



**WIRELESS INSTALLATION LICENSE AGREEMENT**

**BETWEEN**

**CITY PUBLIC SERVICE OF SAN ANTONIO AND**

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

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

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## **WIRELESS INSTALLATION LICENSE AGREEMENT**

This Wireless Installation License Agreement is entered for the purpose of permitting the installation, ownership, lease, license, operation, and/or maintenance of Wireless Installations on or supported by CPS Energy Poles or Streetlight Poles in accordance with the further terms hereof (the “Wireless Installation Agreement”) is made and entered into on the \_\_\_ day of 20\_\_\_, (the “Effective Date”) by and between the City of San Antonio, Texas, acting by and through City Public Service Board of San Antonio, a municipal board of the City of San Antonio, Texas (“CPS Energy”) and [Company Name] (“Licensee”) (collectively, the “Parties”):

### **RECITALS**

- A. Licensee is a provider of cellular mobile radio service within the meaning of Title 47, United States Code, and desires to install, own, lease, or operate Wireless Installations on or supported by CPS Energy Poles or Streetlight Poles in accordance with the terms of this Wireless Installation Agreement and the Pole Attachment Standards, as they may be amended from time to time.
- B. Although not required to do so under state or federal law, CPS Energy is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement, installation, or operation of Licensee’s Wireless Installations in specified locations, including: (1) on Poles, other than within the Communications Space, Electrical Space or Supply Space, or Neutral Space of such Poles; or (2) on Streetlight Poles, each subject to the further requirements of this Wireless Installation Agreement and the Pole Attachment Standards, as they may be amended from time to time.

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

### **AGREEMENT**

#### **1. DEFINITIONS**

- 1.1 Except as provided herein, capitalized terms in this Wireless Installation Agreement shall have the meanings provided herein and in the Pole Attachment Standards.
- 1.2 Pole Attachment Standards means the CPS Energy Pole Attachment Standards, made effective August 1, 2016, as they may be amended from time to time pursuant to the procedures set forth in this Wireless Installation Agreement and the Pole Attachment Standards.
- 1.3 Permitted Wireless Installation Space means locations for Wireless Installations CPS Energy has specified in a Permit limited to (a) on Poles, other than within the Communications Space, Electrical Space or Supply Space, or Neutral Space of such Poles; or (b) on Streetlight Poles, each in CPS Energy-specified locations and in accordance with the requirements of the Pole Attachment Standards.
- 1.4 Unauthorized Wireless Installation means a Wireless Installation (a) that is not authorized by a Permit issued by CPS Energy after Licensee’s submission of a complete and accurate Application; (b) that is nominally authorized by a Permit issued by CPS Energy, but the Application for which was based upon inaccurate or incomplete information supplied by or

on behalf of Licensee; (c) that is without a required franchise, easement, or license to use the public rights-of-way within a municipality or administered by another governmental authority or the private property occupied in whole or in part by the Wireless Installations; or (d) for which any costs or fees owed to CPS Energy for engineering, construction, installation, rental, or inventory have not been paid as prescribed by this Wireless Installation Agreement or the Pole Attachment Standards.

- 1.5 Wireless Installation Agreement means an agreement in a form approved by CPS Energy authorizing a provider of Wireless Services using licensed and unlicensed spectrum to install, own, lease, license, use, or operate one or more Wireless Installations.\

## 2. SCOPE OF AGREEMENT

- 2.1 Grant of License. Subject to the provisions of the Pole Attachment Standards, which are incorporated herein and made effective to Licensee pursuant to this Wireless Installation Agreement, and to the extent allowed by law, CPS Energy hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install, own, lease, license, use, or operate permitted Wireless Installations in Permitted Wireless Installation Space, each such Wireless Installation subject to the further requirements of this Wireless Installation Agreement and the Pole Attachment Standards, as they may be amended from time to time. Licensee's installation, ownership, holding of a leasehold or licensure interest, use, or operation of any Wireless Installation without obtaining a Permit, or in any location other than Permitted Wireless Installation Space, or otherwise in violation of this Wireless Installation Agreement or the Pole Attachment Standards, shall give rise to one or more Unauthorized Wireless Installations.

- 2.2 Applicability of Pole Attachment Standards.

2.2.1 The Pole Attachment Standards are applicable to Licensee's activities in installing, owning, leasing, licensing, using, or operating Wireless Installations. Pursuant to the Pole Attachment Standards, Licensee must apply for and obtain a Permit for every Wireless Installation.

