including but not limited to information regarding its construction, operation, or repair, in whatever form stored, including, but not limited to computerized records and programs, paper records, and video or audio taped records.

(e) System. The term shall mean a system of pipes, transmission lines, meters, equipment, nodes, antennas, batteries, other power sources, and all other facilities associated with the operation of fiber-optic transmission lines and/or Distributed Antenna System (“DAS”) and/or a Small Cell Systems by the Franchisee in accordance with the terms and conditions contained in this agreement.

(f) Construction, Operation or Repair. These and similar formulations of those terms refer to the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting testing, make-ready, excavation and tree trimming.

(g) Rights-of-way. The term “right(s)-of-way” refers to City streets, alleys, roads and compatible utility easements. It does not include recreational and nature trails.

(h) Gross Revenues. Means all revenue derived by Grantee or any affiliate of Grantee or any other person who would constitute an operator of the System from the operation of the System to provide local telecommunications services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged users or subscribers for any service, installation, disconnection, reconnection and change-in-service fees, lease payments, late fees, administrative fees and any revenue-sharing arrangements. Gross revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a subscriber or user by a city, county, State and collected by Grantee for such entity. The Franchise fee is not such a tax. Gross revenues shall not include amounts which cannot be collected by Granter and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in gross revenues for the period in which they are collected. Gross revenues shall include revenue recovered by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees, however, amounts included in gross revenues shall not be counted more than once; therefore, amounts included once in Granter’s gross revenues shall not be added to gross revenues again if they are received by an affiliate of Grantee in payment for services supplied to Grantee. 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.

## **2. Grant of Authority; Limits and Reservations.**

(a) Grant of Authority. The Franchise is hereby granted, subject to the terms and conditions of this Franchise Agreement, the right, privilege, and authority to construct, operate and repair a System within the franchise territory defined in this Agreement to provide Services. The Franchisee issued to the Franchisee is subject to the terms and conditions of this Agreement. It shall remain in effect for twenty (20) effective date of this grant, unless otherwise terminated by action of the City.

(b) Scope of Franchise. The Franchisee is intended to convey limited rights and interests only as to those City streets, alleys, roads and compatible utility easement rights-of-way in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide the Franchisee any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant. The Franchisee does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on or to regulate the use of and to control the City’s right-of-way covered by the Franchise, including without limitation the right to perform work on its roadways, right-of-way, or appurtenant drainage facilities, including by constructing, altering, renewing, paving, widening, grading blasting or excavating. When practical, the City will give

the Franchisee forty-eight (48) hours notice of any blasting or excavating which is likely to damage the Franchisee's lines and appurtenances so that the Franchisee may protect its lines and appurtenances from any City work.

(c) Exercise of Authority under Franchisee. This Franchisee authorizes Franchisee to engage in service and other services, upon compliance with applicable Louisiana laws.

(d) Activities of Affiliates. Franchisee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate or joint venture or partner of the Franchise directly involved in the offering of Services in the City of Gonzales or directly involved in the management or operation of System in the City of Gonzales will comply with the terms and conditions of this Franchise.

(e) Franchise Not Exclusive. The right to use and occupy the public right-of-way is not exclusive and does not explicitly or implicitly preclude the issuance of other Franchises to construct, operate or repair Systems within the City; or affect the City's right to use or authorize the use of any of its public right-of-way or other property by other persons as it determines appropriate.

(f) Construction of Agreement. The provisions of this Agreement shall be liberally construed to promote the public interest.

(g) Relation to Other Provisions of Law. This Agreement and all rights and privileges granted under the Franchise are subject to the City's police and other powers and other applicable law. The Franchise issued and the franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.

(h) Effect of Grant. By granting this Franchise, the City acknowledges and agrees that it has the authority to issue this Franchise and did so pursuant to processes and procedures consistent with applicable laws, and that it will not raise any claim to the contrary.

