Introduced 5/14/2015

ORDINANCE NO. - 323

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama as follows:

Section 1. Southern Light, LLC, a limited liability company, ("Southern Light") may utilize the rights-of-way in the corporate limits of the City of Huntsville, Alabama, ("City") in order to construct its network and to provide its communications services in accordance with and subject to the terms and conditions of the *Rights-of-Way Use Agreement between Southern Light, LLC, and the City of Huntsville, Alabama*, to be executed by the City and Southern Light ("Use Agreement").

Section 2. The Mayor of the City of Huntsville is hereby authorized for and on behalf of the City, to enter into the Use Agreement with Southern Light, which said Use Agreement shall be in a form substantially similar to that certain agreement attached hereto and identified as "*Rights-of-Way Use Agreement between Southern Light, LLC, and the City of Huntsville, Alabama*" consisting of twenty seven (27) pages, plus Exhibit A, and the date of _____ appearing on the margin of the first page, together with the signature of the President or President Pro Tempore of the City Council, with an executed copy of said Use Agreement being kept on file permanently in the Office of the City Clerk-Treasurer of the City of Huntsville. The City Clerk-Treasurer is authorized to attest thereto.

Section 3. The Use Agreement shall be effective in accordance with its terms.

Section 4. Southern Light shall assume all publication costs with respect to this Ordinance, including the Use Agreement, as such publication is required by law.

ADOPTED this the ___ day of _____, 2015.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the ___ day of _____, 2015.

_____
Mayor of the City of Huntsville,
Alabama

RIGHTS-OF-WAY USE AGREEMENT BETWEEN
SOUTHERN LIGHT, LLC, AND THE CITY OF HUNTSVILLE, ALABAMA

This **RIGHTS-OF-WAY USE AGREEMENT** (hereinafter referred to as "Use Agreement" or "Agreement") is made and entered as of the ____ day of _____, 2015, by and between the City of Huntsville, a municipal corporation of the State of Alabama, (hereinafter referred to as "City") and Southern Light, LLC, a limited liability company, (hereinafter referred to as "Southern Light")(individually "Party" and collectively "Parties").

WHEREAS, Southern Light desires to use the public rights-of-way in the corporate limits of the City in order to construct its network and to provide its communications services; and

WHEREAS, the City has the authority to grant the right to use and occupy the public rights-of-way for such use, to manage and control the rights-of-way, and to obtain fair and reasonable compensation for such use; and

WHEREAS, the City intends to exercise the full scope of its municipal powers, including both its police powers and contracting authority, to promote the public interest and to protect the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City has considered the request of Southern Light and is desirous of granting a non-exclusive right to use the City's rights-of-way for the purposes hereinafter set forth and for no other purposes, subject to the terms and conditions of this Use Agreement; and

WHEREAS, Southern Light has agreed to accept the use of the rights-of-way in accordance with the terms and conditions of this Use Agreement.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Use Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

Sec. 1. Preservation of police power authority; reservation of rights; Southern Light warranties.

(a) *Police powers.* Southern Light, the construction and operation of its network, and its provision of communications services under this Agreement are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and general welfare of the public, including the continuing authority over the construction of the network in the rights-of-way. Southern Light shall comply with all applicable laws enacted by the City pursuant to its police powers, to the extent that they are not preempted by applicable law.

(b) *Right of review.* Nothing in this Agreement shall be deemed to waive a right, if any, that the City, Southern Light, or any person may have to seek judicial or regulatory review as to whether any provision herein may have become invalid or unenforceable as a result of any change in applicable law

President of the City Council of the
City of Huntsville, Alabama
Date:_____

occurring after the effective date of the Agreement. In such a circumstance, either party's rights under section 21(b) of this Agreement may be applied.

(c) *Southern Light warranties, etc.* Southern Light makes the following representations, warranties, and covenants as the basis for the benefits and obligations contained in this Use Agreement:

(1) Southern Light is a multi-member limited liability company duly organized, validly existing, and in good standing under the laws of the State of Alabama, is qualified to do business under the laws of the State of Alabama, and has the power and authority to own its properties, to carry on its business as now being conducted, to execute and deliver the acceptance of this Use Agreement, to carry out the transactions contemplated hereby, and to perform and carry out all obligations on its part to be performed under and pursuant to this Use Agreement.

(2) Southern Light, as of the date of this Use Agreement, has adequate financial resources to construct the network in accordance with the provisions of this Use Agreement, and knows of no technical or legal impediment which would prevent it from performing as contemplated in this Agreement.

(3) Southern Light, during the term of this Use Agreement, will comply with all applicable laws concerning the construction and operation of the network including all requirements to obtain and comply with the conditions of applicable certificates, licenses, permits, and governmental approvals and applicable environmental-related requirements.

(4) Southern Light is not prohibited by any agreement or applicable law from executing and delivering the acceptance of this Use Agreement or from discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Use Agreement.

(5) All corporate actions and consents required on Southern Light's part to execute and deliver the acceptance of this Use Agreement have been completed.

The foregoing covenants, warranties, and representations are material to this Agreement and a breach of all or any of said covenants, warranties, or representations shall constitute a non-curable default under this Use Agreement, and shall entitle the City to immediately terminate the Use Agreement for cause. In the event the Use Agreement is terminated pursuant to this paragraph, Southern Light hereby agrees that the disposition of the network in the rights-of-way shall be governed by applicable provisions of section 10 below.

Sec. 2. Compliance; City makes no warranty.

(a) *Compliance with law.* This Agreement will be construed in a manner consistent with all applicable laws.

(b) *No warranty.* The City makes no express or implied representation or warranty regarding its right to authorize the construction of the network on any particular segment of the rights-of-way or the location or dimensions of any particular segment of the rights-of-way. The burden and responsibility for making all such determinations in advance of construction shall be entirely upon Southern Light.

Sec. 3. Defined Terms.

The following words, terms and phrases, when used in this Agreement, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or unless otherwise more specifically defined in this Agreement. Words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Affiliate or ***affiliated person*** means any person, directly or indirectly, controlling, controlled by, or under common control with Southern Light; provided, however, that affiliate shall not include any limited partner or shareholder holding an interest of less than fifteen percent (15%) of Southern Light, or any creditor of Southern Light solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, Southern Light.

Applicable law means any or all federal, state, or municipal statutes, ordinances, rules, regulations, standards, and other laws, that are now existing or hereafter adopted, as such laws are amended or as they may be from time to time amended or superseded, which apply to Southern Light's communications services, its network, or the matters covered by this Agreement, including City laws. Where reference is made to a specified law, including a specified City law, the United States Code, and the Code of Federal Regulations, it shall mean and include such laws as amended or as may be from time to time amended or superseded.

Southern Light means Southern Light, LLC or the lawful successor, transferee, or assignee thereof.

Cable Service has the meaning set forth in 47 U.S.C. Section 522(6).

City means the City of Huntsville, Alabama, and where necessary for the purposes of the administration and enforcement of this Agreement shall include the City's delegated authorities or representatives authorized to perform as contemplated. The term shall also mean and include where appropriate the City d/b/a Huntsville Utilities.

City laws mean the duly adopted laws and legislation of the City including the Code of Ordinances of the City and any codes, regulations, standards, or specifications adopted by reference; and shall also include the subdivision regulations and any other such rules or regulations that departments, agencies, commission, boards, or bureaus of the City are authorized to establish; all of which are as amended or as may from time to time be amended or superseded.

City Attorney means the City Attorney for the City or his designee.

City Clerk-Treasurer means the City Clerk-Treasurer for the City or his designee.

City Engineer means the City Engineer for the City or her designee.

Communications Act means the federal Communications Act of 1934, as amended (codified at 47 U.S.C. §§ 151 *et seq*.,) and as that Act may, from time to time, be hereinafter amended.

Communications services mean services, other than cable service or any other multichannel video services, which are available to customers or subscribers, either on a wholesale or retail basis, through facilities that enable the provision, whether bundled or unbundled, of voice, video, data, or advanced communications services, including telecommunications services, information and data services, and Internet services. The term also includes the lease, license, sale, or other right of use provided to other persons, including other communications service providers, of portions of the network including facilities, fiber (whether dark or lit), or capacity thereon.

Confidential information means any written, non-verbal, information or communication for which there is sound legal basis to assert that such information or communication is confidential or proprietary in nature and which has been clearly and conspicuously marked as such by the Party asserting its proprietary or confidential status. The consideration flowing to either Party under this Agreement is not considered to be confidential information.

Conjunctions. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

(1) "And" indicates that all the connected terms, conditions, provisions or events apply.

(2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

(3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

Construct or ***construction*** means excavating for, constructing, reconstructing, repairing, rehabilitating, maintaining, installing, relocating, replacing, or removing the network.

Effective date means the date of publication of this Agreement.

Fiber optic installation means Southern Light's aerial or underground fiber, or fiber-related, installation consisting of all internal and external components, such as wires, cables, ducts, and conduits.

Franchise Manager means the person or persons authorized, assigned, or delegated the responsibility to administer and enforce this Agreement on behalf of the City, and that person(s) designee(s).

