

LICENSE AGREEMENT

This **LICENSE AGREEMENT** (“License Agreement”) is entered into this 4th day of August, 2022 (the “Effective Date”), by and between the City of Pueblo, a Municipal Corporation (hereinafter referred to as “City”), and Clarity Telecom, LLC (D/B/A Bluepeak Fiber), a Delaware Limited Liability Company (hereinafter referred to as “Licensee”). Licensee and City may sometimes be referred to in this License Agreement individually as a “party” or collectively as the “parties.”

WITNESSETH

WHEREAS, the City is a Colorado home rule city organized and existing under and by virtue of Article XX of the Colorado Constitution and possesses plenary power and authority over the use and occupation of the public rights of way within its corporate boundaries; and

WHEREAS, Licensee represents and warrants: (a) that it is a “Broadband provider” as that term is defined under Colorado and federal law, including, but not limited to, §38-5.5-102(3), C.R.S., or a “telecommunications provider” as that term is defined under Colorado and federal law, including, but not limited to, §38-5.5-102(9), C.R.S and 47 U.S.C. § 153(51); and (b) that it operates within the geographical boundaries of the City of Pueblo; and

WHEREAS, Licensee provides its telecommunications and/or Broadband services to customers over a network owned, controlled, or leased by Licensee which lines are authorized pursuant to franchise, license agreement, or revocable permit; and

WHEREAS, Licensee may wish to install telecommunications and/or Broadband facilities upon or within certain public rights of way within the corporate boundaries of the City in order to provide telecommunications and/or Broadband services; and

WHEREAS, City is authorized under the constitution and laws of the State of Colorado to grant consent to telecommunications and/or Broadband providers to occupy the public rights of way for such purposes; provided, however, the same shall not be nor constitute the granting of a local franchise under Article 16 of the City’s Charter nor shall same ever become or ripen into any franchise; and

WHEREAS, the City and Licensee have agreed to be bound by the terms and conditions set forth herein which shall govern Licensee’s use of the public rights of way.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions, and mutual promises set forth herein, the parties agree as follows:

ARTICLE I - DEFINITIONS

As used in this License Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this License Agreement, the word “shall” is mandatory, and the word “may” is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this License Agreement.

1. “Telecommunications Act” shall mean the Telecommunications Act of 1996 (47 U.S.C. §151, et seq.), as amended.

2. (a) “Facilities” means all physical components of the Licensee used to provide telecommunications and/or Broadband services which are located, or to become located pursuant to this License Agreement, within the City and are reasonably necessary, useful, or convenient to provide telecommunications and/or Broadband services within the territorial boundaries of the City, including, without limitation, poles, wires, cables, pipes, underground conduits, ducts, manholes, vaults, fiber optic cables and devices, switches, equipment boxes and sheds, and other structures and appurtenances. This term shall also include any Facilities which were installed under any prior License Agreement between the City and Licensee.

(b) “Leased Facilities” means all physical components used by Licensee to provide telecommunications and/or Broadband services which are leased to Licensee by third parties who are authorized by separate instruments to maintain same within Rights of Way within the City.

3. “Account” shall mean each telephone, telecommunications and/or Broadband access line or twisted pair equivalent provided by or on behalf of Licensee, if Licensee provides any type of local exchange service, at a customer’s premises over which the customer may send or receive any telephone, telegraph, fax, data, video, or other similar telecommunications and/or Broadband signals; except that “Account” shall not include any customer line used solely for receipt of cable television programming. Provision of a T1 or DS1 line furnished by Licensee to a customer which is connected to switched access service or local exchange service shall be counted as twenty-four (24) accounts; provision of a T3/DS3 shall be counted as six hundred seventy-two (672) accounts.

4. “Jurisdiction” shall mean (a) within the corporate boundaries of the City of Pueblo as now or hereafter constituted, (b) at, upon, under, or across the Pueblo Municipal Airport (“Airport”) and Pueblo Municipal Airport Industrial Park (“Industrial Park”), and (c) all highways, streets, roads, and other rights of way between and connecting the City of Pueblo and the Airport and/or Industrial Park where Facilities are located.

