

Ordinance

Authorizing the City Manager or designee to execute a pilot license agreement between the City of Corpus Christi and Mobilitie, LLC for wireless facilities and poles in the right-of-way

WHEREAS, Section 253 of the Federal Communications Act of 1934, as amended, including 47 U.S.C. § 253, acknowledges that the City has the authority to manage and control access to and use of the Right-of-Way within the City limits;

WHEREAS, the City owns and controls the Right-of-Way; and

WHEREAS, in accordance with Article IX, Section 1 of the City Charter, the City Council authorizes the City Manager or designee to enter into the License Agreement to install wireless facilities and pole in the right of way.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. The City Manager or designee is authorized to execute a pilot license agreement between the City of Corpus Christi and Mobilitie, LLC for wireless facilities and poles in the right-of-way.

That the foregoing ordinance was read for the first time and passed to its second reading on this the _____ day of _____, 2017, by the following vote:

Joe McComb	_____	Ben Molina	_____
Rudy Garza	_____	Lucy Rubio	_____
Paulette Guajardo	_____	Greg Smith	_____
Michael Hunter	_____	Carolyn Vaughn	_____
Debbie Lindsey-Opel	_____		

That the foregoing ordinance was read for the second time and passed finally on this the _____ day of _____, 2017, by the following vote:

Joe McComb	_____	Ben Molina	_____
Rudy Garza	_____	Lucy Rubio	_____
Paulette Guajardo	_____	Greg Smith	_____
Michael Hunter	_____	Carolyn Vaughn	_____
Debbie Lindsey-Opel	_____		

PASSED AND APPROVED on this the _____ day of _____, 2017.

ATTEST:

Rebecca Huerta
City Secretary

Joe McComb
Mayor

**PILOT LICENSE AGREEMENT
BETWEEN THE CITY OF CORPUS CHRISTI AND MOBILITIE, LLC
FOR WIRELESS FACILITIES AND POLES IN THE RIGHT-OF-WAY**

TABLE OF CONTENTS

	Page No.
ARTICLE 1. PARTIES	6
1.1. ADDRESSES.....	6
ARTICLE 2. DEFINITIONS	7
ARTICLE 3. AUTHORIZATION TO USE RIGHT-OF-WAY	10
3.1. GRANT OF PERMISSION.....	10
3.2. SCOPE OF AGREEMENT	11
3.3. LIST OF LICENSED LOCATIONS	12
3.4. UNAUTHORIZED WIRELESS FACILITIES AND LICENSEE POLES	12
3.5. LICENSEE POLES	13
3.6. LEASING AND SUBLEASING	13
ARTICLE 4. PERMITS AND PERMISSION	14
4.1. REQUEST FOR ALTERNATE LICENSED LOCATION	14
4.2. ALTERNATE LOCATION REVIEW PROCESS.....	14
4.3. PERMITS.....	15
4.4. INVENTORY	15
ARTICLE 5. RENTAL FEES AND OTHER PAYMENTS	15
5.1. RENTAL FEE.....	15
5.2. OTHER PAYMENTS.....	16
5.3. LATE PAYMENT CHARGE.....	16
5.4. HOLD OVER CHARGE	16
5.5. NON-FUNCTIONING WIRELESS FACILITIES	16
5.7. PAYMENT	16
5.8. REIMBURSEMENT	17
5.9. PAYMENT LIMITS.....	17
5.10. COMPLIANCE REVIEW	17

ARTICLE 6.	WIRELESS FACILITIES AND LICENSEE POLES REQUIREMENTS.....	17
6.1.	AESTHETIC REQUIREMENTS.....	17
6.3	INSPECTIONS.....	19
6.4	PLACEMENT.....	19
6.5	ELECTRICAL SUPPLY.....	21
6.6	FIBER CONNECTION.....	21
6.7	GENERATORS.....	22
6.8	EQUIPMENT DIMENSIONS.....	22
6.9	TREE MAINTENANCE.....	22
6.10	SIGNAGE.....	23
6.11	OVERHEAD LINES PROHIBITED IN UNDERGROUND UTILITY AREAS.....	23
6.12	REPAIR.....	23
6.13	GRAFFITI ABATEMENT.....	23
ARTICLE 7.	INTERFERENCE WITH OPERATIONS AND COLLOCATIONS.....	24
7.1.	NO LIABILITY.....	24
7.2.	NO INTERFERENCE.....	24
ARTICLE 8.	ABANDONMENT, RELOCATION AND REMOVAL	25
8.1.	ABANDONMENT OF OBSOLETE WIRELESS FACILITIES AND LICENSEE POLES.....	25
8.2.	REMOVAL REQUIRED BY CITY.....	25
8.3.	REMOVAL BY LICENSEE.....	25
8.4.	REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT	26
8.5.	REMOVAL REQUIRED AFTER TERMINATION OR EXPIRATION OF LICENSE.....	26
8.6.	REMOVAL REQUIRED AFTER TERMINATION.....	27
8.7.	OWNERSHIP.....	27
8.8.	RESTORATION.....	27
8.9.	LICENSEE RESPONSIBLE.....	27
8.10.	ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE.....	27
ARTICLE 9.	ENVIRONMENTAL LAW REQUIREMENTS.....	28

ARTICLE 10. SECURITY.....	28
ARTICLE 11. RELEASE, INDEMNIFICATION, AND INSURANCE	29
11.1. RELEASE.....	29
11.2. INDEMNIFICATION.....	29
11.3. INDEMNIFICATION PROCEDURES	30
11.4. INSURANCE.....	31
ARTICLE 12. TERM AND TERMINATION	34
12.1. TERM	34
12.2. TERMINATION FOR CAUSE BY CITY	34
12.3. TERMINATION BY LICENSEE	35
12.4. HOLDING OVER	35
ARTICLE 13. TRANSFER OF AUTHORITY.....	36
13.1. ASSIGNMENT.....	36
13.2. BUSINESS STRUCTURE AND ASSIGNMENTS.....	36
ARTICLE 14. RECORDS AND AUDITS	37
14.1. RECORDS	37
14.2. INSPECTIONS AND AUDITS.....	37
14.3. CONFIDENTIAL INFORMATION	37
ARTICLE 15. MISCELLANEOUS	38
15.1. FORCE MAJEURE	38
15.2. DISPUTE RESOLUTION.....	38
15.3. ACCEPTANCE AND APPROVAL; CONSENT	39
15.4. REPRESENTATIONS AND WARRANTIES.....	40
15.5. STATEMENT OF ACCEPTANCE	40
15.6. RELATIONSHIP OF THE PARTIES.....	40
15.7. SEVERABILITY	41
15.8. ENTIRE AGREEMENT.....	41
15.9. WRITTEN AMENDMENT.....	41
15.10. APPLICABLE LAWS AND VENUE.....	41
15.11. NOTICES.....	41

15.12.	CAPTIONS	42
15.13.	NON-WAIVER.....	42
15.14.	ENFORCEMENT	42
15.15.	AMBIGUITIES.....	42
15.16.	SURVIVAL	42
15.17.	CERTIFICATE OF INTERESTED PARTIES	43
15.18.	PARTIES IN INTEREST	43
15.19.	REMEDIES CUMULATIVE	43
15.20.	LICENSEE DEBT	44
15.21.	PARTS INCORPORATED	44
15.22.	CONTROLLING PARTS.....	44
15.23	CHANGE OF LAW.....	44
15.24	SIGNATURES.....	44

EXHIBITS

- A. LICENSED LOCATIONS**
- B. APPROVED WIRELESS FACILITIES AND EQUIPMENT LIST**
- C. LETTER OF CREDIT (REPRESENTATIVE SAMPLE)**
- D. PERFORMANCE BOND (REPRESENTATIVE SAMPLE)**

THE STATE OF TEXAS §
§
COUNTY OF NUECES §

RECITALS

WHEREAS, the Licensee shall compensate the City pursuant to state law for the grant of permission to install the Licensee's Wireless Facilities and Licensee Poles at approved locations in the City's Right-of-Way; and

WHEREAS, the City may grant permission, on a site-by-site basis, the Licensee's non-exclusive use at approved locations in its Right-of-Way, subject to the terms and conditions set forth herein, and pursuant to Permits issued by the City Manager; and

WHEREAS, the City and Licensee desire by this Agreement to set forth their understanding of such matters.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein below, City and Licensee agree as follows:

ARTICLE 1. PARTIES

1.1.ADDRESSES

The initial address of the parties, which either party may change at any time by giving written notice to the other party pursuant to the terms of this Agreement, are as follows:

City
City Manager

City of Corpus Christi

P.O. Box 9277
Corpus Christi, TX 78469

Licensee
MOBILITIE, LLC
Legal Department
660 Newport Center Drive
Suite 200
Newport Beach, CA 92660

With Copy To

City Attorney

City of Corpus Christi
P.O. Box 9277
Corpus Christi, TX 78469

Asset Management
660 Newport Center Drive
Suite 200
Newport Beach, CA 9266

Director of Development Services
City of Corpus Christi
P.O. Box 9277
Corpus Christi, TX 78469

ARTICLE 2. DEFINITIONS

2.1. As used in this Agreement, the following terms have the meanings set out below:

- 2.1.1. *“Abandon”* and its derivatives means the Wireless Facility, Licensee Pole, or portion thereof that has been left by Licensee in an unused or non-functioning condition for more than 90 consecutive days unless, after notice to Licensee, Licensee has established to the reasonable satisfaction of the City 30 days after such notice that the Wireless Facility, Licensee Pole, or portion thereof has the ability to provide communications for the intended purpose.
- 2.1.2. *“Affiliate”* means (a) any entity who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with the Licensee; (b) any entity acquiring substantially all of the assets of Licensee in the market defined by the Federal Communications Commission in which the Licensed Locations are located; or (c) any successor entity in a merger, acquisition, or other business reorganization involving Licensee. For purposes of this definition, “own” means to own an equity or other financial interest (or the equivalent thereof) of more than 10 percent or any management interest.
- 2.1.3. *“Agreement”* means this contract between the Parties, including any exhibits and any written amendments as authorized by this Agreement.
- 2.1.4. *“Camouflaged Wireless Facility or Licensee Pole”* means any Wireless Facility or Licensee Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility or Licensee Pole blends into the surrounding environment and is visually unobtrusive. A Camouflaged Wireless Facility or Licensee Pole also includes any Wireless Facility or Licensee Pole approved by the City as conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches so long as they do not limit the line of sight for drivers.
- 2.1.5. *“Carrier”* means a provider of Wireless Services authorized by the Licensee to utilize the Wireless Facilities and/or Licensee Poles.
- 2.1.6. *“City”* is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.7. *“City Attorney”* means the currently appointed or acting City Attorney or his/her designee.
- 2.1.8. *“City Code”* means the Code of Ordinances, City of Corpus Christi, Texas.

- 2.1.9. “City Manager” means the current and successor City Manager of the City or designee.
- 2.1.10. “*Effective Date*” means that date countersigned by the City Manager on the signature page of this Agreement for each respective Licensee.
- 2.1.11. “*Ground Equipment*” means a Wireless Facility that is located on the surface of the Right-of-Way and, if included in an approved Application for Location Review or otherwise approved by the City in writing, an incidental structure to support metering devices.
- 2.1.12. “*Historic District*” recognized by the City, state or federal government under the City Code of Ordinances, State Law, including, but not limited to, Sec. 442.001(3) of the Texas Government Code, a federal law, including, but not limited to, 16 U.S.C. § 470.
- 2.1.13. “*Historic Landmark*” recognized by the City, state or federal government under the City Code of Ordinances, State Law, including, but not limited to, Sec. 442.001(3) of the Texas Government Code, a federal law, including, but not limited to, 16 U.S.C. § 470.
- 2.1.14. “*Licensee*” means Mobilitie LLC, a Nevada limited liability company and includes its successors and assigns.
- 2.1.15. “*Licensed Location*” means the location in the Right-of-Way, as listed in Exhibit A of this Agreement, in which Licensee is authorized to place its Wireless Facilities and Licensee Poles, provided that it has obtained all Permits.
- 2.1.16. “*Licensee Pole*” or “*Licensee Poles*” means pole(s) or similar vertical structure(s) owned and installed by Licensee for the sole purpose of supporting Wireless Facilities, but does not include incidental structure for supporting metering devices.
- 2.1.17. “*Modification*” means any addition, removal, or alteration of any kind, to the Wireless Facility or Licensee Pole, including altering the concealment, camouflage or stealth appearance, from the exact Licensed Location, except for routine maintenance or replacement with equipment that has substantially identical dimensions and appearance.
- 2.1.18. “*Neutral Host Provider*” means a provider of Wireless Facilities and Licensee Poles that leases space on its Wireless Facilities and Licensee Poles to Carriers.
- 2.1.19. “*Other Party*” or “*Other Parties*” means a Wireless Services provider or Neutral Host who is not a Party to this Agreement.

- 2.1.20. *“Park”* means public City Parks. granted by City’s Council and the City Code of Ordinances.
- 2.1.21. *“Party”* or *“Parties”* mean the Licensee and City, individually or collectively as indicated in the context in which it appears.
- 2.1.22. *“Permit”* means any document issued by the City required for installation of Licensee’s Wireless Facilities or Licensee Pole at a Licensed Location in the Right-of-Way such as electrical permit or Public Right-of-Way Blockage Permit .
- 2.1.23. *“Rental Fee”* means the amount Licensee is required to pay the City, as calculated according to Article V of this License, for the use of the City’s Right-of-Way.
- 2.1.24. *“Right-of-Way”* means the ground level, air space above, and space below a public street, road, alley, and/or sidewalk located in the City’s jurisdiction, including the entire area between the boundary lines of every right-of-way, and public utility easements, whether acquired by purchase, grant or dedication and acceptance by the City or by the public, that has been dedicated or designated for or opened to the use of the public for purposes of vehicular and pedestrian travel; and shall include any designated state or federal highway or road or any designated county road under the administrative control of the City for maintenance, repair, or vehicular traffic control purposes.
- 2.1.25. *“School”* means an educational institution that offers a course of instruction for students in one or more grades from kindergarten through grade 12.
- 2.1.26. *“Term”* means the Initial Term and any Extension Terms, collectively, during which this Agreement is in effect.
- 2.1.27. *“Traffic Signal”* means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.
- 2.1.28. *“Traffic-Control Devices”* means all sign, signals, markings, or devices placed or erected by the City or a public body having jurisdiction for the purpose of regulating, warning, or guiding traffic.
- 2.1.29. *“Underground Utility Area”* means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground.
- 2.1.30. *“Utility Pole”* or *“Utility Poles”* means a pole or vertical structure or similar structure supporting pole attachments (as pole attachments are defined in Texas

Utilities Code §252.001(4)) owned by an electric utility, a wireline telecommunications provider, or a utility, as defined in Section 224 of the Communications Act, 47 U.S.C. 224 (a) [Federal Pole Attachment Act] providing one or more of the following: (i) electric distribution with a voltage rating no higher than 34.5 kilovolts; (ii) wireline communications services of a Telecommunications Utility as defined in Texas Utilities Code §51.002(11) and is authorized to occupy the Right-of-Way pursuant to State law authorization or City written agreement.

2.1.31. “*Wireless Facility*” or “*Wireless Facilities*” means the approved equipment in Exhibit B that consists of radios, antennas, wires, fiber optic cables, amplifiers, switches, conduit, power sources, repeaters, and other supporting devices installed overhead or above the ground on a Licensee Pole or Utility Pole and control boxes, pull boxes, cabinets, and other supporting devices installed at ground level, and other wireless network infrastructure components provided by licensed or unlicensed wireless infrastructure companies for the purpose of providing, supporting, enhancing or expanding Wireless Services but not including any separate Licensee Poles or Utility Poles, that are located within the Right-of-Way as part of a wireless network, such as a small cell or distributed antenna system (“DAS”) network.

2.1.32. “*Wireless Services*” means ‘personal wireless services’ as that term is defined in 47 U.S.C. § 332(c)(7)(C), now or hereafter in effect, including commercial mobile services, (defined in 47 U.S.C. § 332(d)), now or hereafter in effect, provided to personal mobile communication devices through or by Wireless Facilities located wholly or partially in the Right-of-Way.

2.2 When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.

2.3. The word “shall” is always mandatory and not merely permissive.

2.4. “Include” and “including,” and words of similar import, shall be deemed to be followed by the words “without limitation.”