Gender. Words of one gender include all other genders and also include firms, partnerships, corporations, and other legal entities, as appropriate.

Gross revenue means any and all payments made to, or compensation or consideration of any kind or nature, including cash, credits, property, and in-kind contributions (services or goods), derived or received, directly or indirectly by Southern Light, or by any affiliate, from or in connection with the operation or use of the network to provide communications service. Gross revenues include by way of illustration and not limitation information and data services revenue; Internet services revenue; telecommunications services revenue (except that portion of revenues from the provisioning of long distance telephone services which are based on interstate activity unless such revenues are a result of activity which originates or terminates within the City and are charged to a service address within the City); revenue derived or received from the lease, license, sale, or other transfer of use of portions of the network, including facilities, fiber (whether dark or lit) or capacity, by Southern Light or its affiliates to persons, including other communications service providers; any other revenue arising from the operation or possession of this Use Agreement including the right to use and occupancy of the rights-of-way; and any revenue received by Southern Light, by any affiliate of Southern Light, or by any other person through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the Use Agreement. The term does not include unrecovered bad debts charged off after diligent, unsuccessful efforts to collect; and taxes of general applicability imposed on the customer or the transactions (but not on Southern Light or any of its affiliates) by federal, state, or local law and required to be collected and remitted by Southern Light or any of its affiliates to the governmental unit, including sales, use, and utility taxes.

In, when used in conjunction with rights-of-way, means over, above, in, within, on, or under a rights-of-way.

Including or ***include*** does not limit a term to a specified example.

Internet means the combination of Internet protocol-based networks interconnecting millions of computers throughout the world. It allows computers to trade information over public and private networks using telecommunication lines, fiber optic cables, terrestrial wireless networks, and satellite links. It is also referred to as the "net."

Internet services means the offering of direct access and information transport via wireless communications service or wireline communications service to the network of both federal and non-federal interoperable packet-switched, Internet protocol-based data networks to customers for a fee. For purposes of this Agreement, Internet service shall mean the information transport and direct access to the Internet provided to customers over Southern Light's network and shall include the provision of incidental services or revenues that are required by law to be treated under the same regulation as such direct access service. If it is definitively determined under applicable law by a court or agency of binding jurisdiction that Internet service revenues are not allowed to be included in gross revenues upon which the use fee is based, then Southern Light shall not be required to include such revenues within its calculation of gross revenues for purposes of paying the use fee, provided that Southern Light notify the City in writing of such exclusion and the basis therefor. In such a circumstance, the City shall be entitled to exercise its rights under section 21(b) of this Agreement.

Multichannel video service means facilitating the delivery to subscribers of multiple channels of video programming or other programming service, regardless of the technology used to provide it. Multichannel video service specifically includes, but is not limited to, cable service, as such term is

defined in Title VI of the Communications Act of 1934, 47 U.S.C. Section 522(6). Multichannel Video Service includes:

(1) The one-way transmission to subscribers of (i) video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, regardless of whether such transmission, service(s), or interaction relies upon Internet protocol.

(2) Open video system or "OVS."

(3) Any other service using a multichannel video system which is not a telecommunications service or an information service, where under applicable law a franchise or similar permission or approval from the city is required or permitted.

Multichannel video system means facilities, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed or used to provide multichannel video services and which is capable of being provided to multiple subscribers within the facilities area, but such term does not include:

(1) Facilities that serve only to retransmit the television signals of one (1) or more television broadcast stations.

(2) Facilities that serve subscribers without using any rights-of-way.

(3) Facilities of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a multichannel video system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facilities are used in the transmission of multichannel video services directly to subscribers.

(4) Facilities of any electric utility used solely for operating its electric utility system.

Network, except as used in the definition of the "Internet" herein, means all or any portion of Southern Light's facilities located in the rights-of-way which are used to provide its communications services, including its fiber optic installation, manholes, equipment, and other component parts or appurtenances.

Open video services means any video programming provided to any person by a provider certified by the FCC to operate an open video system pursuant to Section 47 U.S.C. § 573, as may be amended, regardless of the facilities used.

Person means any human being, any governmental or political subdivision or public agency, any public or private corporation, any partnership, any firm, association or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing or any other legal entity.

Rights-of-way means the surface of and the space on, above, and below any public street, public road, public highway, public freeway, public lane, public way, public alley, public sidewalk, public

boulevard, public parkway, public drive, public utility easement (to the extent of the City's interest or authority), or public rights-of-way now or hereafter held by the City which shall, within its proper use and meaning, entitle Southern Light to the use thereof for the purpose of constructing and operating its network and providing its communications services. This term shall not include any state or federal rights-of-way or any property owned or controlled by any person other than the City, except as provided by applicable law or pursuant to an agreement between the City and any such governmental entity or person. The term shall also not include property owned or leased by the City that is not used or is not typically used as rights-of-way for vehicular or pedestrian transport or the installation of utility facilities, such as City parks, City property, or public works facilities.

Rights-of-way management means the exercise of the City's police powers for the purpose of managing and controlling the occupancy of the rights-of-way in order to keep them functioning and operational for their dedicated or intended purpose; maintain them in good condition, order, and repair; control the orderly flow of vehicle and pedestrian traffic; administer their use by public or private users including users' facilities; preserve the public asset; recover costs; and such other acts reasonably necessary to protect the public health, safety, and welfare.

Subscriber means any person, who or which lawfully elects to subscribe for any purpose to a communications service of Southern Light or any of its affiliates and whose premises or facilities are physically wired or otherwise lawfully activated to receive such services from Southern Light's facilities.

Telecommunications means the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used. This term does not include multichannel video service.

Use fee means the fee described in subsection 16(a).

Video programming means programming provided by or generally considered comparable to programming broadcast station.

Wireless communications facilities means facilities used for the transmission or reception of wireless communications services, usually consisting of an antenna array or micro facility, connection cables, an equipment facility, and a support structure such as a tower, monopole, or utility pole to achieve the necessary elevation.

Wireless communications services means communications services made available to subscriber through wireless communications facilities, including any FCC licensed or unlicensed radio communications services, whether used for transmission or reception of voice, video, or data, including, wireless fidelity ("WiFi") and personal wireless services as defined by the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized

mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed. The term does not include broadcast radio or television services.

Wireline communications services means communications services made available through wire or fiber facilities.

Tree regulations means chapter 27, article II of the City Code as such ordinance may be superseded or amended from time to time and such other regulations as may be now or hereafter adopted or promulgated that establish standards for tree planting, maintenance, or protection of trees in the rights-of-way.

Visual obstruction regulations means chapter 25, article IX of the City Code, as such ordinance may be superseded or amended from time to time, and such other regulations as may be now or hereafter adopted or promulgated that govern visual obstructions.

Sec. 4. Administration.

(a) *Administration of agreement.* The Franchise Manager is hereby authorized to administer and enforce this Agreement on behalf of the City.

(b) *Administrative authority.* In accordance with applicable law, the City or its designees shall have continuing jurisdiction over construction of the network in the rights-of-way with the right to conduct periodic inspections of the construction of such network, provided such inspection, which shall be solely for the benefit of the City, does not unduly interfere with the network or Southern Light's operations.

Sec. 5. Enforcement.

(a) *Notice of violation; opportunity to cure.*

(1) If the Franchise Manager is of the opinion that Southern Light is in violation of this Agreement, he shall provide Southern Light with a written notice of violation describing the nature of the violation and requirements for correction.

(2) Within ten (10) business days of receiving a notice of apparent violation, Southern Light shall present facts and arguments in refutation or excuse of the alleged violation, or present a plan for correction of the violation including an estimated schedule for completion of the corrective action. The Franchise Manager shall thereafter determine whether the violation has been refuted or excused, or may approve the corrective plan in whole or part, or require changes thereto. The cure period for any corrective action shall be as reasonably established by the Franchise Manager, provided that the period shall not be less than thirty (30) days in the case of any fees or other charges due under this Agreement or less than sixty (60) days in all other cases, except in the case of an emergency or except as otherwise expressly provided for in this Agreement.

(3) During the cure period any action to prosecute the violation, including revocation of the Agreement, shall be held in abeyance.

(b) *Dispute resolution between the Parties.* Except as otherwise provided for in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and will consider in good faith whether to use a non-binding mediator when such discussions have failed. Each Party shall bear its own costs of mediation, including attorney fees.

(c) *Revocation.*

(1) In addition to all other rights or remedies which the City has pursuant to law or equity or under this Agreement, and subject to applicable law, the City reserves the right to revoke this Agreement, and all rights and privileges pertaining thereto, in the event that:

a. Southern Light is in violation of any material provision of this Agreement and the violation is not capable of being cured or Southern Light has not, to the City's satisfaction, refuted or excused the failure to comply or has not complied with the cure provisions set forth hereinabove in subsection (a).

b. Southern Light has engaged in an evasion or attempt to evade any material provision of this Agreement and fails or refuses to cure it.

c. Southern Light has perpetrated or attempted to perpetrate any fraud or deceit upon the City.

d. There is any material misrepresentation of fact by Southern Light in the application for, negotiation or renegotiation of, or renewal of, the Agreement.

