



SPECIAL CALLED MEETING AGENDA

I. Call To Order

II. Roll Call:

III. Consideration of Agenda

IV. Unfinished Business

Miscellaneous

Resolutions

Ordinances

V. New Business

Miscellaneous

1. Public hearing for a proposed economic development project with CenturyLink to construct, install, and place fiber optic facilities within the City of Orange Beach.

Resolutions

1. Resolution authorizing fiber optic broadband project.
2. ADDITION: Resolution establishing fees for wireless telecommunications facilities.

Ordinances

VI. Adjourn

FOR CURRENT INFORMATION REGARDING TIMES AND DATE OF MEETINGS
OF THE COUNCIL AND COMMITTEE OF THE WHOLE, CALL 980-INFO (980-4636)

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AT www.cityoforangebeach.com

ITEM 1.



SPECIAL CALLED MEETING AUGUST 28, 2017

Departments: Administration

Description of Topic:

Public hearing for a proposed economic development project with CenturyLink to construct, install, and place fiber optic facilities within the City of Orange Beach.

Action Options/Recommendation:

Source of Funding (if applicable) :



**SPECIAL CALLED MEETING
AUGUST 28, 2017**

Departments: Administration

Description of Topic:

Resolution authorizing fiber optic broadband project.

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Map
- ▣ Agreement

RESOLUTION NO. 17-xxx

A RESOLUTION AUTHORIZING FIBER OPTIC BROADBAND PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

SECTION 1. Approval of Lending of Credit, Expenditure of Public Funds and Giving of Things of Value.

The City, at its public meeting on August 28, 2017, and in accordance with Alabama Constitutional Amendment No. 750, hereby finds and determines that the proposed lending of its credit, expenditure of public funds and giving of things of value for the purposes described in the proposed form of Fiber Optics Development Agreement (the “Development Agreement”) by and between the City of Orange Beach, Alabama, (the “City”) and CenturyTel Broadband Services, LLC, a Louisiana limited liability company, doing business as CenturyLink (“CenturyLink”), will serve a valid and sufficient public purpose, notwithstanding any incidental benefits accruing to CenturyLink or any other private party. A draft of the Development Agreement was presented and considered at this meeting.

Under the Development Agreement, CenturyLink proposes to construct, install and place fiber optic facilities within the City to make available to owners and occupants of residential units within the City the option of symmetrical 100 Megabyte (MB) or 1 Gigabit (GIG) high speed internet services on a “fiber to the home” basis.

Subject to the terms and conditions of the Development Agreement, and subject to the mutual execution and delivery thereof by the parties thereto, the City Council hereby approves: (i) a waiver of certain construction permit fees for CenturyLink, (ii) providing expedited processing of CenturyLink’s construction permits and other regulatory approvals, (iii) providing CenturyLink with meeting space for town hall sessions, (iv) disseminating a one-time letter on City letterhead notifying potential subscribers about the project, and (v) if certain initial subscription levels are met, making a one-time loan to CenturyLink in the principal amount of \$1,000,000, to be repaid in quarterly installments, without interest, in an amount equal to 4% of the revenues received by CenturyLink for the provision of the services over the fiber optic network and certain other ancillary services, to both residences and businesses.

SECTION 2. Approval of Development Agreement.

The City hereby authorizes, adopts and approves the Development Agreement in substantially the form and of substantially the content as the form of the Development Agreement presented and considered at this meeting (a copy of which has been ordered filed in the permanent records of the City in the custody of the City Clerk) with such changes and additions thereto and deletions therefrom as the Mayor shall approve, which approval shall be evidenced by his executing the Development Agreement, and the Mayor is hereby authorized and directed, in the name and on behalf of the City, to execute, acknowledge and deliver said Development Agreement, and the City Clerk is hereby authorized and directed to affix to the Development Agreement the seal of the City and to attest the same.

SECTION 3. Authorization of Related Documents and Action.

The Mayor and City Clerk are hereby authorized and directed to execute, deliver, seal and attest the Development Agreement and such other agreements, undertakings, documents and certificates related thereto, and to take such other actions on behalf of the City as may be necessary or desirable to carry out the transactions contemplated by this resolution.