ARTICLE 3. AUTHORIZATION TO USE RIGHT-OF-WAY

3.1. GRANT OF PERMISSION

3.1.1. The City hereby grants Licensee the right to enter and to use 28 licensed locations in the Right-of-Way located in the areas listed in Exhibit A to attach, install, construct, operate, lease, maintain, repair, replace, reattach, reinstall, relocate, and remove Licensee Poles and Wireless Facilities in the most recently approved

version of Exhibit B, Approved Wireless Facilities and Equipment List, subject to the terms of this Agreement.

- 3.1.2. This Agreement does not confer any other rights not described herein nor does it permit Licensee or third parties to use the Right-of-Way for purposes not specified in this Agreement.
- 3.1.3. This Agreement does not authorize the Licensee to install equipment and facilities associated with or for macro wireless towers in the Right-of-Way. For purposes of this section “macro wireless towers” means any structure larger than the equipment dimensions in Article 6.
- 3.1.4. Neutral Host Providers must have an existing agreement with a Carrier to use or lease the Neutral Host Provider’s Wireless Facilities or Licensee Poles in order to receive authorization to be in Licensed Locations.
- 3.1.5 Upon determination of Licensee that a licensed location is not suitable, Licensee may request an alternate site location following removal of any Wireless Facility or Licensee Pole in accordance with the terms of this Agreement.

3.2. SCOPE OF AGREEMENT

- 3.2.1. This Agreement is not exclusive and the City reserves the right to grant permission to use its Right-of-Way for the same or similar purposes to Other Parties.
- 3.2.2. Except as expressly provided herein, this Agreement does not grant Licensee the authority to grant any rights under this Agreement to any Other Party without the written consent of the City. If Other Parties seek to install Wireless Facilities on a Licensee Pole, either the Licensee or Other Party must first notify the City Manager in writing for Location Review for each Wireless Facility and Licensee Pole and obtain the City Manager’s written consent. The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Facilities deployed by Licensee in the Rights-of-Way pursuant to this Agreement may be owned and/or operated by Licensee’s third-party wireless carrier customers (“Carriers”) and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Facilities shall be treated as Licensee’s Facilities for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such Facilities; (ii) Licensor’s sole point of contact regarding such Facilities shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Facilities.

- 3.2.3. Licensee and City agree that Licensee Poles once installed shall not be considered “Utility Poles” within the definition of this Agreement, and that third-party wireline attachments (unrelated to Licensee’s network or Wireless Facilities) shall not be permitted to be on Licensee Poles.
- 3.2.4. This Agreement only authorizes use of the Right-of-Way and does not confer any rights or permission to install Wireless Facilities on a Utility Pole not owned by the City.
- 3.2.5. This Agreement does not grant to the Licensee an interest in any property.
- 3.2.6. This Agreement does not include the right to use the Public Rights-of-Way to conduct other businesses nor to install landlines, including fiber, for backhaul or any other purpose.

3.3. LIST OF LICENSED LOCATIONS

- 3.3.1. Licensee shall install its Wireless Facilities or Licensee Poles only in the Licensed Locations listed in Exhibit A.
- 3.3.2. The City Manager may revoke a Licensee’s permission to use a Licensed Location listed in Exhibit A for that Licensee’s non-compliance with this Agreement. The City Manager may amend or supplement Exhibit A as needed during the Term of this Agreement without further approval from City Council, under the following conditions. Licensee’s permission to utilize a specific location may be revoked prior to the expiration of the Term: (i) by Licensor upon notice to Licensee, if Licensee fails to pay any amount when due hereunder concerning the applicable Communication Facility and such failure continues for fifteen (15) days after Licensee’s receipt of written notice of nonpayment from Licensor; or (ii) by either Party upon notice to the other Party, if such other Party materially breaches any provision of this Agreement concerning the applicable Communication Facility and the breach not cured within sixty (60) days after receipt of written notice of the breach from the non-breaching Party.

3.4. UNAUTHORIZED WIRELESS FACILITIES AND LICENSEE POLES

- 3.4.1. The City Manager will review proposed Wireless Facilities, Licensee Poles, and other equipment specifications upon request and may amend and supplement Exhibit B without further approval from City Council.
- 3.4.2. The City Manager shall deem as unauthorized any type of Wireless Facility or Licensee Pole not listed in or attached under Exhibit B. The City Manager at his or her sole discretion may, upon 30 days’ written notice, remove or require the Licensee to remove unauthorized Wireless Facilities or Licensee Poles at

Licensee's expense without any liability to the City. The City will invoice and Licensee shall reimburse the City within 30 days of receipt of the invoice for the City's cost of removal of unauthorized Wireless Facilities and Licensee Poles.

- 3.4.3. Any Modification to a Wireless Facility or Licensee Pole must be approved by the City Manager except for routine maintenance or replacement of an existing Wireless Facilities with equipment that (1) has substantially identical dimensions and appearance or smaller dimensions and a less intrusive appearance.

3.5. LICENSEE POLES

- 3.5.1. Licensee shall not install Licensee Poles in the Right-of-Way unless Licensee demonstrates that that a new Licensee Pole and Wireless Facilities in the Right-of-Way are necessary to fill a coverage or capacity gap in Wireless Services.
- 3.5.3. Licensee Poles must be spaced at least 300 linear feet from another Wireless Facility pole that is capable of supporting Wireless Facilities along the proposed location, unless otherwise approved by the City Manager in writing.
- 3.5.4. References to Licensee Poles throughout this Agreement shall not be construed as permission to install Licensee Poles in the Right-of-Way absent a Permit.
- 3.5.5. Licensee shall not install wooden poles, unless it is consistent with the design of other poles in the surrounding area.
- 3.5.6. Licensee shall allow the City to attach City Equipment to Licensee Poles to the extent City Equipment does not interfere with Licensee's Wireless Facilities.

3.6. LEASING AND SUBLEASING

No later than ninety (90) days from the Effective Date, Licensee shall notify the City Manager, in writing, when more than one Carrier is using the same Licensed Location and every ninety (90) days thereafter, Licensee shall provide an updated notice of the existence of any additional Carriers added at each Licensed Location during that period. No notice is required if there is no change in Carriers utilizing the Licensed Locations.

The written notification to the City Manager must identify the Licensed Location.

Licensee may license use of its Wireless Facilities and/or Licensee Poles to Carrier(s) for provision of Wireless Services only if the use strictly complies with this Agreement.

ARTICLE 4. PERMITS AND PERMISSION

4.1. REQUEST FOR ALTERNATE LICENSED LOCATION

4.1.1. Upon determination of Licensee that a licensed location is not suitable, Licensee may request an alternate site location following removal of any Wireless Facility or Licensee Pole in accordance with the terms of this Agreement.

4.1.1.1. A one-time nonrefundable Administrative Fee of \$1,000 for review of the Alternative Licensed Location This fee applies only to new requests for alternate locations based on Licensee's business model and does not apply to revisions to the initial 28 sites based on City rejection or request for modification of the initially requested sites.;

4.1.1.2. Documents necessary for the review or requested by the City, including but not limited to:

4.1.1.2.1. Map showing intended location of the Wireless Facility or Licensee Pole and its distance from a designated Historic Landmark, Park, or School, if any;

4.1.1.2.2. Representative drawings or Pictures of the intended Wireless Facility and Licensee Pole; and

4.1.1.2.3. Engineering and construction plans and drawings;

4.2. ALTERNATE LOCATION REVIEW PROCESS

4.2.1. The City shall review a request for Alternate Licensed Location and notify the Licensee in writing within 30 days of receipt of the request if Licensee needs to submit additional information. The notice shall include the information that must be submitted to the City. If Licensee does not submit the missing or additional information within 180 days of the notice, then the Licensee's request for Alternate Licensed Location shall be deemed withdrawn.

4.2.2. The City shall review the request for Alternate Licensed Location to determine:

4.2.2.1. removal of Wireless Facility or Licensee Pole from a Licensed Location in accordance with the terms of this Agreement;

4.2.2.2. The requested site is in the Right-of-Way;

4.2.2.3. Compliance with Article 6 of this Agreement;

4.2.2.4. That written permission has been obtained by applicable parties as required by this Agreement; and

4.2.2.5. Compliance with applicable construction, engineering, design specifications, and other applicable requirements, including the Americans with Disabilities Act.