(i) Franchisee Bears Its Own Costs. Unless otherwise expressly provided in this Agreement, all acts that the Franchisee is required to perform must be performed at the Franchisee's own expense.

(j) No Waiver. The failure of the City or the Franchisee on one or more occasions to exercise a right or to require compliance or performance under this Agreement, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such a right has been specifically waived in writing. Any waiver of a breach is not a waiver of any other breach, whether similar or different from that waived.

(k) No Recourse. To the extent permitted by law, the Franchise shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of the Franchise, Franchise Agreement, because of the enforcement of the Franchise, Franchise Agreement except if such loss, costs, expenses, or damages are the result of the sole negligence on the part of the City or its agents. The rights of the City under its provision are in addition to, and shall not be read to limit, any immunities the City or its officials, boards, commissions, agents or employees may enjoy or rights which the Franchisee may enjoy under federal or state law.

(l) 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.

### **3. Effect of Changes in Law.**

(a) Severability. In the event that a court or agency or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent and controlling jurisdiction declares any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore to the injured party the benefits or equivalent consideration which the injured party agrees is a reasonable substitute for the benefits the injured party expected to receive from the provision which was declared unenforceable.

(b) Effect of Change in Law. In the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, subject to the parties' rights under Section 3(a) of this section, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, voided, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party.

**4. Transfers.** The rights granted under the Franchise may not be transferred, assigned, sublet or subdivided in any way or through any mechanism, including a sale or lease of all or substantially all of the System or a sale or change in the control of the Franchisee (all referred to below as "transfers") without the express prior permission of the City by Ordinance or federal law. The City may not unreasonably refuse to allow such assignment or transfer.

(a) Control. The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. A change in control includes any of the following:

(1) If Franchise is a publicly traded partnership or corporation, the sale or transfer of five percent (5%) of the Franchisee's stock or general partnership interest;

(2) If Franchisee is a closely held partnership or corporation or an individual, transfer of fifty percent (50%) of the ownership interest or the voting stock interest in Franchise or transfer of fifty percent (50%) or more of the ownership interest or the voting stock in any legal parent or entity directly or indirectly controlling or managing Franchisee;

(3) Any other transaction which has the practical consequence of transferring to a new entity or legal person the actual working control of the Franchisee, the Franchise, or all or substantially all of the System.

(b) Application for Transfer. An entity that seeks approval of a proposed transfer (hereafter the "Applicant") shall file an application for approval of that transfer no later than on ninety (90) days prior to the proposed effective date of the transfer. The application shall meet the requirements of applicable law. City shall make a written decision within thirty (30) days.

(c) Notice of Transfer. The Franchisee shall notify the City Manager in writing as soon as any agreement or contract is executed for a transfer that is subject to the approval of the City.

(d) Review of Transfer. As the City determines necessary in evaluating the application, the City may require the Franchisee and Applicant to submit information in addition to that provided as part of the application.

(e) Mandatory Conditions.

(1) No application shall be granted unless the Applicant agrees in writing that it will:

(i) Abide by and accept the terms of the Agreement and any additional terms and conditions that the City reasonably determines are needed to protect the public interest; however, except as the City reasonably determines the proposed transfer increases the risk of nonperformance or partial performance of any franchise obligation, the City agrees that it will not seek modifications to the terms of this Agreement as a condition of approval of a transfer which occurs within two years of the effective date of this Agreement; and

(ii) Assume and be responsible for the obligations and liabilities of the Franchisee, known and unknown, under this Agreement and applicable law.

(iii) Provide performance guarantees to the City that the City considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the Franchisee.

(2) No application shall be granted unless the Applicant agrees that approval by the City of the transfer shall not constitute a waiver or release of any rights of the City under this Franchise Agreement or applicable law, whether arising before or after the effective date of the transfer.

(3) No application shall be granted unless the Applicant posts all required bonds, securities, and the like in its own name at least 30 days prior to the closing date of the transfer.