5. “Rights of Way” shall mean City streets, roads, alleys, sidewalk areas, and other dedicated rights of way within the Jurisdiction, together with dedicated utility easements within the Jurisdiction and easements deeded to the City for utility purposes, and including state highways and highways which are part of the federal interstate highway system. The term shall not include

any other property owned or leased by the City for other public use including, without limitation, City parks and open spaces.

6. “PMC” shall mean the Pueblo Municipal Code, as amended, and as same may be amended in the future.

7. “Wireless Communications Facility” or “WCF” means a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

ARTICLE II - CONDITIONAL CONSENT GRANTED

1. Subject to Licensee’s compliance at all times with all of the terms and conditions of this License Agreement, all of the ordinances referenced herein, all applicable local, state, and federal laws, and further subject to the City’s lawful exercise of its police power (including, but not limited to, zoning, subdivision, permit, and building code requirements) and the City’s prior and superior right to usage for municipal purposes, the City hereby grants to Licensee, insofar as it has or may have the requisite power and authority to do so, a non-exclusive license to make reasonable use of the Rights of Way to construct, install, operate, and maintain Licensee’s Facilities in, through, over, above, and along the City’s Rights-of-Way within the City to and for the benefit of the City and the inhabitants of the City; provided, however, that with respect to state highways, Licensee must separately obtain consent from the Colorado Department of Transportation. This License Agreement shall extend to all areas of the City as it is now constituted, and to additional areas as the City may increase in size by annexation or otherwise.

2. The license granted herein to make reasonable use of the Rights of Way shall not be deemed to be a franchise, nor an exclusive license or right, and the City reserves the right to make or grant a similar use of the Rights of Way to any other person or persons, including one or more other telecommunications providers.

3. The City retains the following rights in regard to this license:

(a) To revoke the license and consent hereby granted for misuse, non-use, or failure of Licensee to comply with the provisions hereof;

(b) To use, control, and regulate the use of the City streets, roads, easements, other public places, and the Rights of Way, and the space above and beneath the same; and

(c) To require the removal or relocation of any of the Facilities from the Rights of Way if necessary or desirable, in the sole but reasonable judgment of the City, for any public or municipal purpose or project.

4. The license granted herein to make reasonable use of the Rights of Way shall not be deemed to grant authorization to construct or operate Wireless Communications Facilities. Authorization to utilize the Rights of Way for Wireless Communications Facilities must be obtained through separate authorization specifically permitting the use of the Rights of Way for Wireless Communications Facilities.

ARTICLE III - SCOPE

The license and consent granted by this License Agreement confer only the right to make reasonable use of the Rights of Way for Licensee's provision of telecommunications and/or Broadband services, and it is expressly understood and agreed to by Licensee that Licensee shall not operate a private telecommunications network, Wireless Communications Facilities, nor operate as a "cable operator" as that term is defined under federal law (47 U.S.C. §522(5)), nor shall it provide or offer to provide "cable services" as that term is defined under federal law (47 U.S.C. §522(6)), without proper local, state and federal authorization, as required by law.

ARTICLE IV - OCCUPATION TAX & E911 SURCHARGES

1. To the extent Licensee operates as a local exchange provider, as defined by §40-15-102(18), C.R.S. and/or as an interexchange provider, as defined by §40-15-102(11), C.R.S the following provisions shall apply:

(a) Licensee understands and acknowledges that City had heretofore adopted Ordinance No. 4267 in December 1976 imposing upon all telecommunications utilities operating within the City, and effective January 1, 1977, an occupation tax as stated in said Ordinance. In its provision of local exchange services, whether directly or through resale, Licensee agrees to be bound by and comply with said Ordinance, including payment of the tax in an amount equal to six dollars (\$6.00) per annum for each Account, payable quarterly in equal installments. In providing local exchange services, Licensee hereby expressly agrees that it is and constitutes a telephone utility within the meaning of Ordinance No. 4267 and Licensee irrevocably waives and relinquishes any right it has or may have to claim or assert that said Ordinance is invalid under law or should not be applied to Licensee, including, without limitation, any claim that said Ordinance violates any provision of state law or the Telecommunications Act.

