

**ORDINANCE NO. 2016-2**

AN ORDINANCE GRANTING A FRANCHISE TO CENTURYTEL OF ALABAMA, LLC D/B/A CENTURLINK ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES ("CENTURLINK") TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF HAMILTON, ALABAMA ("THE CITY").

The City hereby ordains that it is in the public interest to grant CenturyLink a Franchise to operate the System pursuant to the terms and conditions contained herein.

**SECTION 1. Grant of Franchise.** The City hereby grants to CenturyLink the right, privilege and authority to construct, install, maintain, operate, upgrade, replace, renovate, adjust, protect, support, raise, lower, disconnect, remove and relocate its cables, poles, pedestals, boxes, wires, conduits, conductors, pipes and related appurtenances ("Facilities") for its System in, under, along, over and across the present and future streets, alleys and public ways of the City ("Public Ways"), for the purpose of providing telecommunication services to the City's inhabitants and businesses (collectively the "Franchise").

**SECTION 2. Acceptance by CenturyLink.** Within sixty (60) days after the passage of this Ordinance by the City, CenturyLink shall file a signed copy thereof with the City Recorder, otherwise this Ordinance and the rights granted herein shall be null and void.

**SECTION 3. Term.** The Term of the Franchise is ten (10) years commencing on the date of Acceptance by CenturyLink as set forth in Section 2, above.

**SECTION 4. Franchise Fee.** Within sixty (60) days after the date of CenturyLink's Acceptance of this Ordinance and until its expiration, CenturyLink will pay the City three percent (3%) of CenturyLink's local exchange access service Gross Revenue (as defined in Appendix A hereto). Payment shall be made quarterly within sixty (60) days after the end of each quarter during the Term of the Franchise.

**SECTION 5. Records Inspection.** CenturyLink shall make available to the City, upon reasonable advance written notice of no less than sixty (60) days, such information pertinent only to enforcing the terms of this Ordinance in such form and at such times as CenturyLink can reasonably make available. Subject to applicable laws, any information that is provided to the City and/or that the City reviews *in camera* is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Any such information provided to the City shall be immediately returned to CenturyLink following review. The City will not make copies of such information.

**SECTION 6. Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any

other entity. The City's use, however, shall not unreasonably interfere with CenturyLink's Facilities or the rights granted to CenturyLink herein.

**SECTION 7. City Regulatory Authority.** The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties consistent with applicable federal and state law.

**SECTION 8. Indemnification.** The City shall not be liable for any property damage or loss or injury to or death of any person that occurs in the construction, operation or maintenance by CenturyLink of its Facilities. CenturyLink shall indemnify, defend and hold the City harmless from and against third party claims, demands, liens and all liability or damage of whatsoever kind on account of CenturyLink's use of the Public Ways. The City shall: (a) give prompt written notice to CenturyLink of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit CenturyLink to assume the defense of such claim, demand, or lien. CenturyLink shall not be subject to liability for any settlement made without its consent. Notwithstanding the other provisions contained herein, CenturyLink shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

**SECTION 9. Insurance Requirements.** CenturyLink will maintain in full force and effect for the Term of the Franchise, at CenturyLink's expense, a comprehensive liability insurance policy written by a company authorized to do business in the State of Alabama, or will provide self-insurance reasonably satisfactory to the City, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System by CenturyLink. Such insurance will be in an amount not less than \$1,000,000.00. CenturyLink will also maintain Worker's Compensation coverage throughout the term of the Franchise as required by law. The City may review the status of CenturyLink's insurance at [www.centurylink.com/moi](http://www.centurylink.com/moi).

**SECTION 10. Annexation.** When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail to CenturyLink: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation.

**SECTION 11. Plan, Design, Construction and Installation of CenturyLink's Facilities.**

**11.1** All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

**11.2** CenturyLink shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for any required permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. CenturyLink will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as

may be reasonably necessary to assure compliance. Notwithstanding the foregoing, CenturyLink shall not be obligated to obtain a permit to perform emergency repairs.

**11.3** To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, renovated or replaced in accordance with applicable and lawful rules, ordinances and regulations of the City.

**11.4** If, during the course of work on its Facilities, CenturyLink causes damage to or alters the Public Way or other public property, CenturyLink shall replace and restore such Public Way or public property at CenturyLink's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration.

**11.5** CenturyLink shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, each party shall first notify the other of such work and allow the other party, at its own expense, to share a the trench for laying its own facilities therein, provided that such action will not unreasonably interfere with the first party's use of the trench or unreasonably delay project completion.

**11.6** Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect CenturyLink's Facilities, the City shall give written notice to CenturyLink, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of CenturyLink's Facilities.

**11.7** CenturyLink shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

## **SECTION 12. Relocation of Facilities.**

**12.1 Relocation for the City.** CenturyLink shall, upon receipt of advance written notice of not less than one hundred twenty (120) days, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any CenturyLink property located in a Public Way when required by the City consistent with its police powers. CenturyLink shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way and as otherwise required by applicable state or federal law.

