

## SPONSORSHIP AGREEMENT

This **SPONSORSHIP AGREEMENT** (the “Agreement”) is entered into as of this \_\_\_\_ day of March, 2022 (the “Effective Date”) by and between City of Marshall, Minnesota, a municipality of the State of Minnesota (the “City”), and Clarity Telecom, LLC, a Delaware limited liability company, d/b/a Bluepeak, (the “Sponsor”) (each a “Party” and collectively the “Parties”).

### **RECITALS**

**WHEREAS**, the City is engaged in the management and the operation of the arena and expo center, known as the Red Baron™ Arena & Expo, and four softball/youth baseball fields, known as the Schwan Regional Amateur Sports Center, hereafter referred to as the “Property,” located in Marshall, Minnesota;

**WHEREAS**, the Sponsor is a founding sponsor of the Property and wishes to continue to provide financial support in exchange for certain rights to be granted in connection with the Property and agrees to do so under the terms and conditions of this Agreement;

**WHEREAS**, the City wishes to continue to grant the Sponsor certain rights in connection with the Sponsorship on the terms and conditions set forth below; and

**WHEREAS**, each Party is duly authorized and capable of entering into this Agreement.

### **AGREEMENT**

**NOW THEREFORE**, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

#### **1. GRANT OF RIGHTS.**

The City hereby grants the Sponsor the rights described in this Agreement and in Exhibit A attached hereto and made a part hereof, in connection with the Property, and the City agrees to perform all of the City’s obligations hereunder. As between the Parties, any sales or use tax or other assessments upon any of the Sponsorship Rights (as defined in Exhibit A) granted to Sponsor in this Agreement by any applicable governmental authority shall be paid by, and shall be the sole responsibility of, the City.

#### **2. VIK.**

In consideration for the Sponsorship Rights granted hereunder, Sponsor shall provide to the City the VIK (as defined in and subject to the terms and conditions of Exhibit A). The City understands that it shall not be entitled to any compensation other than the VIK. For purposes of clarity, Sponsor shall not be under any obligation for the payment of any commissions or any monetary fees to the City or to any other agent of the City.

#### **3. TERM.**

The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect, unless otherwise earlier terminated in accordance with the provisions of Section 4(B) of this Agreement, until July 31, 2025 (the “Term”). For purposes of clarity, the Parties acknowledge and agree that to the extent either Party has been performing in connection with elements described in this Agreement prior to the Effective Date, the terms and conditions of this Agreement shall retroactively govern each Party’s performance in connection with the subject matter hereof.

#### 4. SPONSORSHIP RENEWAL AND TERMINATION.

##### (A) Sponsorship Renewal.

The Sponsor shall have the exclusive right to negotiate with City for a renewal of the Sponsorship Rights granted to Sponsor hereunder via an extension of this Agreement that contains terms mutually acceptable to Sponsor and the City. Commencing not later than one hundred and eighty days prior to the expiration of the Term, the City shall provide Sponsor with written notification of a proposal setting forth the consideration and other terms and conditions for such renewal (the "Negotiation Notice"). Following Sponsor's receipt of the Negotiation Notice, at Sponsor's discretion, the City and Sponsor shall negotiate exclusively with each other in good faith regarding an extension of this Agreement, such negotiations to begin within ten (10) business days following Sponsor's receipt of the Negotiation Notice and to continue until the end of a sixty (60) day period thereafter (the "Renewal Negotiation Period"). After the end of the Renewal Negotiation Period, if the Parties have not entered into an extension of this Agreement or otherwise agreed to extend the Renewal Negotiation Period, the City shall be free to commence negotiations with any other third-party for the sponsorship and other rights granted to Sponsor pursuant to this Agreement.

##### (B) Termination.

Notwithstanding anything to the contrary herein, and in addition to any termination rights provided for elsewhere in this Agreement, this Agreement may be terminated as follows:

- (i) By mutual consent in writing of the City and Sponsor.
- (ii) In the event of a breach by either Party (x) of a material provision of this Agreement, and/or (y) in the performance of its material obligations under this Agreement in a timely manner, which breach shall not have been cured (if curable) within thirty (30) days of the breaching Party's receipt of written notice thereof, the non-breaching Party may declare this Agreement in default and, in addition to any other remedies which may be available to it, terminate this Agreement, effective immediately upon notice of termination given in writing.
- (iii) By either Party at any time and without prior notice, if the other Party is convicted of any crime or offense, or is guilty of serious misconduct in connection with performance under this Agreement.

