

CABLE TELEVISION AGREEMENT

This Cable Television Agreement (“Agreement”) is made and entered into this _____ day of _____, 2023, by and between the City of Norman, OK, a municipal corporation, hereinafter referred to as the “City,” and Clarity Telecom, LLC, d/b/a Bluepeak Fiber, hereinafter referred to as “Clarity” or “Company,” with Clarity and City sometimes separately referred to hereinafter as a “party,” and sometimes collectively as “parties.”

WHEREAS, the City’s role as manager of public rights-of-way and easements and as a regulator of cable service requires it to maintain a fair and level playing field for all such service providers; and

WHEREAS, City and Clarity have determined that it is in the best interest of all parties, including the citizens of City, that Clarity be granted the right to construct and operate a cable system to provide cable services within the City; and

WHEREAS, the City Council of Norman has relied on Clarity’s representations and has considered all information presented to it by Clarity, by City staff, and the public, and has determined that Clarity has the technical, legal and financial ability to construct and operate a cable system and to provide cable services; and

WHEREAS, based upon such representations, the City Council of Norman has determined to grant Clarity a non-exclusive permit to construct, install, maintain and operate a cable system in the City, subject to the terms and conditions set forth herein and applicable federal, state, and municipal statutes, regulations and ordinances, is consistent with the public interest.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth, the parties agree as follows:

1. Term of Agreement: This non-exclusive Agreement shall take effect the last date of signature below by the City and by Clarity and shall be effective for a term of five (5) years thereafter. Prior to the end of this term, the parties agree to enter into good faith negotiations regarding a possible renewal and/or modification and/or extension of this Agreement, subject to Clarity’s right to commence renewal proceedings under Applicable Law.
2. Definitions. The following words, terms and phrases, when used in this Agreement, shall have the meanings ascribed to them in this section:
 - (A) “Applicable Law” means all federal, state and local statutes, laws, rules, regulations, ordinances and similar governmental requirements applicable to all similarly situated parties on an equal and non-discriminatory basis.
 - (B) “Cable Service” shall have the same meaning as contained in federal statutes, 47 U.S.C. §522(6) on the effective date of this Agreement.
 - (C) “Cable System” shall have the same meaning as contained in federal statutes, 47 U.S.C. §522(7) on the effective date of this Agreement.

- (D) “Public Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by City which shall entitle City and Clarity to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. “Public Way” also means any easement now or hereafter held by City for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle City and Clarity to the use thereof for the purposes of installing Clarity’s Cable System or transmitting Clarity’s Cable Service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

3. Nature of Agreement:

- (A) No privilege or exemption shall be granted or conferred by this Agreement except those specifically prescribed herein.
- (B) Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City by this Agreement shall be subject to transfer by the City to any other legally authorized officer, employee, department, or board of the City.
- (C) This Agreement shall not relieve Clarity of any existing obligations involved in obtaining permits, pole or conduit space from any department of the City, utility company, or from others maintaining utilities in streets.
- (D) This Agreement may not be sold, transferred, leased, assigned or disposed of (except to an affiliate of Clarity or as a result of a merger or other business combination where Clarity is the surviving entity), including but not limited to, by forced or voluntary sale, merger, consolidation, receivership or other means without the prior written consent of the City, and then only under such reasonable conditions as the City may establish under Applicable Law. Such consent as required by the City shall not, however, be unreasonably conditioned, withheld, or delayed. Notwithstanding the foregoing, this Section shall not prevent the assignment or hypothecation of the Agreement by Clarity as security for debt without such approval.
- (E) Clarity represents that it will construct a “Cable System” to provide Cable Service which Cable System shall consist of a set of closed transmission paths and associated signal generation, reception, and control equipment or other equipment that is designed to provide Cable Service to subscribers. This Agreement shall not apply to any service Clarity provides that is not a “Cable Service”. Clarity will comply with all local and federal laws regarding Cable System, including the FCC technical standards set out in Subpart K of 47 C.F. R. Part 76.

