

ORDINANCE NO. _____

**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO
SOUTHERN LIGHT, LLC, FOR THE PURPOSE OF CONSTRUCTING
AND MAINTAINING FIBER-OPTIC TRANSMISSION LINES WITHIN
THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF FOLEY, ALABAMA**

WHEREAS, Southern Light, LLC, (hereinafter referred to as the “the Provider”) desires to construct, maintain and expand its fiber-optic transmission lines within certain public rights-of-way within the City of Foley, Alabama; and

WHEREAS, the Provider agrees and recognizes that it is required to obtain consent in the form of a franchise from the City of Foley in order to construct the proposed fiber-optic transmission lines within the corporate limits of the City of Foley; and

WHEREAS, the City Council wishes to accommodate the Provider’s request and grant a franchise for the construction of the fiber-optic transmission lines in accordance with the terms and conditions contained herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF FOLEY, ALABAMA, AS FOLLOWS:**

The City Council of the City of Foley does hereby grant to Southern Light, LLC, a non-exclusive franchise granting the limited authority to construct fiber-optic transmission lines in the City of Foley in and along certain public rights-of-way subject to the terms and conditions set forth in the agreement attached hereto as Exhibit “A.”

Any Ordinance heretofore adopted by the City Council of the City of Foley, Alabama, which is in conflict with this Ordinance is hereby repealed but only to the extent of such conflict.

This Ordinance shall become effective after its publication as required by law, and the Provider shall have thirty (30) days thereafter to execute and comply with the terms and conditions contained in the Franchise Agreement. The Provider shall bear all costs of publication.

ADOPTED AND APPROVED this _____ day of _____, 20__.

Presiding Officer

Attest – City Clerk

COUNTY OF BALDWIN)
STATE OF ALABAMA)

NON-EXCLUSIVE FRANCHISE AGREEMENT

(Foley, Alabama – Southern Light)

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between the CITY OF FOLEY, ALABAMA, an Alabama municipal corporation (hereinafter "City"), and Southern Light, an Alabama limited liability company with its principal place of business in Mobile County, Alabama (hereinafter "Provider");

W I T N E S S E T H :

WHEREAS, the Provider desires to use public rights-of-way in the present and future corporate limits of the City to build, install, operate, repair, replace and expand its fiber-optic transmission lines for telecommunication services within the City, including a Distributed Antenna System ("DAS"), and/or Small Cell System serving one or more wireless service providers within the City and police jurisdiction of Foley, Alabama; and

WHEREAS, it is the policy of the City to permit such entry into to the corporate limits and such use of the rights-of-way for the provision of telecommunication services, subject to the duty and authority of the City to manage its streets, public property and rights-of-way, and to require fair and reasonable compensation from telecommunications providers for the use thereof on a competitively neutral and nondiscriminatory basis; and

WHEREAS, the City, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public to grant the Provider a nonexclusive franchise to occupy certain rights-of-way in the City upon the terms and conditions contained below; and

WHEREAS, the Provider agrees to terms and conditions imposed by the City hereby;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and in consideration for the payments of money called for herein, and for other good and valuable consideration, the City and the Provider hereby covenant and agree as follows:

ARTICLE 1. GENERAL.

1.1 Agreement. Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between City and Provider.

1.2 Definitions. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the

singular number shall include the plural number, and words in the plural number shall include the singular.

A. **"Affiliate"** of the Provider means a person or entity who, directly or indirectly, meets at least one of the following criteria:

1. It beneficially owns fifteen percent (15%) or more of the outstanding voting securities or other voting ownership interests of the Provider, whether through rights, options, convertible interests, or otherwise;

2. It controls or holds power to vote fifteen percent (15%) or more of the outstanding voting securities or other voting ownership interests of the Provider;

3. It has fifteen percent (15%) or more of its outstanding voting securities or other voting ownership interests, directly or indirectly, beneficially owned by the Provider, whether through rights, options, convertible interests, or otherwise;

4. It has fifteen percent (15%) or more of its outstanding voting securities or other voting ownership interests, directly or indirectly, controlled or held with power to vote by the Provider;