(2) Prior to revoking the Agreement the City Council shall schedule a hearing on the matter and Southern Light shall be given at least thirty (30) days advance notice of the date and time for the hearing and the grounds for revocation. At such hearing Southern Light shall have the right to be heard on the matter and may present evidence on its behalf including proof refuting or excusing the violation.

(3) Within thirty (30) days of the conclusion of the hearing the City Council may adopt a resolution revoking the Agreement where it finds that there is a basis to do so and Southern Light shall, thereafter, be notified in writing of the Council's decision.

(d) *Enforcement; attorneys' fees.* Unless prohibited by applicable law, the City shall be entitled to enforce this Use Agreement through all remedies lawfully available, and Southern Light shall pay the City's costs of enforcement, including reasonable attorneys' fees, in the event that Southern Light is determined judicially to have violated the provisions of this Use Agreement.

Sec. 6. Grant.

(a) *Grant.*

(1) Subject to the requirements of this Agreement and applicable law, Southern Light is hereby granted by the City, where the City has the right and authority to do so, the non-exclusive right to use the rights-of-way to construct its network and to operate its network in order to provide communications services and for no other purpose. This Agreement does not grant to Southern Light, or any of its affiliates or any other person providing services over its network, the right to use the rights-of-way or to use Southern Light's network in the rights-of-way, to provide cable service or any other multichannel video services. The City makes this grant without reducing its police powers and expressly reserves the right to adopt and enforce, now and in the future, in addition to the provisions of this Use Agreement and existing laws, ordinances, and regulations, such additional laws, ordinances, and regulations as it may find necessary in the exercise of its police power to provide for the health, safety, or welfare of the public.

(2) Southern Light agrees that its network will be a fiber-optic network of current and modern design with broadband capacity meeting or exceeding the capacity set by the federal government as broadband. Southern Light further agrees that the total outside diameter of the entire fiber optic installation at any given point in the right-of-way shall not exceed 2.5 inches, not including concrete encasements allowed or required by the City Engineer.

(3) Subject to applicable provisions of this Agreement, the location and construction details of each part of the network shall be subject to the approval of the City Engineer, in accordance with the plans and specifications submitted to and approved by the City Engineer, as such plans and specifications may be modified from time to time with the approval of the City Engineer.

(4) Notwithstanding any provision of this Agreement to the contrary, this Agreement does not grant to Southern Light the right to install in the rights-of-way any tower or pole of any type, or to otherwise install in the rights-of-way wireless communications facilities.

(5) Notwithstanding anything contained in this Agreement to the contrary, Southern Light agrees that neither it nor any affiliate, nor any other person using its network to provide service in the City, will be providing, through Southern Light's network or facilities in the rights-of-way, cable service or any other multichannel video services, that no other person will be providing cable service or any other multichannel video services through Southern Light's network, and that the grant of this Agreement does not relieve Southern Light from any obligation it may have now or in the future to obtain a franchise, license, or other right to use the rights-of-way for the provision of cable service or any other multichannel video services. In the event Southern Light, any affiliate or any other person using Southern Light's network intends to commence providing services or to conduct any other activity not authorized by this Use Agreement, it must first obtain a separate franchise, license, or other right of use agreement, or, where appropriate, an amendment to this Agreement.

(6) The use of the rights-of-way authorized by this Agreement shall in all matters be subordinate to the City's use and rights.

(b) *Nonexclusive.* Southern Light's use of the rights-of-way pursuant to this Agreement shall be nonexclusive. The City specifically reserves the right to grant, at any time and from time to time, such additional use agreements or other rights to use the rights-of-way for any purpose as

determined by the City, and to any other person, including itself, as it deems appropriate, subject to applicable law.

(c) *No title.* This Agreement shall not convey title, equitable or legal, in the rights-of-way, and Southern Light acknowledges it receives under this Agreement only the right to occupy rights-of-way only for the specific purposes and for the specified period stated in this Agreement and as may be further limited by the specific terms of the Agreement. This Agreement and the rights granted hereunder do not excuse Southern Light from obtaining appropriate access or attachment agreements before locating its facilities on another person's poles, conduits or other facilities, including the City d.b.a. Huntsville Utilities.

(d) *Permits.* Nothing in this Agreement shall be construed to relieve Southern Light from obtaining licenses and permits required by applicable City law.

(e) *No vested right to City location; priority of use.*

(1) Southern Light acknowledges by acceptance of this Agreement that it obtains through this Agreement no rights to or further use of the rights-of-way other than those expressly stated herein. This Agreement does not give to Southern Light any vested right in any facilities' particular location for its network, and Southern Light acknowledges and accepts at its own risk, provided that the City has the legal authority for the use or uses in question, that the City may make use in the future of the rights-of-way in which Southern Light's network is located in a manner inconsistent with Southern Light's use of such rights-of-way for its placement and use of its network, and that in such event Southern Light will not be entitled to compensation from the City. If Southern Light occupies private property by way of a private easement and that property is taken for or otherwise becomes rights-of-way, then Southern Light shall retain the right to occupy the easement subject to the City's right of condemnation.

(2) This Agreement does not confer upon Southern Light any priority over the use of the rights-of-way. In the event of a dispute as to priority of use of the rights-of-way the first priority shall be to the public generally, the second priority to the City and its agencies, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees, licensees and others having the right to use the rights-of-way, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Alabama.

(f) *Records and reports.* Southern Light shall cooperate with the City with respect to the administration of this Agreement and to this end, subject to section 8 concerning confidential information, shall furnish or make available to the City upon request, at no cost to the City, such records, reports, and other information reasonably necessary, as determined by the City, for the administration and enforcement of this Agreement and in such form and manner as prescribed by the City.

Sec. 7. Acceptance; publication; exhibits.

(a) *Acceptance.* This Agreement shall not be effective until an unconditional acceptance by Southern Light of its terms and conditions is filed with the City within thirty (30) days after approval by

the City of the Agreement, or such other time as the City might allow, and publication of the Agreement takes place in accordance with applicable law and the provisions of this section. Southern Light's acceptance shall be accomplished by delivery of a signed Agreement by a person having the authority to bind Southern Light, proof of insurance coverage, posting of security if required by the Franchise Manager, payment of any amounts due at signing, and other requirements as may be included in this Agreement.

(b) *Publication.* This Agreement shall be published in a newspaper having general circulation in the City. Such publication shall be done by or at the direction of the City Clerk-Treasurer of the City and the expenses thereof shall be paid in advance by Southern Light or Southern Light shall make arrangements with the newspaper to be billed directly.

(c) *Incorporation of exhibits.* This Agreement hereby incorporates by reference all exhibits appended hereto.

Sec. 8. Confidential information.

(a) *Acceptance of public records law.* Southern Light acknowledges and understands that the City, as a municipality, is subject to laws governing the disclosure of public records including disclosure or release of the contents of this Agreement. The City will comply with applicable law concerning confidential information clearly identified as such by Southern Light. Notwithstanding anything to the contrary in this Agreement, all obligations of the City in this section are subject to, and limited by, the requirements of Alabama open records laws.

(b) *Release of confidential information.* Where the release of confidential information to a third party is necessary for rights-of-way management purposes, the City and Southern Light shall mutually agree on what, if any, such information can be released to the third party. The City will confer with Southern Light prior to releasing any confidential information.

(c) *City responsibility.* The City's responsibility to maintain confidential information as set forth in this section shall not apply to any such information which (i) becomes publicly available other than through the disclosing Party; (ii) is required to be disclosed by applicable law or by administrative or judicial order; (iii) is independently developed by the receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party.

(d) *Disclosure of confidential information.* Notwithstanding anything to the contrary in this Agreement, the City may disclose, as necessary, any confidential information to its officials, officers, boards, commissions, agencies, employees, agents, representatives, or contractors in order to administer or enforce this Agreement, or otherwise for rights-of-way management purposes.

(e) *Continuing obligation concerning confidential information.* The provisions of this section shall survive expiration, termination, or revocation of this Agreement.

Sec. 9. Construction. Construction in and use of the rights-of-way and related activities for the network shall be governed by Exhibit A. Southern Light shall be responsible for any construction or

construction-related activity, including restoration and repair of the rights-of-way, performed by others on its behalf.

Sec. 10. Rights and obligations upon termination of this Agreement or abandonment of network.

(a) *Termination, revocation, expiration, and abandonment.* Upon termination, revocation, or expiration of this Agreement, or by abandonment of the network, all rights and obligations between the City and Southern Light created by this Agreement shall cease other than (1) the obligation to pay outstanding fees and other amounts due to the City; (2) maintain security until released by the City or otherwise in accordance with this Agreement; (3) defense and indemnification obligations as set forth in this Agreement; and (4) such other provisions in this Agreement which expressly provide for survival beyond the term thereof. The disposition of Southern Light's network, including removal, and restoration of the rights-of-way and other public or private property shall be governed by applicable law and this Agreement.