(f) Other Changes in Ownership. Franchisee shall notify the City of any substantial changes in ownership in Franchisee or in any entity that directly or indirectly controls franchisee at least ninety (90) days prior to the proposed effective date of the change. If the City concludes the proposed change is a transfer as defined in this Agreement, Franchisee shall immediately comply with the requirements of this Section 4 and agrees not to complete the proposed change without prior City approval. This provision shall not apply to publicly traded stock transactions which the Securities and Exchange Commission does not require notice.

## **5. Franchise Fee.**

(a) Payment to City. As financial compensation for use of Public Rights-of-Way for the offering of Services, the Franchisee and its affiliates shall pay the City a Franchise fee in an amount equal to five percent (5%) of the Gross Revenues. Gross Receipts on Telecommunications Services that originate in one municipality and terminate in another shall be evenly apportioned among the two municipalities for purposes of calculating the Use Fee owed to each municipality by the Company, such that the aggregate Use Fee paid by the company to the two municipalities shall not exceed five percent (5%) of the Gross Receipts on said Telecommunications Services. "Affiliate" as used in this paragraph means any affiliate or joint venture or partner of the Franchisee directly involved in the offering of Services in the City, or directly involved in the management or operation of the System in the City of Gonzales.

(b) Not in Lieu of Any other Assessments, Tax or Fee. The Franchise fee is in addition to all other fees, assessments, taxes or payments that the Franchisee may be required to pay under any federal, state, or local law.

(c) Payments. In the event that a franchise fee payment or other sum due is not received by the City Manager on or before the date due, or is underpaid, the Franchisee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the maximum rate of 1½% per month compounded annually.

(d) No Accord or Satisfaction. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Agreement for the performance of another obligation of the Franchisee.

(e) Payment on Termination. If the Franchise terminates for any reason, the Franchisee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Franchisee to the City by utilizing the funds available in a security fund, letter of credit, and/or security provided by the Franchisee.

**6. Notices.** All notices to Franchisee shall be mailed to:

**Southern Light, LLC**  
**ATTN: Kelly A. McGriff, Esq.**  
**Vice President and Deputy General Counsel**  
**Uniti Group Inc.**  
**107 St. Francis Street**  
**Suite 1800**  
**Mobile, Alabama 36602**

until Franchisee changes that address by making an appropriate filing with the City Manager. A notice may be "mailed" to Franchisee by depositing it in the U.S. Mail, registered certified mail, return receipt requested.

**7. Insurance Requirements.**

(a) General Requirement. Franchisee must have adequate insurance during the entire term of the Franchise against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the holding of the Franchise by the Franchisee, its agents, representatives, contractors, subcontractors and employees. As of the effective date of the Franchise, the Franchisee must have insurance coverage in place in the amounts and the form specified in (b); it shall maintain at least that coverage throughout the Franchise term.

(b) Scope of Insurance. Franchisee must keep insurance in effect in accordance with the minimum insurance scope the City Manager may set from time to time. The initial minimum insurance coverage shall be at least as broad as:

(1) Insurance Services Office form number CG-00-01 (Ed. 11-88) covering commercial general liability;

(2) Insurance Services Office form number CA-00-01 (Ed. 12-90), covering automobile liability symbol (1), "any auto"; and

(3) Industrial insurance as required by applicable federal, state, and local laws, and stop gap or employer's liability insurance.

(c) Initial Insurance Limits. Franchisee must keep insurance in effect in accordance with the minimum insurance limits set forth below. The Franchisee shall obtain policies for the following initial minimum insurance limits:

(1) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$3,000,000 aggregate limit;

(2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

(3) Stop Gap or Employer's Liability: \$1,000,000

**8. Deductibles and Self-insured Retentions.** If Franchisee changes its policy to include a self-insured retention, the Franchisee shall give notice of such change to the City. If any such self-insured retention creates any obligation or liability for the City, such self-insured retention shall be subject to the approval of the City Manager. Such approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible and/or self-insured retentions of the policies shall not in any way limit or apply to the Franchisee's liability to the City and shall be the sole responsibility of the Franchisee.