#### 5. EXCLUSIVITY OF SPONSORSHIP.

During the Term, (a) Sponsor shall have, and the City shall ensure, product and service advertising exclusivity in the Sponsorship Business Categories (as defined in Exhibit B) at and in connection with the Property and all games and events at the Property, and otherwise in connection with all advertising, promotions, marketing, sponsorship, and like entitlements and benefits associated with the Property and all games and events at the Property; and (b) the City shall not permit any other third-party to sponsor, advertise, or otherwise receive or enjoy any acknowledgement or recognition with respect to any product, service, trade name, or brand in the Sponsor Business Categories at or in connection with the Property or any games or events at the Property. For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, to the extent that any third-party other than Sponsor provides or otherwise makes available equipment, products, or services in the Sponsor Business Categories on the premises of the Property, the City shall use its best efforts to remove, cover, or "white label" during the games and events at the Property the applicable third-party's trademarks or other branding (including, without

limitation, customary branding and marking on any such equipment, products, and/or services themselves with the applicable third-party's trademarks). For example, if, during the Term, any third-party other than Sponsor provides or otherwise makes available video services on the premises of the Property for use/viewing by visitors of the Property, the City shall use its best efforts to remove, cover, or "white label" during the games and events at the Property the applicable third-party's trademarks or other branding on any equipment, products, and/or services used by such third-party to provide such video services (e.g., televisions), including, without limitation, customary branding and marking on any such equipment, products, and/or services themselves with the third-party's trademarks. For the avoidance of doubt, the City's obligation to remove, cover, or "white label" any such branding during the games and events at the Property shall apply solely (i) to the extent such third-party's trademarks or other branding can reasonably be considered commercial advertisements; and (ii) to equipment, products, or services in the Sponsor Business Categories that are located within the TV viewing and in-game viewing areas on the premises of the Property (e.g., excluding private administrative offices, etc.). Notwithstanding anything in this Agreement to the contrary, during the Term, to the extent that any concert event presented at the Property is a part of a national tour whose tour sponsorship is in the Sponsor Business Categories, any such tour sponsor may be permitted the same advertising rights at the Property during such event as are provided at similar venues throughout such tour, even if such sponsor is a competitor; provided that (x) the City shall notify Sponsor in writing (email acceptable) of such event and the proposed tour sponsorship advertising and materials, (y) promptly following the conclusion of such event, the City shall remove all such tour sponsorship advertising and materials, and (z) to the extent not prohibited by any applicable restrictions of such tour sponsor's artist, Sponsor's Sponsorship Rights and VIK under this Agreement at the Property shall remain intact, but shall not be exclusive (solely with respect to the sponsor of such national tour) during the event at the Property. In no event shall the City or any Property or event personnel or broadcasters use or permit the use of any blocking technology or the insertion of any virtual signage on the exterior or interior signage of the Property, including over any of the Property's permanent or temporary (including digital) signage, to the extent the same (1) covers, removes, obstructs, de-illuminates, or otherwise disturbs in any way any the Sponsorship Rights or VIK, or (2) otherwise violates the terms of this Agreement (including the category exclusivity granted to Sponsor herein), including during any broadcast or re-broadcast of any event (or other exploitation of the same).

## 6. RESPONSIBILITIES.

(A) Of the City. The City agrees to do each of the following:

- (i) Provide the Sponsor with the Sponsorship Rights detailed in this Agreement and Exhibit A to this Agreement.
- (ii) Organize, produce, and supervise all events at the Property (both public, private, and otherwise) in a workmanlike manner, in accordance with applicable laws, and with professional diligence and skill, using fully trained, skilled, competent, and experienced personnel.
- (iii) Make all arrangements for the use of the Property, including securing any necessary permits, coordinating parking and/or transportation, supplying equipment, and contracting with vendors and other service providers.
- (iv) Deliver the Property Trademarks (as defined in Section 8(B)(i) below) to the Sponsor within ninety (90) days of the Effective Date.
- (v) Provide adequate professional security for all events at the Property and take commercially reasonable steps to ensure the safety of all workers, volunteers, and persons attending such events.

- (vi) Use best efforts to obtain appropriate media coverage of the Property.
- (vii) Use best efforts to promote the Property and maximize attendance.

(B) Of the Sponsor. The Sponsor agrees to do each of the following:

- (i) Provide all assistance and cooperation to the City that is reasonably necessary for Sponsor to exercise its Sponsorship Rights under this Agreement.
- (ii) Deliver the Sponsor Trademarks (as defined in Section 8(A)(i) below) to the City within thirty (30) days of the Effective Date.

## 7. PARTIES' REPRESENTATIONS AND WARRANTIES.

(A) The Parties each represent and warrant as follows:

- (i) Each Party has full power, authority, and right to perform its obligations under the Agreement and grant the rights hereunder without the consent or approval of any other third-party which has not yet been obtained, subject to Section 19 of this Agreement.
- (ii) Each Party is not a party to any agreements or commitments that would prevent or interfere in any manner with the full performance of its material obligations set forth in this Agreement.
- (iii) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
- (iv) Each Party will comply with all laws, rules, and regulations applicable to the performance of its material duties hereunder.
- (v) Each Party will perform its duties and responsibilities hereunder in a professional and responsible manner consistent with reasonable industry standards.
- (vi) Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.

(B) The City hereby represents and warrants as follows:

- (i) The City is authorized to grant the rights described herein and Sponsor's use and enjoyment thereof and the City's performance of its obligations hereunder will not violate any applicable rules, laws, or regulations or infringe the rights of any person, entity, or estate.
- (ii) The Property shall be operated in accordance with and shall not violate any applicable laws, rules, or regulations, and the City shall obtain all permissions required to comply with such laws, rules, or regulations.
- (iii) The City shall notify the Sponsor of any changes that would materially change the deliverable elements of any Sponsorship Rights at least ninety (90) days before

implementing such changes.