SECTION 4. Public Benefits Sought to be Achieved.

The public benefits sought to be achieved by the City’s adoption of the Development Agreement are expected to include, without limitation, (i) advancing the economic development of the City, (ii) promoting the convenience, order, prosperity and welfare of its citizens, (iii) increasing

property values within the City, (iv) stimulating additional economic activity within the City, and (v) providing enhanced educational opportunities within the City.

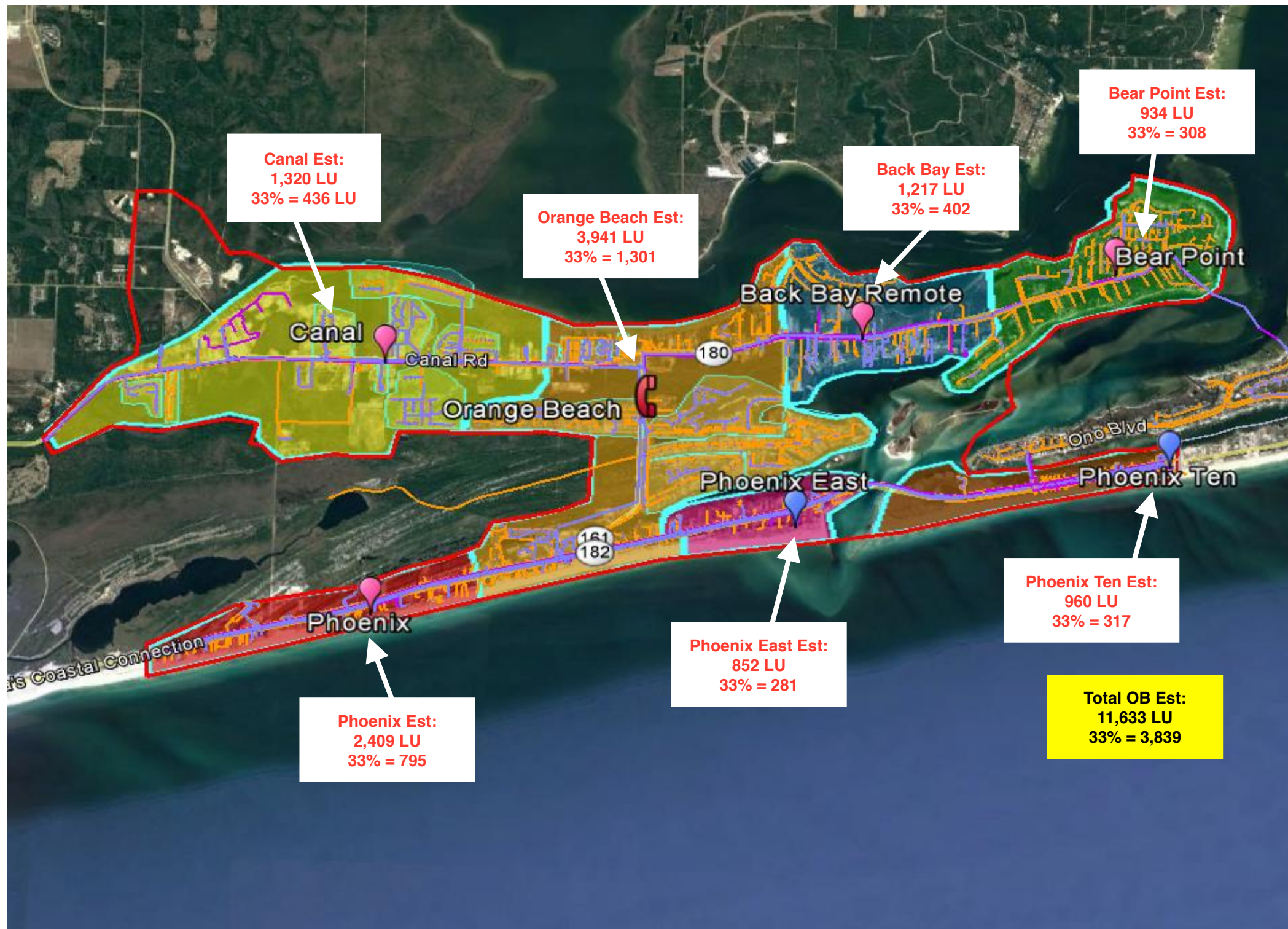
ADOPTED THIS 28th DAY OF AUGUST, 2017.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 17-xxx, which was duly and legally adopted at a regular meeting of the City Council on August 28, 2017.