(a) Endorsements.

(1) General liability and automobile liability policies shall contain, or shall be endorsed so that:

(i) The City, its officers, officials, employees, and agents are to be covered as and have the rights of additional insureds with respect to liability arising out of activities performed by or on behalf of Franchisee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its System;

(ii) To the extent of Franchisee's negligence, the Franchisee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees, and agents shall be in excess of the Franchisee's insurance and shall not contribute with it;

(iii) Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) All policies shall contain, or shall be endorsed so that:

The Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not be renewed be stated by the insurance company, except after Forty-five (45) calendar days prior written notice, return receipt requested, has been given to the City Manager.

(b) Acceptability of Insurers. The insurance obtained by Franchisee shall be placed with insurers with a Bests' rating of no less than A: VIII, or if not rated by Bests', with surpluses equivalent to Bests' A: VIII rating.

(c) Verification of Coverage. The Franchisee shall furnish the City with certificates of insurance required by this Agreement and endorsements or a copy of the page of the policy reflecting blanket additional insured status, if

required by written contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on such forms as are consistent with standard industry practices and are to be received by the City. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise Agreement and State law.

(d) Performance Bonds. Upon Application for a permit to construct or repair any portion of the system, the City may require the posting of a cash or corporate bond in an amount in the City Engineer's discretion is necessary to insure the prompt payment for any damage that may be caused by Franchisee or for the prosecution of the work in the event it is not completed or completion is substandard.

## **9. Indemnification.**

(a) Scope of Indemnity. To the extent permitted by law, and except for matters arising out of the City's sole negligence, Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, and its officers, boards, commissions, agents, and employees, against any and all claims, including but not limited to third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, operation or repair of its System, or in any way arising out of the Franchisee's enjoyment or exercise of its Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement. Without limiting in any way the Franchisee's obligation to indemnify the City and its officers, boards, commissions, agents, and employees as set forth above, this indemnity provision applies to, but is not limited to, expenses for reasonable legal fees and for disbursements incurred by the City and liabilities as follows:

(1) To persons or property, in any way arising out of or through the acts or omissions of the Franchisee, its officers, employees, or agents, or to which the Franchisee's negligence shall in any way contribute;

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, for the violation or infringement of any copyright, trademark, trade name, service mark, or patent, for a failure by the Franchisee to secure consents from the owners or authorized distributors of programs to be delivered by the System, or for violation of any other right of any person, excluding claims arising out of or relating to programming provided by the City; and

(3) Arising out of Franchisee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Franchisee with respect to any aspect of its business to which this Agreement applies.

(b) Duty to Give Notice and Tender Defense. The City shall give the Franchisee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Franchisee and the Franchisee shall have the right and duty to defend, settle or compromise and claims arising hereunder and the City shall cooperate fully therein.

(c) Exception to Duty to Tender Defense. Notwithstanding the above, the City shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of the Franchisee and the City.

(d) Additional Indemnifications. The City may require Franchisee to execute specific and additional indemnifications in connection with issuing any permits related to performance under this agreement.

## **10. Liquidated Damages.**

(a) Amounts. Because the Franchisee's failure to comply with provisions of the Agreement will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and the Franchisee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury. The liquidated damage amounts are in 2016 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index.

(1) For all material violations of this Agreement for which actual damages may not be ascertainable: \$100/day for each violation for each day the violation continues.

(b) Date of Violation, Notice and Opportunity to Cure. The date of violation will be the date the Franchisee receives notice of the violation. The City must provide written notice of a violation pursuant to the notice section contained in this Franchise. Upon receipt of notice, the Franchisee will have a period of 60 days to cure the violation or to present to the City a reasonable remedial plan. The City, in its sole discretion, shall decide whether to accept or reject the remedial plan presented by the Franchisee. Liquidated Damages occur only in the event either cure has not occurred within sixty days or the City rejects the plan. Damages will be retroactive to the date of the violation.