- (F) If City enters into or has entered into an arrangement of any kind with any person or entity other than Clarity to enter into the Public Ways for the purpose of constructing or operating a Cable System or providing Cable Service or video service to any part of the City, the City and Clarity will comply with the provisions of applicable federal laws and FCC orders related to additional cable agreements. Except as specifically provided in this paragraph, neither City nor Clarity shall be permitted to take any unilateral action that materially changes the explicit mutual promises and covenants contained in this Agreement, and any changes, modifications or amendments to this Agreement must be made in writing, signed by City and Clarity.
- (G) If either party is not in compliance with the terms of the Agreement, after written notice is provided by the non-breaching party, the offending party has forty-five (45) calendar days to cure the breach, and in the event that any particular breach cannot be reasonably cured within such a period, provided the party in breach is exerting good faith efforts to cure the breach, the period shall toll for so long as such efforts continue in good faith at the approval of the non-breaching Party. No cure period shall be permitted if a party to this Agreement is found to have already materially breached this Agreement three (3) times during any calendar year. In the event a party to this Agreement is in breach and such breach is not cured within the cure period set out above, the non-breaching party may require the breaching party to pay reasonable expenses to cure the breach by providing no less than ninety (90) calendar days prior written notice of request for payment to the breaching party.

4. Obligations of Clarity:

- (A) During the term of this Agreement, Clarity shall pay to City a fee equal to 5% of the gross collected revenues of Clarity and its affiliates from the provision of Cable Service within the City. This fee may be identified and passed through on any subscriber bill by Clarity to the extent not prohibited by Applicable Law, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each calendar quarter.
- (B) For purposes of this Agreement, gross collected revenues means any amounts in whatever form and from any source, directly or indirectly earned or derived by Clarity or any affiliate from the operation of the Cable System to provide Cable Service within the City. The fee shall not apply to Internet access or telephone or voice services offered by Clarity. Nothing in this Agreement shall be construed to prohibit the City from separately imposing any fees on these services to the extent permitted by applicable law.
- (C) During the performance of this Agreement, Clarity shall maintain the following insurance:
 - a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
 - c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.

- d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.
 - e) Clarity shall, upon written request, furnish City with certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to City. City shall require all Project contractors to include City, Clarity, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both City and Clarity, each to the same extent.
- (D) Upon reasonable prior notice, Clarity will grant the City the right to conduct reasonable audits of Clarity's books and records during normal business hours, on a nondisruptive basis, as are reasonably necessary to monitor compliance with the Agreement. City agrees to treat any information disclosed to it by Clarity as confidential, to the extent not prohibited by Applicable Law, and to disclose it only to employees, representatives, and agents of City that have a need to know, or in order to enforce the provisions hereof.
- (E) Clarity and City agree that the Fee for Cable Services shall be in lieu of all other concessions, charges, excises, franchise, license, privilege, permit fees, taxes, or assessments *except* sales taxes, personal or real property taxes, and ad valorem taxes that are payable outside of this Agreement.
- (F) During the term of this Agreement, Clarity shall provide capacity for four (4) "streams" or "channels" of noncommercial educational and governmental programming through Clarity's cable and/video service for the use of City, Norman Public Schools, the University of Oklahoma, and other educational institutions designated by the City. All programming shall be provided by the City or educational entities in a format compatible with Clarity's technology. Clarity shall not be required to share video programming with any other video service provider authorized to do business in the City.
- (G) Clarity shall comply with the federal Emergency Alert System regulations (47 C.F.R. Part 11).
- (H) The parties agree to consult in the event that, after execution of this Agreement, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either City or Company, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the original intentions of the parties.
- (I) No user of the Cable System who lawfully receives Cable Service with Clarity's express permission, shall be refused service arbitrarily. If such residence is located within 125 feet of Clarity's feeder cable, the Cable Service will be provided at Clarity's

- published rate for standard installations. However, if the subscriber is located in an area where there would not be at least 40 residences per linear stand mile of cable as measured from Clarity's closest commercially reasonable tie-in point that is actively delivering Cable Service as of the date of such request for service, or if such residence is located farther than 125 feet from Clarity's nearest feeder cable, then Clarity shall only be required to extend the Cable System to subscribers in that area if the subscribers are willing to pay the capital costs of extending the Cable System. Clarity may require that such subscribers pay the capital contribution for construction in advance. Subscribers also shall be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence. Cable Service offered to Subscribers pursuant to this Article shall be conditioned upon Clarity having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. Nothing herein shall be construed to limit Clarity's ability to offer or provide bulk rate discounts or promotions.
- (J) All transmission and distribution structures, poles, other lines, and equipment installed or erected by Clarity pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways. Clarity shall comply with all right of way and easement management ordinances and/or regulations enacted by City, including such ordinances and/or regulations enacted after the effective date of this Agreement.
- (K) If during the course of Clarity's construction, operation, or maintenance of the Cable System, there occurs a disturbance of any Public Way by Clarity, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.
- (L) Subject to the City making a reasonable alternative pathway available to Clarity for such relocation (including in terms of cost and technical feasibility), and upon its receipt of reasonable advance notice, Clarity shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of Clarity when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by City. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to Clarity.
- (M) Clarity shall, on the request of any person or entity holding a building or other structure moving permit issued by City, temporarily raise or lower its wires to permit the moving of such building or other structure, provided: i) the expense of such temporary raising or lowering of wires is paid by such person or entity, including, if required by Clarity, making such payment in advance; and ii) Clarity is given not fewer than ten (10) business days' advance written notice to arrange for such temporary wire changes.
- (N) Clarity shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the City so as to prevent branches from coming in contact with