5. It is a partnership or limited liability company in which the Provider is a partner or member, as the case may be;

6. It is an officer, director, member, partner, manager, employee, or agent of the Provider;

7. It has contributed more than twenty percent (20%) of the capital of the Provider.

B. **"Assignee"** of the Provider means a person or entity who, directly or indirectly, has received a transfer or making over (by deed, bill of sale, assignment, or otherwise) of some or all of the Provider's System or the Provider's rights in this Agreement, including, but not limited to, situations whereby fiber optic strands, lines, fibers, capacity or bandwidth is assigned by Provider. Assignments are subject to the provisions of Section 10.7 of this Agreement.

C. **"Equipment"** of the Provider means all those things necessary to the operation of the System.

D. **"Governing Body"** or **"City Council"** means the City Council of the City of Foley, Alabama.

E. **"Gross Revenues"** means the value proceeding or accruing from the Provider's and its Affiliate's and Assignee's business within the corporate limits of the City of Foley, including all actual and accrued receipts, without any deductions on account of the costs of the services sold, the costs of the materials used, labor or service costs, interest paid, or any other expenses whatsoever (including, but not limited to, fees or costs paid to other telecommunications, fiber optic or cable providers or fees paid to co-locate on other's equipment or facilities), and without any deductions on account of any losses or operating expenses (i.e., "gross gross" and not "gross net"). Gross Revenues includes, but is not limited to, any value accruing to the Provider and its Affiliate and Assignee for assigning capacity, bandwidth, rights

or space on the System in the City.

F. **“Person”** means any natural being as well as any corporate entity, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legally recognizable entity.

G. **“Rights-of-way”** means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, or other public ways of travel located within the corporate limits of the City, as they exist now or in the future. Rights-of-way shall not mean any property owned by the City which is not dedicated for public travel.

H. **“System”** shall mean of conduit, pipes, dark fiber, meters, equipment, which may include a Small Cell System and/or DAS serving on or more wireless service providers, including individual nodes, low-powered, radio access nodes that operate in licensed, and sometimes, unlicensed, spectrum that have a range of ten (10) meters to one to two kilometers, owned by a third party and attached to a Grantee or Grantor owned Structure, and all other facilities associated with the operation of a fiber-optic telecommunications network within the City which is owned or operated by the Provider or its Affiliates or Assignees.

I. **“Telecommunications”** shall mean 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.

1.3 Franchise Description. The City hereby grants to the Provider the non-exclusive but limited right, privilege, and franchise to construct, maintain, operate, repair, and replace its System along the Rights-of-way of the City, subject to the terms and conditions contained herein.

1.4 Other Licenses. The Provider acknowledges that it has obtained or will obtain the necessary approvals, licenses or permits required by federal, state and local laws to provide telecommunications services consistent with the provisions of this Agreement, including any approval by the Public Service Commission.

1.5 Relationship. Nothing herein shall be deemed to create a joint venture, employer-employee, or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

ARTICLE 2. COMPENSATION.

2.1 Annual Franchise Fees. The Provider shall pay to the City an annual franchise fee in an

amount equal to the greater of the following two amounts:

- A. Five Thousand and 00/100 Dollars (\$5000.00); or
- B. Five percent (5%) of Gross Revenues from the preceding calendar year.

Partial franchise fee payments shall be made in advance on a quarterly basis during each calendar year without invoice and within fifteen (15) days of the close of each quarter. The annual franchise fee for the partial calendar year remaining after the effective date of this Agreement shall be pro-rated for the remainder of the calendar year and based on \$5,000 per year. An annual certified audit shall be furnished to the City by the Provider on or before April 1st of each year which shows the Gross Revenues of the Provider and its Telecommunications Customers for the previous calendar year. Provider shall simultaneously furnish information showing the amount of all franchise fees it owes to all other municipalities in Baldwin County, Alabama along with a statement of the number of linear feet of right-of-way that Provider occupies in each municipality and the number of linear feet of right-of-way Provider occupies in the City. Both of these documents shall be signed and certified by an officer of the Provider and each Affiliate and Assignee as true and accurate, and the audit shall be signed by a licensed and certified public accountant. The Provider agrees that the City and its agents, employees and contractors shall have the right to review Provider's and its Affiliate's and Assignee's corporate, financial and other books and records at its business office during normal business hours upon advance notice for the purpose of ensuring the Provider's and its Affiliate's and Assignee's compliance with this Agreement. Provider shall deliver a copy of this Agreement to all of its Affiliates and Assignees to advise them of these provisions.

