

**STATE OF ALABAMA
COUNTY OF BALDWIN**

FIBER OPTICS DEVELOPMENT AGREEMENT

THIS FIBER OPTICS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into effective as of the ____ day of _____, 2019 (the “Effective Date”), by and between Camp Fox, LLC d/b/a “Island Fiber”, an Alabama limited liability corporation and a minority Service-Disabled Veteran-Owned Business certified by the United States Small Business Administration (“Island Fiber”) and the City of Orange Beach, an Alabama Class 8 municipal corporation (the “City”).

WHEREAS, Island Fiber proposes to construct, install and place fiber optic facilities within the City (the “Project”) to make available to owners and occupants (the “Target Constituents”) of residential units within the City (each, a “Unit”) the option of symmetrical 100 Megabyte (MB) or 1 Gigabit (GIG) high speed internet services on a “fiber to the home” basis (the “Services”); and

WHEREAS, Island Fiber proposes to expend the capital to construct the Project based on a predetermined level of subscribership that will ensure financial viability; and

WHEREAS, the City supports and encourages the availability of high-speed internet services within the City in order to increase tourism, facilitate economic development, enhance educational opportunities for area youth, and otherwise increase the quality of life of its citizens; and

WHEREAS, Island Fiber and the City recognize that the economic viability of the Project depends on the number of Target Constituents who subscribe to the Services; and

WHEREAS, the City has agreed to provide assistance to Island Fiber in its efforts to obtain sufficient subscriber levels; and

WHEREAS, Amendment No. 750 of the Constitution of Alabama 1901 (“Amendment No. 750”) authorizes the City to lend its credit to or grant public funds and things of value in aid of or to any corporation or other business entity for the purpose of promoting the economic development of the City; and

WHEREAS, the City has determined that the commitment of City resources and financial assistance to Island Fiber in connection with the construction of the Project to provide the Services to City residents (i) will advance the economic development of the City, (ii) promote the convenience, order, prosperity and welfare of its citizens, (iii) is a direct benefit to the City, its residents and businesses as a result of increased property values, additional economic activity and enhanced educational opportunities within the area of the City, and thus, is in the best interest of the City and serves a valid and sufficient public purpose; and

WHEREAS, the City's execution of this Agreement and performance of its obligations hereunder were duly authorized by that certain Resolution No. _____, adopted by the City Council on _____, 2019, approving the transactions contemplated by this Agreement; and

WHEREAS, at least seven (7) days prior to said meeting of the City Council, the City caused a notice of this action to be published in *The Baldwin Times* and *The Press Register*, describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the City proposes to grant public funds or things of value, all as is required by Amendment No. 750.

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. MARKETING CAMPAIGN. Within thirty (30) days of the Effective Date, Island Fiber agrees to work with the City to commence a robust marketing campaign to make Target Constituents aware of the Project and seek an indication of interest in the Services by their payment of the Reservation Fee. The marketing campaign will include (i) notifying Target Constituents of the Project through U.S. mail, leaflets, email notifications and other channels of communication, and (ii) scheduling and conducting town-hall and community meetings, all in an effort to inform Target Constituents of the Project and the Services. Island Fiber will work with the City to plan a marketing strategy to generate sufficient interest among Target Constituents to meet the necessary subscribership levels in order to make the construction of the Project economically viable. Island Fiber agrees to develop verbal presentations and written communications describing the proposed Services and the benefits of the Project to the Target Constituents.

2. CONSTRUCTION OBLIGATIONS. Island Fiber shall construct, install and place fiber optic facilities within the City and shall make such fiber available to the Target Constituents. The Targeted Constituents are identified in the attached **Exhibit A**.

(a) Construction shall proceed in phases. In Phase I, Island Fiber shall build out the area of the city known as the Burkart neighborhood, as depicted on Exhibit A. Construction and installation for Burkart shall commence upon the adoption and execution of this agreement and shall be completed not later than September 15, 2019.

(b) The construction and installation for the remaining Targeted Constituents will be as agreed by the City and Island Fiber, which shall be evidenced by a duly adopted amendment to this agreement. It is anticipated that Phase II will start upon the completion of the Burkart neighborhood, with a projected completion date of December 31, 2020. The construction and installation phasing will depend on the total number of Target Constituents opting to subscribe to Island Fiber services.