Clarity wires, cables, or other equipment. Clarity shall comply with reasonable standards for trimming put in place by the City's forester, and limited to the minimum required for adequate clearance.

- (O) Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the City.
 - (P) In those areas of the City where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, Clarity likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Clarity's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the City where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Clarity shall attempt to construct, operate, and maintain all of its transmission and distribution facilities underground where commercially reasonable. Nothing contained in this paragraph shall require Clarity to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this paragraph, in the event that all of the transmissions or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Agreement, Clarity shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.
5. Obligations of City. City will not attempt to nor subject the provision of Clarity's Cable Service to regulation under any provision of the City's cable television or broadband telecommunications franchise ordinance or similar ordinance(s) that are inconsistent with or more burdensome than those contained herein. In addition:
- (A) City agrees to subject the construction and installation of the facilities that will be used in whole or in part to provide Clarity's Cable Service to the same process and review as it subjects the installation and construction of traditional telecommunications infrastructure;
 - (B) City agrees not to unreasonably block, restrict, or limit the construction and installation of facilities that will be used in whole or in part to provide Clarity's Cable Service;
 - (C) City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with placement of communications or transmission facilities of any kind in a timely and prompt manner; and

- (D) City hereby grants to Clarity the nonexclusive right to construct and operate a Cable System and offer Cable Service and other service in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Agreement shall be construed to prohibit Clarity from offering any service over its Cable System that is not prohibited by Applicable Law.
6. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.
7. Entire Agreement. This Agreement constitutes the entire agreement between City and Clarity with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and Clarity regarding the subject matter hereof.
8. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.
9. Miscellaneous.
- (A) Clarity and City each hereby represents and warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.
- (B) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.
- (C) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.
- (D) This Agreement shall not be exclusive, and the City expressly reserves the right to enter into similar agreements with any other company offering the same or similar video services at any time.
- (E) The geographic area covered by this Agreement shall be the incorporated limits of the City of Norman, Oklahoma, as such area now exists or may be modified in the future by annexation or deannexation.

- (F) The parties agree that either Cleveland County District Court (21st Judicial District) or the United States District Court for the Western District of Oklahoma shall be the sole and exclusive forum for any judiciable disputes concerning this Agreement.
10. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.
11. Employment Requirements. Clarity shall afford equal opportunity in employment to all qualified persons as required by Applicable Law. No person shall be discriminated against in employment because of race, color, sex, religion, gender, national origin, age, familial status or disability in violation of Applicable Law.
12. Notices. Unless otherwise provided by Applicable Law, all notices or approvals pursuant to this Agreement shall be in writing and shall be deemed to be sufficiently given upon delivery to the address set forth below by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service (such as Federal Express). If questioned, the party sending a notice shall have the burden to prove receipt or rejection. Rejected notices shall be deemed delivered. The parties may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this section.

To City: City Clerk
City of Norman
201 West Gray, P.O. Box 370
Norman, Oklahoma 73070

Copy to: Kathryn.Walker@normanok.gov

To Clarity/Bluepeak: Bluepeak Fiber
4600 S. Ulster Street, Suite 1300
Denver, CO 80237
Attn: Legal Notices

Copy to: compliance.team@mybluepeak.com

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the dates set forth below.

City:

APPROVED by the City Council of The City of Norman, Oklahoma, on the ____ day of _____, 2023.

MAYOR

ATTEST:

City Clerk

REVIEWED as to form and legality this _____ day of _____, 2023.

City Attorney

Clarity Telecom, LLC:

Signature: _____

Printed Name: _____

Title: _____

Date: _____, 2023