2.2 Other Fees. The Provider shall also pay all such ad valorem taxes, service fees, business license fees, sales taxes, permit fees, right-of-way fees, or other taxes and fees as may now or hereafter be lawfully imposed on the Provider.

2.3 Collection. If any payment is not received by the City on the date due, the Provider shall pay interest on any such unpaid portion at the rate of one and a half percent (1.5%) per month from the first day after the same shall become due until paid to the City, and the Provider shall reimburse the City for all costs incurred by the City in collecting or attempting to collect any sums due under this Agreement, including, but not limited to, reasonable attorney's fees and court costs.

2.4 Non-waiver. Any acceptance of all or a part of any fee hereunder shall not be construed as a waiver or release of the City's right to collect the full amount owed hereunder, nor shall it be construed as an accord or agreement that the amount paid is correct.

ARTICLE 3. TERM.

3.1 Term. The franchise rights granted to Provider shall commence on the date this Agreement

is fully executed and shall continue for the remainder of the calendar year in which it was executed and for a period of TEN (10) calendar years thereafter (i.e., expiring on December 31, 2014), unless sooner terminated, revoked or cancelled as herein provided.

3.2 Renewal. Neither party has the unilateral right to renew this Agreement.

ARTICLE 4. CONSTRUCTION REQUIREMENTS

4.1 Quality. All work involved in the installation, operation upgrade, repair and removal of Equipment shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any Equipment violates any health or safety law or regulation, then the Provider shall, at its own cost and expense, promptly correct all such conditions.

4.2 Liability Limitation/Notice. Neither the City nor its officers, employees or agents shall be responsible to the Provider for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any Equipment by or on behalf of the Provider or the City in connection with any Emergency, public work, public improvement, alteration or any municipal structure, any change in the grade or line of any Street, or the elimination, discontinuation, and closing of any Street, as provided in this Agreement, provided that, with respect to any action by or on behalf of the City, except in case of Emergency, (i) the City has provided such notice to Provider as may be required by this Agreement; (ii) the City has followed the notice and other requirements imposed by Alabama law; and (iii) for those actions described in Section 6 of this Agreement, the requirements of Section 6 shall apply.

4.3 New Grades or Lines. If the grades or lines of any Street are changed at any time during the Term, then the Provider shall, at its own cost and expense and upon the request of the City, protect or promptly alter or relocate Equipment so as to conform with such new grades or lines. If the Provider refuses or neglects to so protect, alter or relocate Equipment within thirty (30) day (or such other period of time as may be agreed upon by the City and the Provider) after notice to the Provider by the City, the City shall have the right to break through, remove, alter, or relocate such Equipment. Provider shall also reimburse the City for or bear any additional cost actually incurred by the City that the City would not otherwise have incurred if Provider had not refused or failed to comply with the City's request to protect, alter or remove Equipment under this Section 4.3.

4.4 Protection of Streets. In connection with the installation, operation, upgrade or repair or removal of Equipment by Provider, the Provider shall, at its own cost and expense, protect the Streets and any City-owned structures thereon, thereunder or thereover, and shall obtain the prior approval of the City, before altering the Streets or any such structures. Any such alteration shall be made by the Provider, at its sole cost and expense, in a manner prescribed by the City to protect the Streets and any City-owned structures thereon. The Provider shall be liable, at its own cost and expense, to replace or repair, in a manner as may be reasonably specified by the

City, any Street or City-owned structure thereon, thereunder or thereover that may become disturbed or damaged as a result of the installation, operation, upgrade, repair or removal of Equipment. The Provider shall warrant for one (1) year, commencing on the date the work is approved by the City, that any such replacement or repair (excluding trees, grass and other plantings) conforms to written City specifications and requirements made available to the Provider. If the Provider does not commence such replacement or repair after thirty (30) days' notice, the City may make such replacement or repair and the Provider shall pay the reasonable cost of the same.