**12.2 Relocation for a Third Party.** CenturyLink shall, at the request of any person holding a lawful permit issued by the City, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any CenturyLink property located in a Public Way, provided that the cost of such action is borne by the person requesting it and CenturyLink is given reasonable advance written notice. In such situation, CenturyLink may also require advance payment. For purposes of this subsection 12.2, "reasonable advance written notice" shall mean no less than thirty (30) days for a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**12.3 Alternatives to Relocation.** CenturyLink may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise CenturyLink in writing if one or more of the alternatives are suitable. If requested by the City, CenturyLink shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by CenturyLink full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, CenturyLink shall relocate the components of the System as otherwise provided herein. Notwithstanding the foregoing, CenturyLink shall in all cases have the right to abandon the Facilities.

**SECTION 13. Vegetation Management.** CenturyLink shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards. This grant shall in no way impose a duty on CenturyLink; instead, this grant gives permission to CenturyLink should CenturyLink elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

**SECTION 14. Renewal.** At least one hundred twenty (120) days prior to the expiration of the Franchise, CenturyLink and the City shall either agree to extend the Term or use best faith efforts to renegotiate a replacement Franchise agreement.

**SECTION 15. Revocation of Franchise for Noncompliance.**

**15.1** In the event that the City believes that CenturyLink has not complied with the terms of the Franchise, the City shall informally discuss the matter with CenturyLink. If these discussions do not lead to resolution of the problem, the City shall notify CenturyLink in writing of the exact nature of the alleged noncompliance.

**15.2** CenturyLink shall have thirty (30) days from receipt of the written notice described in subsection 15.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

**15.3** In the event that CenturyLink does not comply with subsection 15.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide CenturyLink at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

**15.4** Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 15.3, determines that CenturyLink is noncompliant with this Ordinance, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or

- C. In the case of substantial noncompliance with a material provision of this Ordinance, seek to revoke the Franchise in accordance with subsection 15.5.

15.5 Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to CenturyLink. CenturyLink shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon CenturyLink, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give CenturyLink an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. CenturyLink may appeal the City's determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

15.6 Notwithstanding the foregoing provisions in this Section 15, CenturyLink does not waive any of its rights under applicable law.

**SECTION 16. No Waiver of Rights.** Neither the City nor CenturyLink shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

**SECTION 17. Transfer of Franchise.** CenturyLink's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the City, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with CenturyLink, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of CenturyLink in the Franchise or Facilities in order to secure indebtedness.

**SECTION 18. Entire Agreement and Amendment.** This Ordinance and the Franchise granted by it set forth the full agreement of the City and CenturyLink with respect to the subject matter hereof and supersede and replace any prior agreement, understanding, Ordinance and Franchise regarding the subject matter hereof (the consent and franchise to use the Public Ways of the City for a Franchise fee). Amendments to the terms and conditions contained herein shall be mutually agreed upon by the City and CenturyLink and formally adopted by the City Council as an ordinance amendment.

**SECTION 19. Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) business days after such

notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

The City:  
City of Hamilton  
Attn: Angela Owen  
422 Second Street Southwest  
PO Box 188  
Hamilton AL 35570

CenturyLink:  
Law Department  
Franchise Rights-of-Way Attorney  
1801 California St., 9<sup>th</sup> Floor  
Denver, Colorado 80202

**SECTION 20. Publication.** In accordance with Alabama Statute, the City shall be responsible for publication of this Ordinance, and any amendments thereof. CenturyLink shall be responsible for payment of all necessary and reasonable costs of publication of this Ordinance, and any amendments thereof.

**SECTION 21. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common 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 hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

CONSIDERED and APPROVED this 21<sup>st</sup> day of March, 2016

CITY OF HAMILTON

By: Wade Williams  
[Name], [Title]

ACCEPTED BY CENTURYLINK:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPENDIX A

## LISTING OF SERVICE CATEGORIES INCLUDED IN "GROSS REVENUE"

## FOR CALCULATION OF FRANCHISE FEES

Business Local Access—including Flat Rate, Multiparty, and Extended Area Service

Business Measured Usage Local Access Service

Flat Usage Local Access Trunks

Low Income Telephone Assistance Program Local Access

Measured Rate Local Access Trunk Usage

Message Rate Local Access Trunk Usage

Public Access Line (PAL) Service

Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service

Residential Measured Usage

THE FOLLOWING IS A NON-EXCLUSIVE LISTING OF CATEGORIES OF REVENUE NOT REPRESENTING THE RETAIL SALE OF LOCAL ACCESS SERVICES AND THEREFORE EXCLUDED FROM THE DEFINITION OF "GROSS REVENUES" AND, THEREFORE, ARE NOT INCLUDED IN THE CALCULATION OF ANY FEE DUE TO THE CITY

Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks

Bad debt write-offs and customer credits

Revenue from directory advertising

Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including but not limited to support for the hearing impaired

Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments

Revenues from internet access

Revenues from digital or other electronic content, such as computer software, music and video downloads

Revenues from equipment sales, rentals, installation and maintenance

Revenues from any carrier purchased for resale

Revenues from private line services not for switched local access service