- (iv) The City shall use the Sponsor Trademarks in such a manner so as not to diminish the value or tarnish the reputation of Sponsor or the Sponsor Trademarks.
- (v) The obligations required by this Agreement shall be performed by the City or the City's staff, and the Sponsor shall not be required to hire, supervise, or pay any third parties to help the City perform such obligations.
- (vi) The City shall comply with all applicable terms and conditions of this Agreement in order to provide and preserve the rights and protect the interests of Sponsor hereunder.
- (vii) The terms and provisions of this Agreement and the performance by the City of its obligations hereunder do not violate or conflict with any laws, agreement, or any other rules, laws, or regulations applicable to this Agreement.

## 8. TRADEMARKS.

### (A) Sponsor Trademarks.

- (i) License. The Sponsor hereby grants the City a non-exclusive, non-transferable (except as permitted in Section 19 below), non-sublicensable, royalty-free limited license to use, display, and reproduce its logos, trademarks, service marks, and trade names (each, a "Sponsor Trademark" and collectively, the "Sponsor Trademarks"), solely in the form provided and manner approved by Sponsor and only as necessary to provide the Sponsorship Rights and perform the City's obligations hereunder during the Term. The City agrees to obtain the written consent of the Sponsor before each use, display, and reproduction of the Sponsor Trademarks. All such uses shall be in accordance with any reasonable written procedures and guidelines provided by Sponsor from time to time. Without limiting the foregoing, the City will use appropriate trademark and other notices for the Sponsor Trademarks on the materials prepared by or on behalf of the City, as directed in writing by Sponsor. The City acknowledges the rights and interests of Sponsor in and to the Sponsor Trademarks. As between the Parties, all use of the Sponsor Trademarks and the goodwill generated thereby will inure to the sole benefit of Sponsor.
- (ii) Ownership. All Sponsor Trademarks licensed to the City in connection with this Agreement are (as between the Parties) the Sponsor's sole property, and the City has no ownership or other intellectual property rights in or to such items. If the City is deemed to have acquired any interest in the Sponsor Trademarks (or any goodwill associated therewith) by virtue of the use thereof as permitted herein, the City hereby irrevocably assigns to Sponsor all right, title and interest the City may be deemed to have therein. Upon expiration or earlier termination of this Agreement, the City will cease all use of the Sponsor Trademarks (unless permitted under a separate, valid agreement between Sponsor and the City). If it becomes advisable at any time in the sole judgment of Sponsor to modify any use of the Sponsor Trademarks, the City agrees to comply with the written direction of Sponsor, provided that with respect to modification of any previously approved use Sponsor reimburses the City for any reasonable out-of-pocket expenses incurred by the City in complying with any such direction.
- (iii) Authority. The Sponsor represents and warrants to the City that all of the Sponsor Trademarks are owned by the Sponsor or that the Sponsor has permission from the rightful owner to use and to license use of the same.

(B) Property Trademarks.

- (i) License. The City hereby grants the Sponsor a non-exclusive, non-transferable (except as permitted in Section 19 below), royalty-free limited license to use, display, and reproduce the logos, trademarks, service marks, and trade names, associated with the Property (each a "Property Trademark" and collectively, the "Property Trademarks"), solely in the form provided and manner approved by the City and only as necessary to exercise and enjoy the Sponsorship Rights (including in connection with the promotion and advertisement of the Sponsor's products and services) and perform Sponsor's obligations hereunder during the Term. The Sponsor agrees to obtain the written consent of the City before each use, display, and reproduction of the Property Trademarks. All such uses shall be in accordance with any reasonable written procedures and guidelines provided by the City from time to time. Without limiting the foregoing, Sponsor will use appropriate trademark and other notices for the Property Trademarks on the materials prepared by or on behalf of Sponsor, as directed in writing by the City. Sponsor acknowledges the rights and interests of the City in and to the Property Trademarks. As between the Parties, all use of the Property Trademarks and the goodwill generated thereby will inure to the sole benefit of the City.
- (ii) Ownership. All Property Trademarks licensed to the Sponsor in connection with this Agreement are (as between the Parties) the City's sole property, and the Sponsor has no ownership or other intellectual property rights in or to such items. If Sponsor is deemed to have acquired any interest in the Property Trademarks (or any goodwill associated therewith) by virtue of the use thereof as permitted herein, Sponsor hereby irrevocable assigns to the City all right, title, and interest Sponsor may be deemed to have therein. Upon expiration or earlier termination of this Agreement, Sponsor will cease all use of the Property Trademarks (unless permitted under applicable law and/or a separate, valid agreement between Sponsor and the City). If it becomes advisable at any time in the sole judgment of the City to modify any use of the Property Trademarks, Sponsor agrees to comply with the written direction of the City, so long as the City requires all other similarly situated licensees to do the same and provided that with respect to modification of any previously approved use, the City reimburses Sponsor for any reasonable out-of-pocket expenses incurred by Sponsor in complying with any such direction.
- (iii) Authority. The City represents and warrants to the Sponsor that all the Property Trademarks are owned by the City or that the City has permission from the rightful owner to use and to license use of the same.