(b) The City has by Ordinance No. 9864 imposed an emergency telephone charge ("E911 Charge") of one dollar seventy-two cents (\$1.72) per month per exchange access facility, wireless communications access, and interconnected voice-over-internet-protocol service provided within the Jurisdiction, as authorized by §29-11-100.5, et seq., C.R.S. Licensee agrees to collect the E911 Charge from its customers and promptly remit the same monthly E911 Charge to the City as provided by §29-11-103(1), C.R.S.

ARTICLE V - SALES AND USE TAXES

1. Licensee agrees to obtain a sales and use tax license from the City and to comply with all provisions of Title XIV of the Pueblo Municipal Code relating to sales and use taxes.

2. Licensee acknowledges and agrees that to the extent Licensee sells telecommunications services to customers within the City, including the provision of interstate telephone access service and interlata access service, such service is taxable by the City pursuant to §14-4-61(3), PMC, and Licensee shall collect such taxes from its customers and promptly remit same to the City in accordance with Title XIV, PMC.

ARTICLE VI - USE OF RIGHTS OF WAY

1. Facilities shall be located, installed, and maintained so that none of the Facilities endanger the lives, health, or safety of persons, or interfere with any public improvements the City or other governmental entities (including any stormwater, sanitary sewer, or water utilities or enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Facilities hinder or obstruct the use of the streets or other public ways for their public purposes, including, but not limited to, vehicular and pedestrian traffic. All Facilities shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any Right of Way.

2. Prior to the commencement of construction of any portion of its telecommunications system within the City (other than Leased Facilities), Licensee shall furnish to the City the general schematic plans for its Facilities, including system route maps, renderings of equipment boxes and structures, engineering, traffic control, and landscaping plans. In addition, the Licensee shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure, (a) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (b) that aesthetic and good planning principles have been given due consideration, and (c) that adverse impact on the environment has been minimized. The Licensee shall comply with all regulatory requirements of the City lawfully binding on the Licensee and shall incorporate all other reasonable changes to its plans requested by the City.

3. Not less than thirty (30) days prior to construction of any Facilities within the Rights of Way at any specific location, Licensee shall furnish the City's Director of Public Works with detailed plans for such Facilities including detailed location drawings and final architectural, engineering, traffic control, and landscaping plans. Prior to commencing construction, Licensee shall: (a) obtain written approval of the Director of Public Works of the construction plans, (b) procure appropriate excavation permits pursuant to Chapter 6 of Title XII, PMC, and permits required by Chapter 3 of Title XII, PMC, or permits required pursuant to any similar ordinance adopted by City in the future, (c) pay all fees associated with such permits, and (d) comply with all requirements of said Chapters 3 and 6 of Title XII, the terms of said permits, and the City's Standard Construction Specifications and Standard Details adopted March 28, 2005, or as

subsequently revised.

4. All construction, excavation, maintenance, and repair work done by Licensee shall be done in a workmanlike and expeditious manner that minimizes the inconvenience to the City, the general public, and individuals. Licensee shall be liable for any damage to the City or City-owned property caused by Licensee's failure to act in a timely manner. All such construction, excavation, maintenance, and repair work done by Licensee shall comply with all applicable codes of the City and the State of Colorado, and Licensee shall be responsible for obtaining all applicable permits and licenses. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes and permits, and may order Licensee to perform corrective work. All public and private property disturbed by Licensee's activities shall be promptly restored by Licensee at its expense to substantially its former condition, subject to inspection by the City's Director of Public Works or their designee and compliance by Licensee with reasonable remedial action required by said official pursuant to the inspection. Licensee shall be liable to the City for the full cost of restoring any public property not promptly remedied by Licensee as required by said official.