4.2.3. The City shall deny a request for Alternate Licensed Location if the Licensee's request is not in compliance with Articles 3, 4, and 6 of this Agreement.

4.3. PERMITS

4.3.1. Licensee shall not install a Wireless Facility or Licensee Pole without the required City Permit(s).

4.3.2. The Licensee is authorized to apply for Permit(s). Such Permit application shall include the permit fee in the amount as provided by City Ordinance.

4.3.3. The Licensee shall give notice to the City Manager of any revocation or denial of any such Permit affecting its performance hereunder within 15 days of such revocation or of the day upon which the Licensee received actual or constructive notice of denial of such Permit.

4.4. INVENTORY

Licensee shall maintain a list of its Wireless Facilities and Licensee Poles and Licensed Locations during the Term of this Agreement. Licensee shall provide to the City Manager such list on the first anniversary of the Effective Date and every year thereafter until the end of the Term.

City shall maintain an accounting of all Rental Fees owed from, invoiced to, and received from Licensee under this Agreement. City shall provide such accounting to the Licensee on the first anniversary of the Effective Date and every year thereafter until the end of the Term.

ARTICLE 5. RENTAL FEES AND OTHER PAYMENTS

5.1. RENTAL FEE

Licensee shall pay the City an annual Rental Fee of \$1,500 per Licensed Location for which Licensee installs Wireless Facilities or Licensee Poles in the Right-of-Way during the Term of this Agreement. Except as provided for in this Agreement, the Rental Fee is non-refundable.

5.1.1. The Rental Fee payment for the 28 Licensed Locations associated with this Agreement ("Initial Payment") is due 30 days of execution of this agreement. The Rental Fee for any year after the Initial Payment shall be paid pursuant to a subsequent agreement to be entered into between the Parties, which subsequent agreement the Parties agree shall go into effect upon the expiration or earlier termination of this Agreement, or as soon as reasonably practical thereafter.

In consideration of the advance payment, if for any reason one or more of the Licensed Locations is not constructed, Licensee shall be entitled to a refund or credit against future payments attributable to that location.

5.2. OTHER PAYMENTS

The Rental Fee payable hereunder shall be exclusive of, and in addition to all ad valorem taxes, special assessments for municipal improvements, and other lawful obligations of the Licensee to the City.

5.3. LATE PAYMENT CHARGE

Until the payment due is received, Licensee shall incur 12 percent annual interest, compounded daily from the due date until payment is made on the amount due, not to exceed an amount allowable by state or federal law.

5.4. HOLD OVER CHARGE

The Rental Fee for any Hold Over Period, as described in section 12.6, shall be 150% of the Rental Fee due according to the most recent ROW Rental Fee Schedule. Payment pursuant to this subsection does not extend or renew this Agreement.

5.5. NON-FUNCTIONING WIRELESS FACILITIES

Licensee shall continue to pay Rental Fees for Wireless Facilities or Licensee Poles that are no longer in service or operational if the Wireless Facilities or Licensee Poles occupy the Right-of-Way.

5.6. ADMINISTRATIVE FEES

In addition to Annual License Fees, Licensee shall be responsible for paying an Administrative Fee of \$3,400 for the review of the 28 Licensed Locations Sites payable within 30 days of execution of this Agreement. If the City rejects one or more sites and resubmission is necessary, the resubmission will be included in the initial \$3,400 fee, with no additional application fee.

5.7. PAYMENT

- 5.7.1. No later than 30 days before the payment due date, City Manager shall mail notice to Licensee that includes the current Rental Fees and other fees, payment, or charges due.
- 5.7.2. Rental Fee and other payments shall be payable by ACH direct deposit or check payable to the City of Corpus Christi and sent to the following address:

ATTN: Director of Development Services

City of Corpus Christi
P.O. Box 9277
Corpus Christi, TX 78469

5.8 REIMBURSEMENT

When under the terms of this Agreement, the City at its own expense has removed or remediated Licensee's Wireless Facilities or Licensee Poles and Licensee is required to reimburse the City, the Licensee shall remit payment to the City to the address listed in Article 5.7 within 30 days of the date of the invoice for removal, remediation, or requirement.

5.9 PAYMENT LIMITS

Following removal of any Wireless Facility or Licensee Pole consistent with the terms of this Agreement, there will be no compensation due, including any Rental Fees, to the City by Licensee for such Wireless Facility or Licensee Pole except that the City shall not issue any refunds for any amounts already paid by Licensee for Wireless Facilities or Licensee Poles that have been removed.

Notwithstanding the foregoing, if Licensee is required by the City to remove a Wireless Facility or Licensee Pole and such removal is not the result of Licensee's failure to comply with this Agreement, City will reimburse Licensee the Rental Fee for such Wireless Facility or Licensee Pole pro-rated monthly for the remainder of the calendar year.

5.10 COMPLIANCE REVIEW

The City may, at its discretion, upon no less than 30 days prior written notice, require that the Licensee produce its records related to this Agreement for review by the City Manager to ascertain the correctness of the information provided under Article 5 of this Agreement. If the City Manager identifies, as a result of a review of the information provided pursuant to Article 5 of this Agreement amounts owed by the Licensee from prior periods, the Licensee shall pay a late penalty of 12 percent per annum on the amount identified, not to exceed an amount allowed by state or federal law. If the review determines that payment of the Rental Fee was not made in accordance with the terms of this Agreement and that such payment represents an underpayment of at least 20 percent of the Rental Fees due, the Licensee shall reimburse the City for all reasonable review costs, and pay the Rental Fees determined to be due and payable to the City hereunder. Such costs and fees shall be paid within 30 days after determination of amount due is made. If the review determines that payment of the Rental Fee was not made in accordance with the terms of this Agreement and that such payment represents an overpayment of any amount, City will credit such overpayment against Licensee's future obligations to City under this Agreement and reimburse Licensee the remainder of such amount within 30 days of the end of the Term.

ARTICLE 6. WIRELESS FACILITIES AND LICENSEE POLES REQUIREMENTS

6.1. AESTHETIC REQUIREMENTS

- 6.1.1. The Wireless Facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet or other unit that may include ventilation openings; external cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or are visually minimized to the extent possible.
- 6.1.2. Licensee shall, at its own expense, install a Camouflaged Wireless Facilities or Licensee Poles, provided Licensee obtains the requisite approvals and permits required by this Agreement. Camouflaged Wireless Facilities or Licensee Poles shall not be installed unless they conform to the aesthetic or design standards for the proposed installation site, if any, unless otherwise approved by the City Manager.
- 6.1.3. In order to minimize negative visual impact to the surrounding area, the Licensee shall not install Ground Equipment in a Right-of-Way unless approved by the City Manager in writing. The right granted to Licensee to install Wireless Facilities and Licensee Poles on or within the Licensed Location shall not constitute a grant by the City to locate and place facilities or equipment in, above, under, across, or along the Public Rights-of-Way near or outside the Licensed Location nor does it delegate the right to Licensee to grant such a right.
- 6.1.4. Licensee shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.
- 6.1.5. If a Licensed Location becomes an Underground Utility Area during the Term of this Agreement, then Licensee's grant of permission for the Licensed Location with the Utility Poles at such Licensed Location Licensee will be instructed to relocate poles after 60 days notice. Permits required based on a request for relocation shall be granted in an expedited basis with priority. When installing Wireless Facilities in the area where the Utility Poles at issue were removed, Licensee must install Camouflaged Wireless Facilities, Ground Equipment, and Licensee Poles as authorized by the City Manager and in compliance with Underground Utility Area's aesthetic standards, as approved by the City Manager.
- 6.1.6. Licensee shall not install Licensee Poles in Underground Utility Area except as authorized by the City Manager and in compliance with any aesthetic standards. Any Licensee Poles authorized to be installed in Underground Utility Areas shall be Camouflaged Wireless Facilities or Licensee Poles as required by the City Manager.
- 6.1.7. Licensee shall not install Licensee Poles within a Historic District except as authorized by the City Manager and in compliance with any aesthetic standards. Any Licensee Poles authorized to be installed within a Historic District shall be Camouflaged Wireless Facilities or Licensee Poles as required by the City

Manager. Applications for approval of aesthetic review must be reviewed within ten (10) days of submission.