(c) Effect on Duty to Comply. The collection of liquidated damages by the City shall in no respect affect:

(1) Compensation owed to subscribers; or

(2) The Franchisee's obligation to comply with the provisions of this Agreement or applicable law.

## **11. Relationship of Remedies.**

(a) Remedies are Non-exclusive. The remedies provided for this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the City at law or equity, provided however, cumulative remedies may not exceed the total wrong involved.

(b) No Election of Remedies. Without limitation, the recovery of amounts under the insurance, indemnity or liquidated damages provisions of this Agreement shall not be construed as the following: an election of remedies, a limit on the liability of the Franchisee under the Franchise for damages or other wise; or to excuse faithful performance by the Franchisee.

## **12. Non-discrimination.**

### **(a) No Discrimination.**

(1) The Franchisee must comply with all applicable local, state and federal laws and regulations prohibiting discrimination, including without limitation, laws and regulations prohibiting discrimination in the provision of service or employment.

(2) The Franchisee is specifically prohibited from discriminating among persons or taking any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a person to waive such rights as a condition of taking service.

(b) Equal Employment Plan. The Franchisee must adopt and follow an equal employment opportunity plan that complies with all applicable provision of federal, state and local laws and regulations (which requirement includes the obligation to amend that plan to bring it into compliance with those laws and regulations, as hereafter amended or interpreted).

### **(c) No Discrimination.**

(1) Franchisee shall fully, comply with all applicable federal, state, and local laws, ordinances, executive orders and regulations which prohibit discrimination. These laws include, but are not limited to, Titles VI and VII of the Civil Rights Act of 1964, as amended.

(2) During the performance of this Franchise Agreement, neither Franchisee nor any part subcontracting under the authority of this Franchise Agreement shall discriminate on the basis of age, ancestry, creed, color, marital status, national origin, race, religion, sex, sexual orientation, or presence of any mental, physical or sensory handicap against any employee or applicant for employment, unless based on a bona fide occupational qualification, or in the administration or delivery of services or any other benefit under this Franchise Agreement.

(d) Reporting. Franchisee shall submit such documents and information as may be requested by the City.

## **13. Conditions on Use of Rights-of-Way: Specific Practices.**

The construction, operation and repair of the System must be performed in compliance with this Agreement and all applicable laws regarding use of the rights-of-way. The Franchisee's obligations and the City's rights under that Section include, but are not limited to, the following:

### **(a) Use of Public and Private Property; Generally.**

(1) The System shall be constructed, operated and repaired so as to cause minimum interference with the rights and reasonable convenience of property owners (including the City) and users of the right-of-way and other public property. The City may from time to time issue reasonable rules, regulations and permit requirements concerning the construction, operation and repair and System as appropriate. Applications for work permits shall be presented to the City Building Permit Division which may require electronic plan uploads, cross-sections, or further detailing of work to be done. Any work done, whether by Franchisee, its contractors, or third parties will include necessary paving, patching, grading, and any other reasonably necessary repair or restoration to the City rights-of-way. All work shall be done to the satisfaction of the City Engineer.

(2) All equipment, lines, and appurtenances which are used in the operation, maintenance, repair or construction of the Franchisee's system, except for those pieces specifically noted in this Franchise, and which are located within the City's rights-of-way shall be considered to be part of Franchisee's system and shall be the Franchisee's responsibility. All permits for the operation, maintenance, repair or construction of said system shall be applied for and given in the name of the Franchisee, who shall be responsible for all work done under the permit regardless of whether the work is done by the Franchisee, its employees or contractors, or by third parties.

(3) Franchisee shall obtain all required permits or easements before commencing any construction, reconstruction, repair, maintenance, or other work or property use. Permits for emergency work shall be obtained as soon as possible, but in no event later than one working day after the work is begun.