5. The installation, maintenance, renovation, and replacement of Facilities by Licensee shall be subject to regulation by the City including as to (a) the location of Facilities in or upon the streets, alleys, and dedicated easements, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements, and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, electric and natural gas facilities, street lights, traffic signals, and all other municipal or authorized public use of the Rights of Way. The City's Director of Public Works may direct and require Licensee to locate its Facilities within a defined telecommunications corridor within any street or other Right of Way or otherwise at a specific location to minimize interference with other facilities or utilities. Licensee shall install and maintain its Facilities in such manner as to minimize interference with trees, natural features, and vegetation. Whenever feasible, Licensee shall enter into pole-sharing and conduit-sharing agreements with third parties in order to co-locate its wires and cables upon poles or within the conduit of other telecommunications providers or utilities.

6. Licensee shall, upon reasonable notice of not less than sixty (60) days, and at its sole cost and expense, remove, locate, and relocate its Facilities in, on, over, or under any Rights of Way in such manner as the City may at any time require for the purpose of facilitating the construction, reconstruction, maintenance, repair, or change in grade of any street, sidewalk, public improvement, or City project, or for the purpose of promoting the efficient operation of any such public improvement or project, or for the purpose of facilitating the vacation and/or redevelopment of Right of Way by the City. In the event Licensee fails to act within a reasonably allocated time, the City may cause Licensee's Facilities to be relocated, and Licensee shall be liable to the City for the costs thereof. In the event the City causes Licensee's facilities to be relocated, the City shall be held harmless for any damages incurred to Licensee's Facilities during such relocation.

Licensee may request an extension of time to relocate facilities due to the inability to relocate its Facilities due to the actions or inactions of a third party which is unaffiliated with Licensee and not under contract with or under the control of Licensee. Such request for extension shall not be unreasonably withheld by the City.

7. Except where specifically authorized by the Director of Public Works of the City, all of Licensee's Facilities located within Rights of Way shall be located underground. In locations where wires or cables of franchisees of the City or of authorized local exchange carriers are presently located above-ground, the Director of Public Works will allow Licensee's Facilities to also be located above-ground unless he has specific reasons for not allowing above-ground installation at such location. Thereafter, and notwithstanding that any such authorization had been given, should the City subsequently determine for any area of the City that telephone or telecommunications wires, cable television cables, or electric utility wires located above ground shall be relocated underground, Licensee shall, upon reasonable notice, at its sole cost and expense, relocate its Facilities below ground in cooperation with other affected interests. In the event that Licensee fails to act within a reasonable allocated time the City may cause Licensee's Facilities to be relocated, and Licensee shall be liable to the City for the costs thereof. In the event the City causes Licensee's Facilities to be relocated, the City shall be held harmless for any damages incurred to Licensee's Facilities during such relocation.

8. After execution of this License Agreement, Licensee shall join and associate with the notification association of owners and operators of underground facilities in accordance with the requirements of Article 1.5 of Title 9, Colorado Revised Statutes. Prior to undertaking any excavation within the Rights of Way, Licensee shall comply with the notice requirements of said Article.

ARTICLE VII - ADDITIONAL CITY REGULATION

1. The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances, and rules and regulations as may be deemed necessary by the City to promote the health, safety, and welfare of its inhabitants and their property.

2. Notwithstanding anything in this License Agreement to the contrary, Licensee acknowledges that the City is planning to develop a new telecommunications policy which will be implemented through one or more ordinances or resolutions to be adopted by the City Council of the City, and/or through regulations to be adopted by Departments of the City. Licensee agrees that upon adoption of any such policy or regulations after the Effective Date, this License Agreement or any provision thereof may be unilaterally revoked or canceled by the City without cause and replaced with new terms and conditions which shall be made equally applicable within each class of Broadband or telecommunications provider operating within the City.

3. If, during the term of this License Agreement, the City is authorized pursuant to

Colorado Law to collect compensation for use of the Rights of Way by telecommunications providers and the City enacts an ordinance concerning the use of Rights of Way which requires compensation for the use of the Rights of Way from any class of telecommunications providers on a competitively neutral and nondiscriminatory basis within such class, then Licensee shall, in accordance with the terms of such ordinance, pay such compensation.