**9. SPONSOR CREATED MERCHANDISE.**

During the Term, and subject to the approval of the City, which shall not be unreasonably withheld, conditioned, or delayed, the Sponsor shall have the right to create, manufacture or cause to be manufactured, and sell or give away merchandise associated with the Property and containing the Property Trademarks and Sponsor Trademarks in connection with the promotion of the Sponsor's products and services. All merchandise caused to be manufactured for sale or to be given away by the Sponsor in association with the Property shall be of quality consistent with similar promotional items in the industry and, to the knowledge of Sponsor, shall be free from material product defects.

**10. INDEMNIFICATION.**

- (A) Of Sponsor by City. Subject to limits applicable under Minnesota law, the City shall defend,

indemnify and hold harmless the Sponsor and its officers, directors, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns (the "Sponsor Indemnified Parties"), and each of them, from and against any and all third party claims, actions, suits, demands, causes of action, proceedings or investigations ("Third Party Claim(s)") and any damages, liabilities, costs, expenses (including reasonable attorneys' fees), and/or judgments, (collectively, the "Losses") that any of the Sponsor Indemnified Parties suffer from or incur to the extent arising out of or resulting from (i) any inaccuracy of any representation or warranty made by the City under this Agreement; (ii) the City's breach of this Agreement, including any of its obligations, agreements, or duties under this Agreement; (iii) allegations that any Property Trademarks or any other information, materials, content or media provided or designated for use by or on behalf of the City or the use thereof, in the form furnished and manner approved by City and otherwise in conformity with the terms of this Agreement, violates any rights of any person, entity or estate; (iv) the Property, any events taking place there, or the operational activities at or in connection with the Property or such events; or (v) the negligent or more culpable acts or omissions of the City and/or the City's officers, directors, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns; but in any event, excluding any Third Party Claims and Losses to the extent (vi) caused by Sponsor's breach of this Agreement and/or the negligent or more culpable acts or omissions of Sponsor and, or (vii) covered by Sponsor's indemnification obligations set forth in Section 10(B), below.

- (B) Of City by Sponsor. Subject to limits applicable under Minnesota law, the Sponsor shall defend, indemnify and hold harmless the City and its officers, directors, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns (the "City Indemnified Parties") from and against any Third Party Claims and any Losses that any of the City Indemnified Parties may suffer from or incur to the extent arising out of or resulting from (i) any inaccuracy of any representation or warranty made by the Sponsor under this Agreement or (ii) the Sponsor's breach of this Agreement, including any of its obligations, agreements, or duties under this Agreement; but in any event, excluding any Third Party Claims and Losses to the extent (iii) caused by the City's breach of this Agreement and/or the negligent or more culpable acts or omissions of the City or the City's officers, directors, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns and, or (iv) covered by the City's indemnification obligations set forth in Section 10(A), above.
- (C) Indemnification Procedure. A Party entitled to indemnification under this Section (an "Indemnified Party") shall promptly notify the Party obligated to indemnify such Indemnified Party (the "Indemnifying Party") of any Third Party Claim made against it; provided that a delay in or failure by the Indemnified Party to provide such notice shall not relieve the Indemnifying Party of its obligations under this Section, except to the extent that such delay or failure materially prejudices the Indemnifying Party's ability to defend such Third Party Claim. The Indemnifying Party shall have the right to undertake, conduct, and control, through counsel of its own choosing, the defense and settlement of any such Third Party Claim, provided that no settlement shall be made that involves (i) the admission of fault or the imposition of penalties, fines, or damages upon the Indemnified Party and/or (ii) equitable or injunctive relief without the written permission of the Indemnified Party, which shall not be unreasonably withheld, conditioned, or delayed. The Indemnified Party shall have the right to be represented by counsel of its own choosing, but at its own expense. So long as the Indemnifying Party is contesting any such claim in good faith, the Indemnified Party shall not pay or settle such claim. The Indemnified Party shall provide reasonable assistance to the Indemnifying Party in the defense of such Third Party Claim or action at the Indemnifying Party's request and reasonable expense.

**11. DISCLAIMER OF WARRANTIES.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY DISCLAIMS ALL WARRANTIES IN CONNECTION HEREWITH, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**12. LIMITATION OF LIABILITY.**

IN NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (TORT, CONTRACT, OR OTHERWISE), SHALL SPONSOR BE LIABLE TO THE CITY FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING ANY LOST PROFITS, LOSS OF USE, OR LOSS OF OPPORTUNITY) SUFFERED BY THE CITY ARISING IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT SHALL SPONSOR'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY SUCH LIABILITY IS BASED ON (TORT, CONTRACT, OR OTHERWISE), FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION FOR DAMAGES, LOSSES, OR COSTS ARISING FROM THIS AGREEMENT, EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

**13. INSURANCE.**

Each Party shall maintain, at its own expense, insurance coverage required in the reasonable amounts and types for each Party's operations.