(c) During the term of this agreement, or any extension thereof, Island Fiber shall not offer fiber optic facilities to any business that is licensed within the City of Orange Beach.

3. COMPLIANCE WITH LAWS. Island Fiber shall comply, and cause its officers, managers, agents, contractors and employees to comply, with all applicable federal, state, and local statutes, regulations, rules, ordinances and other laws applicable to the construction of the Project and the provision of the Services. Island Fiber agrees to pursue and prosecute such construction work with commercially reasonable diligence. Island Fiber agrees to construct the Project in a good, workmanlike manner in accordance with high commercial standards and “best management practices.” Island Fiber agrees to use reasonable efforts to minimize interference with the use and operation of any applicable rights-of-way. Island Fiber shall ensure that anyone performing the construction work relating to the Project is paid in a prompt manner and that no liens are placed on any property on which any work is performed.

4. REGULATORY MATTERS. Island Fiber shall comply in all respects with Article IV of Chapter 66 of the City Code with respect to the construction and operation of the Project. Notwithstanding the foregoing, the City agrees to waive any construction permit fees associated with the construction of the Project.

5. CITY RESOURCES. Subject to the City’s standard scheduling procedures, the City will provide Island Fiber with meeting space for town hall sessions so that Target Constituents may learn about the Project and the proposed Services.

6. INITIAL GRANT/REMEDIES FOR DEFAULT. The City agrees to grant Island Fiber the sum of Three Hundred Thousand Fifty and No/100 (\$350,000.00) Dollars, payable in a lump sum within ten (10) days after the adoption of this Agreement.

(a) Should Island Fiber default in its construction obligations under paragraph 2 of this agreement, Island Fiber shall, not later than 10 days after receiving an notice of default from the city, submit an instrument satisfactory to the City Attorney transferring ownership of the Facilities to the City.

(b) In addition to the remedies set forth in paragraph (a) above, default in the construction obligations shall be grounds to terminate the Franchise previously granted to Island Fiber on _____, 2019, by Ordinance No. _____.

7. LIMITATION OF LIABILITY. NEITHER THE CITY NOR ISLAND FIBER OR THEIR AFFILIATES, AGENTS, OR CONTRACTORS IS LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS, LOST REVENUES, LOST DATA, LOST BUSINESS OPPORTUNITIY, OR COSTS OF COVER ARISING OUT OF OR RELATED TO THIS AGREEMENT. THESE LIMITATIONS APPLY REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF FORESEEABILITY.

8. **PUBLIC PURPOSE.** Pursuant to Amendment No. 750, the City does hereby ascertain, determine, declare and find that the expenditure of public funds for the purposes described herein is in the best interest of the City and will serve a valid and sufficient public purpose notwithstanding any incidental benefit accruing to Island Fiber or any other private entity or entities. The placement of fiber infrastructure for the purpose of providing high speed interest services to the Target Constituents constitutes a public purpose for the expenditure of public funds for the reasons as stated in the recitals hereto.

9. **TERM.** This Agreement shall begin on the Effective Date and terminate on January 1, 2021. Either party shall have the right to terminate this Agreement if the other party breaches this Agreement and fails to cure the breach within thirty (30) day after written notice; provided however, that if any such breach, by its nature cannot be cured within the period specified above, then such period shall be extended for so long as the party in breach is proceeding to cure such breach as soon as reasonably possible under the circumstances and providing the other party with periodic report describing such efforts; provided, further, however, if such breach is not cured within one hundred eighty (180) days from the original notice of such breach, the other party shall have the right to terminate this Agreement without further notice.

10. **ENTIRE AGREEMENT.** This Agreement (including the exhibits referred to herein), together with that certain franchise granted pursuant to the City's Ordinance No. _____, constitutes the entire agreement among the parties hereto and supersedes any prior understandings, agreements or representations by or among the parties hereto, whether written or oral to the extent they relate to the subject matter hereof.