4.5 No Obstruction. Except in cases of Emergency, in connection with the installation, operation, upgrade, repair or removal of Equipment, the Provider shall not obstruct the sidewalks, streets, subways, railways, rivers or other traffic within the corporate limits of the City without the prior consent of the City. Equipment shall be located so as to cause minimum interference with the use of the Streets and adjoining property.

4.6 No Interference. In the provision of Telecommunications Services, the Provider shall comply with federal and state law governing interference with the technical operation of any other telecommunications system within the corporate limits of the City.

4.7 Underground Utilities. The Provider shall comply with any current or future City ordinances requiring the placement of Equipment underground. Nothing herein is intended to obligate the Provider to bear the cost of placing existing Equipment underground pursuant to a current or future City ordinance.

4.8 Moving Equipment. Upon receipt of a request from any Person holding a permit to move any structure, the Provider and such Person shall negotiate, in accordance with Provider's tariffs, reasonable terms and conditions and a time that is reasonable under the circumstances to move any Equipment to permit the moving of said structure. The Provider may impose a charge in accordance with state and federal law, or if such law is not applicable, a reasonable charge on any Person other than the City for any such movement of Equipment, or such charge as may be otherwise agreed to by the parties.

4.9 Safety Precautions. The Provider shall, at its own cost and expense, undertake all efforts required by applicable law to prevent accidents at its worksites, including the placing and maintenance of proper guards, fences, barricades, watchmen and suitable and sufficient lighting.

4.10 Moving Equipment in Case of Emergency. The City may, at any time, in case of fire, disaster, or other Emergency, cut or move Equipment in which event the City shall not incur any liability to the Provider, any Affiliated Person or any other Person. If circumstances do not permit the Provider to be consulted prior to any such cutting or movement of Equipment, the City shall provide notice to the Provider promptly after any action taken by the City. All costs to repair or replace such Equipment damaged or destroyed by the reasonable action of the City shall be borne by the Provider.

4.11 Location of Lines. Prior to beginning any new installation, operation upgrade, repair and removal of Equipment, the Provider shall provide to the City CAD/GIS files showing the location of the Equipment lines involved, both before and after the proposed installation, operation upgrade, repair or removal.

Within one-hundred twenty (120) days of the execution of this Agreement, Provider shall provide to the City CAD/GIS files showing the location of all existing Equipment. The required CAD/GIS files shall be provided to:

Kelly Tomkins
GIS Specialist
117 West Laurel Avenue
Foley, Alabama 36535

The City reserves the right to request any additional information necessary to the maintenance or updating of the City's records regarding the location of the Equipment and the Provider agrees to provide any such information within fifteen (15) days of said request.

ARTICLE 5. POLICE POWERS.

5.1 Reservation of Police Powers. The City expressly reserves, and the Provider expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

5.2 Right-of-Way. All construction, repair, maintenance, or other work which takes place on, under, above, or otherwise such that it has any impact on the streets, rights-of-way or public places of the City shall be in accordance with all applicable federal, State and local standards, codes, and ordinances as they exist now or in the future. In addition, the following rules shall also apply to the Provider's use of the rights-of-way (and in the event of an irreconcilable conflict between these rules and the general standards, codes, and ordinances, the more stringent of the rules shall apply):

- A. All facilities will, wherever practicable, be placed underground;
- B. Any necessary aboveground construction will be coordinated with Riviera Utilities;
- C. No street, alley, bridge, right-of-way or other public place used by the Provider shall be obstructed longer than necessary during its work of construction or repair, and the shall be restored to the same good order and condition as soon as possible;
- D. No part of any street, alley, bridge, right-of-way, or other public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or other

public improvement, shall be damaged, and in the event any damage occurs, the Provider shall repair or replace the same as promptly as possible in as good or better condition; and

- E. The Provider shall, in addition to its duties and obligations to indemnify and hold the City harmless under other provisions of this Agreement, indemnify and save the City harmless from any and all liability, costs, expenses, causes of action, judgments, or other damages arising out of or related to the Provider's (or its agents', contractors' or employees') acts, omissions, or presence in the City or in the rights-of-way.