2.2.2 Licensee agrees that CPS Energy has 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, and that the amended Pole Attachment Standards will be incorporated into this Wireless Installation Agreement as of their effective date. As provided in the Pole Attachment Standards, any amendments will be preceded by an appropriate notice period.

- 2.3 Licensee's Privilege to Install, Own, Use, or Operate Wireless Installations. Licensee must obtain a Permit pursuant to the procedures of the Pole Attachment Standards for each Wireless Installation it installs, owns, leases, licenses, uses, or operates. The issuance or maintenance of such Permit or 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 and Streetlight Poles. Nothing in this Wireless Installation Agreement or the Pole Attachment Standards, other than a properly issued Permit, shall be construed as authorization to install, own, lease, license, use, or operate a Wireless Installation on any specific Pole or Streetlight Pole.

- 2.4 No Interest in Property. No use, however lengthy, of CPS Energy Facilities, and no payment of any fees or charges required under this Wireless Installation Agreement or the Pole Attachment Standards, shall create or vest in Licensee any easement or other ownership or property interest of any nature in any portion of such CPS Energy Facilities. Neither the Pole Attachment Standards, this Wireless Installation 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 anything in the Pole Attachment Standards, this Wireless Installation Agreement, or any Permit to the contrary, Licensee shall at all times be and remain a licensee only.
- 2.5 Non-Exclusivity. CPS Energy has previously granted or will grant rights or privileges to use CPS Energy Poles or Streetlight Poles to others not a party to this Wireless Installation Agreement, including for the purpose of installing, owning, leasing, licensing, using, or operating permitted Wireless Installations. After the execution of this Wireless Installation Agreement, CPS Energy shall continue to grant access to its Poles and Streetlight Poles to other persons similarly situated to Licensee seeking to install Wireless Installations on nondiscriminatory terms and conditions.
- 2.6 Franchise, Authority to Use Public Rights-of-Way, and Other Permits.
- 2.6.1 Licensee warrants and agrees that 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.
- 2.6.2 Licensee warrants and agrees that this Wireless Installation Agreement does not constitute a franchise or license to use public rights-of-way within the City of San Antonio or any other jurisdiction within the CPS Energy service area.
- 2.6.3 Licensee warrants and agrees that it is the obligation of Licensee to obtain (a) a franchise or other authority by ordinance, regulation, or state law authorizing Licensees to install, own, use, erect, maintain, lease, license, or operate one or more Wireless Installations in the public rights-of-way from the applicable governing authority or authorities; and (b) other necessary permits, authority, or consents from federal, state, municipal, or other public authorities to conduct such activities.
- 2.6.4 Licensee warrants that it is in compliance with the requirements of subsection 2.6.3 based on its current deployment plans and will provide CPS Energy copies of relevant municipal and/or state franchises, licenses, certificates of authority, or other documents conferring legal authority upon request.
- 2.7 Permitted Uses. Licensee shall only use Wireless Installations to provide Wireless Services for which Licensee has lawful authority and shall not engage in any illegal practices, anticompetitive behavior, or collusion with regard to construction activities related to the installation, operation, maintenance, transfer, relocation, use, lease, license, or removal of its Wireless Installations. Licensee shall fully and timely cooperate with CPS Energy, Other Attaching Entities, other owners of Wireless Installations, and governmental authorities, as prescribed in this Wireless Installation Agreement or the Pole Attachment Standards with regard to the transfer and relocation of Wireless Installations. Licensee understands that preventing or unreasonably delaying any Other Attaching Entity or other owners of Wireless Installations from installing, transferring, or relocating an Attachment or Wireless Installation on a Pole or interfering with the quiet enjoyment of any Other Attaching Entity's or other Wireless Installation owner's privileges will constitute a material breach of this Wireless Installation Agreement.

2.8 No Rights after Termination. Nothing in this Wireless Installation Agreement shall be construed to require CPS Energy to allow Licensee to use any Pole or Streetlight Pole after the termination of this Wireless Installation Agreement.

2.9 Parties Bound by Wireless Installation Agreement. Licensee and CPS Energy are bound by the duties outlined in this Wireless Installation Agreement.

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

#### **3.1 Wireless Installation Fees.**

3.1.1 Pursuant to this Wireless Installation Agreement and the incorporated Pole Attachment Standards, CPS Energy shall assess, and Licensee shall pay, in addition to any other fees or charges under the Wireless Installation Agreement, fees and charges for the privilege of installing, owning, leasing, licensing, using, or operating Wireless Installations on Poles or Streetlight Poles on a per-Wireless Installation basis. Licensee shall be subject to the annual Wireless Installation Fee and applicable Application Fee as provided in Appendix H of the Pole Attachment Standards.