**14. FORCE MAJUERE.**

Subject to the provisions of this Agreement, neither Party shall be liable to the other for failure to perform hereunder if, and to the extent, such failure results from a Force Majeure Event (defined in this Section below); provided that financial difficulty shall not be considered a Force Majeure Event. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either Party's performance of this Agreement, such Party shall be excused from performance of its obligations, provided such Party gives prompt written notice to the other Party of such Force Majeure Event and uses its commercially reasonable efforts to avoid or remove such causes of non-performance as soon as possible. "Force Majeure Event" shall include, but not be limited to, an act of God; war; terrorism; strike or labor dispute; blockade; embargo; government order; lightning; fire, explosion, or other serious casualty; water damage; accident or sabotage; or unusually severe weather (including hurricane, earthquake, tornado, landslide, or flood).

**15. CONFIDENTIALITY.**

Each Party shall not disclose to any person, firm, or corporation (other than to each Party's respective employees who have a need to know, in their capacity as such), without the prior written consent of the other Party, any of the terms or conditions of this Agreement, subject to the Minnesota Government Data Practices Act and other applicable laws; provided that the foregoing will not prohibit any disclosure to the extent required (and only to the extent so required) by applicable securities laws or the rules of any stock exchange where a party's securities are traded.

**16. PRESS RELEASES.**

Neither Party shall make any public disclosures (whether in the form of news releases, advertising or solicitation materials, blog or social media postings, or otherwise), whether written or oral, concerning the



existence of this Agreement or the commercial relationship or other terms hereof or use or reference the other Party's name or other reference in any public disclosure related to the subject matter hereof without the other Party's prior written consent in each instance; provided that the foregoing will not prohibit any disclosure to the extent required (and only to the extent so required) by the Minnesota Government Data Practices Act and other applicable laws, including applicable securities laws or the rules of any stock exchange where a party's securities are traded.

#### **17. NATURE OF RELATIONSHIP.**

The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. Neither Party will be bound by any acts, obligations, or undertakings of the other Party. Nothing in this Agreement shall create any obligation between either Party and a third-party.

#### **18. AMENDMENTS.**

No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties.

#### **19. ASSIGNMENT.**

Neither Party may, without the prior written consent of the other Party, assign, subcontract, or delegate its obligations under this Agreement; provided however, that Sponsor may assign this Agreement without the City's prior approval to an affiliate and/or to a third-party in the event of a merger or reorganization of Sponsor of a sale of all or substantially all of the Sponsor's assets or a reorganization or a consolidation of Sponsor with any of its affiliates. City may assign the operational and management duties of the Property to a third-party provider, subject to the terms and conditions of this Sponsorship Agreement; provided that, for purposes of clarity, the City shall remain responsible for any such performance of the City's duties hereunder by a third-party provider.

#### **20. SUCCESSORS AND ASSIGNS.**

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

#### **21. NO IMPLIED WAIVER.**

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

#### **22. NOTICE.**

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to the Sponsor:

Clarity Telecom, LLC d/b/a Bluepeak  
ATTN: Nick Wilkin, CFO  
7979 E. Tufts Ave, Suite 850  
Denver, CO 80237

With a copy to:

Clarity Telecom, LLC d/b/a Bluepeak  
ATTN: General Counsel  
7979 E. Tufts Ave, Suite 850  
Denver, CO 80237

If to the City:

City of Marshall  
ATTN: Sharon Hanson, City Administrator  
344 W. Main St.  
Marshall, MN 56258

**23. JURY TRIAL WAIVER.**

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES THAT THEY EACH WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST ANY OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

**24. GOVERNING LAW.**

This Agreement shall be governed by the laws of the State of Minnesota.

**25. COUNTERPARTS AND ELECTRONIC SIGNATURES.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

**26. SURVIVAL.**

Any provisions, which by their nature, are intended to survive, shall survive the expiration or termination of this Agreement, including the limitations of liability and indemnity provisions herein.

**27. SEVERABILITY.**

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule by a court of competent jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

**28. APPROVALS.**

With respect to any approval or consent required under the terms of this Agreement, approval by email shall be deemed sufficient and effective and neither Party shall unreasonably withhold, condition, or delay any such approval or consent.

**29. ENTIRE AGREEMENT.**


This Agreement, including Exhibit A (Sponsorship Rights, VIK), Exhibit A-1, and Exhibit B (Sponsor Business Categories) attached hereto, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

**30. HEADINGS; CONSTRUCTION.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) terms used in the plural include the singular and vice versa; (b) any reference to an "Exhibit" or a "Section" refers to an Exhibit, or a Section, as the case may be, of this Agreement; (c) the Exhibits hereto form part of this Agreement; (d) all references to this Agreement and the words "herein", "hereof", "hereto" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Exhibit, Section, or other subdivision; (e) all Section and Exhibit headings are for convenience only and shall not affect the interpretation or construction of this Agreement; (f) the words "including," "included" and "includes" mean inclusion without limitation; (g) the word "or" is not exclusive and shall have the meaning commonly ascribed to the term "and/or"; and (h) any legal or equitable principles that might require or permit the construction of this Agreement or any provision hereof against the Party drafting this Agreement shall not apply in any construction or interpretation of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first above written.