5.3 Compliance with current and future laws. Except as specifically provided herein, or as otherwise mandated by law, the privilege granted to the Provider by this Agreement does not exempt or excuse the Provider from the police power and all other municipal authority and laws including, but not limited to, those relating to zoning, permitting, traffic control, construction and excavation, planning, aesthetics, and the environment.

ARTICLE 6. SEVERABILITY.

6.1 Severability. If any section, sentence, paragraph, term or provision of this Agreement is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is its ability to collect the fees called for herein during the term of this Agreement and its ability to manage the rights-of-way in a manner similar to that provided in this Agreement. For the Provider, "material consideration" is its ability to use the rights-of-way to expand its fiber optic network.

ARTICLE 7. EXPIRATION OR TERMINATION.

7.1 Grounds for Termination. The City may terminate and revoke this Agreement and all rights and privileges herein provided for any one or more of the following reasons:

- A. If Provider fails to make timely payments of the fees as required under Article 2 of this Agreement and does not correct such failure within ten (10) calendar days after written notice by the City of such failure;
- B. The Provider, by act or omission, violates a duty herein set forth in any particular

within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Provider notice of such determination, the Provider, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have a total of sixty (60) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 60-day period and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Provider shall have no further rights or authority hereunder; provided, however, that in the event such failure is of such nature that it cannot be reasonably corrected within the 60-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Provider; or

- C. The Provider becomes insolvent, unable or unwilling to pay its debts; files for bankruptcy protection; or if all or part of its facilities are sold under an instrument to secure a debt.

7.2 Remedies at Law. In the event the Provider or the City fail to fulfill any of their respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.3 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto). Without limiting the generality of the foregoing, no end users, customers, Affiliates, or clients of the Provider's fiber optic network are third party beneficiaries of this Agreement.

7.4 Rights of Provider Upon Expiration or Termination. Upon expiration or termination of this Agreement, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture, the Provider shall have the right to remove from the Rights-of-way any and all of its equipment, fixtures and improvements, but in such event, it shall be the duty of the Provider, immediately upon such removal, to restore the rights-of way to as good a condition as the same was before the removal was effected, and furthermore, the Provider shall comply with any then-existing ordinances and permits required for work in the rights-of-way and restoration of the same.

7.5 Failure to Commence Removal. If, in the reasonable judgment of the City, the Provider fails to commence removal of the Equipment within thirty (30) days after the City's removal order, or if the Provider fails to substantially complete such removal, including all associated repair of the Streets, within twelve (12) months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to:

a. declare that all rights, title and interest to the Equipment belong to the City with all rights of ownership, including but not limited to, the right to connect and use the Equipment or to effect a transfer of all right, title and interest in the Equipment to another Person for operation; or

b. authorize removal of the Equipment installed by the Provider in the Streets at the Provider's cost and expense, by another Person.

To the extent consistent with applicable law, any portion of the Equipment designated by the City for removal and not timely removed by the Provider shall belong to and become the property of the City without payment to the Provider, and the Provider shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.

7.6 No Condemnation. None of the declaration, connection, use, transfer or other actions by the City under this Article 7 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

ARTICLE 8. PARTIES' DESIGNEES.

8.1 City's Designee and Address. The Mayor or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless later specified, all notices from the Provider to the City pursuant to or concerning this Agreement shall be delivered to the Mayor at P.O. Box 1750, Foley, Alabama, 36536, or such other officer and address as the City may designate by written notice to the Provider.

8.2 Provider's Designee and Address. Kelly A. McGriff, General Counsel, shall serve as the Provider's representative, regarding administration of this Agreement. Unless otherwise specified herein, all notices from the City to the Provider pursuant to or concerning this Agreement, shall be delivered to the Provider's representative at 107 St. Francis Street, Suite 1800, Mobile, Alabama, 36602, or such other office as the Provider may designate by written notice to the City.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 Insurance. Prior to commencing construction or installation activities in the City pursuant to this Agreement, the Provider shall secure and maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 per person and \$3,000,000.00 as to each occurrence for bodily injury and property damage issued by a company licensed to do business in Alabama and which is satisfactory to the City. In addition, the Provider shall secure and maintain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be named as an additional insured on these policies which shall be primary to any policies held by the City, and Provider shall deliver to the City a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City.

9.2 Indemnification. The Provider agrees to indemnify, defend and hold the City and its officers, employees, and agents harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the Provider's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the City in defense of such claims. The City shall first give written notice to the Provider of any claim, demand, lien, liability, or damage with respect to which the City seeks indemnification and, unless in the City's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the City shall permit the Provider to assume the defense of such with counsel of the Provider's choosing, unless the City reasonably objects such counsel. Notwithstanding any provision of this section to the contrary, the Provider shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage, or liability arises solely and exclusively out of negligent acts or omissions of the City. This provision shall survive the termination or expiration of this agreement, and it shall be in addition to and supplementary of any insurance coverage.

ARTICLE 10. GENERAL PROVISIONS.

10.1 Binding Agreement. The parties both represent that, when fully executed, this Agreement shall constitute a legal and binding obligation of the parties. Each party further represents that it has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

10.2 Governing Law and Venue. This Agreement is entered into in the County of Baldwin, State of Alabama, and it involves property rights in Baldwin County, Alabama; therefore it is the intention of the parties that Alabama's substantive law shall be applied to all rights, remedies and interpretations hereunder and that all actions brought for the breach of this Agreement or for enforcement of rights under this Agreement shall be brought in a court of competent jurisdiction located in the judicial circuit or district embracing Baldwin County, Alabama.

10.3 Interpretation of Agreement. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof. Both parties hereby stipulate that they have had an opportunity to review and revise this agreement through negotiations, and notwithstanding any laws or rules of construction to the contrary, this Agreement shall be interpreted according to its plain meaning and shall not be strictly construed against the drafting party.

10.4 Amendments. This Agreement may only be modified or amended by written agreement signed by both parties. No oral modifications or amendments shall be effective. No amendment shall be effective unless and until the City Council first properly authorizes the Mayor to execute the amendment.

10.5 Binding Agreement. This Agreement shall be binding upon the successors and assigns of each of the parties.

10.6 Entire Agreement. This Agreement constitutes the full and complete agreement and understanding of the parties hereto. Neither party is relying on any fact or representation or commitment by the other party that is not included herein. All prior offers demands and representations of the parties are revoked and nullified unless expressly contained herein.

10.7 Assignment. This Agreement and the rights to operate within the City cannot be assigned by the Provider, in whole or in part, without the prior written approval of the City. When and if such an assignment is approved, the receiving party shall be deemed an Assignee.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties have set their hands and seals this the ____ day of _____, 20 ____.

CITY OF FOLEY, ALABAMA

By: _____
Its: Mayor

ATTEST:

By: _____
Its: City Clerk/Administrator

STATE OF ALABAMA)
COUNTY OF BALDWIN)

Now before me, the undersigned authority in and for said County and State, personally appeared _____ and _____, respectively as Mayor and City Clerk of the City of Foley, Alabama, and being informed and advised of the contents of the foregoing instrument, they executed the same voluntarily on the date indicated above for and on behalf of the City of Foley, Alabama with the full intent and authority to bind said City of Foley, Alabama.

(SEAL)

NOTARY PUBLIC
My Commission Expires: _____

Southern Light, LLC

By: _____
Title: _____

STATE OF ALABAMA)
COUNTY OF MOBILE)

Now before me, the undersigned authority in and for said County and State, personally appeared _____, as the _____ of _____, and being informed and advised of the contents of the foregoing instrument, he/she executed the same voluntarily on the date indicated above for and on behalf of said entity with the full intent and authority to bind said entity.

(SEAL)

NOTARY PUBLIC
My Commission Expires: _____