City Clerk



**STATE OF ALABAMA
BALDWIN COUNTY**

FIBER OPTICS DEVELOPMENT AGREEMENT

THIS FIBER OPTICS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into effective as of the 28th day of August, 2017 (the “Effective Date”), by and between CENTURYTEL BROADBAND SERVICES, LLC, a Louisiana limited liability company (“CenturyLink”), doing business as “CenturyLink”, and the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation (the “City”).

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

WHEREAS, to calculate the required subscribership level for infrastructure build-out, the City will be divided into seven (7) neighborhood “tranches” (each, a “Tranche”), which are reflected on Exhibit A attached hereto and made a part hereof; and

WHEREAS, to determine the existence of a sufficient level of subscribership, Target Constituents will be required to indicate their interest in subscribing to the Services by paying a \$25.00 reservation fee (the “Reservation Fee”); 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 and to increase the quality of life of its citizens; and

WHEREAS, CenturyLink 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 CenturyLink in its efforts to obtain sufficient subscribership 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 CenturyLink 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 August 28, 2017, 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, CenturyLink agrees to work with the City to commence a robust marketing campaign to make Target Constituents aware of the Project and seeking 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. CenturyLink 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. CenturyLink agrees to develop verbal presentations and written communications describing the proposed Services and the benefits of the Project to the Target Constituents.

2. RESERVATION FEE COLLECTION SYSTEM. Within thirty (30) days of the Effective Date, CenturyLink agrees to develop and implement an online reservation fee collection system to facilitate the Target Constituents' ability to indicate their interest in obtaining the Services and payment of the Reservation Fee (the "Fee Collection System"). The Fee Collection System will monitor the number of Target Constituents who pay the Reservation Fee to determine when the appropriate subscribership thresholds have been met. CenturyLink will provide the City with written notice of the date on which the Fee Collection System first becomes available for use by Target Constituents (such date, the "Commencement Date"). If the Initial Subscription Threshold (as defined in Section 3 below) is not met within one (1) year from the Commencement Date, CenturyLink will refund the Reservation Fee to all Target Constituents who paid the Reservation Fee.

3. CONSTRUCTION OBLIGATIONS. If, within one (1) year from the

Commencement Date, CenturyLink has received (a) Reservation Fees on account of at least thirty-three percent (33%) of the Units within at least one (1) Tranche (a “Qualified Tranche”), and (b) Reservation Fees on account of at least one thousand (1,000) Units located within one or more Qualified Tranches (such contingency, the “Initial Subscription Threshold”), then CenturyLink agrees to undertake the infrastructure construction work for the Project within each Qualified Tranche.¹ Build out will continue by Tranche, as each Tranche becomes a Qualified Tranche. As to each Tranche, the infrastructure construction work for the Project will be completed within twelve (12) months of a Tranche becoming a Qualified Tranche. CenturyLink shall work with the City to continue to actively market and promote the Project and the Services to the Target Constituents of each Tranche that is not a Qualified Tranche until such time as it becomes a Qualified Tranche (and thus, the construction obligation is triggered as to that Qualified Tranche).

4. COMPLIANCE WITH LAWS. CenturyLink 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. CenturyLink agrees to pursue and prosecute such construction work with commercially reasonable diligence. CenturyLink agrees to construct the Project in a good, workmanlike manner in accordance with high commercial standards and “best management practices.” CenturyLink agrees to use reasonable efforts to minimize interference with the use and operation of any applicable rights-of-way. CenturyLink 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.