3.1.2 Licensee shall pay all assessed Wireless Installation Fees in full within forty-five (45) days of Licensee's receipt of a statement from CPS Energy.

3.1.3 Licensee failure to pay timely all statements from CPS Energy for Wireless Installation Fees shall constitute a breach of this Wireless Installation Agreement.

3.2 Penalties for Unauthorized Wireless Installations. In the event that Licensee, its agents, or its contractors installs, owns, leases, licenses, uses, or operates one or more Unauthorized Wireless Installations, Licensee shall pay CPS Energy the sum of \$500 for each Unauthorized Wireless Installation, in addition to any costs or expenses required of Licensee under this Wireless Installation Agreement or the Pole Attachment Standards to apply for and obtain a Permit for the Wireless Installation. If Licensee either does not apply for a Permit for the Wireless Installation within ten (10) business days of notice that it has installed an Unauthorized Wireless Installation, or if Licensee does not obtain a permit within forty-five (45) days of notice, the Wireless Installation shall be removed in accordance with the Pole Attachment Standards at Licensee's expense.

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

4.1 Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public or private authority or other appropriate persons any required authorization to construct, operate, or maintain its Wireless Installations on public or private property before it occupies any portion of CPS Energy's Poles or Streetlight Poles. Licensee must provide CPS Energy, as required by the Pole Attachment Standards, a copy of a license, franchise, certificate of authority, or other authorization that grants Licensee access to municipal rights-of-way for the purpose of installing Wireless Installations, as applicable. With regard to access to public or private property, other than municipal rights-of-way, Licensee shall provide CPS Energy upon request 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 or private rights-of-way and to pay all costs associated therewith, and to maintain such approval for the term of a Permit.

- 4.2 Lawful Purpose and Use. Licensee's Wireless Installations must at all times serve a lawful purpose, and the use of such installations must comply with all applicable federal, state, and local laws. The use of Wireless Installations for any illegal or unauthorized purpose shall constitute a breach of this Wireless Installation Agreement.
- 4.3 Forfeiture of CPS Energy's Rights. Any Permit, which on its face covers a Wireless Installation that would result in forfeiture or diminution 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 Wireless Installation as of the installation date of the Wireless Installation referenced by such order, decision, action, or ruling. Further, if any of Licensee's existing Wireless Installations, whether installed pursuant to a valid Permit or not, would cause such forfeiture or diminution (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), Licensee shall promptly remove its Wireless Installations upon receipt of written notice from CPS Energy of such order, decision, action, or ruling. If Licensee does not remove its Wireless Installations after the expiration of 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, Other Attaching Entities, or other owners of Wireless Installations to occupy the real property on which CPS Energy Poles or Streetlight Poles are located are terminated solely as a result of Licensee's Unauthorized Wireless Installations or the failure to remove Licensee's Wireless Installations within the 45-day period set forth in this Section 4.3, Licensee shall use best efforts to restore CPS Energy or other Attaching Entities or Wireless Installation owners to their original status before such Unauthorized Wireless Installation was installed.

## 5. **LIABILITY AND INDEMNIFICATION**

- 5.1 Liability. CPS Energy reserves to itself the right to maintain and operate its Pole and Streetlight Pole system in such manner as will best enable it to fulfill its service requirements. AS A MATERIAL PART OF THE CONSIDERATION OF THIS WIRELESS INSTALLATION AGREEMENT, LICENSEE TAKES AND ACCEPTS CPS ENERGY POLES AND STREETLIGHT POLES "AS IS" IN THE CONDITION IN WHICH LICENSEE FINDS THE CPS ENERGY POLES AND STREETLIGHT 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 OR STREETLIGHT 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 OR STREETLIGHT POLES, BUT IS RELYING UPON ITS OWN EXAMINATION OF THE CPS ENERGY POLES OR STREETLIGHT POLES. CPS ENERGY shall NOT be liable to Licensee, its customers, or anyone else for any interruption to service associated with Wireless Installations or any interference with the operation of Wireless Equipment, except where caused by CPS Energy's negligence or willful misconduct. With the exception of third-party claims subject to Section 5.2, 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 Wireless Installations, Wireless Equipment or system, cost of capital, increased expenses or operation of other facilities, or cost of replacement equipment, facilities or power.

5.2 Indemnification. 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 liability, costs, damages (including indirect or consequential damages), fines, taxes, special charges by others, penalties, payments (including payments made by Indemnitees under any Workers’ Compensation Laws or under any plan for employees’ disability and death benefits), and expenses (including reasonable attorneys’ fees of Indemnitees and all other costs and expenses of litigation) of every kind or character arising from the performance of this Wireless Installation Agreement, including any act, omission, failure, negligence, or willful misconduct in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal, or operation by Licensee or Licensee’s officers, directors, employees, agents, or contractors of Licensee’s Attachments, Communications Facilities, and Wireless Installations, the Communications Facilities or Wireless Installations of any Other Attaching Entity, or CPS Energy Facilities (“Additional Covered Claims”). Licensee’s indemnification obligations for Additional Covered Claims shall apply irrespective of any negligence or alleged negligence of Indemnitees, except to the extent that CPS Energy’s negligence or willful misconduct gives rise to such Additional Covered Claims, in which case it is expressly agreed that Licensee’s obligations of indemnity under this section 5.2 shall be effective only to the extent of its pro rata share of liability. Additional Covered Claims include, but are not limited to, the following:

- 5.2.1 Claims related to intellectual property infringement, libel and slander, and claims or ransom demands resulting from malicious cybersecurity breaches or cyber-attacks perpetrated against CPS Energy’s internal computer networks, systems, gateways, or software applications arising from, resulting from, or related to Licensee’s online access to CPS Energy’s electronic systems, databases, applications, or software utilized by Licensee in the Make-Ready Engineering design process, the installation of Attachments or Wireless Installations, or the construction of Licensee’s Communications Facilities or Wireless Installations;
- 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 Communications Facilities, Wireless Installations, or CPS Energy Facilities in accordance with the requirements and specifications of the Pole Attachment Standards;
- 5.2.3 Claims for damage to or destruction of Communication Facilities of any Other Attaching Entity, the Wireless Installations of other persons, CPS Energy Facilities, private property of any third-party, or injury to or death of any person or persons that arise out of or are caused by the erection, installation, maintenance, presence, operation, use, rearrangement, or removal of or from CPS Energy Poles or Streetlight Poles of Licensee’s Attachments, Licensee’s Facilities, or Licensee’s Wireless Installations, or the proximity of Licensee’s Facilities or Wireless Installations 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;
- 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, the 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 or Wireless Installations at the locations of Poles or Streetlight Poles owned by CPS Energy;
  - 5.2.6 Claims for taxes or special charges by others that arise directly or indirectly from the construction, maintenance, or operation of Licensee's Facilities or Wireless Installations 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 Wireless Installation Agreement by Licensee or its agents and employees or by Licensee's contractors;
  - 5.2.8 Claims arising from or due to environmental conditions arising from Licensee's use, storage, maintenance, disposal, or release of any Hazardous Substances on, under, adjacent, or proximate to CPS Energy Facilities.
- 5.3 Procedure for Indemnification.
- 5.3.1 Indemnitor shall give prompt notice to Licensee of any claim or threatened claim wherein Indemnitor is seeking indemnification pursuant to Section 5.2, specifying the alleged 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 Indemnitor, Indemnitor shall give the written notice to Licensee no later than ten (10) calendar days after Indemnitor receives written notice of the action, suit, or proceeding.
  - 5.3.2 Indemnitor's failure to give the required notice will not relieve Licensee of its obligation to indemnify Indemnitor unless and to the extent Licensee is materially prejudiced by such failure.
- 5.4 Environmental Hazards. Licensee represents and warrants that its use of CPS Energy's Poles or Streetlight Poles will not generate Hazardous Substances, that it will not store or dispose of Hazardous Substances on or about CPS Energy's Poles or Streetlight Poles, that it will not transport to CPS Energy's Poles or Streetlight Poles any Hazardous Substances, and that Licensee's Communications Facilities do not constitute or contain and will not generate any Hazardous Substances, including any such activities 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 and Wireless Installations will not release such Hazardous Substances.
- 5.5 Municipal Liability Limits. No provision of this Wireless Installation 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.
- 5.6 No Limitation. No indemnification provision contained in this Wireless Installation Agreement under which Licensee indemnifies CPS Energy shall be construed in any way to limit any other indemnification provision contained in this Wireless Installation 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 Streetlight Poles, or premises surrounding the Poles and Streetlight Poles prior to commencing any work on Poles or Streetlight Poles or entering the premises surrounding the Poles or Streetlight Poles.
- 6.2 Knowledge of Work Conditions. By executing this Wireless Installation Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees 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 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 or Streetlight 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 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 Protection of Utility Data. During the term of this Wireless Installation Agreement, Licensee may have access to CPS Energy's geodatabase electronic records of Pole or Streetlight Pole locations, strand and underground routes, substation locations, and other pertinent information related to CPS Energy's electric distribution system. Such electronic records consist of proprietary and confidential CPS Energy information related to critical infrastructure and shall be treated as confidential by 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, such as the best practices outlined in the Federal Trade Commission's "Start with Security" cybersecurity guidelines.
- 6.5 Licensee's Confidential Information. To the extent that Licensee considers any document or information submitted to CPS Energy under the terms of this Wireless Installation Agreement or the Pole Attachment Standards to be trade secret, proprietary, or otherwise confidential under law, it shall label or mark the document or information conspicuously with the words "Confidential Information." If any person requests access to Licensee's information submitted to CPS Energy under the terms of this Wireless Installation Agreement or the Pole Attachment Standards, CPS Energy will treat such information as required under the Texas Public Information Act, Chapter 552, Texas Government Code.

## **7. INSURANCE**

- 7.1 Insurance Coverage. Licensee shall comply with the insurance coverage and other requirements summarized in Appendix A to this Wireless Installation Agreement and shall be subject to the claims processing and procedures found in the Pole Attachment Standards. 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 ("Covered Persons") from and against any and all claims or demands for damages, corresponding with Appendix

A. Licensee understands that failure to maintain the appropriate insurance coverage at any time during the term of this Wireless Installation Agreement shall constitute a breach of this Wireless Installation 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 Wireless Installation Agreement, by contract or otherwise, to use CPS Energy Facilities. Such rights shall not interfere with the privileges granted to Licensee by the specific Permits issued pursuant to this Wireless Installation Agreement and the Pole Attachment Standards. Licensee's privileges under a Permit issued pursuant to this Wireless Installation Agreement and the Pole Attachment Standards shall not interfere with the privileges of any Other Attaching Entity or other provider of Wireless Services that has been issued a Permit. In the event of a conflict between the privileges of Licensee and any Other Attaching Entity or other provider of Wireless Services that cannot be resolved by reference to the Pole Attachment Standards, CPS Energy shall resolve the conflict as the Pole or Streetlight Pole owner based on non-discriminatory principles.

## **9. ASSIGNMENT**

- 9.1 Limitations on Assignment. Licensee shall not assign its privileges or obligations under this Wireless Installation Agreement, nor any part of such privileges 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 Wireless Installation Agreement to the contrary, Licensee shall have the privilege to assign this Wireless Installation 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 Wireless Installation Agreement. No assignment or transfer under this Section 9 shall be allowed, however, until the assignee or transferee becomes a signatory to this Wireless Installation Agreement and assumes all obligations of Licensee arising under this Wireless Installation 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 Wireless Installation Agreement for claims that arose during the time period Licensee operated pursuant to the Wireless Installation Agreement, and Licensee shall not be released from those claims.
- 9.3 Sub-Licensing. Licensee shall not sub-license space on a CPS Energy Pole or Streetlight Pole to any third party, or place a Wireless Installation for the benefit of any third-party, including an Affiliate, on a Pole, Streetlight Pole, or Attachment Arm. Any such action shall constitute a material breach of this Wireless Installation Agreement.

## **10. FAILURE TO ENFORCE, NONWAIVER**

Failure of CPS Energy or Licensee to take action to enforce compliance with any of the terms or

conditions of this Wireless Installation Agreement or the Pole Attachment Standards or to give notice or declare this Wireless Installation Agreement or any authorization granted thereunder in default or terminated shall not constitute a waiver or relinquishment of any term or condition of this Wireless Installation Agreement or the Pole Attachment Standards, but the same shall be and remain at all times in full force and effect until terminated in accordance with their terms.

## **11. TERMINATION OF WIRELESS INSTALLATION AGREEMENT**

- 11.1 CPS Energy shall have the right, pursuant to the procedure set out in Section 11.2, to terminate this Wireless Installation Agreement or any Permit issued pursuant to the Pole Attachment Standards, and to pursue any and all remedies provided in this Wireless Installation Agreement, whenever Licensee is in default of any term or condition of this Wireless Installation Agreement, including, but not limited to:
- 11.1.1 Construction, operation, maintenance, use, lease, or licensure of Licensee's or Wireless Installations in violation of law or in aid of any unlawful act or undertaking;
  - 11.1.2 Construction, operation, maintenance, use, lease, or licensure of Licensee's or Wireless Installations after any authorization required of Licensee has lawfully been denied or revoked by final action of any governmental or private authority;
  - 11.1.3 Construction, operation, maintenance, use, lease, or licensure of Licensee's or Wireless Installations without the insurance and/or performance bond coverage required under Sections 7 and 17;
  - 11.1.4 Failing to pay in full an invoice for any charge, fee, penalty, or interest as provided in this Wireless Installation Agreement or the Pole Attachment Standards; or
  - 11.1.5 Failing to promptly and fully perform any other covenant, condition, provision, or agreement contained in this Wireless Installation Agreement or 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 of default under Section 11.1, above. Licensee shall take immediate corrective action to cure such default within fifteen (15) calendar days, or such longer time 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. Such agreement to extend the period to cure shall not be unreasonably withheld by CPS Energy. Upon correcting such condition, but no later than the expiration of the applicable cure period, Licensee shall confirm in writing to CPS Energy that the cited condition has ceased or been corrected. If Licensee fails to cure such condition, CPS Energy may immediately terminate this Wireless Installation Agreement or any Permit at its option and provide written notice to Licensee. In the event of termination of this Wireless Installation Agreement or any of Licensee's privileges or authorizations thereunder, Licensee shall remove its Wireless Installations at Licensee's expense pursuant to the Pole Attachment Standards. If Licensee fails to remove its Wireless Installations such installations shall be deemed abandoned, and CPS Energy may remove them at Licensee's expense.

## **12. TERM OF AGREEMENT**

- 12.1 Initial Term and Renewal. This Wireless Installation Agreement shall become effective on Effective Date, and, shall have an initial term of five (5) years. Following the expiration of the initial term, this Wireless Installation Agreement shall automatically renew for successive one-year terms until such time that this Wireless Installation Agreement is terminated by either Party upon giving the other Party six (6) months' written notice of termination or pursuant to the other terms of this Wireless Installation Agreement.
- 12.2 Survival of Obligations. Any expiration or termination of Licensee's privileges under this Wireless Installation Agreement shall not relieve Licensee of any obligation, whether indemnity or otherwise, which has accrued prior to such expiration or termination of this Wireless Installation Agreement or removal of Licensee's Wireless Installations.
- 13. AMENDING AGREEMENT AND POLE ATTACHMENT STANDARDS**
- 13.1 Amendments to Pole Attachment Standards. CPS Energy reserves the right to amend the Pole Attachment Standards in accordance with their terms. Any amendment to the Pole Attachment Standards shall apply prospectively, except to the extent required by federal, state, or local law.
- 13.1.1 Acceptance of Amendment. At least thirty (30) calendar days prior to the effective date of an amendment to the Pole Attachment Standards, CPS Energy will send Licensee a form notice requesting Licensee's acknowledgment of the amendment by a date certain and whether Licensee accepts or rejects the amendment. Licensee shall return the executed form clearly marking acceptance or rejection of the amendment before the effective date of the amendment. If Licensee fails to timely return the form, CPS Energy will send a written reminder within ten (10) business days following the effective date of the amendment requesting return of the executed form no later than ten (10) business days from the date of the reminder notice. If CPS Energy does not receive the executed form by the effective date of the amendment, it shall suspend processing of Licensee's Applications until such time as the form is received accepting the amendment.
- 13.1.2 Rejection of Amendment. If Licensee returns the form rejecting the amendment, CPS Energy will suspend any further processing of Licensee's Applications and will send written notice to Licensee within ten (10) business days of receipt of the form verifying Licensee's choice to reject the amendment. Within thirty (30) days thereafter, the Parties shall meet to discuss the timing for contract termination, not to exceed ninety (90) days, and the terms for the orderly removal or other disposition of Licensee's Wireless Installations, not to exceed one hundred and eighty (180) days. If Licensee shows good cause as to why it cannot meet within thirty (30) days, the Parties may agree on an alternative time to meet. If Licensee refuses to meet within the thirty (30) day period or fails to schedule an alternative time to meet upon a showing of good cause, CPS Energy may send notice of termination at any time and Licensee shall remove its Attachments and Wireless Installations pursuant to the provisions of the Pole Attachment Standards.
- 13.2 Amendments Only in Writing. Notwithstanding other provisions of this Wireless Installation Agreement, the terms and conditions of this Wireless Installation Agreement shall not be amended, changed, or altered except in writing signed by authorized representatives of both Parties or upon CPS Energy's adoption of amendments to the Pole Attachment Standards and Licensee's acceptance thereof in accordance with the terms of this Wireless Installation Agreement.

**14. DISPUTE RESOLUTION**

- 14.1 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 Wireless Installation Agreement, or any potential conflict between the provisions of this Wireless Installation 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”) shall 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 Wireless Installation Agreement.
- 14.2 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>
First Level	<i>CPS Energy Executive Vice-President</i>	<i>[Company Name] General Manager</i>
Second Level	<i>CPS Energy General Counsel</i>	<i>[Company Name] General Counsel</i>

- 14.3 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.
- 14.4 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.
- 14.5 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 Wireless Installation 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 respectively shall maintain a staffed 24-hour emergency telephone numbers, not available to the general public, at which either Party can report damage to Wireless Installations 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 Wireless Installations requiring notice under this Section 15.2.

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

- 16.1 Licensee shall notify CPS Energy in writing not later than thirty (30) days after the filing or imposition of a receivership, reorganization, bankruptcy or other such action or proceeding by or against Licensee.
- 16.2 The privileges 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, or debtor-in-possession to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership, trusteeship, or bankruptcy shall have been vacated or dismissed prior to the expiration of said one hundred twenty (120) days, or unless:
- 16.2.1 To the extent permitted by law, within one hundred twenty (120) days after their election, appointment, or imposition such receivers, trustees, or debtor-in-possession

shall have complied fully with all the terms and provisions of this Wireless Installation Agreement granted pursuant hereto, and the receivers, trustees, or debtor-in-possession within said one hundred twenty (120) days shall have remedied all defaults under the Wireless Installation Agreement, if any; and

- 16.2.2 To the extent permitted by law, within said one hundred twenty (120) days, such receivers, trustees, or debtor-in-possession shall execute an agreement duly approved by CPS Energy, whereby such receivers, trustees, or debtors-in-possession assume and agree to be bound by each and every term, provision and limitation of this Wireless Installation Agreement.
- 16.3 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 Wireless Installation Agreement, CPS Energy may serve notice of termination upon Licensee, in which event the Wireless Installation Agreement herein granted and all privileges of the Wireless Installation Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
- 16.3.1 CPS Energy shall have approved the transfer of this Wireless Installation Agreement, as and in the manner this Wireless Installation Agreement provides; and
- 16.3.2 The successful bidder shall have agreed with CPS Energy to assume and be bound by all the terms and conditions of this Wireless Installation Agreement.

## **17. PERFORMANCE BONDS**

- 17.1 Bond to Be Posted. Prior to making any Wireless Installations and within thirty (30) days of the Effective Date of this Wireless Installation Agreement, Licensee shall provide to CPS Energy a performance bond in the amount of one-hundred thousand and 00/100 dollars (\$100,000.00) corresponding with the requirements of Appendix B. 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. Department of the Treasury as published in the 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 shall 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 Wireless Installation 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 Wireless Installations on or about CPS Energy's Poles or Streetlight 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, its contractors, or 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.
- 17.3 Actions after Draw-Down. Within thirty (30) days after notice to Licensee that CPS Energy has drawn any amount against the bond, Licensee shall take action to replenish the bond to its prior amount.
- 17.4 Cancellation or Replacement. 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 Wireless Installation Agreement shall constitute a material breach of the Wireless Installation Agreement retroactive to the date of the notice of cancellation of the bond.

## **18. ENTIRE AGREEMENT; NON-WAIVER**

This Wireless Installation Agreement, together with the incorporated Pole Attachment Standards, supersede all previous oral and written agreements between CPS Energy and Licensee regarding the approval, placement, transfer, maintenance, and removal of Licensee's Wireless Installations on CPS Energy's Poles or Streetlight Poles within the geographical service area covered by the Wireless Installation Agreement. All provisions, terms, and conditions to this Wireless Installation Agreement are expressed herein. Notwithstanding any contrary provision, term, or condition herein, this Wireless Installation Agreement shall neither waive nor be interpreted to waive any claims of any nature, any amounts or credits owed, or any obligations or duties arising under a prior agreement between the Parties or the Parties' performance thereunder. Nor shall this Wireless Installation Agreement act as a waiver of any claims for the prior use of CPS Energy Poles or Streetlight Poles without valid authorization.

## **19. SEVERABILITY**

The invalidity of one or more clauses, sentences, sections, or articles of this Wireless Installation Agreement shall not affect the validity of the remaining portions of this Wireless Installation Agreement, provided that the material purposes of this Wireless Installation Agreement can be determined and effected.

## **20. GOVERNING LAW**

The validity, performance and all matters relating to the effect of this Wireless Installation 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, APPENDICES, AND POLE ATTACHMENT STANDARDS**

The recitals stated above, all appendices to this Wireless Installation Agreement, and the Pole Attachment Standards, as they may be amended from time to time, are incorporated into and constitute part of this Wireless Installation Agreement.

## **22. MISCELLANEOUS PROVISIONS**

22.1 Preexisting Wireless Installations. Licensee shall not be required to obtain multiple Permits for unauthorized Wireless Installations in place prior to the Effective Date of this Wireless Addendum. However, Licensee must account for all preexisting Wireless Installations by submitting a Permit Application with an inventory of preexisting Wireless Installations identifying for each installation its physical address, identification of supporting Pole(s), GPS coordinates, type of equipment, electricity account serving the equipment, and other

relevant information requested by CPS Energy. Licensee shall also include as part of the Permit Application demonstrative engineering design drawings of the type(s) of Wireless Installations and equipment specifications. All such preexisting Wireless Installations shall be subject to inspection by CPS Energy and must be in compliance with all Applicable Engineering Standards prior to the issuance of the Permit. CPS Energy shall issue a Permit for such preexisting Wireless Installations following compliance with the Permit requirements and upon payment of any rent in areas, penalties, and unpaid electricity associated with such preexisting Wireless Installations.

- 22.2 Termination of Pole Use for Rate Challenge. The Parties agree that the Wireless Rate is not governed by FCC rules or PURA, for a host of reasons, including restrictions on the placement of Wireless Installations set forth in this Wireless Addendum and the Standards, which require among other things that Wireless Installations be placed in space considered unusable for other purposes, including the installation of Attachments. The Parties further agree that if any Attaching Entity challenges the Pole Attachment Rate CPS Energy proposes in any year on the basis of (a) claims that the Pole Attachment Rate should be reduced based upon revenues generated from Wireless Installations; (b) the nominal increase in space on a pole actually used, if not “usable” within the meaning of FCC regulations; (c) the revenues generated from permission to install Wireless Installations; (d) costs incurred or avoided as a result of permission to install Wireless Installations; or (e) any other basis related to Wireless Installations; then CPS Energy may terminate the privilege of Licensee and all other Attaching Entities that have installed Wireless Installations on CPS Energy Poles. Within one hundred eighty (180) days of receiving written notice of termination to use CPS Energy Poles, Licensee and such Attaching Entities shall remove all Wireless Installations from distribution Poles and will only have access to Streetlight Poles thereafter.
- 22.3 Contractors and Agents Bound. Licensee agrees to include in all its contracts and agreements with independent contractors or agents provisions that are consistent with and which will fulfill the requirements of this Wireless Installation Agreement.
- 22.4 No Third-Party Beneficiaries. The terms and provisions of this Wireless Installation Agreement are intended to be for the benefit of CPS Energy and Licensee. Except as otherwise provided herein, nothing in this Wireless Installation Agreement, express or implied, is intended to confer upon any other person or entity, other than the Parties, any benefits, rights or remedies under or by reason of this Wireless Installation Agreement.

### **23. INTEREST ON PAST-DUE AMOUNTS**

In the event Licensee fails to pay an amount due under the terms of this Wireless Installation Agreement within the period of time set forth for payment, interest shall accrue on the unpaid balance at the rate of one and 17/100ths percent (1.17%) per month (or such lesser rate as may be required by law) for each month starting from the date the payment is due until such time as payment is received.

### **24. ATTORNEY’S FEES**

If CPS Energy or Licensee brings any action at law or in equity to enforce any provision of this Wireless Installation Agreement, including the incorporated Pole Attachment Standards, the

prevailing party will be entitled to recover its reasonable costs and attorney's fees in addition to any other relief to which it may be entitled.

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

**[Company Name]**

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

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

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

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

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

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

**APPENDIX A**  
**MINIMUM INSURANCE REQUIREMENTS**

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

1.02 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

1.03 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)

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

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

Excess Liability Coverage	\$8,000,000.00
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1.06 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.

1.07 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.

- 1.08 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), in accordance with ISO endorsement forms "CG 20 10 04 13" and "CG 20 37 04 13," or their equivalent. Further, Licensee represents and warrants that:
  - (a) All such policies will be endorsed to 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 policy endorsements as required in this Appendix B from issuing insurance company(s).
- 1.09 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.
- 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; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the effective date of this Agreement.
- 1.11 Licensee shall not commence the installation of Attachments under this Agreement until Licensee has obtained all required insurance and until such insurance has been received and approved by CPS Energy. 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 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 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 insurance specified to be carried by the Licensee, in the like form specified herein.
- 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.

**APPENDIX B  
PERFORMANCE BOND**

**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 \_\_\_\_\_, 20[\_\_\_] 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 Wireless Installations 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 \_\_\_\_\_, 20[\_\_\_].

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.)