



STANDARD POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

CITY PUBLIC SERVICE OF SAN ANTONIO AND

[_____]

CPS ENERGY AGREEMENT NO. _____

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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 agrees to install and maintain Attachments and associated communications equipment on CPS Energy’s Poles to provide Communications Services to the public or for the purposes of a permitted Private Network; and
- B. 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 incorporated herein by reference as if fully set forth in this Agreement; and
- C. 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) detrimentally affect CPS Energy’s ability to deliver exceptional customer service; or (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. 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. 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; and
- F. 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 pursuant to the terms hereof. Upon the expiration or termination of this Agreement, Licensee shall have a duty to remove its Attachments. Any Attachments, whether previously authorized or not, that are not timely removed shall be subject to the terms and conditions of the Pole Attachment Standards, including removal by CPS Energy at Licensee’s expense.

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

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 section of this Agreement or in the Pole Attachment Standards. 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 the word “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 Attachment Rate shall have the meaning set forth in the Pole Attachment Standards.
- 1.5 Communications Facilities shall have the meaning set forth in the Pole Attachment Standards.
- 1.6 Communications Services shall have the meaning set forth in the Pole Attachment Standards.
- 1.7 CPS Energy Facilities shall have the meaning set forth in the Pole Attachment Standards.
- 1.8 Licensee means [**Company Name**] and its authorized successors and assignees.
- 1.9 Licensee’s Facilities shall have the meaning set forth in the Pole Attachment Standards.
- 1.10 Overlash shall have the meaning set forth in the Pole Attachment Standards.
- 1.11 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.
- 1.12 Permit shall have the meaning set forth in the Pole Attachment Standards.
- 1.13 Pole shall have the meaning set forth in the Pole Attachment Standards.
- 1.14 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.

- 1.15 Private Network means a network constructed by a private or public entity, such as a school, a university, or a unit of local government, used solely for non-commercial communications purposes.
- 1.16 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, as they may be amended from time to time, which are incorporated herein and made effective to Licensee pursuant to this Agreement, 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 install and maintain permitted 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, but shall give rise to one or more Unauthorized Attachments.
- 2.2 Applicability of Pole Attachment Standards. In order for Licensee to enjoy the privilege of installing 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. 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 in this 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 Attach. Licensee must obtain a Permit pursuant to the procedures and requirements of the Pole Attachment Standards for each Attachment Licensee desires to undertake. 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 authorization to install an Attachment to any specific Pole.
- 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 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 or permitted Private Networks, 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, 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 privileges will constitute a material breach of this Agreement. Nothing in this Agreement shall be construed to require CPS Energy to allow Licensee to 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 this Agreement and the incorporated Pole Attachment Standards, CPS Energy shall assess, and Licensee shall pay, fees and charges for the privilege of installing Attachments onto Poles within forty-five (45) days of Licensee's receipt of a statement from CPS Energy. Notwithstanding any other provision of this Agreement, the Attachment Rate shall be assessed at the highest rate permitted under applicable law as set forth in the Pole Attachment Standards. Licensee's failure to timely pay statements or invoices for Attachments or other applicable fees or charges in accordance with their terms 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 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.

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 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 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 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 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 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 45-day period set forth in this Section 4.3, Licensee shall use best efforts to restore CPS Energy and/or other Attaching Entities to their original status before such Unauthorized Attachment was installed.

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 OWN 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. CPS Energy shall not be liable to Licensee for any indirect, special, incidental, or consequential damages suffered by Licensee 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 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 in any manner, connected with, occurring incident to, or in the performance of this 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 and Communications Facilities, the Communications Facilities of any Other Attaching Entity, or CPS Energy Facilities (“Covered Claims”). Licensee’s indemnification obligations for Covered Claims shall apply irrespective of any negligence or alleged negligence of Indemnitees except to the extent that CPS Energy’s gross negligence or willful misconduct gives rise to such Covered Claims. Except when resulting from CPS Energy’s gross negligence or willful misconduct, Covered Claims include, but are not limited to, the following:
- 5.2.1 Claims related to intellectual property infringement, libel and slander, 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 Communications Facilities 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, 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 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;
 - 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 at the locations of 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 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;
 - 5.2.8 Claims arising from or due to environmental conditions arising from the 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 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 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 Indemnitee, Indemnitee shall give the written notice to Licensee no later than ten (10) calendar days after Indemnitee receives written notice of the action, suit, or proceeding.
 - 5.3.2 Indemnitee's failure to give the required notice will not relieve Licensee of its obligation to indemnify Indemnitee 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 will not generate Hazardous Substances, that it will not store or dispose of Hazardous Substances on or about CPS Energy's Poles, that it will not 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 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 will not release such Hazardous Substances.
- 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.
- 5.6 No Limitation. 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 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 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 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 Agreement, 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 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 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 and other requirements under this Agreement and the incorporated Pole Attachment Standards, 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 ≤ 300 total Attachments installed on CPS Energy Poles.
- 7.1.2 Option B. Attaching Entity providing Communications Services with ≥ 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, 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 privileges granted to Licensee by the specific Permits issued pursuant to the Pole Attachment Standards. Licensee's privileges under a Permit issued pursuant to the Pole Attachment Standards shall not interfere with the privileges of any Other Attaching Entity that has been issued a Permit. In the event of a conflict between the privileges of Licensee and any Other Attaching Entity that cannot be resolved 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 privileges or obligations under this 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 Agreement to the contrary, Licensee shall have the privilege 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, including an Affiliate, 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, NONWAIVER

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 in default or 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, and to pursue any and all remedies provided in this Agreement, whenever Licensee is in default of any term or condition of this Agreement, including, but not limited to:

11.1.1 Construction, operation or maintenance of Licensee's Attachments or Communications Facilities in violation of law or in aid of any unlawful act or undertaking;

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;

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;

11.1.4 Failing to accept amendments to the Pole Attachment Standards;

11.1.5 Failing to pay in full an invoice for any charge, fee, penalty, or interest as provided in this Agreement or the Pole Attachment Standards; or

11.1.6 Failing to promptly and fully perform any other covenant, condition, provision, or agreement contained in this Agreement, including without limitation 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 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 as may be agreed by the parties in writing. Licensee shall confirm in writing to CPS Energy that the default has been cured.

11.3 If Licensee fails to cure such default within the applicable time, CPS Energy may immediately terminate this Agreement or any Permit and provide written notice to Licensee of such termination.

- 11.4 In the event of termination of this Agreement or any of Licensee's privileges or authorizations hereunder, Licensee shall remove its Attachments at Licensee's expense pursuant to the Pole Attachment Standards. If Licensee fails to remove its Attachments as provided in the Pole Attachment Standards, the Attachments shall be deemed abandoned, and CPS Energy may remove the Attachments at Licensee's expense.

12. TERM OF AGREEMENT

- 12.1 Initial Term and Renewal. This Agreement shall become effective on August 1, 2016, 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 or pursuant to the other terms of this Agreement.
- 12.2 Survival of Obligations. Any expiration or termination of Licensee's privileges under this Agreement shall not relieve Licensee of any obligation, whether indemnity or otherwise, which has accrued prior to such expiration or termination of this Agreement or removal of Licensee's Attachments.

13. AMENDING AGREEMENT AND POLE ATTACHMENT STANDARDS

- 13.1 CPS Energy reserves the right to amend the Pole Attachment Standards in accordance with their terms. Within thirty (30) days of notice of CPS Energy's amendment of the Pole Attachment Standards, Licensee shall submit in writing a letter in form and substance acceptable to CPS Energy in its reasonable discretion accepting the amendments to the Pole Attachment Standards as an amendment to this Agreement ("Amendment Acceptance Letter"). Failure of Licensee to provide the Amendment Acceptance Letter within the time required shall constitute an event of default under Section 11, CPS Energy may terminate this Agreement, and Licensee shall remove all Attachments in accordance with the Pole Attachment Standards.
- 13.2 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 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 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 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") 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 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:

	CPS Energy	Licensee	Time
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

- 14.3 The allotted time for the first level negotiators will begin on the tenth (10th) 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 (10th) 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 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 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 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 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 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 Agreement, CPS Energy may serve notice of termination upon Licensee, in which event the Agreement herein granted and all

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 this Agreement provides; and

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

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. 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 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, 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.

17.2 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 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 Agreement shall constitute a material breach of the Agreement retroactive to the date of the notice of cancellation of the bond.

18. ENTIRE AGREEMENT

Except as to any payments or credits due under previous agreements as of the effective date 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 the incorporated Pole Attachment Standards and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

19. SEVERABILITY

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

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, APPENDICES, AND POLE ATTACHMENT STANDARDS

The recitals stated above, all appendices to this Agreement, and the Pole Attachment Standards 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.

22.3 Preexisting Agreements. Licensee shall not be required to obtain a new Permit for an Attachment authorized under a Permit obtained under prior agreement between the Parties prior to the effective date of this Agreement. However, such Attachments permitted by prior agreement are subject to all the terms and conditions of this Agreement and the Pole Attachment Standards from the effective date.

22.4 All Attachments made after the effective date of this Agreement are and shall be authorized by the procedures, requirements, and limitations of this Agreement, subject to Licensee's compliance with all the terms and conditions of the Pole Attachments Standards. Licensee's failure to maintain all Attachments in accordance with the Pole Attachment Standards shall be considered a default, and Unauthorized Attachments shall be subject to removal at Licensee's expense.

22.5 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.

22.6 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.

23. INTEREST ON PAST-DUE AMOUNTS

In the event Licensee fails to pay an amount due 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 brings any action at law or in equity to enforce any provision of this Agreement, including the incorporated Pole Attachment Standards, CPS Energy will be entitled to recover its reasonable 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: _____

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 herein and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same of his/her own 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 herein and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same of his/her own 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 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 herein and who executed the foregoing instrument and acknowledged that he/she signed and sealed the same of his/her own free and voluntary act and deed.

“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 $\geq 1,000$ 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 OPTION A**

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. 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 the insurance policies and policy endorsements as required in this Exhibit A from issuing insurance company(s).
- 1.8 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.
- 1.9 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 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.
- 1.11 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 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 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.
- 1.14 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.

DRAFT (5/11/2016)

**MINIMUM INSURANCE REQUIREMENTS
FOR OPTIONS B, C, AND D**

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), under the form of additional insured endorsement providing the maximum protection to CPS Energy allowed by applicable law. 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 the insurance policies and policy endorsements as required in this Exhibit A 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 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 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 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 (5/11/2016)

**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, dates 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.)