ARTICLE VIII - COORDINATION AND CONDUIT/POLE SHARING

1. In order to minimize disruption to vehicular traffic and inconvenience to the public, and to enable the limited width of Rights of Way to be apportioned among all utilities, telecommunications providers, and other interests needing to locate or maintain facilities in the Rights of Way for the benefit of the public, it is imperative that pole sharing and conduit sharing be encouraged to the greatest extent possible. In furtherance of such purposes, Licensee agrees that it shall reasonably cooperate with the City, authorized utilities, and other local exchange carriers in placing conduit within the Rights of Way and in sharing unused space within underground conduits owned by Licensee, and upon poles or other above-ground facilities owned by Licensee.

2. Whenever the Licensee intends to install new underground conduit or replace existing underground conduit in a build greater than five hundred (500) feet in length, Licensee shall, whenever feasible, provide the City and all utilities, cable television franchisees, and local exchange carriers authorized to use the Rights of Way, with sixty (60) days advance written notice in order to permit the additional contemporaneous installation of conduit by the City, and such utilities, cable television franchisees, authorized telecommunications providers, and local exchange carriers. If the City desires additional conduit installed, it will so notify the Licensee and the City shall be responsible for the additional incremental expense of installing such additional conduit. If a utility, cable television franchisee, authorized telecommunications provider, or local exchange carrier desires additional conduit installed, it will so notify the Licensee in writing at least ten (10) days prior to the proposed construction date, and such party requesting the additional conduit shall be responsible for a pro-rata expense of installing such additional conduit. This Section is intended to maximize the coordination of facilities located within rights of way, and is not intended to govern routine connections of customers to an installed network not involving significant line extension or other excavations of limited scope.

3. Notwithstanding anything to the contrary in Section 2 of this Article VIII, in order to minimize disruption to the public and enable use of the public rights of way for public purposes, in connection with any installation of underground conduit by Licensee, the City may request Licensee to install one additional conduit for exclusive use by the City for public and municipal purposes. In any such case, Licensee shall install the conduit as requested and the City shall reimburse Licensee only for the cost of the conduit and associated handholes and pull boxes for the conduit, and for the additional incremental expense of installing such additional conduit, handholes, and pullboxes.

ARTICLE IX - INDEMNIFICATION

1. Licensee shall install, construct, maintain, and operate its telecommunications and/or Broadband system in a reasonable manner and shall use commercially reasonable efforts to provide reasonable protection against injury or damage to any and all persons or property. Licensee agrees to indemnify, defend, and hold the City harmless from all claims, costs, demands, suits, reasonable expert witness and attorneys' fees, court costs, and other reasonable costs of defense and judgments to the extent the same arise from, in whole or in part, Licensee's negligent acts or omissions or failure to comply with the provisions of this License Agreement, and from all damages or penalties to the extent arising out of the installation, construction, operation, or maintenance of Licensee's telecommunications and/or Broadband system, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License Agreement, except to the extent such damages or penalties result from the negligent acts or omissions or intentional or willful and wanton misconduct of the City. The City shall not be liable for, and Licensee shall indemnify, defend, and hold the City harmless from all costs, damages, and claims to the extent arising from or relating to delay by Licensee in performing its obligations hereunder, for any cause whatsoever, except for the negligent acts or omissions or intentional or willful and wanton misconduct of the City, other users of the Rights of Way, or a force majeure event.