(4) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner and may be subject to the supervision, inspection, approval and direction of the City Engineer. The Franchisee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law and permits during construction, operation and repair of its system. By way of illustration and not limitation, the Franchisee must comply with the then current; National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc. (currently ANSI C2-1190 and replaced by subsequently adopted additions), and Occupational Safety and Health Administration (OSHA) Safety and Health Standards. All traffic control shall be done in compliance with the then current edition of Manual on Uniform Traffic Control Devices, Part VI.

### **(b) Use of Poles and Conduits.**

(1) Where electrical and telephone utility wiring is installed underground at the time of initial System construction, or when such wiring is subsequently placed underground, all System lines or



wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line services at no additional expense to the City or subscribers. Related system equipment such as pedestal must be placed in accordance with City code requirements and underground utility rules as interpreted by the City Engineer. In areas where both electric and telephone utility wiring is aerial, the Franchisee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. The foregoing notwithstanding, and subject to the City's reasonable standards as to aesthetics and public safety, the Franchisee shall not be enjoined from installing its Distributed Antenna System ("DAS") and/or a Small Cell System.

(2) The Franchisee shall utilize existing poles and conduit wherever possible, subject to the execution of a separate agreement with the City for the attachment to its poles. The foregoing notwithstanding, and subject to the City's reasonable standards as to aesthetics and public safety, the Franchisee shall not be enjoined from setting its own poles in the City's Rights of Way.

(3) The Franchisee does not grant, give or convey to the Franchisee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the City Manager upon demonstrated need and subject to protecting Franchisee's proprietary information from disclosure to third parties.

(4) The Franchisee 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 Franchisee 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 Council. The City Engineer may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Franchisee 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.

(5) In any case, where the Franchisee is or has been authorized to erect a pole, the Franchisee shall extend the right to use its poles upon reasonable terms and conditions or other persons having a franchise or permit to maintain lines and facilities upon the same road or right-of-way (a "franchise holder"). The City shall have the right to install and maintain free of charge upon the poles owned by the Franchisee any facilities that do not unreasonably interfere with the Franchisee's System.

(c) Repair and Restoration of Property.

(1) The Franchisee shall protect public and private property from damage. If damage occurs, the Franchisee shall promptly notify the property owner.

(2) If public or private property is disturbed or damaged, the Franchisee shall restore the property to its former condition including necessary paving, patching, grading and other necessary repair or restoration, normal wear and tear excepted. Public right-of-way or other City property shall be restored to its former condition, normal wear and tear excepted, in a manner and within a time approved by the City Engineer or custodial agency. If restoration of public right-of-way or other City property is not satisfactorily performed within a reasonable time, the City Engineer or custodial agency may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Franchisee's expense and recover the cost of those repairs from the Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Franchisee shall pay the City. Consistent with this agreement, if suit is brought upon Franchisee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of the City, then the Franchisee shall pay the City's actual costs resulting from the non-payment, including interest from the date the bill was presented, disbursements, attorney's fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed.

(3) Prior to entering onto private property to construct, operate or repair its System, Franchisee shall give the person residing on or using the property adequate notice that it intends to work on the property, a description of the work it intends to perform and a name and phone number the person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

(d) Movement of System For and By City. Franchisee and City agree to each bear their respective cost of repair, replacement removal related to their particular property in the event of fire, disaster, or other emergency, or when a City project or activity makes the removal, replacement, modification or disconnection necessary or less expensive for the City. Except during an emergency, the City will provide reasonable notice to Franchisee prior to taking such action and shall, provide Franchisee with the opportunity to perform such action. Following notice by the City, Franchisee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other City property, except that the City shall provide at least one hundred eight (180) days written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Franchisee's facilities or equipment. If the Franchisee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, the Franchisee shall pay the City. The City, its officials, officers, employees and agents shall not be liable to the Franchisee for any damage caused as a result of action taken under this Section.

(e) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation, or repair of the facilities or equipment of another franchise holder, Franchisee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The parties shall determine how costs associated with the removal, relaying or relocation shall be allocated prior to construction.

(f) Movement for Other Permittees. At the request of any person holding a valid oversize loaded or



similar permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes, including standby time, must be paid by the permit holder, and Franchisee may require a reasonable deposit of the estimated payment in advance.