5. REGULATORY MATTERS. CenturyLink 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. The City agrees to provide expedited processing of construction permits and other regulatory approvals.

6. CITY RESOURCES. Subject to the City’s standard scheduling procedures, the City will provide CenturyLink with meeting space for town hall sessions so that Target Constituents may learn about the Project and the proposed Services. It is presently anticipated that these initial meetings would be held in the City’s Community Center during the month of September, 2017. Additionally, the City agrees to disseminate a letter on City letterhead to certain Target Constituents, in form and substance acceptable to the City, notifying such Target Constituents of the Project and the nature of the Services, and informing them of the initially-scheduled dates for the town hall meetings. The City agrees to be responsible for the printing

¹ By way of example, if each Tranche contained 2,000 units, and CenturyLink received Reservation Fees from 750 Units within Tranche 1, and 500 Reservation Fees from each of the other Tranches, then there would be no obligation to construct, because Tranche 1 would have exceeded 33% within that Tranche, but there would not be 1,000 Units in Qualified Tranches. By further way of example, if each Tranche contained 2,000 Units, and CenturyLink received Reservation Fees from 750 Units within Tranche 1, 750 Reservation Fees in Tranche 2, and 500 Reservation Fees from each of the other Tranches, then there would be an obligation to construct in Tranche 1 and 2, because Tranche 1 and 2 would have exceeded 33% within those Tranches, and there would be more than 1,000 Units in Qualified Tranches.

and preparation costs of such letter, and for the postage expense incurred in such mailing.

7. CITY LOAN. If the Initial Subscription Threshold is met within one (1) year from the Commencement Date, CenturyLink shall notify the City of the same in writing. Within thirty (30) days of being notified that the Initial Subscription Threshold is met, the City will make a one-time loan to CenturyLink in the principal amount of One Million Dollars (\$1,000,000) (the "City Loan"). The proceeds of the City Loan will be placed in a segregated account in the name of CenturyLink. The City Loan will be paid back in quarterly installments without interest, in an amount equal to four percent (4%) of the gross revenues received by CenturyLink for the provision of the Services and any other ancillary services (such as voice and video) to both residences and businesses within the City over the facilities constructed, installed and placed in connection with the Project, until such time as the City Loan has been repaid in full. Upon the City funding said City Loan, CenturyLink agrees to execute and deliver to the City a promissory note in substantially the form attached hereto as Exhibit B. The City Loan will become due and payable in full upon any one or more of the following events: (i) CenturyLink abandoning or otherwise ceasing to operate and maintain the Project or provide the Services; or (ii) the termination of this Agreement.

8. LIMITATION OF LIABILITY. NEITHER THE CITY NOR CENTURYLINK 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 OPPORTUNITY, 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.

10. 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 CenturyLink or any other private entity or entities. The placement of fiber infrastructure for the purpose of providing high speed internet services to City residents constitutes a public purpose for the expenditure of public funds for the reasons stated in the recitals hereto.

11. TERM. This Agreement shall begin on the Effective Date and terminate at the earlier to occur of: (i) within one (1) year from the Commencement Date, if the Initial Subscription Threshold has not been attained; (ii) CenturyLink's repayment in full of the City Loan; or (iii) the failure to maintain legal authority to operate within the rights-of-way in which the Project is constructed; provided, however, 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) days 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 reports 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. No termination of this Agreement for breach shall affect or impair the City Loan or the obligation of repayment therefor.

12. ENTIRE AGREEMENT. This Agreement (including the exhibits referred to herein), together with that certain franchise granted pursuant to the City's Ordinance No. 2012-1162, 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.

13. AMENDMENT, MODIFICATION, AND NON-WAIVER. No amendment, modifications, or changes to this Agreement shall be binding upon either party hereto unless set forth in a writing 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.

14. GOVERNING LAW AND VENUE. This Agreement shall be construed and enforced in accordance with the laws of the state of Alabama.

15. 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.