<b>SPONSOR</b>	CLARITY TELECOM, LLC D/B/A BLUEPEAK  By: <u></u> Name: <u>RICH FISH</u> Title: <u>CEO</u>
<b>CITY</b>	CITY OF MARSHALL  By: _____ Name: Robert J. Byrnes Title: Mayor
	ATTEST:  By: _____ Name: Kyle Box Title: City Clerk

**EXHIBIT A**  
**SPONSORSHIP RIGHTS, VIK**

**1. SPONSORSHIP RIGHTS.**

In exchange for the VIK, as defined in Section 2 of this Exhibit A, the Sponsor will receive the rights, benefits, signage, marketing and promotional assets and other entitlements set forth below in connection with the Property and all events and games taking place at the Property during the Term (collectively, the "Sponsorship Rights"). Unless otherwise specified herein, the size, duration, number and location of all signage, promotions and other displays or points of presence/marketing exposures referenced herein shall be mutually agreed upon by the Parties in good faith, provided that to the maximum extent possible, the City shall afford Sponsor prominent placement and treatment with respect to all such elements (e.g., placement in the best available, and most prominent, locations of the Property). Unless otherwise specified herein, all such advertising, sponsorship, promotional rights, and other benefits shall be at no additional cost or expense to Sponsor. The initial production and installation costs and expenses for applicable signage shall be borne by the City; provided that production and copy costs for camera-ready artwork and production costs of changed advertising copy shall be the responsibility of Sponsor. Following satisfactory production and installation of such signage (as approved by Sponsor), Sponsor shall be responsible for artwork and production costs attributable to changes or rebranding to such signage as requested by Sponsor. If such production work is to be completed by the City and reimbursed by Sponsor, Sponsor will be billed at net cost by the City for such production work; provided that Sponsor shall not be responsible for any such cost or expense incurred by the City that has not been approved in advance in writing by Sponsor. The City will provide reasonable advance written notice to Sponsor with respect to any print ad, video/LED and/or other media submission format requirements and deadlines, if and as applicable. Sponsor will be entitled to change-out and/or "refresh" its content and/or messaging for any of the following assets from time to time during the Term, subject to the City's approval.

The form and content of any advertisements, promotional materials, advertising copy and other display materials for Sponsor arising from this Agreement shall be subject to the prior written approval of the City. Following initial installation, the City shall be responsible for all repair and maintenance costs with respect to any display or signage provided to Sponsor under this Agreement. For purposes of clarity, at its sole cost and expense, the City shall be solely responsible for (a) the maintenance of all such signage and displays (including, without limitation, maintenance of the structures supporting the signage and/or display of the electrical system, so that the signage and/or display is properly illuminated), as well as for obtaining applicable permits and other approvals in connection therewith (e.g., from the county or other third parties), including, if necessary, the replacement of existing signage, as needed to preserve the appearance of a Property, and (b) removal of such signage upon the expiration or termination of this Agreement. The City hereby represents and warrants that the City, at its sole cost and expense, shall keep Sponsor's signage and displays in good repair throughout the Term (including, without limitation, replacement of any faded, damaged, obsolete, or defective signage). Determination as to whether any signage must be replaced shall be made by mutual agreement of the Parties. Any request by any Party regarding replacement of any signage shall be made based upon reasonable criteria and shall be made in good faith. The City agrees that during the Term there will be no alteration or removal of any signage and/or displays described herein without Sponsor's prior consent.

To the extent that any Sponsorship Rights to be provided for under this Agreement become impossible or impracticable to provide (each, an "Unavailable Benefit"), upon request by Sponsor, the City shall propose to Sponsor, in lieu of such Unavailable Benefit, one or more substitute promotions or benefits or advertisements ("Substitute Benefits") having substantially the same sponsorship or promotional value in the aggregate as the Unavailable Benefit, as mutually agreed upon by the Parties.

- (A) Signage and branding. The Sponsor will receive the right, at all events and games taking place at the Property, to:

- (i) **Four (4) Under Ice Logos.** Sponsor shall receive four (4) under ice logo advertisements, two (2) on Main Rink and two (2) on Secondary Rink.
  - (ii) **Two (2) Dasherboards.** Sponsor shall receive two (2) dashboard advertisements on the Main Rink.
  - (iii) **ProStar (videoboard).** Sponsor shall receive recognition on the Pro Star Video Board including a .30 second commercial spot during pre-game warm up of all games going on in the Ice Arena.
  - (iv) **Website.** Sponsor shall receive a billboard advertisement on the partner's page of the Property website and Property event calendar as well as a direct link to Sponsor. There will also be a Bluepeak logo on the Property app when applicable.
  - (v) **Press Release.** Sponsor's name will be on all press releases, social media, and when possible, on live media interviews.
  - (vi) **Proud or Official.** Sponsor will have the right call itself a "proud" or "official" sponsor of the Property and reference the same in all marketing and promotional materials.
  - (vii) **Club Room.** Title sponsor and signage in the Club Room (the "Bluepeak Club Room").
  - (viii) **TV.** TV cling advertising on TV's within the Property.
  - (ix) **Bluepeak Power Play.** Naming rights each time there is a power play.
  - (x) **Marketing Ideas.** Sponsor and the City may agree to additional marketing concepts at various times during the Term of this Agreement.
- (B) **Event Rights.** The Sponsor will receive the right to support the following at City sponsored events:
- (i) **Postgame Events.** Sponsor shall be the title sponsor of postgame events.
  - (ii) **Between 2<sup>nd</sup> & 3<sup>rd</sup> period(s).** Sponsor shall sponsor the event (i.e., puck toss, little league game, etc.,) on the rink between 2<sup>nd</sup> & 3<sup>rd</sup> periods when applicable.
- (C) **Media Rights.** The Sponsor will receive the right, valued at the amounts listed below, to:
- (i) **In Ice Logos:** \$10,000.00  
**Landing Pg. Co-Branding:** \$2,000.00
  - (ii) **Dasher Board Sponsorship:** \$2,000.00
  - (iii) **Club Room Naming Rights:** \$9,000.00
  - (iv) **TV Clings:** \$1,000.00
  - (v) **Total Advertising Package:** \$24,000.00

## 2. VIK.

In exchange for the Sponsorship Rights as defined herein, the Sponsor agrees to provide the value-in-kind

(consisting of the products and service) as set forth in Section 3 of this Exhibit A (the "VIK").

### 3. PUBLIC WI-FI.

The Sponsor currently provides and manages a public Wi-Fi network at the Property, using a Rukus high density wireless solution. Sponsor will continue to provide public Wi-Fi in the Red Baron Arena & Expo, and at the Schwan Regional Amateur Sports Center, adjacent to the Red Baron Arena & Expo, consistent (in all material respects) with past practice and subject to the terms herein.

(A) Subject to the terms set forth herein and in attached Exhibit A-1, Sponsor shall provide:

- (i) Fiber Internet and transport to the Property as deemed required by Sponsor to support the public Wi-Fi network.
- (ii) Complete management of the public Wi-Fi network.
- (iii) All reoccurring Internet & phone costs and management:
  - Valued at (and not to exceed, on a time and materials basis at Sponsor's then-current rates) \$2,000.00 per month or \$72,000.00 for the full three (3) year Term.
- (iv) Internet Bandwidth for the Wi-Fi network.

(B) The City shall provide:

- (i) Power at each WAP (Wireless Access Point)
- (ii) Rack space and power in the arena for equipment.

(C) Other public Wi-Fi network terms:

- (i) Be free for the public for up to two (2) hours per day.
- (ii) Customers of Sponsor will have unlimited access to the public Wi-Fi network provided by Sponsor.
- (iii) The public Wi-Fi network shall be for public use while using the Property and shall not be used for commercial or business purposes or to replace any other internet connections that may be required on a permanent basis.
- (iv) Sponsor will monitor the public Wi-Fi network and blacklist any device, at Sponsor's sole discretion, any device that appears to be permanently using the public Wi-Fi network.
- (v) Sponsor will provide an authentication service and manage the authentication of devices to register to the public Wi-Fi network.
- (vi) Sponsor will maintain and control a landing page for device authentication.
- (vii) Sponsor agrees to provide marketing space on the landing page for Property, and both Parties agree it is in the spirit of the Agreement for Sponsor to cobrand the landing page with Property.

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## EXHIBIT A-1

Sponsor's provision of, and users' use of, the VIK shall be subject to Sponsor's standard terms and conditions (other than payment) and acceptable use policy, available at <https://mybluepeak.com/terms-conditions/#AcceptableUse> or as such terms and conditions are otherwise provided to the City from time to time upon request. In the event of any conflict between such standard terms and conditions and the terms of this Agreement, such standard terms and conditions shall govern and prevail. In connection with Sponsor's provision of the VIK, Sponsor shall be entitled to post reasonable signage and branding on the Property regarding such service (e.g., "splash page" recognition of Sponsor during the customer sign-on process to the Wi-Fi service, and mutually agreed upon external advertising and other promotional opportunities). All such signage shall be subject to the City's prior review and approval in accordance with the terms of the Agreement. Sponsor shall, at Sponsor's sole cost and expense, maintain, repair and/or replace the VIK service and related equipment, as applicable in Sponsor's reasonable discretion.

The City represents, warrants and covenants to Sponsor that the City has obtained any and all requisite approvals from the owner of the Property (if any Property is not owned by the City) (the "Owner") to enter into this Agreement and to grant certain rights to Sponsor as more specifically set forth herein including, without limitation, the right to install the Equipment to and at the Property.