(g) Tree Trimming and Excavation. The Franchisee shall have the authority to trim trees that overhang a public right-of-way of the City so as to prevent the branches of such trees from coming in contact with its System, in accordance with applicable City codes and regulations.

(h) Decisions of City Engineer. Whenever the decision, requirement or approval is by this Agreement to be a determination of the City Engineer, that determination shall be conclusive upon the parties hereto, except in that instance where the determination is arbitrary, made in bad faith or to defraud the parties hereto.

(i) Road Vacations. If, at any time, the City vacates any City rights-of-way covered by this limited Franchise, the City shall not be held liable for any damages or loss to the Franchisee by reason of such vacation.

#### **14. Operation and Reporting Provisions.**

(a) Books and Records.

(1) Inspection and audit. The City shall have the right to inspect and audit, upon reasonable written notice, at any time up to three (3) years from the date that this Agreement ends whether by expiration, revocation, or termination, at Southern Light's office where such records are located, all relevant financial statements and financial records in the form and manner as reasonably prescribed by the City to verify compliance with the use fee or other payment requirements of this Agreement.

(b) Reports.

Southern Light to submit a statement, certified as true by an independent auditor or chief financial officer of Southern Light, setting forth its gross revenues by category, and describing what revenues were included and excluded in calculating the use fee, and any adjustments made to gross revenues. The request shall be made by the City no later than thirty (30) days after the given quarterly payment is received, and Southern Light shall have ninety (90) days to respond.

(c) Retention of Records; Relation to Privacy Rights. The Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under this Agreement.

#### **15. Remedies.**

(a) Rights of City. In addition to exercising any of the other remedies provided in this Agreement, or the remedies available under applicable law, the City may revoke the Franchise and void the Franchise Agreement if:

(1) Franchisee attempts to or does practice any fraud or deceit in its conduct or relations under this Franchise Agreement or in the process of being granted the rights, authority, power, privileges and permission herein; or

(2) Franchisee attempts deliberately to evade any material provision of this Franchise Agreement; or

(3) Franchisee fails to correct any material breach of this Agreement, after notice and opportunity to cure; or

(4) Franchisee repeatedly violates this Agreement regardless of whether any single provision violated is deemed immaterial; or

(5) Franchisee abandons its franchise.

Without limitation, the failure of Franchisee to comply with the deadlines established herein, its failure to provide or maintain the required reports and records or its failure to comply with applicable law shall be deemed a material violation of this Franchise Agreement.

(b) Rights of Franchisee. Notwithstanding any provision of this Agreement to the contrary that could be read to limit the Franchisee's rights, before the City revokes the Franchise, it shall:

(1) Provide notice to the Franchisee of the violation;

(2) Permit the Franchisee to request an opportunity to be heard on the issue; and

(3) If the Franchisee timely requests an opportunity to be heard, allow the Franchisee to appear and present information relevant to determining whether the violation occurred, and the appropriate remedy for the violation, if any.

(c) Procedures Prior to Revocation.

(1) Notice of Violation. City shall provide Franchisee with a detailed written notice of any franchise violation upon which it proposes to take revocation action, and a ninety (90) day period within which Franchisee may demonstrate that a violation does not exist or cure the alleged violation.

(2) Default. If Franchisee fails to disprove or cure the violation within ninety (90) days, then City may declare the Franchisee in default, which declaration must be in writing.

(3) **Hearing Available to Franchisee.** Within thirty (30) Business Days after receipt of a written declaration of default from the City, Franchisee may request, in writing, a hearing before the City or its agent, in a public proceeding. Such hearing shall be held within ninety (90) days of receipt of the request therefor and a decision rendered within thirty (30) days after the conclusion of the hearing. Any decision shall be in writing and shall be based upon written findings of fact.