11. **AMENDMENT, MODIFICATION AND NON-WAIVER.** No amendments, modifications or changes to this Agreement shall be binding upon either party hereto unless set forth in writing and executed by a duly authorized officer or agent. No waiver by any party of any breach or default of any term, condition, or provision hereof shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, provision hereof shall be implied from any action of either party and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

12. **GOVERNING LAW AND VENUE.** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

13. **SEVERABILITY.** If any provision of this Agreement or the application thereof to any party or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provision to such party or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. If any provision of this Agreement or the application thereof to any party or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is destroyed or rendered ineffective thereby, this Agreement

shall be deemed terminated. No such termination shall affect or impair the City Loan or the obligation of repayment therefor.

14. ASSIGNMENT. Nothing herein contained shall prevent or limit Island Fiber's right to assign its rights and obligations under this Agreement to an affiliate or to enter into any merger or consolidation. No such assignment to an affiliate (or merger or consolidation) shall relieve Island Fiber of its obligations hereunder. Island Fiber may not otherwise assign its rights under this Agreement to any other person or entity.

15. NOTICES. Any communication, notice or demand expressly required or permitted under this Agreement must be in writing and will be deemed to have been given when (i) personally delivered, (ii) deposited with any nationally recognized overnight carrier that routinely issues receipts, or (iii) deposited in any depository regularly maintained by the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to the party for whom it is intended at the addresses set forth on Exhibit B attached hereto and made a part hereof. Any party to this Agreement may add additional addresses or change its addresses for purposes of receipt of any such communication by given ten (10) days prior written notice of such change to the other parties in the manner prescribed in this Section.

16. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

17. RELATIONSHIP OF THE PARTIES. The City and Island Fiber agree that nothing contained in this Agreement, any act of Island Fiber or any act of the City shall be deemed or construed by either of the parties hereto, or by third persons, to create any relationship of a thirty party beneficiary hereof, or of principal and agent, or of a limited or a general partnership or of a joint venture or of any association or relationship between Island Fiber and the City other than as independent contractors in a contract entered into at arm's length. Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no investment or equity interest in the business of Island Fiber and shall not be liable for any debts of Island Fiber, nor shall the City be deemed or construed to be a partner, joint venturer, or otherwise interested in the assets of Island Fiber, nor shall Island Fiber at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment or supplies or other thing whatsoever.

18. CONSTRUCTION. The section headings used herein are convenience only and shall not be construed as part of this Agreement. The parties acknowledge that both parties and their counsel have read and fully negotiated all the language used in this Agreement, and that no rule of construction shall apply to this Agreement which construes any language, whether ambiguous, unclear or otherwise, in favor of, or against any party by reason of that party's role in drafting this Agreement. The word "including" shall mean including without limitation.

IN WITNESS WHEREOF, the parties have caused this Fiber Optics Development Agreement to be executed as of the day and year first above written.

THE CITY OF ORANGE BEACH,
An Alabama Municipal Corporation

Dated: _____

By: _____
Tony Kennon, Mayor

ATTEST:

Renee Eberly, City Clerk

CAMP FOX, LLC DBA ISLAND FIBER,
An Alabama Limited Liability Corporation

Dated: _____

By: _____
As its: _____

STATE OF ALABAMA

COUNTY OF BALDWIN

I, _____, a Notary Public, in and for said County in said State, hereby certify that TONY KENNON and RENEE EBERLY, whose names are signed to the foregoing instrument as Mayor and City Clerk, respectively, of THE CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date on behalf of said municipal corporation.

Given under my hand and seal this _____ day of _____, 2019.

Notary Public, Baldwin County, Alabama

My Commission Expires: _____

STATE OF ALABAMA

COUNTY OF BALDWIN

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____, whose name is signed to the foregoing instrument as _____ of CAMP FOX, LLC DBA ISLAND FIBER, an Alabama limited liability corporation, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he executed the same voluntarily on the day the same bears date on behalf of said corporation.

Given under my hand and seal this _____ day of _____, 2019.

Notary Public, Baldwin County, Alabama

My Commission Expires: _____

EXHIBIT A

EXHIBIT B

Addresses for Notices

To the City: City of Orange Beach, Alabama
 Attn: City Clerk
 Post Office Box 458
 Orange Beach, Alabama 36561

With required copy to: City of Orange Beach, Alabama
 Attn: City Attorney
 Post Office Box 458
 Orange Beach, Alabama 36561

To Island Fiber: