



**STANDARD POLE ATTACHMENT LICENSE AGREEMENT**

**BETWEEN**

**CITY PUBLIC SERVICE OF SAN ANTONIO**

**AND**

[ \_\_\_\_\_ ]

**DRAFT**

**CPS ENERGY AGREEMENT NO. \_\_\_\_\_**

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**APPENDICES**

**DRAFT**

## STANDARD POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement (the "Agreement") is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2016, by and between the City of San Antonio, Texas, acting by and through City Public Service of San Antonio, a municipal board of the City of San Antonio ("CPS Energy") and [Company Name] ("Licensee") (collectively, the "Parties").

### RECITALS

- ~~A.~~ Licensee currently maintains existing Attachments and associated communications equipment on CPS Energy's Poles pursuant to prior agreements between Licensee and CPS Energy; and
- ~~A.B.~~ Licensee agrees to install and maintain new Attachments and associated communications equipment on CPS Energy's Poles to provide Communications Services to the public; and
- ~~B.C.~~ All of Licensee's Attachments shall be installed and maintained pursuant to the procedures and regulations set out in CPS Energy's Pole Attachment Standards, which are adopted by reference to this Agreement, and consistent with the duties outlined in this Agreement; and
- ~~C.D.~~ CPS Energy supports the rapid deployment of competitive broadband networks within its service area pursuant to prudent pole attachment terms and conditions that will not (i) compromise the safety and reliability of CPS Energy's electric distribution system; (ii) affect CPS Energy's ability to deliver exceptional customer service; and (iii) unreasonably interfere with the functionality of third-party communications networks that share CPS Energy Poles. This Agreement shall be interpreted consistent with these principles; and
- ~~D.E.~~ With this Agreement CPS Energy makes a departure from the traditional Make-Ready Work process by authorizing Licensee to prepare make-ready engineering design documents, and to manage make-ready construction in the electrical space of utility Poles at Licensee's option, subject to CPS Energy's review and approval of engineering design documents and field inspections of construction operations; and
- ~~E.F.~~ CPS Energy is willing, when it lawfully may do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on CPS Energy's Poles, provided that CPS Energy may refuse, on a non-discriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Engineering Standards in accordance with the terms and conditions of the Pole Attachment Standards and consistent with the duties outlined in this Agreement, except to the extent applicable federal, state, or local law imposes additional or different requirements.
- ~~F.G.~~ This Agreement has an initial term of five (5) years and will automatically renew for successive one-year terms unless and until it is terminated by either Party. Upon the expiration of this Agreement, Licensee shall not be permitted to make any new

Attachments; Licensee's existing attachments shall be permitted to remain subject to the terms and conditions of the Agreement and the the Pole Attachment Standards, including the obligation to remit Pole Attachment Fees pursuant to Section 3, shall have a duty to remove its Attachments. Any Unauthorized Attachments that are not timely removed shall be subject to the terms and conditions of the Pole Attachment Standards.

**Commented [SB(1):** They are on approx. 40,000 poles owned by AT&T, We should come to an agreement that existing attachments remain, but new attachments are not permitted.

Therefore, in consideration of the foregoing recitals and of the mutual covenants, terms and conditions and remunerations herein provided, and the rights and obligations created hereunder, the Parties agree as follows:

## AGREEMENT

The above Recitals are incorporated herein for all intents and purposes the same as if they were restated in their entirety.

### 1. DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific section of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 Affiliate means, when used in relation to Licensee, another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 Attachment shall have the meaning set forth in the Pole Attachment Standards.
- 1.3 Attachment Arm shall have the meaning set forth in the Pole Attachment Standards.
- 1.4 Communications Facilities shall have the meaning set forth in the Pole Attachment Standards.
- 1.5 Communications Services means the provision of Telecommunications Services, Cable Services, Video Services, or Information Services over wire or cable facilities utilizing Attachments to utility Poles.
- 1.6 CPS Energy Facilities shall have the meaning set forth in the Pole Attachment Standards.
- 1.7 Licensee means [**Company Name**] and its authorized successors and assignees.
- 1.8 Licensee's Facilities shall have the meaning set forth in the Pole Attachment Standards.
- 1.9 Overlash shall have the meaning set forth in the Pole Attachment Standards.
- 1.10 Other Attaching Entity means any entity, other than Licensee, to which CPS Energy has extended, or in the future extends, a license agreement to attach facilities to CPS Energy Poles subject to the Pole Attachment Standards, or an entity that has allowed its license agreement to expire, and whose existing Attachments at the time of contract expiration

become subject to the Pole Attachment Standards.

- 1.11 Permit shall have the meaning set forth in the Pole Attachment Standards.
- 1.12 Pole shall have the meaning set forth in the Pole Attachment Standards.
- 1.13 Pole Attachment Standards means CPS Energy's Pole Attachment Standards with an effective date on or about August 1, 2016, and as amended from time to time.
- 1.14 Unauthorized Attachment shall have the meaning set forth in the Pole Attachment Standards.

## 2. SCOPE OF AGREEMENT

- 2.1 Grant of License. Subject to the provisions of the Pole Attachment Standards, the duties outlined in this Agreement, and to the extent allowed by law, CPS Energy hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to maintain Attachments in existence on the effective date of this Agreement, and install and maintain permitted new Attachments, to CPS Energy Poles. The grant of this license to access available Poles is contingent on Licensee following the procedures and regulations in the Pole Attachment Standards at all times. Licensee's failure to follow the Pole Attachment Standards shall not result in the grant of any license, right, or privilege to access any Pole, or to install or maintain an Attachment to any Pole under this Agreement.
- 2.2 Applicability of Pole Attachment Standards. In order for Licensee to enjoy the right to install an Attachment onto an available Pole, Licensee must obtain a Permit for every Attachment pursuant to the procedures and requirements of the Pole Attachment Standards. CPS Energy reserves the right to amend the Pole Attachment Standards from time-to-time in response to changing conditions in the local market, technological advances, business requirements, policy initiatives, or changes in federal, state, or local law. As provided in the Pole Attachment Standards, any amendments will be preceded by an appropriate notice period.
- 2.3 Licensee's Right to Attach. In order to install an Attachment, Licensee must obtain a Permit pursuant to the procedures and requirements in the Pole Attachment Standards. The issuance of such Permits is subject at all times to CPS Energy's right to provide core electric utility services, including any and all internal communications service essential to the proper operations of such core electric utility services, using its Poles. Nothing in this Agreement, other than a Permit properly issued under the Pole Attachment Standards, shall be construed as granting Licensee any right to install an Attachment to any specific Pole. For an avoidance of doubt, Licensee is not required to obtain a Permit for authorized Attachments existing on the effective date of this Agreement.
- 2.4 No Interest in Property. No use, however lengthy, of any CPS Energy Facilities, and no payment of any fees or charges required under the Pole Attachment Standards, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such CPS Energy Facilities. Neither the Pole Attachment Standards, this Agreement, nor any Permit granted under the Pole Attachment Standards, shall constitute an assignment of any of CPS Energy's rights to CPS Energy Facilities. Notwithstanding

**Commented [SB(2):** Need to make sure the Standards clearly indicate that any changes to standards are applicable to new attachments; existing attachments should not have to automatically comply with amended rules unless it is a safety issue or to comply with applicable law. Otherwise we can bring attachments into compliance when replaced and/or worked on in the ordinary course of business.

anything in the Pole Attachment Standards or this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.

- 2.5 Non-Exclusivity. CPS Energy has previously granted rights or privileges to use CPS Energy Poles to others not a party to this Agreement. After the execution of this Agreement, CPS Energy shall continue to grant nondiscriminatory access to its Poles to Other Attaching Entities seeking to make Attachments pursuant to the Pole Attachment Standards and the nondiscrimination requirements in state law.
- 2.6 Franchise. CPS Energy does not have the power to grant Licensee the right to conduct business within the City of San Antonio or other cities or jurisdictions within the CPS Energy service area. This Agreement does not constitute a franchise or license to use municipal rights-of-way within the City of San Antonio or any other local jurisdiction within the CPS Energy service area. It is the obligation of Licensee to obtain (a) a franchise, or other authority by ordinance or state law, authorizing Licensee to erect and maintain Licensee's Facilities within the public streets, highways, alleys, utility easements, and other public thoroughfares directly from the applicable governing authority; and (b) any other necessary permits, authority, and consents from federal, state, municipal or other public authorities.
- 2.7 Permitted Uses. Licensee shall only use Attachments to provide Communications Services, including voice, video and data, and shall at all times comply with applicable federal, state, and local laws and regulations not engage in any illegal practices, anticompetitive behavior, or collusion with regard to construction activities related to the installation, operation, maintenance, transfer, relocation, or removal of its Attachments. Licensee shall fully and timely cooperate with CPS Energy and Other Attaching Entities, as prescribed in the Pole Attachment Standards, with regard to the transfer and relocation of Attachments. Licensee understands that preventing or unreasonably delaying any Other Attaching Entity from installing, transferring, or relocating an Attachment on a Pole or interfering with the quiet enjoyment of any Other Attaching Entity's Attachment rights will constitute a material breach of this Agreement. Nothing in this Agreement shall be construed to require CPS Energy to allow Licensee to install any new Attachment use any Pole after the termination of the Agreement.
- 2.8 Parties Bound by Agreement. Licensee and CPS Energy are bound by the duties outlined in this Agreement.

### **3. FEES AND CHARGES**

- 3.1 Pole Attachment Fees. Pursuant to the Pole Attachment Standards, CPS Energy shall assess fees and charges on Licensee for the privilege of installing and maintaining Attachments onto Poles in compliance with applicable law. Licensee understands that failure to timely pay invoices for Attachments shall constitute of breach of this Agreement.

### **4. PRIVATE AND REGULATORY COMPLIANCE**

- 4.1 Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate, and/or maintain its Communications Facilities on public and/or private

property before it occupies any portion of CPS Energy's Poles. Licensee must, upon receipt of a written request from CPS, provide CPS Energy with evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Section 4 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith, and to maintain such approval for the term of a Permit. Licensee shall defend, indemnify and reimburse CPS Energy for all loss, costs and expense, including reasonable attorney's fees, that CPS Energy may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on CPS Energy's Poles.

4.2 Lawful Purpose and Use. Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such facilities must comply with all applicable federal, state, and local laws. The use of Attachments for any illegal or unauthorized purpose shall constitute a breach of this Agreement.

4.3 Forfeiture of CPS Energy's Rights. Any Permit, which on its face covers Attachments that would result in forfeiture of CPS Energy's rights (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), shall be deemed invalid as to such Attachments as of the date of the order, decision, action, or ruling. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), Licensee shall promptly remove its Facilities upon receipt of written notice from CPS Energy of such order, decision, action, or ruling. If Licensee does not remove its Facilities after the expiration of one hundred and twenty (120) ~~forty-five (45)~~ calendar days from CPS Energy's issuance of the written notice, CPS Energy will perform such removal at Licensee's expense. If the rights of CPS Energy and/or Other Attaching Entities to occupy the real property on which CPS Energy Poles are located are terminated solely as a result of Licensee's Unauthorized Attachment or the failure to remove Licensee's Facilities within the 120~~45~~-day period set forth in this Section 4.3, Licensee shall use all commercially reasonable efforts to restore CPS Energy and/or other Attaching Entities to their original status before such Unauthorized Attachment was installed.

**Commented [SB(3)]:** Should contain an obligation on the part of CPS to notify Licensee upon receipt of any notice, demand or proceeding wherein an allegation is raised that Licensee's attachments will result in a forfeiture; it should also permit Licensee the right, but not obligation, to intervene, if legally permissible, in any such proceeding.

**Commented [SB(4)]:** Unreasonable time period to engineer a job to remove attachments and relocate, or seek applicable emergency relief.

**Commented [SB(5)]:** Not sure this would be limited to an Unauthorized Attachment

## 5. **LIABILITY AND INDEMNIFICATION**

5.1 Liability. CPS Energy reserves to itself the right to maintain and operate its Pole system in such manner as will best enable it to fulfill its service requirements. AS A MATERIAL PART OF THE CONSIDERATION OF THIS AGREEMENT, LICENSEE TAKES AND ACCEPTS CPS ENERGY POLES "AS IS" IN THE CONDITION IN WHICH LICENSEE FINDS THE CPS ENERGY POLES, WITH ANY AND ALL LATENT AND PATENT DEFECTS AND WITH NO EXPRESS OR IMPLIED WARRANTIES BY CPS ENERGY OF MERCHANTABILITY, FITNESS, SUITABILITY, OR THAT THE POLES ARE FIT FOR ANY PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE CONDITION OF THE CPS ENERGY POLES, BUT IS RELYING UPON ITS EXAMINATION OF THE

CPS ENERGY POLES. CPS ENERGY shall NOT be liable to Licensee, its customers, or anyone else for any interruption to service of Licensee or any interference with the operation of Licensee's Facilities, except where caused by CPS Energy's gross negligence or willful misconduct. Except as provided in Section 5.2 of this Agreement with respect to third party claims, neither Party shall be liable to the other for any indirect, special, incidental or consequential damages suffered by the other Party such as, but not limited to, loss of any anticipated profits, claims of customers, loss of revenue, loss of use of Licensee's Facilities or system, cost of capital, increased expenses or operation of other facilities, or cost of replacement equipment, facilities, or power. ~~The aggregate liability of CPS Energy to Licensee, in any fiscal year, for any fines, penalties, claims or damages shall not exceed the amount of the total annual Attachment Connection Fees paid by Licensee to CPS Energy for that year as calculated under the relevant provisions of the Pole Attachment Standards.~~

5.2 Indemnification. Licensee, and any agent, contractor, or subcontractor of Licensee, shall defend, indemnify and hold harmless CPS Energy and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors (each an "Indemnitee" and collectively, the "Indemnitees") against any and all in liability, costs, damages (including indirect or consequential damages), fines, taxes, special charges by others, penalties, payments (including payments made by CPS Energy under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of CPS Energy and all other costs and expenses of litigation) ("Covered Claims") ~~arising in any way~~, including any act, omission, failure, negligence or willful misconduct of Licensee, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents, or contractors, of Licensee's Attachments and Communications Facilities ~~or the Communications Facilities of any Other Attaching Entity~~, except to the extent the negligence or willful misconduct of ~~the Indemnitees~~ CPS Energy gives rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

5.2.1 Claims related to Licensee's alleged intellectual property infringement, libel and slander, and trespass, ~~cybersecurity breaches, cyber attacks, loss of digital or online data, and infringement of patents.~~

5.2.2 Claims associated with cost of work performed by CPS Energy that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents, or contractors, to install, maintain, use, transfer or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement and the Pole Attachment Standards, except where such claims are caused by CPS Energy's failure to pay for such costs, or its negligence and/or willful misconduct.

5.2.3 Claims for damage to or destruction of Communication Facilities of any Other Attaching Entity, private property of any third-party, or injury to or death of any person or persons that ~~arise out of or~~ are caused by any act, omission, or negligence of Licensee or its contractors, agents and employees in the erection, installation, maintenance, presence, operation, use, rearrangement or removal of or from CPS Energy Poles of Licensee's Attachments



or Licensee's Facilities, ~~or the proximity of Licensee's Facilities to CPS Energy Facilities, or by any act, omission, or negligence of Licensee or its contractors, agents and employees on or in the vicinity of CPS Energy Facilities, except to the extent caused by the negligence or willful misconduct of CPS Energy, its contractors, agents and/or employees.~~

- 5.2.4 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, or contractors, of any law, rule, or regulation of the United States, State of Texas or any other governmental entity or administrative agency.
- 5.2.5 Claims of governmental bodies, property owners or others alleging that Licensee does not have sufficient right or authority for placing and maintaining Licensee's Facilities at the locations of Poles owned by CPS Energy.
- 5.2.6 Claims for taxes or special charges by others, which arise ~~directly or indirectly~~ from the construction, maintenance or operation of Licensee's Facilities and are payable by Licensee pursuant to federal, state, or local regulation, statute, or other requirement.
- 5.2.7 Claims caused by or relating in any manner to a breach of this Agreement by Licensee or its agents and employees or by Licensee's contractors.

### 5.3 Procedure for Indemnification.

- 5.3.1 ~~CPS Energy~~Indemnitee shall give prompt notice to Licensee of any claim or threatened claim ~~wherein Indemnitee is seeking indemnification pursuant to Section 5.2,~~ specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third-party against ~~Indemnitee~~CPS Energy, Indemnitee -~~CPS Energy~~ shall give the written notice to Licensee no later than ten (10) calendar days after ~~Indemnitee~~CPS Energy receives written notice of the action, suit or proceeding.
- 5.3.2 ~~Indemnitee~~CPS Energy's failure to give the required notice will not relieve Licensee from its obligation to indemnify ~~Indemnitee~~ CPS Energy unless and to the extent Licensee is materially prejudiced by such failure.
- 5.3.3 Licensee will have the right at any time, by notice to ~~Indemnitee~~CPS Energy, to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to ~~Indemnitee~~CPS Energy. ~~Indemnitee~~ CPS Energy agrees to cooperate fully with Licensee. If Licensee assumes control of the defense of any third-party claim, ~~Indemnitee~~ CPS Energy shall have the right to participate in the defense at its own expense. If Licensee does not assume control or otherwise participate in the defense of any third-party claim, Licensee shall be bound by the results obtained by ~~Indemnitee~~CPS Energy with respect to the claim.
- 5.3.4 If Licensee assumes the defense of a third-party claim as described above, then in no event will ~~Indemnitee~~CPS Energy admit any liability with respect to, or settle, compromise or discharge, any third party-claim without Licensee's prior written

consent, and ~~Indemnitee~~CPS Energy will agree to any settlement, compromise or discharge of any third-party claim which Licensee may recommend which releases ~~Indemnitee~~CPS Energy completely from such claim.

5.4 Environmental Hazards. Licensee represents and warrants that its use of CPS Energy's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about CPS Energy's Poles or transport to CPS Energy's Poles any Hazardous Substances, and that Licensee's Communications Facilities do not constitute or contain and will not generate any Hazardous Substance in violation of federal, state or local law now or hereafter in effect, including any amendments. The term "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. ~~Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities will not release such Hazardous Substances. Except for any Hazardous Substance arising from or due to (a) CPS Energy's installation, maintenance or use of CPS Energy's Poles, (b) the installation and maintenance of Attachments on, or the use of, CPS Energy's Poles by an Other Attaching Entity, or (c) existing at the location where CPS Energy's Poles are installed at the time Licensee installs its Attachments.~~ Licensee and its agents, contractors and subcontractors, shall defend, indemnify and hold harmless CPS Energy and its respective officials, officers, board members, council members, commissioners, representatives, ~~employees, agents,~~ and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the ~~Licensee's release, unlawful discovery,~~ and storage of any Hazardous Substances on, under or adjacent to CPS Energy's Poles attributable to Licensee's use of CPS Energy's Poles.

5.5 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by CPS Energy of any applicable State limits on municipal liability. No indemnification provision contained in this Agreement under which Licensee indemnifies CPS Energy shall be construed in any way to limit any other indemnification provision contained in this Agreement.

## 6. DUTIES, RESPONSIBILITIES, AND EXCULPATION

6.1 Duty to Inspect. Licensee acknowledges and agrees that CPS Energy does not warrant the condition or safety of CPS Energy's Facilities or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Poles, and/or premises surrounding the Poles prior to commencing any work on Poles or entering the premises surrounding the Poles.

6.2 Knowledge of Work Conditions. By executing this Agreement, Licensee ~~agrees~~warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under the Pole Attachment Standards and that it fully understands or will acquaint itself with the

facilities, difficulties, and restrictions attending the execution of such work.

- 6.3 Duty to Inform and Protect. Licensee further ~~agrees warrants~~ that it understands the imminent dangers, INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION, inherent in the work necessary to make installations on Poles by Licensee's employees, servants, agents, contractors or subcontractors. ~~and Licensee accepts as its duty and sole responsibility to notify, inform, and keep informed Licensee's employees, servants, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.~~ Licensee also ~~agrees warrants~~ that it will implement all precautions, procedures, and measures in the Pole Attachment Standards to protect public safety and the safety of personnel working close to electrified lines.
- 6.4.1 Protection of Utility Data. During the term of this Agreement, ~~each party Licensee~~ may have access to ~~CPS Energy's~~ geodatabase electronic records of Pole locations, strand and underground routes, substation locations, and other pertinent information related to ~~CPS Energy's electric~~ the other party's distribution system. Such electronic records consist of proprietary and confidential ~~CPS Energy~~ information related to critical infrastructure and shall be treated as confidential by ~~the receiving party Licensee~~ and protected from public disclosure. ~~Licensee shall implement physical and cybersecurity measures to protect the geodatabase information from public disclosure, theft, and widespread internal distribution in compliance with the Federal Trade Commission's "Start with Security" cybersecurity guidelines.~~

## 7. INSURANCE

- 7.1 Selection of Applicable Option. For the purpose of determining the appropriate insurance coverage applicable under this Agreement, Licensee shall select the option appropriate for its type and size of business as described below:
- 7.1.1 Option A. Private or public Attaching Entity not providing Communications Services with  $\leq 300$  total Attachments installed on CPS Energy Poles.
- 7.1.2 Option B. Attaching Entity providing Communications Services with  $\geq 300$  but  $< 1,000$  total Attachments installed on CPS Energy Poles.
- 7.1.3 Option C. Attaching Entity providing Communications Services with  $\geq 1,000$  but  $< 25,000$  total Attachments installed on CPS Energy Poles.
- 7.1.4 Option D. Attaching Entity providing Communications Services with  $>25,000$  total Attachments installed on CPS Energy Poles.
- 7.1.5 Selection. Licensee shall certify its selection in Appendix A. Such selection shall be made based on whether Licensee provides Communications Services and on the number of Attachments currently installed on CPS Energy Poles. If Licensee does not currently have any installed Attachments, Licensee may select the option that best meets its business needs.
- 7.2 Insurance Coverage. Licensee agrees at all times to carry and maintain in full force insurance sufficient to ~~fully~~ protect CPS Energy and its directors, officers, employees and

agents from and against any and all claims or demands for damages where Licensee is obligated to indemnify CPS Energy and its directors, officers, employees and agents pursuant to Section 5.2, and corresponding with Licensee's option under Appendix A. The appropriate insurance requirements applicable to Licensee based on the option selected in Appendix A are listed on Appendix B. ~~Licensee understands that failure to maintain the appropriate insurance coverage at any time during the term of this Agreement shall constitute a breach of this Agreement.~~

## 8. AUTHORIZATION NOT EXCLUSIVE

CPS Energy shall have the right to grant, renew and extend nondiscriminatory rights and privileges to others not party to this Agreement, by contract or otherwise, to use CPS Energy Facilities. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued to Licensee pursuant to the Pole Attachment Standards. Licensee's rights under a Permit ~~issued pursuant to the Pole Attachment Standards~~ shall not interfere with the rights of any Other Attaching Entity which has been issued a Permit. In the event of a conflict between the rights of Licensee and any Other Attaching Entity that cannot be resolved by CPS Energy by reference to the Pole Attachment Standards, CPS Energy shall resolve the conflict as the Pole owner based on non-discriminatory principles.

## 9. ASSIGNMENT

9.1 Limitations on Assignment. Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of CPS Energy, which consent shall not be unreasonably withheld, conditioned, or delayed.

9.2 Obligations of Assignee/Transferee and Licensee. Notwithstanding any provision in this Agreement to the contrary, Licensee shall have the right to assign this Agreement to any parent, subsidiary, Affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Licensee, or to any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee that are subject to this Agreement. No assignment or transfer under this Section 9 shall be allowed, however, until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish CPS Energy with ~~prior~~ written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from those claims that arose under this Agreement for the time period Licensee operated pursuant to the Agreement.

9.3 Sub-licensing. Licensee shall not sub-license space on a CPS Energy Pole to any third-party, or place an Attachment or Overlash for the benefit of any third-party on a Pole or Attachment Arm. Any such action shall constitute a ~~material~~ breach of this Agreement. The use of Licensee's Communications Facilities by third-parties (including, but not limited to, leases of dark fiber) that involves no additional Attachment or Overlash is not subject to the provisions of this Section 9.3.

## 10. FAILURE TO ENFORCE

Failure of CPS Energy or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated in accordance with this Agreement.

## 11. TERMINATION OF AGREEMENT

- 11.1 CPS Energy shall have the right, pursuant to the procedure set out in Section 11.2, to terminate this entire Agreement, or any Permit issued ~~pursuant to the Pole Attachment Standards~~, whenever Licensee is in default of any term or condition of this Agreement, including, but not limited to, the following circumstances:
- 11.1.1 Construction, operation or maintenance of Licensee's Attachments or Communications Facilities in violation of law or in aid of any known unlawful act or undertaking; or
  - 11.1.2 Construction, operation or maintenance of Licensee's Attachments or Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by final action of any governmental or private authority; or
  - 11.1.3 Construction, operation or maintenance of Licensee's Attachments or Communications Facilities without the insurance and/or performance bond coverage required under Sections 7 and 17; or
  - 11.1.4 Failure to pay in full an undisputed claim or invoice related to an Attachment installed pursuant to the Pole Attachment Standards following the expiration of the appropriate grace period prescribed in the Pole Attachment Standards.
- 11.2 CPS Energy will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition applicable to Section 11.1, above. Licensee shall take immediate corrective action to cure such condition or deficiency within ~~thirty~~ ~~thirtyfive~~ ~~(30)~~ ~~5~~ calendar days, or such longer period mutually agreed to by the Parties not to exceed sixty (60) calendar days, unless such cure cannot be accomplished in such time period, provided Licensee has commenced and is diligently pursuing such cure. Upon correcting such condition, but no later than the expiration of the sixty (60) day period, Licensee shall confirm in writing to CPS Energy that (a) the cited condition has ceased or been corrected, or (b) provide specific information to dispute CPS Energy's allegation of a default thereby invoking Section 14 - Dispute Resolution. If Licensee fails to cure or dispute such condition, CPS Energy may immediately terminate ~~this Agreement or any applicable Permit~~ ~~or, where such default is material, this Agreement,~~ and provide written notice to Licensee. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, Licensee will no longer be able to initiate any new attachments on CPS Energy's Poles; existing attachments will be permitted to remain and shall be subject to the terms and conditions of this Agreement. CPS Energy may seek removal of Licensee's Attachments at Licensee's expense pursuant to the Pole Attachment Standards.

**12. TERM OF AGREEMENT**

12.1 Initial Term and Renewal. This Agreement shall become effective upon its execution and, shall have an initial term of five (5) years. Following the expiration of the initial term, the Agreement shall automatically renew for successive one-year terms until such time that the Agreement is terminated by either Party upon giving the other Party six (6) months' written notice of termination.

12.2 Survival of Obligations. Even after the termination or expiration of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communications Facilities that arose under this Agreement.

**13. AMENDING AGREEMENT**

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed, or altered except in writing signed by authorized representatives of both Parties.

#### 14. DISPUTE RESOLUTION

Any disputes related to the day-to-day administration of the permitting process shall be governed by the dispute resolution provisions of the Pole Attachment Standards. In the event a dispute arises between the Parties related to the legal interpretation of any provision of this Agreement, or any potential conflict between the provisions of this Agreement and the Pole Attachment Standards, prior to the filing of any suit or administrative proceeding with respect to such a dispute, the Party believing itself aggrieved (the Invoking Party) will give written notice to the other Party. Such a notice will be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement. CPS Energy and Licensee will use their best efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between their negotiators at the following successive management levels, each of which will have a period of allotted time as specified below in which to attempt to resolve the dispute:

	<b>CPS Energy</b>	<b>Licensee</b>	<b>Time</b>
First Level	<i>CPS Energy Executive Vice-President</i>	<i>[Company Name] General Manager</i>	15 days
Second Level	<i>CPS Energy General Counsel</i>	<i>[Company Name] General Counsel</i>	15 days

The allotted time for the first level negotiators will begin on the tenth (10<sup>th</sup>) business day following delivery of the Invoking Party's notice, unless otherwise agreed by the Parties. If resolution of the dispute is not achieved by the first level negotiators, then the allotted time for the second level negotiators will begin on the tenth (10<sup>th</sup>) business day following the end of first level negotiations, unless otherwise agreed by the Parties.

If a resolution of the dispute is not achieved by negotiators at the second management level, then the Parties shall participate in non-binding mediation at a time mutually agreed by both Parties. Mediation shall take place in San Antonio, Texas. The allotted period for completion of the mediation shall be thirty (30) days from commencement of mediation, unless otherwise agreed by the Parties. The Parties agree to share the cost of mediation equally using a mutually agreed professional mediator from JAMS, or similar alternative dispute resolution organization. If resolution of the dispute is not achieved by mediation within the allotted time, then either Party may file an action to resolve the dispute with a state regulatory agency or a court of competent jurisdiction over the subject matter of the dispute.

#### 15. NOTICES

15.1 Notice. Wherever this Agreement requires notice to be given by either Party to the other, such notice shall be in writing and shall be effective when personally delivered to or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to CPS Energy, at:

Attention: Asset Management

145 Navarro  
P.O. Box 1771  
San Antonio TX 78296

with a copy to:  
CPS Energy General Counsel  
at the same address

If to Licensee, at:

Attention: [Company Representative]  
[Company Name]  
[Street Address]  
[City, State, Zip Code]

with a copy to:  
[Company's] Legal Department  
at the same address

or to such other address as either Party, from time to time, may give the other Party in writing.

- 15.2 Emergency Contact. CPS Energy and Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, at which either Party can report damage to Attachments or other situations requiring immediate communications between the Parties. The contact person for each Party shall be qualified and able to respond to the other Party's concerns and requests. Failure of Licensee to maintain an emergency contact shall eliminate CPS Energy's liability to Licensee for any actions that CPS Energy deems reasonably necessary given the specific circumstances of the emergency or other damage to Attachments requiring notice under this Section 15.2.

#### **16. RECEIVERSHIP, FORECLOSURE, OR ACT OF BANKRUPTCY:**

- 16.1 The rights granted to Licensee hereunder, at the option of CPS Energy, shall cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
- 16.1.1 To the extent permitted by law, within one hundred twenty (120) days after their election or appointment, such receivers or trustees shall have complied fully with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Agreement, if any; and



16.1.2 To the extent permitted by law, within said one hundred twenty (120) days, such receivers or trustees shall execute an agreement duly approved by CPS Energy having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

16.2 In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, CPS Energy may serve notice of termination upon Licensee and the successful bidder at such sale, in which event the Agreement herein granted and all rights and privileges of the Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

15.2.1 CPS Energy shall have approved the transfer of this Agreement, as and in the manner in this Agreement provided; and

15.2.2 Unless such successful bidder shall have agreed with CPS Energy to assume and be bound by all the terms and conditions to this Agreement.

16.3 Licensee shall notify CPS Energy not later than thirty (30) days of the filing of a receivership, reorganization, bankruptcy or other such action or proceeding by or against Licensee.

## **17. PERFORMANCE BONDS**

17.1 Prior to making any Attachments under this Agreement, Licensee shall provide to CPS Energy a performance bond in an amount corresponding with the requirements of Appendix C. The bond shall be executed with a proper surety through a company licensed and qualified to operate in the State of Texas and listed with the U.S. Dept. of the Treasury Federal Register. In addition, the bond shall not be for an amount greater than the surety's approved limit as referenced in the Current Federal Register and be accompanied by a certified power-of-attorney document, all still subject to the final approval of CPS Energy. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any damages, claims, liens, taxes, liquidated damages, penalties, or fees due to CPS Energy which arise by reason of the construction, installation, operation, maintenance, transfer, relocation or removal of Licensee's Attachments or Communications Facilities on or about CPS Energy's Poles. This shall include claims for damages to CPS Energy Facilities caused by Licensee, or its contractors and agents. CPS Energy shall have the right to draw funds from the bond to recover damages to CPS Energy Facilities caused by Licensee, or its contractors and agents. Provision shall be made to permit CPS Energy to draw against the bond. Licensee shall not use such bond for other purposes and shall not assign, pledge or otherwise use the bond as security for any other purpose.

17.2 Amount and Form of Bond. The amount and form of the performance bond applicable to Licensee is based on the selection made in Appendix A and is provided in Appendix C. Attaching Entities that do not provide Communications Services that selection Option A are exempt from the performance bond requirements.

17.3 Within thirty (30) days after notice to Licensee that any amount has been drawn against the bond by CPS Energy, Licensee shall take action to replenish the bond to its prior amount.

17.4 Licensee shall provide CPS Energy with thirty (30) days prior written notice of any cancellation or replacement of the bond. Failure to maintain the bond throughout the term of the Agreement shall constitute a material breach of the Agreement retroactive to the date of the notice of cancellation of the bond.

**Commented [SB(6):** There should be some exception for entities that meet a certain financial threshold – say a value in excess of \$150,000,000.00.

## 18. ENTIRE AGREEMENT

Except as to any payments or credits due under previous agreements as of the execution of this Agreement, this Agreement supersedes all previous agreements, whether written or oral, between CPS Energy and Licensee for placement and maintenance of Licensee's Communications Facilities on CPS Energy's Poles within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

## 19. SEVERABILITY

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of the Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

## 20. GOVERNING LAW

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Texas.

## 21. INCORPORATION OF RECITALS AND APPENDICES

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

## 22. MISCELLANEOUS PROVISIONS

22.1 Appendices Made Part of Agreement. The Appendices to this Agreement are part of the Agreement.

~~22.2 No Waiver. The failure of CPS Energy or Licensee to enforce or to insist upon compliance with any of the terms or conditions of this Agreement does not constitute a waiver or relinquishment of any terms or conditions of the Agreement.~~

**Commented [SB(7):** See §10 above.

~~22.3~~ 22.2 Prior Agreements. Except as to any payments or credits due under prior agreements as of the execution of this Agreement, this Agreement supersedes all prior Agreements, oral or otherwise, between the Parties providing for Attachments to CPS Energy Poles. All

Attachments existing as of the execution of this Agreement and all future Attachments are and shall be authorized by this Agreement, subject to Licensee's compliance with all the terms and conditions of the Pole Attachment Standards. It is not necessary for Licensee to obtain a new Permit for an Attachment authorized prior to the execution of this Agreement under a Permit obtained under prior agreement between the Parties. However, such Attachments permitted by prior agreement are subject to all the terms and conditions of the Pole Attachment Standards. ~~Licensee's failure to maintain such Attachments in accordance with the Pole Attachment Standards shall be considered Unauthorized Attachments subject to removal at Licensee's expense.~~

22.422.3 **Contractors and Agents Bound.** Licensee agrees to include in all its contracts and agreements with independent contractors or agents provisions which are consistent with and which will fulfill the requirements of this Agreement.

22.522.4 **No Third-Party Beneficiaries.** The terms and provisions of this Agreement are intended to be for the benefit of CPS Energy and Licensee except as otherwise provided in this Agreement, and nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the Parties, any benefits, rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

_____	_____
City Public Service of San Antonio	<b>[Company Name]</b>
BY: _____	BY: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

CPS ENERGY

STATE OF TEXAS

§§

County of Bexar

I, the undersigned, a Notary Public in and for the State of Texas, hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20[ ] personally appeared before me [NAME] \_\_\_\_\_, [TITLE] \_\_\_\_\_, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned: "I certify that the officer who has signed this Agreement has the legal authority to execute such contract on behalf of CPS Energy."

GIVEN under my hand and official seal the day and year above written.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas, residing at  
\_\_\_\_\_, Texas

LICENSEE

STATE OF \_\_\_\_\_)

§§

County of \_\_\_\_\_)

I, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20[ ] personally appeared before me [NAME] \_\_\_\_\_, [TITLE] \_\_\_\_\_, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned: “ I certify that the office who has signed this Agreement has the legal authority to execute such contract on behalf of Licensee.”

GIVEN under my hand and official seal the day and year above written.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_, residing at  
\_\_\_\_\_

**APPENDIX A**

STATE OF \_\_\_\_\_)

§§

County of \_\_\_\_\_)

I, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20[ ] personally appeared before me [NAME] \_\_\_\_\_, [TITLE] \_\_\_\_\_, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein stated.

“I certifies that Licensee qualifies for the selection made below based on whether it provides Communications Services and number of Attachments installed on CPS Energy Poles as of the date of this Agreement.

\_\_\_\_\_

Option A. Private or public Attaching Entity not providing Communications Services with ≤ 300 total Attachments installed on CPS Energy Poles.

\_\_\_\_\_

Option B. Attaching Entity providing Communications Services with ≥ 300 but < 1,000 total Attachments installed on CPS Energy Poles.

\_\_\_\_\_

Option C. Attaching Entity providing Communications Services with ≥ 1,000 but < 25,000 total Attachments installed on CPS Energy Poles.

\_\_\_\_\_

Option D. Attaching Entity providing Communications Services with >25,000 total Attachments installed on CPS Energy Poles.”

GIVEN under my hand and official seal the day and year above written.

\_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_, residing at

\_\_\_\_\_, \_\_\_\_\_

**APPENDIX B**

**MINIMUM INSURANCE REQUIREMENTS  
CORRESPONDING WITH OPTIONS A & B**

1.1 LICENSEE shall purchase and maintain in full force and effect, at its own expense, the following minimum insurance coverages and limits:

1.2 Statutory Worker’s Compensation and Employer’s Liability Insurance with ~~minimum~~ limits ~~of not less than~~ indicated below. The policy must be in the name of the LICENSEE or contain an endorsement naming CPS Energy as the Alternate Employer.

Required Limits – Statutory limits, with Employer’s Liability Coverage as follows:

Bodily Injury by Accident	\$1,000,000.00
Bodily Injury by Disease Each Employee	\$1,000,000.00
Bodily Injury by Disease Policy Limit	\$1,000,000.00

1.3 Commercial General Liability Insurance, including the coverages identified below, with ~~minimum~~ limits indicated below.

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00

The Commercial General Liability Policy will include the following coverage’s where applicable:

1. Bodily injury & Property damage on an “Occurrence” basis
2. Premises & Operations
3. Independent Licensees
4. Products/Completed Operations
5. Personal Injury Liability
6. Contractual Liability
7. Explosion, Collapse, and Underground (XCU)

1.4 Business Automobile Insurance for all owned, non-owned, and hired vehicles.

Combined Single Limit BI & PD	\$500,000.00
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1.5 Each of Licensee’s liability insurance policies shall be **primary to and non-contributing** with, any other insurance carried by, or for the benefit of the CPS Energy. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage.

1.6 Licensee's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and excess liability insurance policies shall be endorsed to waive all rights of subrogation in favor of CPS Energy and its affiliates, and their shareholders, directors, officers, members, employees and agents.

1.7 CPS Energy and its employees, officers, directors, owners, advisors, consultants and agents shall be included as additional insureds without limitation on all policies (except workers' compensation), under the form of additional insured endorsement providing the maximum protection to CPS Energy allowed by applicable law. Such additional insured coverage:

- (i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors;
- (ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of CPS Energy, its employees, agents or independent contractors, or where such coverage is prohibited by law, or to claims arising out of the gross negligence of CPS Energy, its employees, agents or independent contractors; and
- (iii) shall not exceed Licensee's indemnification obligation under this Agreement, if any.

1.7.1 Further, Licensee represents and warrants that:

- (a) Licensee shall, or have all ~~All~~ such policies ~~will be endorsed,~~ to provide reflect thirty (30) days' notice of cancellation to CPS Energy. LICENSEE shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.
- (b) Upon request by CPS Energy, Licensee shall provide true copies of the insurance policies and policy endorsements as required in this Exhibit A from issuing insurance company(s).

1.8.2.2 All LICENSEE's insurance shall be issued by insurance carriers licensed to do business in Texas at the time the policy is issued and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates listing CPS Energy's name and address as a Certificate Holder, and list the name of Project as described in this Agreement and the name and phone number of the broker who prepared the certificate. Certificates of insurance shall be prepared on an Acord form 25-S-~~2~~, or its equivalent.

1.9.2.3 With respect to any coverage maintained on a "claims-made" policy form, LICENSEE shall maintain such coverage for two (2) years following termination of this Agreement or completion of all Services associated with this Agreement, whichever is later; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the date of commencement of Services under this Agreement

1.10.2.4 LICENSEE shall not commence Services under this Agreement until LICENSEE has obtained all required insurance and until such insurance has been received ~~and approved~~ by CPS Energy. LICENSEE's failure to fulfill these insurance requirements within ten (10) days after receipt of CPS Energy's notice to proceed shall not be considered cause for any adjustment to LICENSEE's compensation or schedule. ~~CPS Energy's approval of~~



~~LICENSEE's insurance shall not relieve or decrease the liability of LICENSEE hereunder.~~

~~4.4.2.5~~ If LICENSEE fails to obtain or renew the above required insurance and furnish to the CPS Energy acceptable evidence thereof, CPS Energy shall have the right, but not the obligation, to: (1) procure such insurance and reduce the Agreement amount by the cost thereof; or (2) deem ~~as material~~ breach of this Agreement the LICENSEE's failure to do so.

~~1.12.6~~ Nothing herein shall reduce or alter any obligation LICENSEE has to indemnify, defend or hold harmless the Indemnified Parties identified in the Agreement.

~~1.13.7~~ In the event LICENSEE enters into a subcontract with an independent contractor, the LICENSEE will require the independent contractor to procure at a minimum all types of insurance specified to be carried by the LICENSEE, in the like form specified herein, but at limits pursuant to the contractual arrangement between Licensee and such independent contractor.

~~2.8~~ ~~1.15~~ LICENSEE and, as applicable, its independent contractors shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by LICENSEE, independent contractor and/or CPS Energy.

~~1.14~~ Notwithstanding anything herein to the contrary, Licensee may satisfy any insurance requirements by maintaining a program of self-insurance. In the event Licensee elects to self-insure its obligation to include CPS Energy as an additional insured, the following provisions shall apply:

(i) CPS Energy shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) CPS Energy shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and

(iii) CPS Energy shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.

**MINIMUM INSURANCE REQUIREMENTS  
CORRESPONDING WITH OPTION C**

1.1 LICENSEE shall purchase and maintain in full force and effect, at its own expense, the following minimum insurance coverages and limits:

1.2 Statutory Worker’s Compensation and Employer’s Liability Insurance with ~~minimum~~ limits ~~of not less than~~ indicated below. The policy must be in the name of the LICENSEE or contain an endorsement naming CPS Energy as the Alternate Employer.

Required Limits – Statutory limits, with Employer’s Liability Coverage as follows:

Bodily Injury by Accident	\$1,000,000.00
Bodily Injury by Disease Each Employee	\$1,000,000.00
Bodily Injury by Disease Policy Limit	\$1,000,000.00

1.3 Commercial General Liability Insurance, including the coverages identified below, with ~~minimum~~ limits indicated below.

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00

The Commercial General Liability Policy will include the following coverage’s where applicable:

1. Bodily injury & Property damage on an “Occurrence” basis
2. Premises & Operations
3. Independent Licensees
4. Products/Completed Operations
5. Personal Injury Liability
6. Contractual Liability
7. Explosion, Collapse, and Underground (XCU)

1.4 Business Automobile Insurance for all owned, non-owned, and hired vehicles.

Combined Single Limit BI & PD	\$1,000,000.00
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1.5 Excess Liability Coverage, following form, over Employers’ Liability, Commercial Liability, Commercial Automobile Liability Policies, with the limits shown below.

Excess Liability Coverage	\$1,000,000.00
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1.6 Each of Licensee’s liability insurance policies shall be **primary to and non-contributing** with, any other insurance carried by, or for the benefit of the CPS Energy. Insurance may

be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage.

1.7 Licensee's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and excess liability insurance policies shall be endorsed to waive all rights of subrogation in favor of CPS Energy and its affiliates, and their shareholders, directors, officers, members, employees and agents.

1.8 CPS Energy and its employees, officers, directors, owners, advisors, consultants and agents shall be included as additional insureds without limitation on all policies (except workers' compensation), under the form of additional insured endorsement providing the maximum protection to CPS Energy allowed by applicable law. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of CPS Energy, its employees, agents or independent contractors, or where such coverage is prohibited by law, or to claims arising out of the gross negligence of CPS Energy, its employees, agents or independent contractors; and

(iii) shall not exceed Licensee's indemnification obligation under this Agreement, if any.

1.9 Further, Licensee represents and warrants that:

(a) Licensee shall, or have ~~All~~ such policies ~~will be endorsed,~~ to ~~provide~~ ~~reflect~~ thirty (30) days' notice of cancellation to CPS Energy. LICENSEE shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.

(b) Upon request by CPS Energy, Licensee shall provide true copies of the insurance policies and policy endorsements as required in this Exhibit A from issuing insurance company(s).

1.10 All LICENSEE's insurance shall be issued by insurance carriers licensed to do business in Texas at the time the policy is issued and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates listing CPS Energy's name and address as a Certificate Holder, and list the name of Project as described in this Agreement and the name and phone number of the broker who prepared the certificate. Certificates of insurance shall be prepared on an Acord form 25-S, or its equivalent.

1.11 With respect to any coverage maintained on a "claims-made" policy form, LICENSEE shall maintain such coverage for two (2) years following termination of this Agreement or completion of all Services associated with this Agreement, whichever is later; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the date of commencement of Services under this Agreement

1.12 LICENSEE shall not commence Services under this Agreement until LICENSEE has obtained all required insurance and until such insurance has been

received ~~and approved~~ by CPS Energy. LICENSEE's failure to fulfill these insurance requirements within ten

(10) days after receipt of CPS Energy's notice to proceed shall not be considered cause for any adjustment to LICENSEE's compensation or schedule. ~~CPS Energy's approval of LICENSEE's insurance shall not relieve or decrease the liability of LICENSEE hereunder.~~

~~4.11.13~~ If LICENSEE fails to obtain or renew the above required insurance and furnish to the CPS Energy acceptable evidence thereof, CPS Energy shall have the right, but not the obligation, to: (1) procure such insurance and reduce the Agreement amount by the cost thereof; or (2) deem ~~as material~~ breach of this Agreement the LICENSEE's failure to do so.

~~4.12.14~~ Nothing herein shall reduce or alter any obligation LICENSEE has to indemnify, defend or hold harmless the Indemnified Parties identified in the Agreement.

~~4.13.15~~ In the event LICENSEE enters into a subcontract with an independent contractor, the LICENSEE will require the independent contractor to procure at a minimum all types of insurance specified to be carried by the LICENSEE, in the like form specified herein, but at limits pursuant to the contractual arrangement between Licensee and such independent contractor.

~~4.14.16~~ LICENSEE and, as applicable, its independent contractors shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by LICENSEE, independent contractor and/or CPS Energy.

Notwithstanding anything herein to the contrary, Licensee may satisfy any insurance requirements by maintaining a program of self-insurance. In the event Licensee elects to self-insure its obligation to include CPS Energy as an additional insured, the following provisions shall apply:

(i) CPS Energy shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) CPS Energy shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and

(iii) CPS Energy shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.

**MINIMUM INSURANCE REQUIREMENTS  
CORRESPONDING WITH OPTION D**

1.1 LICENSEE shall purchase and maintain in full force and effect, at its own expense, the following minimum insurance coverages and limits:

1.2 Statutory Worker’s Compensation and Employer’s Liability Insurance with ~~minimum~~ limits of not less than indicated below. The policy must be in the name of the LICENSEE or contain an endorsement naming CPS Energy as the Alternate Employer.

Required Limits – Statutory limits, with Employer’s Liability Coverage as follows:

Bodily Injury by Accident	\$1,000,000.00
Bodily Injury by Disease Each Employee	\$1,000,000.00
Bodily Injury by Disease Policy Limit	\$1,000,000.00

1.3 Commercial General Liability Insurance, including the coverages identified below, with ~~minimum~~ limits indicated below.

Each Occurrence	\$2,000,000.00
General Aggregate	\$5,000,000.00

The Commercial General Liability Policy will include the following coverage’s where applicable:

1. Bodily injury & Property damage on an “Occurrence” basis
2. Premises & Operations
3. Independent Licensees
4. Products/Completed Operations
5. Personal Injury Liability
6. Contractual Liability
7. Explosion, Collapse, and Underground (XCU)

1.4 Business Automobile Insurance for all owned, non-owned, and hired vehicles.

Combined Single Limit BI & PD	\$1,000,000.00
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1.5 Excess Liability Coverage, following form, over Employers’ Liability, Commercial Liability, Commercial Automobile Liability Policies, with the limits shown below.

Excess Liability Coverage	\$2,000,000.00
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1.6 Each of Licensee’s liability insurance policies shall be **primary to and non-contributing** with, any other insurance carried by, or for the benefit of the CPS Energy. Insurance may

be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage.

1.7 Licensee's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and excess liability insurance policies shall be endorsed to waive all rights of subrogation in favor of CPS Energy and its affiliates, and their shareholders, directors, officers, members, employees and agents.

2.9 CPS Energy and its employees, officers, directors, owners, advisors, consultants and agents shall be included as additional insureds without limitation on all policies (except workers' compensation), under the form of additional insured endorsement providing the maximum protection to CPS Energy allowed by applicable law. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of CPS Energy, its employees, agents or independent contractors, or where such coverage is prohibited by law, or to claims arising out of the gross negligence of CPS Energy, its employees, agents or independent contractors; and

(iii) shall not exceed Licensee's indemnification obligation under this Agreement, if any.

1.8 Further, Licensee represents and warrants that:

(a) Licensee shall, or aAll such policies will be endorsed to, provide-reflect thirty (30) days' notice of cancellation to CPS Energy. LICENSEE shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.

(b) Upon request by CPS Energy, Licensee shall provide true copies of the insurance policies and policy endorsements as required in this Exhibit A from issuing insurance company(s).

1.9 All LICENSEE's insurance shall be issued by insurance carriers licensed to do business in Texas at the time the policy is issued and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates listing CPS Energy's name and address as a Certificate Holder, and list the name of Project as described in this Agreement and the name and phone number of the broker who prepared the certificate. Certificates of insurance shall be prepared on an Acord form 25-S, or its equivalent.

1.10 With respect to any coverage maintained on a "claims-made" policy form, LICENSEE shall maintain such coverage for two (2) years following termination of this Agreement or completion of all Services associated with this Agreement, whichever is later; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the date of commencement of Services under this Agreement

1.11 LICENSEE shall not commence Services under this Agreement until LICENSEE has

obtained all required insurance and until such insurance has been received ~~and approved~~ by CPS Energy. LICENSEE's failure to fulfill these insurance requirements within ten (10) days after receipt of CPS Energy's notice to proceed shall not be considered cause for any adjustment to LICENSEE's compensation or schedule. ~~CPS Energy's approval of LICENSEE's insurance shall not relieve or decrease the liability of LICENSEE hereunder.~~

~~1.12~~ If LICENSEE fails to obtain or renew the above required insurance and furnish to the CPS Energy acceptable evidence thereof, CPS Energy shall have the right, but not the obligation, to: (1) procure such insurance and reduce the Agreement amount by the cost thereof; or (2) deem ~~as material~~ breach of this Agreement the LICENSEE's failure to do so.

~~1.13~~ 1.12 Nothing herein shall reduce or alter any obligation LICENSEE has to indemnify, defend or hold harmless the Indemnified Parties identified in the Agreement.

~~1.14~~ 1.13 In the event LICENSEE enters into a subcontract with an Independent contractor, the LICENSEE will require the Independent contractor to procure at a minimum all types of insurance specified to be carried by the LICENSEE, in the like form specified herein, but at limits pursuant to the contractual arrangement between Licensee and such independent contractor.

~~1.15~~ 1.14 LICENSEE and, as applicable, its Independent contractors shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by LICENSEE, Independent contractor and/or CPS Energy.

Notwithstanding anything herein to the contrary, Licensee may satisfy any insurance requirements by maintaining a program of self-insurance. In the event Licensee elects to self-insure its obligation to include CPS Energy as an additional insured, the following provisions shall apply:

(i) CPS Energy shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) CPS Energy shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and

(iii) CPS Energy shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.



### **APPENDIX C**

The performance bond requirements applicable to Licensee are based on the selection made in Appendix A. Attaching Entities that do not provide Communications Services and select Option A are exempt from the performance bond requirements. The performance bond requirements and form of bond corresponding with Options B, C, and D are listed below:

DRAFT

**PERFORMANCE BOND  
CORRESPONDING WITH OPTION B**

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That, (name of License), hereinafter called "Principal" and (name of surety company), a surety company licensed to do business in Texas, hereinafter called "Surety", are held and firmly bound unto CITY OF SAN ANTONIO ACTING THROUGH THE CITY PUBLIC SERVICE OF SAN ANTONIO, TEXAS, A MUNICIPAL BOARD OF THE CITY OF SAN ANTONIO, TEXAS, hereinafter called "Obligee", in the amount of **Twenty-Five Thousand and no/100 dollars (\$25,000)**, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016 to \_\_\_\_\_ which contract hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if said Principal shall well and truly perform its obligations, including but not limited the payment by Principal of any claims, liens, taxes, penalties and fees due to Obligee which arise by reason of the construction, installation, operation, maintenance, transfer, relocation or removal of Principal's Attachments on or about Obligee's Pole(s) under the aforesaid Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

No extension of time or other waiver or amendment of the terms of the said aforesaid Contract shall relieve the Surety of its obligations hereunder, and the Surety waives notice of any such extension, waiver, amendment, or change. This bond shall be automatically extended in time without formal and separate amendment to cover full and faithful performance of the Contract modifications, regardless of the amount of time involved.

THIS BOND may be cancelled by Surety by giving thirty (30) days written notice to the Obligee by registered mail. Such cancellation shall not affect any liability the Surety may have or incurred under this bond prior to the effective date of termination. Provided that no action, suit or proceeding shall be maintained against the Surety on this bond unless action is brought within twelve (12) months of the cancellation date of this bond.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Executed: **(date)**

(SEAL)

\_\_\_\_\_  
**PRINCIPAL**

By: \_\_\_\_\_

\_\_\_\_\_  
**TITLE**

(SEAL)

\_\_\_\_\_  
**SURETY**

By: \_\_\_\_\_  
(Name), Attorney-in-fact

(Copy of current power of attorney executed by Surety Company showing authority of attorney-in-fact must be attached.)

**PERFORMANCE BOND  
CORRESPONDING WITH OPTION C**

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That, (**name of License**), hereinafter called "Principal" and (**name of surety company**), a surety company licensed to do business in Texas, hereinafter called "Surety", are held and firmly bound unto CITY OF SAN ANTONIO ACTING THROUGH THE CITY PUBLIC SERVICE OF SAN ANTONIO, TEXAS, A MUNICIPAL BOARD OF THE CITY OF SAN ANTONIO, TEXAS, hereinafter called "Obligee", in the amount of **One-Hundred Thousand and no/100 dollars (\$100,000)**, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016 to \_\_\_\_\_ which contract hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if said Principal shall well and truly perform its obligations, including but not limited the payment by Principal of any claims, liens, taxes, penalties and fees due to Obligee which arise by reason of the construction, installation, operation, maintenance, transfer, relocation or removal of Principal's Attachments on or about Obligee's Pole(s) under the aforesaid Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

No extension of time or other waiver or amendment of the terms of the said aforesaid Contract shall relieve the Surety of its obligations hereunder, and the Surety waives notice of any such extension, waiver, amendment, or change. This bond shall be automatically extended in time without formal and separate amendment to cover full and faithful performance of the Contract modifications, regardless of the amount of time involved.

THIS BOND may be cancelled by Surety by giving thirty (30) days written notice to the Obligee by registered mail. Such cancellation shall not affect any liability the Surety may have or incurred under this bond prior to the effective date of termination. Provided that no action, suit or proceeding shall be maintained against the Surety on this bond unless action is brought within twelve (12) months of the cancellation date of this bond.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Executed: **(date)**

(SEAL)

\_\_\_\_\_  
**PRINCIPAL**

By: \_\_\_\_\_

\_\_\_\_\_  
**TITLE**

(SEAL)

\_\_\_\_\_  
**SURETY**

By: \_\_\_\_\_  
(Name), Attorney-in-fact

(Copy of current power of attorney executed by Surety Company showing authority of attorney-in-fact must be attached.)

**PERFORMANCE BOND  
CORRESPONDING WITH OPTION D**

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That, (name of License), hereinafter called "Principal" and (name of surety company), a surety company licensed to do business in Texas, hereinafter called "Surety", are held and firmly bound unto CITY OF SAN ANTONIO ACTING THROUGH THE CITY PUBLIC SERVICE OF SAN ANTONIO, TEXAS, A MUNICIPAL BOARD OF THE CITY OF SAN ANTONIO, TEXAS, hereinafter called "Obligee", in the amount of **Five-Hundred Thousand and no/100 dollars (\$500,000)**, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016 to \_\_\_\_\_ which contract hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if said Principal shall well and truly perform its obligations, including but not limited the payment by Principal of any claims, liens, taxes, penalties and fees due to Obligee which arise by reason of the construction, installation, operation, maintenance, transfer, relocation or removal of Principal's Attachments on or about Obligee's Pole(s) under the aforesaid Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

No extension of time or other waiver or amendment of the terms of the said aforesaid Contract shall relieve the Surety of its obligations hereunder, and the Surety waives notice of any such extension, waiver, amendment, or change. This bond shall be automatically extended in time without formal and separate amendment to cover full and faithful performance of the Contract modifications, regardless of the amount of time involved.

THIS BOND may be cancelled by Surety by giving thirty (30) days written notice to the Obligee by registered mail. Such cancellation shall not affect any liability the Surety may have or incurred under this bond prior to the effective date of termination. Provided that no action, suit or proceeding shall be maintained against the Surety on this bond unless action is brought within twelve (12) months of the cancellation date of this bond.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Executed: **(date)**

(SEAL)

\_\_\_\_\_  
**PRINCIPAL**

By: \_\_\_\_\_

\_\_\_\_\_  
**TITLE**

(SEAL)

\_\_\_\_\_  
**SURETY**

By: \_\_\_\_\_  
(Name), Attorney-in-fact

(Copy of current power of attorney executed by Surety Company showing authority of attorney-in-fact must be attached.)