16. ASSIGNMENT. Nothing herein contained shall prevent or limit CenturyLink'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 CenturyLink of its obligations hereunder. CenturyLink may not otherwise assign its rights under this Agreement to any other person or entity.

17. 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 C 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 giving ten (10) days prior written notice of such change to the other parties in the manner prescribed in this Section.

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

19. RELATIONSHIP OF THE PARTIES. The City and CenturyLink agree that nothing contained in this Agreement, any act of CenturyLink 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 third 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 CenturyLink 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 CenturyLink and shall not be liable for any debts of CenturyLink, nor shall the City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of CenturyLink, nor shall CenturyLink 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.

20. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF ORANGE BEACH, ALABAMA

CENTURYTEL BROADBAND SERVICES, LLC

By: _____

By: _____

Its Mayor

Its: _____

STATE OF ALABAMA
BALDWIN COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Tony Kennon, whose name as **MAYOR** of the **CITY OF ORANGE BEACH, ALABAMA**, an Alabama municipal corporation, is signed to the foregoing Fiber Optics Development Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Subscribed and sworn to before me on this the ____ day of _____, 2017.

(SEAL)

Notary Public
My Commission Expires: _____

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____, whose name as _____ of **CENTURYTEL BROADBAND SERVICES, LLC**, a Louisiana limited liability company, is signed to the foregoing Fiber Optics Development Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Agreement, he/she, as such _____ and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Subscribed and sworn to before me on this the ____ day of _____, 2017.

(SEAL)

Notary Public
My Commission Expires: _____

EXHIBIT A

Tranches

EXHIBIT B

Form of Promissory Note

EXHIBIT C

Addresses for Notices

to the City: City of Orange Beach, Alabama
P.O. Box 458
Orange Beach, AL 36561
Attn: Mayor's Office

With a copy to: Paul O. Woodall, Jr.
Jones, Walker, LLP
1819 5th Avenue North
Suite 1100
Birmingham, AL 35203

to CenturyLink: Randy Wood
VP Operations
CenturyLink
1751 Industrial Parkway
Foley, AL 36535

With a copy to: Trey Lutrick
Director, Business Development and Strategy
CenturyLink
100 CenturyLink Drive
Monroe, LA 71203

-and-

CenturyLink Legal Department
931 14th Street, Floor 9
Denver, CO 80202

ITEM 2.



SPECIAL CALLED MEETING AUGUST 28, 2017

Departments: Engineering and Environmental

Description of Topic:

ADDITION: Resolution establishing fees for wireless telecommunications facilities.

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

▣ Resolution

RESOLUTION NO. 17-xxx

**A RESOLUTION ESTABLISHING PERMIT FEES
FOR WIRELESS TELECOMMUNICATIONS FACILITIES**

FINDINGS:

1. On May 16, 2017, the City Council adopted Ordinance No. 2017-1257 establishing regulations relating to the installation of wireless telecommunications facilities.
2. Section 5 of the Ordinance requires the Council to establish a fee schedule for permits.
3. The Council desires to establish such fees.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the attached as Exhibit A, shall be the fee schedule applicable for all permits required by Ordinance No. 2017-1257;
2. That this fee schedule shall be in effect on or after May 17, 2017.

ADOPTED THIS 28th DAY OF AUGUST, 2017.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 17-xxx, which was duly and legally adopted at a regular meeting of the City Council on August 28, 2017.

City Clerk

EXHIBIT A

Wireless Permit Fee Schedule:

Class 1	\$250.00
Class 2	\$500.00
Class 3	\$1,000.00

Escrow Requirements:

- A. The City may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the Application and any requests for recertification.
- B. An Applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultants and expert evaluation and consultation to the City in connection with the review of any Application. The initial deposit shall be \$5,000.00 for towers or new structures, and \$2,500.00 for co-location on antennas or existing structures. These funds shall accompany the filing of an Application and the City will maintain a separate escrow account for all such funds. The City's consultants/experts shall bill or invoice the City no less frequently than monthly for its services in reviewing the Application and performing its duties. In the event that the amount held in escrow by the City is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the Applicant.