(4) **Duty to Exhaust Remedies.** In the event of any dispute between the Franchisee and the City arising out of this Franchise Agreement, the Franchisee agrees to pursue and exhaust all administrative remedies pursuant to law prior to pursuing any legal or equitable remedy.

(5) **Effect of Revocation or Forfeiture.** The revocation or forfeiture of the Franchisee's rights under the Franchise shall not affect any of the City's rights under the Franchise or applicable law.

## **16. Abandonment.**

(a) **Effect of Abandonment.** If the Franchisee abandons its System during the Franchise term, or fails to operate its System in accordance with its duty to provide continuous service, the City, at its option, may operate the System; designate another entity to operate the System temporarily until the Franchisee restores service under conditions acceptable to the City or until the Franchise is revoked and a new Franchisee selected by the City is providing service; or obtain an injunction requiring the Franchisee to continue operations. If the City is required to operate the System, the Franchisee shall reimburse the City or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the System.

(b) **What Constitutes Abandonment.** The City shall be entitled to exercise its option and obtain any required injunctive relief if:

(1) The Franchisee fails to provide Service in accordance with this Franchise Agreement over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless the City authorizes a longer interruption of service; or

(2) The Franchisee, for any period, willfully and without cause refuses to provide Service in accordance with this Franchise Agreement.

## **17. Miscellaneous Provisions.**

(a) **Governing Law.** This Franchise Agreement shall be governed in all respects by the laws of the State of Louisiana. All actions brought by the Franchisee against the City, whether brought in state or federal court, shall be brought in court located in Louisiana, unless prohibited by law.

(b) **Force Majeure.** The Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, labor strikes, floods, weather events, including but in no way limited to hurricanes, tornados, microbursts, or the like, or other circumstances beyond the Franchisee's control, and the Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchise takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its franchise without unduly endangering the health or safety of the Franchisee's employees or the integrity of its property, of the health or safety of the public, or the Franchisee's employees or the integrity of its property, or the health or safety of the public, or the integrity or public right-of-way, public property, or private property; and only if the Franchisee has notified the City in writing of the reason for the inability within three (3) business days of the Franchisee's discovery of the reason.

(c) **Calculation of Time.** Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, the Franchisee is directed to file action within ten (10) calendar days, the action must be completed no later than midnight January 11.

(d) **Time of Essence; Maintenance of Records of Essence.** In determining whether the Franchisee has substantially complied with its Franchise, the parties agree that time is of the essence to this Agreement. As a result, the Franchisee's failure to complete construction extend service, seek approval of transfers, provide information in a timely manner may constitute material breaches. The maintenance of records and provide information in a timely manner may constitute material breaches. The maintenance of records and provision of reports in accordance with the Franchise is also of the essence of this Agreement.

(e) **Guarantee.** The performance of the Franchisee shall be guaranteed in all respects by Southern Light, LLC. A signed guarantee, in a form acceptable to the City shall be filed with the City Manager prior to the effective date hereof.

(f) **Captions.** The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

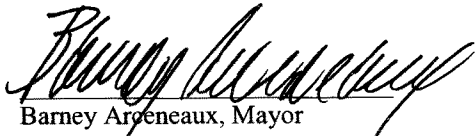
(g) **Counterparts.** This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all Parties shall not have signed the same counterpart.

(h) **Effective Date.** This ordinance shall only become effective upon receipt by City of the written unconditional acceptance by Franchisee of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance and publication as required by law at Franchisee's expense.

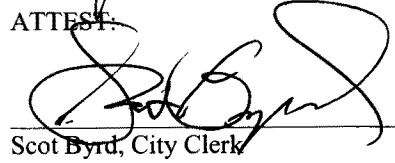
Final vote on the foregoing amendment to be taken at the next regular City Council Meeting scheduled for June 25, 2018.

Councilman Harold Stewart joined the Meeting at 8:21 A.M.

There being no further business to come before the City Council and upon a motion duly made and seconded, the meeting was adjourned.

  
Barney Arpeneaux, Mayor

ATTEST:

  
Scot Byrd, City Clerk