(b) *Operation after termination; holding over.* Notwithstanding anything to the contrary contained in this Agreement, in the event Southern Light, at the sufferance of the City, holds over beyond the term of this Agreement and continues to operate all or any part of its network, provide all or any of its communications services, or otherwise exercise all or any of the rights granted hereunder, after the term of this Agreement, then Southern Light shall continue to comply with and be subject to all applicable provisions of this Agreement, including all compensation and other payment provisions, throughout the period of such holding over, provided that any such holding over shall in no way be construed as a renewal or other extension of the Agreement. In the event the term of this Agreement has expired and the Parties are in the process of re-negotiating a renewal of this Agreement or negotiating a new agreement relative to Southern Light's network or communications services, or as they may otherwise agree, this Agreement shall continue on a month-to-month basis.

Sec. 11. Damages and defense.

(a) *Hold harmless and indemnification.*

(1) Southern Light by its acceptance of this Agreement agrees to and does thereby indemnify, defend, and hold the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees whole and harmless from and against all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, judgments, and damages, of any nature and description, including any suit or claim for personal injury, property damage, defamation, antitrust, errors and omission, theft, fire, royalties, license fees, or infringement of copyright or patent rights, resulting from or arising out of or by reason of: (1) Southern Light's actions pursuant to this Agreement and the rights awarded hereunder, or the procedures leading thereto, (2) any act or omission of Southern Light, its agents, employees, representatives, contractors, or sub-contractors, including in the construction or operation of, or the provision of service over, the network in the City, or any portion thereof, (3) any failure by Southern Light to comply with any applicable law or the terms and conditions of this Agreement, (4) Southern Light's performance

under this Agreement including the provisioning of its communications services, (5) the use of portions of the network by other persons, including other communications service providers, or (6) the presence of any hazardous substance or environmental hazard brought into the rights-of-way by Southern Light or by any person acting on its behalf or under the rights granted under this Agreement.

(2) The foregoing obligations of this subsection (a) shall survive the expiration, termination, or revocation of the Agreement.

(b) *Notice.* In order for the City to assert its rights to be indemnified, defended, or held harmless, the City must notify Southern Light within a reasonable time of any claim or legal proceeding which gives rise to such right.

(c) *Defense.* With respect to Southern Light's indemnity obligations set forth in this section and in section 12, Southern Light shall provide the defense of any claims brought against the City by selecting counsel of Southern Light's choice to represent the City and defend the claim, subject to the consent of the City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the City from cooperating with Southern Light and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with the City, Southern Light shall have the right to defend, settle, or compromise, at its cost and expense, any claim or action arising hereunder, and Southern Light shall have the authority to decide the appropriateness and the amount of any such settlement, and any such settlement shall include at a minimum a full and final release of all applicable claims against the City and shall include a provision that the settlement does not constitute an admission of wrongful conduct by the City. In the event that the terms of any such settlement do not include a full and final release of the City, Southern Light shall not settle the claim or action. All of Southern Light's right to enter a settlement shall entail only payment of monetary amounts by Southern Light or obligations to be performed fully by Southern Light, and under no circumstances shall Southern Light have the power to bind the City to any obligation to pay any monetary amounts, perform any particular action, or refrain from performing any action (although the City may in its discretion independently agree to any such condition).

(d) *Indemnification not limited.* The indemnification obligations of this Agreement are not limited in any way by limitation of the amount or type of damages or compensation payable by or for Southern Light under worker's compensation, disability or other employee benefits acts, or the acceptance of insurance certificates required by this Agreement, or the terms, applicability, or limitations of any insurance held by Southern Light.

(e) *No waiver of City rights.* The City does not and shall not waive any rights against Southern Light which it may have by reason of Southern Light's indemnification, or because of the acceptance by the City of Southern Light's proof of insurance or deposit with the City of any insurance policies described in this Agreement.

Sec. 12. Limitation of liability; immunity.

Except to the extent expressly provided for otherwise in this Agreement, the City shall be responsible for its own acts of negligence, or intentional or willful misconduct committed by the City for

which the City is legally responsible, subject to defenses, immunities, and limitations of liability provided by applicable law; provided, however, notwithstanding anything to the contrary contained in this Agreement and in no event shall the City, its present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, or employees be liable to Southern Light, its affiliates, officers, directors, agents, employees, customers, tenants, licensees, contractors, subcontractors, or assigns for any special, indirect, or consequential damages, including any loss, expense, or damage to profits, business, revenue, or income (whether arising out of the damage to or destruction of the network, in whole or in part, transmission interruptions or problems, any interruption or degradation of service or otherwise), arising in any manner, including the City's negligence, and Southern Light shall indemnify, defend, and save harmless the City and its present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees from and against any and all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, and judgments, of any nature and description, with respect to such special, indirect, or consequential damages. The foregoing obligations of this section shall survive the expiration, termination or revocation of the Agreement.

Sec. 13. Liability insurance; security.

(a) *Insurance.*

(1) *Commercial General Liability.* Southern Light shall, at its sole expense, maintain, throughout the term of this Agreement and any extension or renewal thereof, and such other period of time during which Southern Light operates or is engaged in the removal of the network, (hereinafter referred to as "coverage period") Commercial General Liability Insurance using carriers licensed in the State of Alabama and maintaining a Best rating of not less than "A." Such insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, independent contractors, contractual, personal and advertising injury, and broad form property damage and shall name as Additional Insureds the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees. Such insurance shall be in the amount of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate covering bodily injury, including death, and property damage. If Southern Light employs independent contractors, Southern Light shall insure that these contractors maintain appropriate levels of insurance and that the City is named as an additional insured under each policy. Insurance will be written on an occurrence basis.

(2) *Business Automobile Liability.* Southern Light shall, at its sole expense, maintain during the coverage period Business Automobile Liability insurance with a limit of One Million Dollars ($1,000,000) combined single limit for bodily injury, including death, and property damage covering owned, leased, non-owned, and hired automobiles used in conjunction with its operations under this Agreement. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms. Such insurance shall name the City and the City's present and future officers, elected or appointed officials, council, boards,

commissions, agents, representatives, volunteers performing authorized city functions, and employees as Additional Insureds.

(3) *Workers' Compensation and Employer's Liability.* Southern Light shall, at its sole expense, maintain, during the coverage period, Workers' Compensation coverage as prescribed by the laws of the State of Alabama and Employer's Liability coverage in an amount of not less than One Million Dollars ($1,000,000).

(4) *Umbrella or Excess Liability.* Southern Light shall, at its sole expense, maintain during the coverage period Umbrella or Excess Liability insurance in the amount of Two Million Dollars ($2,000,000). Such insurance shall name the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees as Additional Insureds.

(5) *Evidence of Insurance; deductibles; approval; reservation.* On or before filing its acceptance of this Agreement and upon each policy renewal, Southern Light shall, at no cost to the City, furnish to the City Certificates of Insurance evidencing all of the aforementioned types and limits of insurance to be in effect. The City reserves the right to require complete, certified copies of all required insurance policies or proof of self-insurance at any time and from time to time, at no cost to the City. Southern Light has the right to maintain reasonable deductibles and the City reserves the right to review and approve such deductibles, which approval shall not be unreasonably withheld or delayed. The policies obtained by Southern Light, and proof thereof, shall be subject to the City's approval. The City reserves the right to review these insurance requirements during the coverage period and to adjust insurance coverages and their limits when deemed necessary and prudent by the Franchise Manager, based upon changes in statutory law, court decisions, or the claims history of the industry, as well as Southern Light.

(6) *Maintenance of Insurance Policies; Southern Light's coverage primary.* The liability insurance policies required under this section, if any, shall be maintained by Southern Light through the coverage period. Each such policy of insurance shall provide that it not be cancelled, not renewed, nor materially changed without sixty (60) days' written notice to the City. An endorsement shall be provided which states that Southern Light's coverage is primary and any other insurance carried by the City, if applicable to a loss, is excess.

(7) *No Limit of Liability.* The legal liability of Southern Light to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

(8) *Certificate of Insurance.* Certificates of Insurance, if any, shall name the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions and employees as Additional Insureds, in the case of Commercial General Liability, Business Automobile Liability, and Umbrella or Excess Liability insurance. Worker's Compensation and Employer's Liability insurance shall waive rights of subrogation in favor of the City. Each policy shall contain a provision that coverage afforded under the policies will not be cancelled, changed or not renewed unless at least sixty (60) days prior written notice has been given to the City. All subsequent notices or certificates shall be delivered to the Franchise Manager and the City

Attorney at 308 Fountain Circle, Huntsville, Alabama 35801. All deductibles under said policy shall be the sole responsibility of Southern Light.

(b) *Security.*

(1) Subject to the following subsection (2), Southern Light shall obtain, maintain, and replenish, at its sole cost and expense, and file with the Franchise Manager, an irrevocable standby letter of credit in favor of the City and suitable in form and content, including any amendments thereto, to the Franchise Manager ("letter of credit" or "security") in an amount established by the Franchise Manager both to guarantee the timely completion and faithful performance of all work required in connection with the network including the construction and operation of the network and to secure performance of Southern Light's obligations and faithful adherence to all requirements of this Use Agreement. Throughout the term of this Use Agreement, and for one hundred twenty (120) days thereafter, Southern Light shall maintain the required letter of credit in the amount specified in accordance with this section.