The City hereby grants Sponsor, its successors and assigns, and its authorized agents and contractors, access to the interior and exterior of the Property (including building rooftop(s)) for the purpose of installation, maintenance, repair, upgrade, disconnection, replacement and/or removal of the Equipment. The City agrees to provide a standard power source for operation of the Equipment. The City will not permit any third party to attach Service-related equipment to, or install Service-related equipment within, or operate a Service from or upon, the Property that would interfere with the Equipment. The City grants Sponsor the right to advertise, market and otherwise promote the Property as being a Sponsor provided Service access point in any and all forms of media now known or hereafter developed, in Sponsor's sole discretion. The City grants Sponsor a license to use the names, trademarks, and logos of the City and/or the Property in connection with such advertising, marketing, and promotion (subject in each case to the prior approval of the City).

Equipment may not be relocated, removed, disturbed, tapped, or interfered with by the City or the Owner. Except as otherwise agreed by the Parties in writing, the City shall ensure that (a) the VIK services described herein shall be limited to visitor personal use and does not include commercial use by the City; (b) if and as needed, the City shall allow Sponsor to install and operate additional Wi-Fi-related equipment and antennas (the "Equipment") to and on the Property and related facilities, as reasonably necessary to provide the service and at locations mutually agreed by the parties; (c) if required, the City would provide a standard power source for operation of the Equipment; and (d) the Equipment shall remain the property of Sponsor and Sponsor shall, at its own cost, remove the Equipment upon termination of the Agreement (unless otherwise agreed by the Parties in writing). For purposes of clarity, Sponsor shall have no liability for any damages to the Property in connection with removal of the Equipment and the City shall indemnify, defend, and hold Sponsor harmless from and against all loss, damage, cost, expense, and liability in connection with such removal.

The City shall continue to allow Sponsor to access, provide, and use the following, consistent with past practice and the Parties' course of dealing: (i) a Point of Entry from Sponsor's network into the Property, and/or point of exit, if needed; (ii) installation of meters and Sponsor-provided power supplies; (iii) installation of Sponsor-provided vertical risers, within vertical conduit or sleeves in locked telecommunications closets; (iv) installation of plywood within telecommunications closets (for mounting of Equipment by Sponsor); (v) installation of Sponsor-provided wiring to all necessary locations in the horizontal conduit; and (vi) installation of Sponsor-provided internal wiring. The City shall provide customary and reasonable security to protect all Equipment from theft, damage, or other loss.

The City's right to receive VIK is not transferable (unless approved by Sponsor in writing on a case by



case basis) and void where prohibited.

VIK shall have no refund value and is not redeemable for cash. VIK NOT USED WITHIN THE TIMES SPECIFIED AND/OR RENDERED UNAVAILABLE OR CONTRARY TO THE TERMS HEREOF DUE TO ANY ACT OR OMISSION OF THE CITY OR ITS REPRESENTATIVE(S) WILL BE DEEMED FORFEITED. UPON TERMINATION OF THIS AGREEMENT FOR ANY REASON (OTHER THAN A MATERIAL BREACH BY SPONSOR), ALL OF THE CITY'S RIGHTS TO ANY UNUSED VIK HEREUNDER WILL AUTOMATICALLY TERMINATE AND WILL BE DEEMED FORFEITED.

**EXHIBIT B**  
**SPONSOR BUSINESS CATEGORIES**

Under this Agreement, "Sponsor Business Categories" shall mean:

- (A) Residential and business class video services, regardless of platform or method of distribution, including analog, digital, and/or digital high-definition cable video systems/services, video transport systems/services, open video systems, pay-per-view systems, multi-point distribution systems (MDS or MMDS), satellite television services, SCBJTV systems, or direct broadcast systems (DBS), video on demand (VOD), and/or other multi-channel television, cable or broadband programming systems/services (and specifically including, without limitation, video services such as those offered by Charter/Spectrum, Verizon FiOS, Grande Communications, AT&T Uverse, SureWest, Google Fiber, Dish Network, Direct TV, any MSOs, Netflix, Amazon, Redbox, and Hulu, and any other streaming video service provider);
- (B) Wireless and wireline residential and business class data, fiber optic and/or Internet access or any other transport or network service for Internet Protocol based information (including, without limitation, via analog, digital, and/or broadband dial-up modem or telephone lines, over a cable or dedicated subscriber or communications line, or otherwise);
- (C) Residential and business class in-home/office/venue wireless fidelity (Wi-Fi) technologies and services;
- (D) Business class telecommunications services, including analog fiber optic, dial-up modem or telephone lines, digital Voice over Internet Protocol (VoIP) (e.g., those provided by Skype) or other cable and/or broadband telephony services and/or home phone local and long distance telephone services, including wireless voice services;
- (E) Only to the extent that Sponsor offers such services in Marshall, Minnesota: home security monitoring products and services (including security monitoring services provided by a central monitoring center, home monitoring (via IP cameras installed in the home and alarming), etc.) and/or home "automation" and energy management products and services (including lights, thermostats, alarms) and/or installation, maintenance, and repair services for the same; and/or
- (F) Any product or service that may reasonably be used as a substitute for any of the products or services identified in subsections (A) – (E), above.