2. The City shall provide prompt written notice to the Licensee of the pendency of any claim or action against the City arising out of the operations of the Licensee, the exercise by the Licensee of its rights under this License Agreement or the performance thereof by the Licensee. Licensee shall have sole control over the defense, investigation, and all negotiations for the compromise or settlement of any such claims; however, Licensee shall not enter into any compromise or settlement which imposes any obligation or liability on the City without the prior written consent of the City. The City shall provide Licensee with all reasonable cooperation, information, and assistance in connection with the claim; provided, however, that failure by the City to provide prompt notice of a claim; grant such sole control; and/or provide such cooperation, information and assistance shall not relieve Licensee of its obligations under this Article IX, except to the extent that the City is materially prejudiced by such failure. In the event that Licensee fails to timely assume the defense of any such claim which has been properly and promptly tendered to Licensee. Licensee also hereby agrees to pay all reasonable expenses of the City incurred by the City in defending itself with regard to any such damages, claims, or penalties, including all out-of-pocket expenses, reasonable attorneys' fees, and the reasonable value of any services rendered by the City Attorney, his assistants, or any employees of the City (collectively "Expenses"), but shall not be required to pay for any Expenses that are in excess of any settlement or compromise which was rejected by the City. Nothing herein shall limit the Licensee's obligation of full indemnification under this License Agreement.

ARTICLE X - INSURANCE

Prior to the commencement of any installation of Facilities under this License Agreement, Licensee shall procure and thereafter continuously maintain, for as long as this License Agreement

remains in effect, at Licensee's expense, Commercial General Liability ("CGL") insurance written on ISO form CG 00 01 01 96, or a substitute form providing equivalent coverage, with a limit of not less than \$2 Million per occurrence, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required CGL policy, this License Agreement shall be defined as an insured contract. The policy shall identify the City as an additional insured, shall contain a waiver of right of subrogation against the City and shall have all necessary endorsements to provide coverage without exclusion for explosion, collapse, and underground property damage hazards. A certificate of insurance shall be filed with the City's Director of Finance prior to commencement of installation of Facilities, which evidences compliance with the policy requirements stated above and provides for thirty (30) days prior written notice to the City prior to cancellation or material change of any insurance referred to therein. In the event the certificate states that it confers no rights upon the certificate holder, the City may require Licensee to furnish a complete copy of the policy including all declarations and endorsements.

ARTICLE XI - TERM

Unless sooner terminated as provided herein, the term of this License Agreement shall be for a period of five (5) years from and after the date of the Agreement. The parties may mutually agree in writing to renew this Agreement at expiration of the initial term.

ARTICLE XII - REMEDIES, TERMINATION, REMOVAL

1. In the event of any breach of the terms of this License Agreement by Licensee, the City shall have the right to obtain one or more of the following remedies, which are expressly agreed to be cumulative, and the exercise of any one (1) or more of them shall not be dependent upon the exercise of any other remedy, nor does the exercise of any one (1) or more of them constitute any bar or limitation to the exercise of any other: (a) specific performance or injunctive relief, (b) monetary damages, and (c) termination. In the event the City is required to commence an action to enforce its rights under this License Agreement or to obtain remedies provided above and the party which substantially prevails therein, shall be entitled to recover its costs, including reasonable attorneys' fees and expert witness fees.

2. Before terminating this License Agreement for cause on account of any default by Licensee, the City shall provide Licensee with written notice of the default and afford Licensee a reasonable period of not less than thirty (30) days in which to cure the default.

3. In the event Licensee abandons the telecommunications or Broadband system installed under the terms of this License Agreement or a certain part thereof or fails to use it for a period of one (1) year, or in the event the term of this License Agreement expires, or this License Agreement is terminated or is canceled for any reason, then Licensee shall remove its telecommunications or Broadband system, or the abandoned portions thereof in the case of a partial

abandonment, at its expense. As an alternative to removal, if mutually agreed to by Licensee and the City, the ownership of the telecommunications or Broadband system (or abandoned portions) may be transferred to the City, in which event, all obligations and liabilities of Licensee under this License Agreement in connection with the portion of the telecommunications or Broadband system so transferred to the City shall terminate.

4. Licensee may cancel this License Agreement at any time, as described below, upon ninety (90) days' written notice to the City, subject to the indemnification requirements of this License Agreement, the removal provisions set forth in Section 3 of this Article XII above, and any other provisions that survive the termination of this License Agreement.

ARTICLE XIII - NOTICES

Except as otherwise provided herein, notice under this License Agreement shall be deemed sufficient if provided in writing and mailed by US certified mail, return receipt requested, or delivered by a nationally recognized courier, and shall be deemed effective upon actual receipt or refusal of delivery, and shall be addressed to the respective party as follows:

If to the City:	Mayor 1 City Hall Pl. Pueblo, CO 81003
with a copy to:	Director of Public Works 211 E. "D" Street Pueblo, CO 81003
If to Licensee:	Clarity Telecom, LLC (D/B/A Bluepeak Fiber) 4600 S. Ulster St. Suite 1300 Denver, CO 80237
with a copy to:	Clarity Telecom, LLC (D/B/A Bluepeak Fiber) 4600 S. Ulster St. Suite 1300 Denver, CO 80237 Attention: General Counsel

ARTICLE XIV - EFFECT OF MORE FAVORABLE LICENSE AGREEMENTS

In the event that any wireline telecommunications provider offering telecommunications services, other than cable services, for a fee to the public, or to such classes of users as to be effectively available to the public is granted consent to use the City's Rights of Way pursuant to terms and conditions which, if applied to Licensee, would be more favorable than those included

herein, Licensee shall notify the City of such terms and conditions and Licensee shall have the option to renegotiate with the City with respect to such terms and conditions.

ARTICLE XV - SUCCESSORS AND ASSIGNS

Licensee may sell, transfer, lease, or assign this License Agreement or its rights under this License Agreement, in whole or in part, with prior thirty (30) days' written notice to the City if to: (a) any entity controlling, controlled by, or under common control with Licensee; or (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization, or consolidation involving Licensee. This License Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No provision of this License Agreement shall confer rights or benefits upon any person not a party hereto.

ARTICLE XVI - SIGNATURES

The persons signing this License Agreement on behalf of Licensee represent and warrant that such persons and Licensee have the requisite power and authority to enter into, execute and deliver this License Agreement and that this License Agreement is a valid and legally binding obligation of Licensee enforceable against Licensee in accordance with its terms. This License Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of such components together shall constitute one and the same instrument. This License Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be: (i) an original, and all of which taken together shall constitute one and the same agreement, (ii) a valid and binding agreement and fully admissible under state and federal law, and (iii) enforceable in accordance with its terms.

ARTICLE XVII - FORCE MAJEURE

Neither party shall be liable for its failure to perform any of its obligations hereunder if such failure is caused by an Act of God, labor strike, fire, earthquake, power blackouts, pandemics, epidemics, or any other cause beyond its reasonable control and without its fault or negligence.

ARTICLE XVIII - LAWS GOVERNING/VENUE

This License Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this License Agreement shall be in the District Court located in Pueblo County, Colorado or the Federal District Court for the District of Colorado to the extent the dispute involves a federal question.

ARTICLE XIX - COUNTERPARTS; ELECTRONIC DISPOSITION

This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this License Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this License Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this License Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

ARTICLE XX - PUBLIC DISCLOSURE

The Licensee acknowledges that this License Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-200.1 *et seq.* as the same may be amended, and accordingly may be disclosed to the public.

ARTICLE XXI - AMENDMENT

This License Agreement may not be amended except pursuant to a written instrument signed by both parties.

ARTICLE XXII - OTHER RIGHTS OF WAY USERS

The parties understand and agree that the Licensor permits other persons and entities to install utility facilities in the PROW. In permitting such work to be done by others, the Licensor shall not be liable to Company for any damage caused by those persons or entities.

ARTICLE XXIII - ENTIRE AGREEMENT

This License Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified, or changed only by an agreement in writing which makes specific reference to this License Agreement and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, Licensee and the City have executed this License Agreement as of the Effective Date first above written and under the laws of the State of Colorado.

ATTEST:

City Clerk

[SEAL]

ATTEST:

Title: _____

CITY OF PUEBLO,
A Municipal Corporation

By: _____
Mayor

CLARITY TELECOM, LLC
(D/B/A BLUEPEAK FIBER),
A Delaware Limited Liability Company

By: 
Title: CHIEF EXECUTIVE OFFICER