(2) Based on then-current factors including the construction activity of Southern Light, whether Southern Light is engaged in the removal of the network, an increase in the amount of compensation payments to be made pursuant to this Use Agreement, Southern Light's history of compliance with the terms and conditions of this Agreement, or such other factors which reasonably necessitate the contemplated action, the Franchise Manager may, in his sole discretion, modify the obligations of the foregoing subsection (1). Such modifications include: (i) upon the written request of Southern Light, a waiver of the requirement to post security, or a whole or partial release of the security posted; provided that at any time and from time to time the Franchise Manager may require the posting of any security so waived or released; and (ii) upon the written notice to Southern Light, an increase in the amount of security posted. Southern Light shall post the required security within thirty (30) days or such additional time as the Franchise Manager may allow, without the right of an additional cure period, and the Franchise Manager may delay any construction activity of Southern Light until the required security is posted.

(3) The letter of credit may be drawn on directly by the City at any time and from time to time for the payment of liquidated damages, or for the following purposes but not before the expiration of any notice or cure provisions to the extent applicable:

a. To secure the faithful performance by Southern Light of all terms, conditions, and obligations of this Use Agreement and any later enacted regulations and ordinances pertaining to the rights-of-way or their use, including the proper installation, maintenance, operation, and removal of the network;

b. To compensate the City for any loss or damage to any municipal structure or other property of the City, during the course of any construction of the network by Southern Light, its agents, or employees, or any contractors or subcontractors of Southern Light;

c. To compensate the City for any expenditure, damage, or loss incurred by the City occasioned by Southern Light's non-compliance with the provisions of this Use Agreement or default under any later enacted regulations and ordinances pertaining to the

rights-of-way or their use, or its failure to comply with all rules, regulations, orders, permits, and other directives of the City, issued pursuant to this Use Agreement or other present or future ordinances adopted by the City;

d. To secure the payments of premiums for the liability insurance required pursuant to this Use Agreement; or

e. The payment to the City of any amounts for which Southern Light is liable that are not paid by Southern Light's insurance.

(4) For the City to recover under this subsection (b) for any failure to properly construct or operate the network or any alteration, repair, maintenance, or restoration of City structures or property, in connection with such construction or operation, it is not necessary that the City first perform such work.

(5) The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this Use Agreement or authorized by law; and no action, proceeding, or exercise of a right with respect to such letter of credit shall affect any other rights the City may have.

(c) *Right to Require Replacement of Letter of Credit or Insurance.* If the financial conditions of any company issuing a letter of credit or insurance policy pursuant to this section 13 materially and adversely change, the City may, at any time and from time to time, require that any such letter of credit or insurance policy be replaced with such other letter of credit or other insurance policy consistent with the requirements set forth in this section.

(d) *Notice.*

(1) Each insurance policy shall contain a covenant or endorsement of the insurer to provide sixty (60) days advance written notice by certified mail of such insurer's intention to cancel, substantially change, or not to renew such policy to both the Franchise Manager, City Attorney, and Southern Light; provided, however, in the event said policy fails to so contain a notice provision to the Franchise Manager and City Attorney, then Southern Light shall be responsible for same. Southern Light shall, in the event of any such notice, obtain, pay premiums for, and file with the Franchise Manager and City Attorney written evidence of the issuance of replacement policies prior to the expiration of any such policy.

(2) In no event shall the letter of credit be canceled without sixty (60) days advance written notice by certified mail to both the Franchise Manager and City Attorney. Southern Light shall, in the event of any such cancellation obtain and file with the Franchise Manager and City Attorney written evidence of the issuance of a replacement letter of credit that conforms to the requirements of this section prior to the expiration of any such letter of credit.

(3) Failure to carry or keep such insurance and letter of credit in force throughout the period set forth in this section shall constitute a default of this Use Agreement. The City, through its Franchise Manager, reserves the right to stop any work related to the network until proper evidence of insurance and the letter of credit is furnished.

(e) *Commencement of Work.* Southern Light shall not commence any work in the rights-of-way, including the work of constructing its network, until the insurance and letter of credit requirements of this section have been complied with.

Sec. 14. Term. The term of this Agreement shall commence upon the effective date and shall continue for up to ten (10) years thereafter, unless renewed, revoked, or terminated sooner as herein provided.

Sec. 15. Application fee. Unless otherwise prohibited by applicable law, in addition to all other fees, permits or charges required by the City, Southern Light shall pay to the City at the time of acceptance, one thousand dollars ($1,000.00) as a non-refundable fee in order to defray in whole or part the City's costs in the review and processing of Southern Light's request and the negotiations and preparations of the Agreement. In addition the City reserves the right to charge an additional fee should the City's actual costs exceed the costs of the fee. Southern Light may offset its use fee payable to the City by any such additional fee.

Sec. 16. Payment to City.

(a) *Use fee.* As compensation for the rights and privileges granted by this Agreement, Southern Light shall pay to the City a use fee of the greater of two thousand dollars ($2000.00) a quarter or five percent (5%) of gross revenues, which fee shall be paid quarterly in accordance with subsection (b) of this section. Southern Light may, subject to, and in a manner consistent with, applicable law, itemize on the subscriber's bill that portion of the bill attributable to the fees imposed pursuant to this subsection (a). Southern Light shall not bill subscribers in the City for franchise or other similar rights-of-way use fees imposed by other franchising authorities.

(b) *Quarterly computation; report.*

(1) Unless otherwise provided for in this Agreement the use fee payments due to the City under this Agreement shall be computed and paid on a quarterly basis, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by Southern Light signed by an official of Southern Light who shall certify to its accuracy, showing the basis for the computation and such other relevant facts as may reasonably be required by the City. At the request of the City, payments will be made electronically if technically feasible and at no cost to Southern Light.

(2) For each quarter, the City may require 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) *Inspection and audit; verification.*

(1) *Inspection and audit.* Subject to subsection (c)(2) of this section, 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 offices 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.

(2) Should Southern Light's financial statements and financial records be located in another city or state, Southern Light shall, upon the request of the City, make such records or information available to the City at a convenient location in the City within a time agreed to by the City. Each Party shall pay its own costs and expenses incurred in connection with any such audit, except in the event there is a final and non-appealable determination of an underpayment of five percent (5%) or more of the amount that was due and payable to the City, in which case, in addition to making full payment of the relevant obligation, Southern Light will promptly pay to the City the actual costs and expenses incurred by the City associated with the audit, including attorneys' fees and the professional services of the auditor to perform the audit; provided, however, Southern Light's obligations to pay such costs and expenses shall be capped at $15,000.00 for any one audit. The City may not retain any person or entity to perform the audit whose compensation for performing the audit is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments.

(3) Any additional amount due to the City as a result of the audit, including any applicable interest, shall be paid by Southern Light within thirty (30) days after Southern Light receives a written notice from the City accompanied by a copy of the audit report and any other supporting document necessary to determine the alleged amount due is correct.

(d) *Final payment.* Notwithstanding the foregoing, in the event Southern Light quits its operations or network within the City, whether by transfer or otherwise, it shall make a final payment of any amounts owed to the City within ninety (90) calendar days thereof, and shall provide a statement of gross revenues for the calendar year through the date of cessation of the operations or network, which statement shall contain the information and certification required herein above.

(e) *Evasion of use fee prohibited.* Any transactions which have the effect of circumventing payment of the use fee, including evasion of payment of the use fee by non-collection or non-reporting of gross revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Southern Light, are prohibited.

(f) *Affiliate revenue.* Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of such revenue as revenue of the affiliate has the effect (whether intentional or unintentional) of evading the payment of fees herein which would otherwise be paid under this Agreement.

(g) *No waiver of City rights.* No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the

provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the City in compliance with this Agreement.

(h) *Application of interest.* In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate comparable to the then-current rate used by City for late payment of delinquent taxes.

(i) *City office for payment.* Unless otherwise provided for, all remittances for the monies due according to the terms of this Agreement are to be made payable to the City Clerk-Treasurer and mailed or delivered to:

City of Huntsville, Alabama
Office of City Clerk-Treasurer
ATTN: City Clerk-Treasurer
308 Fountain Circle
Huntsville, AL 35801

Such remittances shall clearly identify or reference this Agreement.

Sec. 17. Sale or transfer of use agreement.

(a) *Restrictions on sale or transfer.*

(1) Southern Light shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either directly or indirectly, either voluntarily or by force or involuntary sale, or ordinary sale, consolidation, transfer of control of Southern Light or any of its affiliates through merger or equity sale, or otherwise (except for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with Southern Light, including its parent corporation) this Agreement or its network or any of the rights or privileges granted by this Agreement without providing the City with prior written notice: (1) identifying the person (hereinafter referred to in this section as "successor in interest") that will acquire control of Southern Light, or that will acquire the Agreement or the rights, interest, or obligations of Southern Light in the network; (2) a summary of the proposed transaction; and (3) a statement from a person with authority to bind the successor in interest certifying under penalty of perjury that the successor in interest agrees to and accepts, and is able to meet the terms and conditions of this Agreement.

(2) Within forty-five (45) days after the closing of the transaction, or such additional time as the Contract Manager may allow, Southern Light's successor in interest shall submit to the City: (i) a written certification, executed by an authorized senior officer or executive of Southern Light's successor in interest, certifying under penalty of perjury that (A) the successor in interest accepts and agrees to be bound by, and to assume all liabilities and obligations of its predecessor under, this Agreement, and (B) all required licenses, consents, certificates of public convenience and necessity, or other governmental authorizations issued by the Federal Communications Commission, the Alabama Public Service Commission or any other agency with jurisdiction

over the successor in interest's acquisition of an interest in Southern Light's network or services have been obtained; (ii) proof of insurance and the posting of any required security in accordance with section 13 of this Agreement; (iii) the names and addresses of those persons to whom notice should be sent in accordance with section 23 of this Agreement; (iv) the name and contact information of the technical point of contact in accordance with section 7 of Exhibit A; and (v) such other information as may be required by the Contract Manager in the administration of this Agreement. In the event Southern Light has outstanding compensation, other payments or other liabilities due to the City under this Agreement that have not been paid or satisfied prior to close of the transaction, both Southern Light and its successor in interest shall be jointly and severally liable to the City for same.

(b) *Prior notice not required.* In the normal course of its business Southern Light may enter into agreements with customers, including resellers, that authorize the customers to use capacity or fiber which is located within Southern Light's network. The customer(s)'s rights to use such capacity or fiber will not constitute an assignment, license, lease, or other transfer under subsection (a) above, provided that Southern Light does not in any way surrender control over its network and remains responsible for its obligations under this Agreement. Nothing in this provision waives the City's right to require Southern Light's customers to obtain any required franchise, license, use agreement, permits, or other applicable authorizations.

Sec. 18. Representations, warranties, and covenants; validity of Agreement. Southern Light shall, by its acceptance of this Agreement, warrant and covenant that it has read and understood this Agreement and that it has all requisite authority to obtain and accept the Agreement and provide the communications services authorized hereunder, and that by making such acceptance, expressly agrees that its covenants and warranties are a material condition of the Agreement. Southern Light shall also, by its acceptance of this Agreement, attest to the validity of its terms and conditions in their entirety, and its willingness to voluntarily and without coercion, undue influence, or duress enter into this Agreement.

Sec. 19. Foreclosure. Upon the foreclosure or other judicial sale of the Southern Light's network, Southern Light shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Southern Light has taken place, and the provisions of this Agreement governing the transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

Sec. 20. Receivership.

(a) The City may cancel this Agreement, subject to any applicable law including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Southern Light, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of this Agreement and remedied all defaults hereunder; and

(2) Such receiver or trustee, within said one hundred twenty (120) days, has executed an

agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement.

(b) *Bankruptcy filing affect.* Consistent with federal law, the filing of a bankruptcy petition alone shall not constitute a material default of the Agreement, provided, however, and subject to valid applicable federal law, in the event of a bankruptcy or other insolvency proceeding, the City retains all existing rights and enforcement authority under the Agreement and its police powers.

Sec. 21. Compliance with federal, state and city laws; severability.

(a) *Compliance with applicable law.* In addition to the requirements of this Agreement, Southern Light shall adhere to all generally applicable law. Southern Light shall obtain and maintain any necessary and lawful permit, license, certification, grant, registration, or any other authorization required by any appropriate governmental entity, including the City, the Federal Communications Commission, or the Alabama Public Service Commission.

(b) The Parties agree to consult in the event that any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable, and binding upon either the City or Southern Light, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either Party, within thirty (30) days of receipt of the ruling, provides written notice to the other Party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification, the Parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the Parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either Party to terminate this Agreement on the provision of thirty (30) days' written notice.

Sec. 22. Waiver. Southern Light shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions, nor shall such failure on the part of the City be construed or held to be a waiver of the City's rights thereafter to strictly enforce any provision of this Agreement, or a waiver of any legal or equitable rights or remedies the City may have in this Agreement, or applicable law.

Sec. 23. Notices. All notices or demands pursuant to the Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to the City, to:	Franchise Manager c/o Director of ITS Department of the City of Huntsville 101 Church Street Huntsville, AL 35801
With a copy to:	City Attorney

City of Huntsville
308 Fountain Circle
Huntsville, AL 35801

If to Southern Light, to: Southern Light, LLC
ATTN: Kelly A. McGriff, General Counsel
107 St. Francis Street
Suite 1800
Mobile, AL 36602

All notices or demands shall be deemed effective, if personally delivered, upon delivery, and if mailed, certified mail, return receipt requested, three (3) days after mailing. The City or Southern Light may from time to time designate in writing any other address for this purpose to the other Party; provided, however, in no event will either the City or Southern Light be required at any time to send any notices or demands to more than two (2) designated addresses, even in the event that this Agreement is transferred or assigned in whole or part. Nothing herein shall prevent the Parties from effecting personal delivery via e-mail.

Sec. 24. Rights and remedies cumulative; interpretation; jurisdiction; venue.

(a) *Rights and remedies cumulative.* The rights and remedies of the City shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other breach or violation.

(b) *Interpretation; jurisdiction; venue.* This Agreement shall be construed, controlled, enforced, governed, and interpreted in accordance with its plain meaning in accordance with the internal laws of the State of Alabama, without regard to principles of conflicts of laws. For any action concerning this Agreement (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

Sec. 25. Taxes.

(a) The Parties agree that the compensation and other payments to be made pursuant to this Agreement are not a tax and are not in the nature of a tax and are in addition to any and all lawful taxes or other fees or charges (including any fees or charges which may be imposed on Southern Light for the use of poles, conduits, or similar facilities that may be owned or controlled by the City) which Southern Light or any affiliated person shall be required to pay to the City or to any other governmental authority, and nothing herein shall be construed to relieve Southern Light from any obligation under applicable law for the payment of all ad valorem, property, use, and other taxes applicable to its communications services or network.

(b) To the extent taxes or other assessments are imposed on the City by taxing authorities other than the City on the use of City property as a result of a Southern Light's use or occupation of the

rights-of-way for its network or of City-owned facilities located in the rights-of-way, Southern Light shall be responsible for payment of such taxes.

(c) Where Southern Light has the right to do so under applicable law, nothing in this Agreement shall be construed to prevent Southern Light from passing through to or collecting from its subscribers taxes paid by it under applicable law.

Sec. 26. Force Majeure. Neither the City nor Southern Light shall be responsible for any resulting loss if the fulfillment of any of the terms or provisions of this Agreement is delayed or prevented by revolutions, insurrections, riots, wars, acts of enemies, national emergency, strikes, floods, fires, acts of God, or by any other cause not within the control of the Party whose performance is interfered with which by the exercise of reasonable diligence such Party is unable to prevent, whether of the class of causes enumerated above or not.

Sec. 27. Captions. The section and subsection captions contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

Sec. 28. Calculation of time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday observed by the City, that day shall be omitted from the computation.

Sec. 29. Entire Agreement. This Agreement constitutes the entire agreement between the City and Southern Light with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, or representations of or between the City and Southern Light regarding the subject matter hereof.

Sec. 30. No third party rights. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity not a Party to this Agreement.

Sec. 31. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile, and any signature transmitted by facsimile will be given the same force and effect as an original signature.

Sec. 32. Amendment. This Agreement may be amended or modified only by a written instrument executed by both Parties.

Sec. 33. Relationship of the Parties. The Parties understand, acknowledge and agree that by making and entering into this Agreement, the City is not in any way or for any purpose a partner of or joint venturer with Southern Light.

Sec. 34. Binding effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have caused this Agreement to be executed under their respective seals as of the date first written above.

Southern Light, LLC, a limited liability company

By: _____ [SEAL] Date: _____
Name: Andrew M. Newton
Title: Chief Executive Officer

STATE OF ALABAMA §
§
COUNTY OF _____ §

I, the undersigned Notary Public, in and for said County in said State, hereby certify that Andrew M. Newton, whose name as Chief Executive Officer of Southern Light, LLC, a 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 officer and with full authority, executed the same voluntarily for and as the act of said limited liability company as of the day the same bears date.

Given under my hand and official seal this _____ day of _____, 2015.

_____
NOTARY PUBLIC

City of Huntsville, Alabama,
a municipal corporation

By: _____ [SEAL] Date: _____
Tommy Battle, Mayor
City of Huntsville, Alabama

Attest:

_____ Date: _____
Charles E. Hagood, City Clerk-Treasurer
City of Huntsville, Alabama

[acknowledgments continued on next page]

STATE OF ALABAMA §
§
COUNTY OF MADISON §

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Tommy Battle, whose name as Mayor of the City of Huntsville is signed to the foregoing instrument, and Charles E. Hagood, whose name as City Clerk-Treasurer of the City of Huntsville is signed to the foregoing instrument, both of whom being known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their respective capacities as Mayor of the City of Huntsville and City Clerk-Treasurer of the City of Huntsville, executed the same voluntarily for and as the act of the City of Huntsville, Alabama, a municipal corporation, as of the day the same bears date.

Given under my hand this the _____ day of _____, 2015.

_____
NOTARY PUBLIC

EXHIBIT A

Sec. 1. Construction.

(a) *Construction standards.*

(1) Construction of Southern Light's network shall be in accordance with applicable law, industry standards, the requirements of other lawful authority, as such may be amended or superseded from time to time, including applicable sections of the Occupational Safety and Health Act of 1970, as amended.

(2) All of Southern Light's network shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and functioning in accordance with good engineering practices and so as to avoid unreasonable interference with or causing damage to public infrastructure or improvements or the facilities of others in the rights-of-way and in a manner that will not unreasonably interfere with the usual and customary uses in the rights-of-way, including pedestrian and vehicular traffic, utilities, and traffic control systems. All such work must be performed by qualified maintenance and construction personnel.

(3) All installation of electronic service equipment shall be done in accordance with the applicable provisions of the National Electrical Safety Code of the National Bureau of Standards and National Electrical Code of the National Board of Fire Underwriters.

(4) Southern Light shall at all times employ ordinary care and shall install, maintain, and use commonly accepted methods and devices for preventing accidents which are likely to cause damage or injury to the public, and, where applicable, shall comply with the Manual on Uniform Traffic Control Devices, as adopted by the City.

(b) *Least disruptive technology.* Southern Light is encouraged to perform construction and maintenance of its network in a manner resulting in the least amount of damage and disruption of the rights-of-way including facilities therein and improvements thereto. Southern Light may be required to use trenchless technology for projects, within roadway limits, which encompasses the roadway and its shoulder, in arterial and other high volume streets and in roadways constructed or resurfaced within the last five (5) years. The City Engineer may require trenchless technology in other locations, where extreme circumstances prevent or make open cut methods impractical. Southern Light may use either the open cut method or trenchless technology for projects outside roadway limits, except as otherwise provided for in this subsection (b).

(c) *Above-ground facilities installation and placement; undergrounding.*

(1) The City desires to promote the undergrounding of facilities in the rights-of-way, their judicious siting, and the use of the least obtrusive facilities in order to reduce or eliminate their impact or potential impact to the public health, safety, or general welfare or otherwise for rights-of-way management purposes. To this end each of the following shall apply relative to Southern Light's network:

a. Southern Light shall install its network facilities underground without cost to the City: (i) in accordance with the subdivision regulations of the City, (ii) where a majority of the facilities of the City d.b.a. Huntsville Utilities or other utilities or service providers in a given area are underground, or (iii) where the City adopts an underground plan and primarily all utility facilities or other facilities are placed underground. Except in the case of an emergency, Southern Light is not authorized to place above ground any of its network that has previously been underground without prior approval from the City and subject to the applicable provisions of this Agreement or applicable law. Nothing herein shall be construed to prevent the above-grounding of those types of network facilities which, due to technical limitations must be placed above ground.

b. In the construction or upgrading of its network, Southern Light shall use the smallest, reasonably available equipment then in use by Southern Light or any of its affiliates.

c. Southern Light shall select locations for its above-ground facilities, both outside and in the rights-of-way, which comply with the City's visibility obstruction regulations; which are not within the paved or traveled portions of the rights-of-way, including the sidewalks, or which do not otherwise block or impede vehicle or pedestrian traffic; which do not block or impede existing public drainage facilities or channels or are otherwise in a designated floodway; or which otherwise raise a reasonable public health, safety, or welfare concern.

d. Southern Light shall, subject to City approval which shall not be unreasonably withheld, select locations and methods of installation and screening for its above-ground network facilities which eliminate or reduce the impact to residential uses including those immediately adjacent to or on the same lot as the proposed facilities.

(2) Where there is a conflict between the rights-of-way construction and administration ordinance referred to in section 8 herein below and the foregoing provisions of subsection (c)(1), such conflict shall constitute a basis for waiving the requirements of the rights-of-way ordinance to the point of the conflict, except where granting the waiver is likely to raise a reasonable public health, safety, or welfare concern.

(d) *Private rights.* Nothing in this Agreement shall be construed to affect any private property rights or the rights of third-parties. Southern Light shall be responsible for compliance with applicable law relative to private property or the rights of third-parties.

(e) *Construction approval.*

(1) At its own expense and cost and concurrent with submission of permit requests for construction of its network or prior to the commencement of construction, including reconstruction, of its network, Southern Light will submit to the City Engineer for her approval construction schedule, plans, and drawings suitable in form and content to the City Engineer. The submittal shall include a schedule and location of work, plans and drawings for construction and restoration acceptable to the City Engineer. The City Engineer's prior approval shall not be required for accessing existing network facilities in such a manner so as to: (i) not interfere with

the use of, or other facilities in, the rights-of-way, (ii) not have the likelihood of creating a threat to the public health or safety, or (iii) require restoration or repair of the rights-of-way. Provided the foregoing conditions are met, such accessing includes accessing existing subsurface facilities through existing manholes or handholes; routine repair and maintenance of existing facilities; running aerial or underground service lines or drops outside the roadway limits, which encompasses the roadway and its shoulder, to individual customers; running overhead lines on existing poles; replacement of existing facilities that does not appreciably alter their location, or enlarge or expand their occupancy of the rights-of-way; or installing lines of wire, cable, or fiber through existing conduits.

(2) Upon completion of construction, including reconstruction, of all or any portion of its network, Southern Light, at its own cost and expense, will update the information provided to the City. Southern Light shall have an ongoing duty to provide to the City current up-to-date "digital as-builts" of its network in a form acceptable to the City.

(3) Submittals shall be prepared in a Microstation V7, 2D, .dgn or compatible format, or ESRI compatible format, with working master units in feet, and 1,000 positional units, geo-referenced to the Alabama State Plane Coordinate System, NAD 1983, Alabama East Zone as described in the Code of Alabama (1975), section 35-2-1 and NGVD 1988 and showing a tie to the Public Land Survey.

(f) *Repair of property.*

(1) In its performance of any construction activity relative to its network, Southern Light shall use its reasonable efforts to protect the rights-of-way and all public and private property located therein from damage or destruction.

(2) Southern Light shall promptly repair and restore public property, including the rights-of-way, and private property in the rights-of-way, to the extent damage to private property interferes with the rights-of-way, which may be damaged or destroyed as a result of the construction of Southern Light's network. Subject to subsection (3) below, any such public property, including the rights-of-way, damaged or destroyed shall be promptly repaired and restored by Southern Light, at Southern Light's sole cost and expense and to the reasonable satisfaction of the City Engineer, to its condition as it existed immediately prior to being damaged or shall be replaced by Southern Light with equivalent property. Southern Light shall not be afforded a cure period under this provision.

(3) Notwithstanding anything to the contrary in this Agreement, Southern Light agrees that with regard to Southern Light's restoration or repair obligations of public property, including the rights-of-way, the City Engineer shall have the right, but not the obligation, to require restoration or repair of public property, including the rights-of-way and public infrastructure, improvements, or facilities, to be in accordance with construction standards for public infrastructure and improvements adopted by the City or standards required by the City Engineer, which may include, but not necessarily be limited to, restoration to the roadway, including sidewalks and curbing, that minimizes deterioration.

(4) Southern Light shall be responsible for coordinating with affected private property owners when crossing driveways and other private infrastructure. Notification to property owners will be the responsibility of Southern Light. Southern Light will be responsible for notifying the City of any road closures for press releases to be issued in a timely manner.

(5) Southern Light will be responsible for locations of all existing utilities prior to beginning work on a site in accordance with applicable local, state, and federal laws.

(g) *Relocation or removal of network.*

(1) For purposes of this subsection (g) the term *public purpose* is defined as activity conducted by or on behalf of the City which relates to the City's exercise of its police powers for the public health, safety, or general welfare, including public works or improvements undertaken for the public safety or convenience, or which otherwise relates to a governmental function of the City.

(2) Subject to subsection (g)(3) below, Southern Light shall be required, either temporarily or permanently, and at its cost, expense and risk, to promptly protect, support, disconnect, relocate in, or remove from the rights-of-way, all or any portion of its network whenever required by the City, upon reasonable notice applicable to the conditions warranting such action and as then reasonably determined by the City Engineer, to accommodate traffic conditions, an emergency situation, public safety, the function of public works of the City, changes in the grade or location of streets, street widening, closure or straightening, any public improvement project, or other public purpose, as that term is defined hereinabove in subsection (g)(1). The City will use its reasonable efforts to coordinate such activity with Southern Light upon the request of Southern Light, including discussions of the least disruptive process.

(3) Nothing in subsection (g)(2) above shall be construed to prevent Southern Light from receiving cost reimbursement or funds under federal or state grants or programs so long such reimbursement or funds are not at City expense, except as may be required otherwise by applicable law. If applicable law requires that the City request such funds on behalf of Southern Light, the City shall do so, upon written request of Southern Light and Southern Light's agreement to reimburse the City for any reasonable costs associated with such request. The availability of such public funds shall not provide Southern Light an excuse for a delay in performing the required action.

(4) Subject to the cost provisions of this subsection (g), in the event the City relocates the rights-of-way where a portion of Southern Light's network is located, the City will use its reasonable efforts to provide Southern Light with a reasonable alternative location for the affected portion in the relocated rights-of-way.

(5) Nothing in this Agreement shall be construed to hinder the right or authority of the City to perform or carry on any public works project or public building project.

(6) Nothing herein shall be construed to prevent Southern Light from continuing to occupy with its network vacated rights-of-way as may be allowed under applicable state law.

(7) Notice of the required action shall be given by the City Engineer to Southern Light and shall contain the basis for the required action, the required commencement and completion dates, and the required action. The time allowed for performance shall be as reasonably determined by the City Engineer and shall take into account, among other things, the nature and scope of the request, any relevant information or limitations provided by Southern Light, whether any emergency exists, and the requirements of the public purpose necessitating the required action. Southern Light may request reasonable extensions of its performance period based on then-current relevant factors.

(8) The City retains the right and privilege to move any of Southern Light's facilities located in the rights-of-way or other areas of the City as the City may determine to be necessary, appropriate, or useful in response to any life-threatening emergency. The City will use its reasonable efforts to notify and consult with Southern Light's technical point of contact if there is a potential that its facilities will be impacted and if there is an opportunity to do so. Nothing herein shall be construed to create any duties or obligations on the City to so notify Southern Light nor shall the City, its officials, agents, employees, or volunteers be in any way be liable to Southern Light for any failure to notify Southern Light.

(9) In the event that after notice Southern Light fails to perform the required action within the specified time, absent any extensions granted by the City pursuant to this Agreement, Southern Light shall have thirty (30) days to cure the noncompliance, except in the case of an emergency. Thereafter, if Southern Light fails to so perform, the City may, at the sole cost, expense, and risk of Southern Light, perform or have performed the required action, without assuming or having any liability to Southern Light, and invoice Southern Light therefor. In addition to or in the alternative, the City may invoice Southern Light, for any costs or expenses, including construction delays, suffered by the City that are attributable to said failure, which invoiced amount shall be paid by Southern Light within thirty (30) days from notice of same, or, in the alternative, assess liquidated damages of one thousand dollars ($1000.00) per diem. Notwithstanding anything in this Agreement to the contrary, Southern Light shall not be afforded a cure period in the case of an emergency condition that, in the City's opinion, poses a likelihood of: (a) endangering life or health, (b) causing a significant loss of property or services, or (c) causing significant damage to or destruction of the rights-of-way.

(h) *Conditions of use.*

(1) Southern Light shall, at its own cost and expense, maintain its network in good working order, condition, and repair and free from graffiti. Southern Light shall use its best efforts to keep the rights-of-way free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue interference to the use of the rights-of-way. Facilities, both outside of and in the rights-of-way, shall not be installed across or within public sewer or stormwater drainage facilities including ditches, pipes, or channels, or otherwise in such a manner so as to obstruct the flow of sewage or stormwater run-off. Southern Light shall control its agents, contractors, and employees in such a manner so as to not create any nuisance and to otherwise comply with the requirements of this subsection (h).

(2) The City shall have no obligation to insure or safeguard Southern Light's network against unauthorized access.

Sec. 2. Temporary movement of network. Upon the request of the City Engineer Southern Light shall temporarily move its network facilities to permit the moving of large objects, vehicles, buildings, or other structures. Except where requested by the City for a City purpose, including a public purpose as that term is defined in subsection (g)(1) above, the expense of such temporary moves shall be paid to Southern Light by the person requesting the same, and Southern Light shall have the authority to require such payment in advance. In no event shall the City pay such expense. Nothing herein shall be construed to abrogate the provisions for moving facilities contained in any pole attachment agreement Southern Light has with another person, including the City d.b.a. Huntsville Utilities.

Sec. 3. Trees. Southern Light shall comply with all applicable laws with respect to the removal, trimming and cutting of trees and keeping its network facilities clear of trees in the rights-of-way, including the tree regulations, as such laws may be amended or superseded. Within fourteen (14) days notice from the City Engineer or immediately in the case of an emergency, Southern Light agrees that it will cooperate in the removal of any tree or branch which has fallen onto its aerial facilities. Except in emergency situations and except for routine trimming and then subject to the tree regulations, in installing, maintaining, and removing its network facilities, Southern Light shall not remove, cut, or damage any trees in the rights-of-way that are greater than four (4) inches in diameter, as measured at twelve (12) inches above the ground, except with the prior consent of the City forester or his designee.

Sec. 4. Joint Trench Coordination; Planned Infrastructure.

(a) *Joint trenching.* Whenever it is possible and reasonably practicable to joint trench or share bores or cuts or joint share conduit, Southern Light shall work with the City and other rights-of-way users, so as to reduce, as far as possible, the number of street cuts within the City.

(b) *Planned infrastructure.* If required of other users of the rights-of-way, when Southern Light installs any new trench or conduit as part of its network facilities, Southern Light may, at the request of the City or its designee install, at the expense of the City, sufficient additional space or additional conduits or other related facilities. The cost to the City shall be the costs of material and labor attributable or proportional to said installation. The City shall have the option to lay its own conduit or place other public improvements, such as wiring for traffic signals and street lights, that do not cause significant cost, delay or redesign, in Southern Light's open trenches during the initial construction and during any future rebuilds or repairs. Southern Light shall provide written notice of the proposed construction to the City Engineer, and the City will then have five (5) business days after receipt to respond in writing to Southern Light. Nothing in this subsection (b) shall be construed to require Southern Light to share space within conduits occupied by its facilities or the facilities of others.

Sec. 5. Advertising, signs, or extraneous markings.

Unless otherwise authorized by applicable law, Southern Light shall not place or cause to be placed any sort of signs, advertisements, or other extraneous markings, whether relating to Southern Light or any other person or entity in the rights-of-way including facilities therein, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the system

for service, repair, maintenance, or emergency purposes, or as may be otherwise required or permitted by the City or state to be affixed by applicable law or regulation for such purposes.

Sec. 6. Abandonment of construction or network; removal. Upon abandonment, or where this Agreement expires, terminates, or is revoked, the City may, at its sole discretion, require Southern Light, upon the City's written request and within a reasonable time as determined by the City Engineer, to remove from the City's rights-of-way, at Southern Light's own cost and expense, all or any portion of its network; provided, however, this provision shall not apply to buried facilities which the City Engineer determines should not be removed. In removing the network, Southern Light shall, at its own cost and expense, refill and compact any or all excavation that shall be made by it and restore the right-of-way and other property to the reasonable satisfaction of the City to its condition as it existed immediately prior to the facilities being removed or as otherwise provided for in section 1(f)(3) above. If Southern Light fails to comply with the said removal order pursuant to this section, the City may, or may contract to, do so at Southern Light's cost, expense, and risk, without assuming or having any liability to Southern Light, and invoice Southern Light therefor; which invoiced amount shall be paid by Southern Light within thirty (30) days from notice of same. Where Southern Light abandons a portion of its network during the term of this Agreement, including any hold-over period, such abandoned portions shall be subject to removal in accordance with this section.

Sec. 7. Technical point of contact; authority of City Engineer; stop work order; City costs.

(a) *Point of contact.* Southern Light shall designate a responsible technical contact person or persons including a telephone number available seven (7) days a week, twenty-four (24) hours a day, with whom representatives of the City can communicate with on all matters relating to rights-of-way management and in the case of an emergency.

(b) *Authority of City Engineer.* The City Engineer is hereby authorized to enforce and administer the construction and rights-of-way provisions of this Agreement and may act through subordinates or delegates.

(c) *Stop work order.* The City Engineer may, at any time and from time to time, issue a stop work order for construction of all or any portion of the network when the City Engineer determines, in her sole discretion, that the activity has caused, or is likely to cause, a situation to exist that poses a clear and immediate danger: (a) to life or health, (b) of a significant loss of property or services, or (c) of significant damage to or destruction of the rights-of-way. The order may be issued, at the City Engineer's option, on the construction site or to Southern Light's technical contact person.

(d) The City reserves the right to, at any time and from time to time, charge Southern Light for the City's reasonable costs related to the administration and oversight of Southern Light's construction-related activity in the rights-of-way, including plans review and inspection costs. Southern Light shall pay the charge within 30 days of invoicing unless it contests the costs to the City Engineer within 20 days of invoicing. The City Engineer shall have the right to adjust the contested charges as appropriate and re-invoice. Southern Light may, at its option, deduct the invoiced charges that it has paid to the City under this subsection (d) from its use fee payment due for the next immediate quarter, provided that it itemize the deduction in its use fee payment statement.

Sec. 8. Rights-of-way construction and administration ordinance. Southern Light acknowledges that the City is in the process of developing a rights-of-way construction and administration ordinance pursuant to its police powers which is generally intended to regulate construction and other related activity in the rights-of-way. To the extent said ordinance as adopted or as may be amended from time to time regulates activity otherwise regulated by this Agreement and is conflict herewith, then said ordinance shall apply in lieu of the provisions of this Agreement, except where this Agreement provides a basis for waiving the application of the rights-of-way ordinance in case of conflict.