- 6.1.9. The City Manager may request that Licensee explore the feasibility of using certain equipment, including certain Wireless Facility, Ground Equipment, Licensee Pole, to improve the aesthetics of the Wireless Facilities, Licensee Poles, Ground Equipment or any portion thereof or to minimize the impact to the aesthetics of the surrounding area. If Licensee, at its sole discretion, chooses to utilize or install such equipment at its sole cost and expense, Exhibit B will be amended to add the equipment.

6.2 INSTALLATION

Licensee shall, at its own cost and expense, install the Wireless Facilities or Licensee Poles in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, as such may be amended from time to time so long as those requirements do not exceed industry accepted standards. Licensee's work shall be subject to the regulation, control and direction of the City Manager. All work done in connection with the installation, operation, maintenance, repair, and/or replacement of the Wireless Facilities or Licensee Poles shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

6.3 INSPECTIONS

- 6.3.1. The City Manager may perform visual inspections of any Wireless Facilities or Licensee Poles located in the Right-of-Way as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Wireless Facilities, the City Manager shall provide written notice to the Licensee within five business days of the planned inspection. Licensee may have a representative present during such inspection.
- 6.3.2. In the event of an emergency situation, the City may, but is not required to, notify Licensee of an inspection. The City may take action necessary to remediate the emergency situation and the City Manager shall notify Licensee as soon as practically possible after remediation is complete.

6.4 PLACEMENT

- 6.4.1. *Parks.* Placement of Wireless Facilities and Licensee Poles on any Parks, Park roads, sidewalk, or property is prohibited unless dedicated as Right-of-Way and the placement complies with city ordinance, state law, private deed restrictions, or other public or private restrictions on the use of the Park.

- 6.4.1.1 The Licensee shall not install Ground Equipment in a Right-of-Way that is within 150 feet of the boundary line of a Park, unless approved by the City Manager in writing.
- 6.4.1.2. The Licensee shall not install a Licensee Pole in a Right-of-Way that is within 300 feet of the boundary line of a Park, unless approved by the City Manager in writing.
- 6.4.2. *Traffic Signals.* Licensee shall neither allow nor place a Wireless Facility on a Traffic-Control Device or Traffic-control Signal or any structure supporting a Traffic-Control Device or Traffic-control Signal.
- 6.4.3. *City Infrastructure.* Licensee shall neither allow nor install Wireless Facilities or Licensee Poles on any part of a City bridge, overpass, or tunnel, unless approved by the City Manager in writing.
- 6.4.4. *Streets.* Licensee Poles and Ground Equipment shall not be installed in Right-of-Ways that are adjacent to streets and thoroughfares that are 50 feet or less in width and both sides of the street or thoroughfare are adjacent to exclusively single-family residential lots, unless approved by the City Manager in writing, and if in compliance with all applicable zoning and land use regulations, and applicable deed restrictions.
- 6.4.5. *Historic Landmarks.* A Wireless Facility must not be within 300 feet of a historic, site, structure, or Historic Landmark recognized by the City, state or federal government under the City Code of Ordinances, State Law, including, but not limited to, Sec. 442.001(3) of the Texas Government Code, and federal law, including, but not limited to, 16 U.S.C. 470, unless approved by the City Manager in writing.
- 6.4.6. *Schools.* Licensee shall adhere to applicable federal radio frequency (RF) emissions standards.
- 6.4.7. *Poles.* Wireless Facilities on a Utility Pole or Licensee Pole shall be installed at least 8 feet above the ground.
- 6.4.8. *Right-of-Way.* Licensee Poles and ground-level Wireless Facilities shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line. Licensee Pole or Wireless Facility shall not impede pedestrian or vehicular traffic in the Right-of-Way. If a Licensee Pole or Wireless Facility is installed in a location that is not in accordance with the plans approved by the City Manager and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable laws, including the American Disabilities Act, then the Licensee shall remove the Wireless Facility or Licensee Pole. City shall provide Licensee 60 days notice and an opportunity to cure. Licensee shall be subject to a \$2,000 per day penalty

from date of noncompliance until the Licensee Pole or Wireless Facility is relocated to the correct area within the Licensed Location, regardless of whether the Licensee's contractor, subcontractor, or vendor installed the Licensee Pole or Wireless Facility. Licensee may request from the City Manager a waiver of underground construction requirements to allow for "microtrenching" at a depth of less than 24 inches for lateral connections connecting Wireless Facilities to the fiber-optic network.

6.4.9. *Design Manual.* Upon adoption of *City Guidelines for Construction in the Rights-of-Way Manual*, any Placement or Modification of Wireless Facilities and Licensee Poles shall comply with the City's Guidelines for Construction in, so long as those guidelines are not more restrictive than addressed under federal law, or otherwise mutually agreed by the Parties.

6.4.10. *Windstorm.* All affected materials and installation shall comply with Texas Department of Insurance Requirements for windstorm resistant construction for design wind speed as required by 2015 International Building Code. Licensee shall be responsible for contracting with a licensed structural engineer in the State of Texas to perform all inspections and provide documentation for windstorm certification.

6.4.11. *Visibility triangle.* No Wireless Facility or Licensee Pole shall be installed that does not conform to the visibility requirements found in the Corpus Christi Unified Development Code subsection 4.2.9 existing or as amended.

6.5 ELECTRICAL SUPPLY

Licensee shall be responsible for obtaining any required electrical power service to the Wireless Facilities and Licensee Poles. The City shall not furnish to the Wireless Facilities or Licensee Poles any required electrical power. The City shall not be liable to the Licensee for any stoppages or shortages of electrical power furnished to the Wireless Facilities or Licensee Poles, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Licensee of the structure, or for any other cause beyond the control of the City. Licensee shall not be entitled to any abatement of the Rental Fee for any such stoppage or shortage of electrical power.

6.6 FIBER CONNECTION

Licensee shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Wireless Facilities or Licensee Pole. This Agreement does not include the right to use the Public Rights-of-Way outside Licensed Location to conduct other businesses nor to install landlines, including fiber, for backhaul or any other purpose.

6.7 GENERATORS

Licensee shall not allow or install generators or back-up generators in the Right-of-Way, unless there is an force majeure type emergency to require such installation.

6.8 EQUIPMENT DIMENSIONS

- 6.8.1. *Wireless Facilities.* Licensee's Wireless Facilities installed above ground shall not exceed 4 feet in height, 2 feet in width, and 2 feet in depth, unless otherwise approved, in writing, by the City Manager. Licensee shall not install any equipment not described in or included in Exhibit B. Extensions to an existing Wireless Facility shall not result in a combined width of more than 3 feet as measured from the edge of the pole, including a Utility Pole and a Licensee Pole, and any subsequent Modifications to said pole. Licensee shall be allowed an additional cabinet for emergency battery back-up power that will not be counted towards the dimension requirements previously stated in this paragraph, provided the battery back-up power cabinet does not exceed 2 feet in height, 2 feet in width, and 21 inches in depth. Licensee's Wireless Facilities must be camouflaged or concealed.
- 6.8.2. *Licensee Poles.* Licensee Poles shall not exceed 40 feet in height as measured from the ground, and with subsequent Modifications shall not exceed 45 feet in height as measured from the ground. Licensee Poles shall not exceed 3 feet in diameter or 3 feet in width as measured from the edge of the pole, including a Utility Pole and a Licensee Pole, and any subsequent Modifications to said pole. All installed poles must contain the required operating equipment to be within or on the Pole. Licensee Poles will be required to be camouflaged.
- 6.8.3. *Ground Equipment.* Any Ground Equipment that contains equipment necessary for supporting Wireless Facilities and Licensee Poles approved by the City Manager shall be no more than 3 feet in height, 3.5 feet in width, and 2 feet in depth and not total more than 21 cubic feet, excluding any concrete pad that is at grade or no more than one inch above grade, per Licensed Location. Licensee shall be allowed an additional cabinet for emergency battery back-up power that will not be counted towards the dimension requirements previously stated in this paragraph, provided the battery back-up power cabinet does not exceed 2 feet in height, 2 feet in width, and 21 inches in depth. Any allowed Ground Equipment will be required to be concealed or camouflaged.

6.9 TREE MAINTENANCE

Licensee, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Licensee Poles to prevent branches of such trees from contacting attached Wireless Facilities or the Licensee Poles. When directed by the City Manager, Licensee shall trim under the supervision and direction of the City Manager. The City shall not be liable for any damages, injuries, or claims arising from Licensee's actions under this section.

6.10 SIGNAGE

- 6.10.1. Licensee shall post its name, location identifying information, and emergency telephone number in an area on the Licensee Pole that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City Manager.
- 6.10.2. Except as required by law or by the Utility Pole owner, Licensee shall not post any other signage or advertising on the Wireless Facilities, Licensee Pole, or Utility Pole.

6.11 OVERHEAD LINES PROHIBITED IN UNDERGROUND UTILITY AREAS.

In Underground Utility Areas, Licensee shall not allow or install overhead lines connecting to Licensee Poles. All overhead lines connecting to the Licensee Pole in Licensed Locations where other overhead telecommunications or utility lines are or will be buried below ground as part of a project, shall be buried below ground.

6.12 REPAIR

Whenever the installation, placement, attachment, repair, removal, operation, use, or relocation of the Wireless Facility, Licensee Pole, or any portion thereof is required or permitted under this Agreement, and such installation, placement, attachment, repair, removal, operation, use, or relocation causes any property of the City or any third party to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any law, rule, regulation or code, Licensee, at its sole cost and expense, shall promptly repair and return such property to its original condition. If Licensee does not repair such property or perform such work as described in this paragraph, then the City shall have the option, upon 15 days' prior written notice to Licensee or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the reasonable and actual costs incurred by the City. Licensee shall reimburse the City for the costs in accordance with Article 5.8 of this Agreement.

6.13 GRAFFITI ABATEMENT

As soon as practical, but not later than 30 days from the date Licensee receives notice thereof, Licensee shall remove all graffiti on any of its Wireless Facilities or Licensee Poles located in the Right of Way.

ARTICLE 7. INTERFERENCE WITH OPERATIONS AND COLLOCATIONS

7.1. NO LIABILITY

- 7.1.1. The City shall not be liable to Licensee for any damage caused by other Licensees with Wireless Facilities sharing the same Utility Pole.
- 7.1.2. The City shall not be liable to Licensee by reason of inconvenience, annoyance or injury to the Wireless Facility, Licensee Pole, or activities conducted by Licensee therefrom, arising from the necessity of repairing any portion of the Right-of-Way, or from the making of any necessary alteration or improvements, in, or to, any portion of the Right-of-Way, or in, or to, its fixtures, appurtenances or equipment. The City will use reasonable efforts not to cause material interference to Licensee's operation of its Wireless Facility or Licensee Pole.

7.2. NO INTERFERENCE

- 7.2.1. Licensee's Wireless Facilities must not cause harmful interference to the City's radio frequency, wireless network, or communications operations ("City Operations) and other Licensee's Wireless Facilities or similar third party equipment in the Right-of-Way or adjacent City property ("Protected Equipment"). If Licensee's Wireless Facilities interfere with the City's Operations, then Licensee and city shall work cooperatively together immediately to ascertain the cause of the interference, and cure the issue. Upon determination of the interference, and if necessary to protect city health and safety concerns Licensee shall immediately cease operation of the Wireless Facilities causing said interference. After a determination of the cause of the interference and a three-day period to cure, if Licensee continues to operate Wireless Facilities that cause interference, such Wireless Facilities may be deemed unauthorized and subject to the provisions of Section 3.4 of this Agreement. If Licensee's Wireless facilities interfere with Protected Equipment, then Licensee shall take the steps necessary to correct and eliminate such interference within 24 hours of determination of cause, and in no event more than three days. If the Licensee is unable to resolve the interference issue within this timeframe, it will voluntarily power down the Wireless Facilities causing the interference, except for intermittent testing until such time as the interference is remedied
- 7.2.2. Following installation or Modification of a Wireless Facility, the City Manager may require Licensee to test the Wireless Facility's radio frequency and other functions to confirm that it does not interfere with the City's Operations or Protected Equipment.

ARTICLE 8. ABANDONMENT, RELOCATION AND REMOVAL

8.1. ABANDONMENT OF OBSOLETE WIRELESS FACILITIES AND LICENSEE POLES

Licensee shall remove Wireless Facilities or Licensee Poles when such facilities are Abandoned regardless of whether it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of it being Abandoned or within 90 days of receipt of written notice from the City. When Licensee removes or abandons permanent structures in the Right-of-Way, the Licensee shall notify the City Manager in writing of such removal or abandonment and shall file with the City Manager the location and description of each Wireless Facility or Licensee Pole removed or abandoned. The City Manager may require the Licensee to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

8.2. REMOVAL REQUIRED BY CITY

- 8.2.1. Licensee shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Wireless Facility or Licensee Pole within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Wireless Facility or Licensee Pole (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Wireless Facility, Licensee Pole, or portion thereof, is adversely affecting proper operation of streetlights, or City property, or (c) Licensee loses or fails to obtain all applicable licenses, permits, and certifications required by Law for its Wireless Facility, Licensee Pole, or use of any Licensed Location under this Agreement. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Wireless Facilities or Licensee Pole at the Licensee's sole cost and expense.
- 8.2.2. The City Manager shall provide 90 days written notice to the Licensee before removing a Wireless Facility or Licensee Pole under this Section 8.2, unless there is imminent danger to the public health, safety, and welfare.
- 8.2.3. Licensee shall reimburse City for the City's actual cost of removal of its Wireless Facilities or Licensee Poles in accordance with this Agreement within 30 days of receiving the invoice from the City.

8.3. REMOVAL BY LICENSEE

- 8.3.1. If the Licensee removes a Wireless Facility or Licensee Pole at its own discretion, it shall notify the City Manager in writing not less than 10 business days prior to

removal. Licensee shall obtain all permits required for removal of its Wireless Facility or Licensee Pole prior to removal.

- 8.3.2. Except as provided in Section 5.9, the City shall not issue any refunds for any amounts paid by Licensee for Wireless Facilities or Licensee Poles that have been removed.

8.4. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT

- 8.4.1. Licensee understands and acknowledges that the City may require Licensee to remove or relocate its Wireless Facility, Licensee Pole, or any portion thereof from the Right-of-Way, and Licensee shall at the City Manager's direction remove or relocate the same at Licensee's sole cost and expense, whenever the City Manager reasonably determines that the relocation or removal is needed for any of the following purposes:

- 8.4.1.1. Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project.

- 8.4.1.2. Required for the creation of an Underground Utility Area.

- 8.4.2. In any such case, the City shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location, if available.

- 8.4.3. If Licensee fails to remove or relocate the Wireless Facility, Licensee Pole, or portion thereof as requested by the City Manager within 90 days of Licensee's receipt of the request, then the City shall be entitled to remove the Wireless Facility, Licensee Pole, or portion thereof at Licensee's sole cost and expense, without further notice to Licensee, and Licensee shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, storage expenses) of the Wireless Facility, Licensee Pole, or portion thereof.

8.5. REMOVAL REQUIRED AFTER TERMINATION OR EXPIRATION OF LICENSE

Within 30 days after termination or expiration of this Agreement, Licensee shall commence removal of all of Licensee's Wireless Facilities and Licensee Poles from the Right-of-Way and peaceably surrender the Right-of-Way to City in the same condition the Right-of-Way was in on the Effective Date, excepting ordinary wear and tear. Removal of all the Licensee's Wireless Facilities and Licensee Poles under this section must be completed within 180 days. If Licensee fails to begin removal of the Wireless Facilities or Licensee Poles on or before the 30th day after the Agreement expires or terminates or fails to complete removal within 180 days, the City may remove, store, or dispose of any remaining portion of the Wireless Facilities or Licensee Poles in any manner the City Manager deems appropriate. Licensee shall, within 30 days after receipt of

the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith (including any reasonable overhead and storage fees).

8.6. REMOVAL REQUIRED AFTER TERMINATION

Within 30 days after termination of this agreement, Licensee shall commence removal of the Wireless Facility or Licensee Pole from the Right-of-Way and peaceably surrender the Right-of-Way to City in the same condition the Right-of-Way was in on the Effective Date, excepting ordinary wear and tear. If Licensee fails to complete removal within 90 days, the City may remove, store, or dispose of any remaining portion of the Wireless Facilities or Licensee Poles in any manner the City Manager deems appropriate. Licensee shall, within 30 days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith (including any reasonable overhead and storage fees).

8.7. OWNERSHIP

No part of a Wireless Facility or Licensee Pole constructed, erected or placed on the Right-of-Way by Licensee will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Wireless Facility or Licensee Pole constructed, modified, erected or placed by Licensee on the Right-of-Way will be and remains the property of Licensee and may be removed by Licensee at any time during or after the Term.

8.8. RESTORATION

Licensee shall repair any damage to the Right-of-Way, and the property of any third party resulting from Licensee's removal activities (or any other of Licensee's activities hereunder) within 10 days following the date of such removal or relocation, at Licensee's sole cost and expense, to include restoration of the Right-of-Way and property to substantially the same condition as it was immediately before the Effective Date, including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

8.9. LICENSEE RESPONSIBLE

Licensee shall be responsible and liable for the acts and omissions of Licensee's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sublicensees, sublessees, and subcontractors in connection with the performance of this Agreement, as if such acts or omissions were Licensee's acts or omissions.

8.10. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE

The City has appropriated \$0 under this Agreement to pay for the cost of any removal or storage of Wireless Facilities or Licensee Pole, as authorized under this Article, and no other funds are allocated in connection with the performance of this Agreement.

ARTICLE 9. ENVIRONMENTAL LAW REQUIREMENTS

Licensee shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental agency with the authority to promulgate environmental rules and regulations applicable to Licensee's use of any Licensed Location under this Agreement ("Environmental Laws"). Licensee shall promptly reimburse the City for any fines or penalties levied against the City because of Licensee's failure to comply with Environmental Laws.

Licensee shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in compliance with the Environmental Laws. "Hazardous Materials" mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Licensee shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws. Except for its contractors, subcontractors, and vendors, Licensee will not have any responsibility for managing, monitoring, or abating, nor be the owner of, nor have any liability for, any Hazardous Materials that it did not bring into the Licensed Locations.

ARTICLE 10. SECURITY

Within 30 days of the execution of this Agreement, Licensee shall maintain and furnish to the City Manager a Security in favor of the City. "Security" means either an executed performance bond, letter of credit or a bank or cashier's check made payable to the City, or other form of security acceptable to the City Attorney for the purpose of protecting the City from the costs and expenses associated with Licensee's failure to comply with its material obligations under and throughout the life of this Agreement, including but not limited to, (a) the City's restoration of the Right-of-Way; (b) the City's removal of any of Licensee's Wireless Facilities or Licensee Poles that are Abandoned or not properly maintained or that need to be removed to protect public health, safety, welfare, or City property; (c) the City's remediation of environmental and hazardous waste issues caused by Licensee; or (d) the City's recoupment of Rental Fees that have not been paid by Licensee in over 12 months, after Licensee receives reasonable notice from the City of any of the non-compliance listed above and opportunity to cure. An example of a City approved letter of credit has been provided in Exhibit "C."

The amount of the Security shall be (a) \$25,000 for the installation of any and all Wireless Facilities and (b) \$100,000 for the installation of any and all Licensee Poles.

The Bond, if any, must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. An example of a City approved bond has been provided in Exhibit "D." The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability up to \$100,000.00, by a reinsurer listed on the U.S. Treasury list.

In the event the surety or party issuing the Security cancels or decides not to renew or extend the Security, Licensee shall obtain, and provide to the City Attorney for approval, a replacement Security with another surety, authorized to do business in Texas, within 30 days of the date the Security has been cancelled or non-renewed. If Licensee fails to provide the replacement Security within the 30-day period, the City Manager, after consulting with the City Attorney, may immediately suspend Licensee from any further performance under this Agreement and begin procedures to terminate for default pursuant to the terms of Section 12.3.

In the event that the City draws upon the Security, Licensee must replenish the amount of the Security within 30 days. Notwithstanding any provisions of this Agreement to the contrary, the City Manager shall be required to notify Licensee in writing as a precondition to drawing on, seeking payment under, or executing against the Security.

In the event that Licensee shall fully and faithfully comply with all of the terms of this Agreement, the City shall return the Security to Licensee within 60 days of the Agreement's expiration or termination, to the extent not otherwise applied in compliance with this Agreement.

ARTICLE 11. RELEASE, INDEMNIFICATION, AND INSURANCE

11.1. RELEASE

LICENSEE AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. INDEMNIFICATION DOES NOT EXTEND TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

NEITHER LICENSEE NOR CITY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT. THIS SECTION WILL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

11.2. INDEMNIFICATION

11.2.1. LICENSEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY" AND "INDEMNIFICATION") THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY PARTIES") FOR ALL THIRD-PARTY CLAIMS, SUITS, DAMAGES, LIABILITIES, FINES, AND EXPENSES INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS (COLLECTIVELY "LOSSES") FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH LICENSEE'S USE OR OPERATION OF ANY WIRELESS FACILITY, LICENSEE POLE, OR UTILITY POLE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION THOSE CAUSED BY LICENSEE'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS' OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS.

11.2.2. LICENSEE'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT WILL SURVIVE FOR FOUR YEARS AFTER THE AGREEMENT EXPIRES OR TERMINATES.

11.2.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY, LICENSEE'S INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT IS LIMITED TO \$500,000 PER OCCURRENCE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, LICENSEE WILL NOT BE REQUIRED TO INDEMNIFY THE CITY PARTIES FOR THE CITY PARTIES' ACTS OR OMISSIONS.

11.2.4. SUBCONTRACTORS' INDEMNIFICATION: LICENSEE SHALL REQUIRE ALL OF ITS SUBCONTRACTORS TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY AS SET FORTH IN THIS AGREEMENT.

11.3. INDEMNIFICATION PROCEDURES

11.3.1 The following procedures shall apply to indemnification under this Agreement:

11.3.1.1 Notice of Claims. If the City receives notice of any claim or circumstances that could give rise to Losses, the City shall give written notice to the other party within 10 days. The notice must include the following:

11.3.1.1.1 A description of the indemnification event in reasonable detail;

11.3.1.1.2 The basis on which indemnification may be due; and

11.3.1.1.3 The anticipated amount of Losses.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of Losses than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that the Licensee is prejudiced, suffers loss, or incurs expense because of the delay.

11.3.2 Defense of Claims. The Licensee may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. The Licensee shall then control the investigation, defense, and any negotiations to settle the claim. Under these circumstances, City will fully cooperate with Licensee in defense of the claim. Within 10 days after receiving written notice of the indemnification request, the Licensee must advise the City as to whether or not it will defend the claim. If the Licensee does not assume the defense, the City shall assume and control the defense, and all defense expenses shall constitute Losses.

11.3.3 Continued Participation. If the Licensee elects to defend the claim, the City may retain separate counsel at its own expense to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. The City will provide the Licensee with reasonable information and assistance related to such claim. The Licensee may settle the claim without the consent or agreement of the City unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City; (ii) would require the City to pay amounts that the Licensee does not fund in full; or (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

11.4. INSURANCE

11.4.1 The Licensee shall maintain certain insurance and Endorsements in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows:

11.4.1.1. **Risks and Limits of Liability.** The Licensee shall maintain the following coverage and limits of liability:

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
	Bodily Injury by Accident \$1,000,000 (each accident)
Employer's Liability	Bodily Injury by Disease \$1,000,000 (policy limit)
	Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability:	
Bodily and Personal Injury; Bodily Injury and Property Damage; Products and Completed Operations Coverage; Explosion, Collapse, and Underground	Combined Limits of \$2,000,000 per occurrence and \$2,000,000 aggregate
Automobile Liability	\$2,000,000 combined single limit for each accident for bodily injury and property damage coverage for all owned, hired, and non-owned Autos

Aggregate limits are per 12-month policy period, unless otherwise indicated.

11.4.1.2. **Form of Policies.** The insurance may be in one or more policies of insurance, which must be reasonably approved by the City Manager and City Attorney; however, such approval shall not be unreasonably withheld.

11.4.1.3. **Issuers of Policies.** The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide.

11.4.1.4. **Additional Insured Parties.** The City and its officers and employees shall be included as additional Insureds as their interest may appear under this Agreement on the above commercial general liability and automobile liability policies.

11.4.1.5. **Deductibles.** Licensee shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

11.4.1.6. **Cancellation.** Upon receipt of notice from its insurer Licensee will provide the City Manager 30 days' advance written notice of any cancellation. Within the 30-day period, Licensee shall provide other suitable policies in lieu of those about to be canceled or non-renewed so as to maintain in effect the required coverage. If Licensee does not comply with this requirement, the City Manager, at his or her sole discretion, may immediately suspend Licensee from any further performance under this Agreement and begin procedures to terminate for default pursuant to the terms of Section 12.4.

11.4.1.7. **Subrogation.** Licensee waives any claim or right of subrogation to recover against the City, its officers, agents, or employees and each of Licensee's insurance policies must on its face or by endorsement state that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

11.4.1.8. **Endorsement of Primary Insurance.** Each policy, except Workers' Compensation, shall be primary and non-contributory with any insurance or program of self-insurance maintained by the City.

11.4.1.9. **Liability for Premium.** Licensee shall pay all insurance premiums on its own insurance policies. The City shall not be obligated to pay any premiums.

11.4.1.10. **Subcontractors.** Licensee shall require all subcontractors to adhere to the same insurance as required of Licensee or Licensee shall insure the activities of the subcontractors in Licensee's insurance policies.

11.4.2 **Certificates of Insurance.** At the time this Agreement is signed and as long as this Agreement continues, Licensee must furnish to the City Manager certificates of insurance, including any blanket additional insured endorsements that meet the requirements of Section 11.4 of this Agreement. These certificates must bear the Licensee's name in which it is insured. If requested by the City Manager, Licensee must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them. Licensee shall provide updated certificates of insurance to the City Manager upon request. Every certificate of insurance Licensee delivers for the shall:

11.4.2.1. evidence coverage in effect for a twelve (12) month period;

11.4.2.2. include the company name and address, policy number, NAIC number or AMB number, and authorized signature;

11.4.2.3. include the name and reference numbers and indicate the name and address of the project manager or authorized contact person in the Certificate

Holder Box; and be appropriately marked to accurately identify all coverages and limits of the policy;

11.4.2.4. be appropriately marked to accurately identify:

11.4.2.4.1. All coverage and limits of the required under this Agreement;

11.4.2.4.2. effective and expiration dates; and

11.4.2.4.3. waivers of subrogation, endorsement of primary insurance and additional insured language, as described above.

11.4.2.5. Licensees shall, upon the City's request, deliver an assurance letter from Licensee's insurer stating that the insurer intends to issue Licensee a new policy that meets the terms of Section 11.4.

ARTICLE 12. TERM AND TERMINATION

12.1. TERM

12.1.1. This Agreement is effective on the Effective Date and unless sooner terminated under other provisions of this Agreement, will remain in effect for one year.

12.2. TERMINATION FOR CAUSE BY CITY

12.2.1. If Licensee defaults under this Agreement, the City may terminate this Agreement subject to Licensee's ability to cure such defaults below. The City's right to terminate this Agreement for Licensee's default is cumulative of all its rights and remedies which exist now or in the future. Default by Licensee includes, but is not limited to:

12.2.1.1. Failure of the Licensee to comply with any material term of this Agreement;

12.2.1.2. Licensee becomes insolvent.

12.2.1.3. The Licensee's failure to obtain all licenses, permits, and certification required by the City under this Agreement and pay all fees associated therewith after the City has notified the Licensee that licenses, permits, and certifications must be obtained to work in the Right-of-Way;

12.2.1.4. All or a substantial part of Licensee's assets are assigned for the benefit of its creditors;

12.2.1.5. A receiver or trustee is appointed for Licensee; or

12.2.1.6. Licensee fails to install any Wireless Facilities or Licensee Poles in the Right-of-Way within 1 year of the Effective Date.

12.2.2. If a default occurs, the City Manager shall deliver a written notice to Licensee describing the default and the termination date. If the City Manager sends a default notice, the Licensee shall have 60 days from the receipt of such notice to cure the default (unless the nature of the event takes longer to cure and the Licensee commences a cure within such 60-day period and thereafter diligently pursues it but will not exceed 180 days unless agreed to by the City Manager which agreement will not be unreasonably withheld). If Licensee cures the default before the proposed termination date, the proposed termination is ineffective.

12.2.3. If the default is not cured in the time and manner set out above or by the City Manager, then the City Manager may immediately terminate this Agreement by notifying Licensee in writing of such termination. After receiving the notice, Licensee shall, immediately cease operations and remove Wireless Facilities and Licensee Poles from the Right-of-Way in accordance with the Sections 8.5 and 8.7 of this Agreement, and any payment due shall be remitted by Licensee within 30 days of the receipt of the notice to the address in the Section 1.1 of this Agreement.

12.3 TERMINATION BY LICENSEE

12.4.1. The Licensee may terminate this Agreement at any time by giving 30 days advance written notice to the City Manager.

12.4.2. If the Licensee does not remove all Wireless Facilities and Licensee Poles from the Right-of-Way within the time period required by Section 8.5 of this Agreement, the Wireless Facilities and Licensee Poles shall be deemed to be in a Hold Over Period subject to the payment obligations in Section 12.5 and Article 5 of this Agreement.

12.4 HOLDING OVER

If Licensee's Wireless Facilities or Licensee Poles continue to occupy the Right-of-Way after expiration of this Agreement, as extended, such occupancy shall not be deemed to be a renewal or extension of this Agreement, but shall be a month to month use of the Right-of-Way (known as the Hold Over Period) provided Licensee a) pays the Holdover Fee and other payments required in Article 5 of this Agreement and b) continues to comply with this Agreement.

ARTICLE 13. TRANSFER OF AUTHORITY

13.1. ASSIGNMENT

- 13.1.1. Licensee may not assign, delegate, transfer, or sell all or any portion of its rights, privileges and obligations under this Agreement without written notice to and the prior written consent of the City Manager, which consent will not be unreasonably withheld. No assignment in law or otherwise shall be effective until the assignee has filed with the City Manager an instrument, duly executed, reciting the fact of such assignment, accepting the terms hereof, and agreeing to comply with all of the provisions hereof. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment of this Agreement for the purposes of this Article. Notwithstanding the foregoing, this Agreement may be assigned by Licensee without any approval or consent of City to any entity which acquires all or substantially all of Licensee's assets in the market by reason of a merger, acquisition or other business reorganization provided that such acquiring entity is bound by all of the terms, and conditions of this Agreement. Licensee shall provide the City notice of any such merger, acquisition or other business reorganization within a reasonable period of time after the consummation thereof.
- 13.1.2. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in this Article. This Agreement does not create any personal liability on the part of any officer or agent of the City.
- 13.1.3. Notwithstanding anything to the contrary contained in this Agreement, Licensee will, whenever in its sole discretion it is required or appropriate for the operation of its business, have the right, without notice to or consent of City, City Manager, or any other party, to assign all or any portion of its rights under this Agreement in whole or in part, to (a) any Affiliates as long as such entity has expertise in the operation of Wireless Facilities, Licensee Poles, or provision of Wireless Services; (b) any entity with which the Licensee or an Affiliate of the Licensee shares joint ownership of the Wireless Facilities or Licensee Poles; or (c) any entity that is a holder of a then-current Agreement; or d) to Licensee's customers. The Licensee shall give written notice to the City Manager within thirty (30) days of such assignment.

13.2. BUSINESS STRUCTURE AND ASSIGNMENTS

Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Licensee shall immediately furnish to the City Manager with proof of the

assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

ARTICLE 14. RECORDS AND AUDITS

14.1. RECORDS

- 14.1.1. Licensee shall keep complete and accurate GIS location information, maps, plans, equipment inventories, and other records related to Licensee's Wireless Facilities and Licensee Poles in Licensed Locations.
- 14.1.2. The City Manager at any time examine, review, or verify the records described in 14.1.1.

14.2. INSPECTIONS AND AUDITS

- 14.2.1. City representatives shall have the right to perform, or to have performed, (1) inspections or audits of the records described in 14.1.1 and (2) inspections of all places in the Right-of-Way where work is undertaken in connection with this Agreement. Licensee shall keep its books and records available for this purpose for at least four years after this Agreement terminates or expires. The inspection or audit may be performed by City staff or third-party representatives engaged by the City. This provision does not affect the applicable statute of limitations.
- 14.2.2. In addition to other records or filings required hereunder or by law, the Licensee shall maintain and provide access to a current map by either paper or electronic means, upon request by the City Manager, showing the approximate locations of the Wireless Facilities and Licensee Poles in the Right-of- Way.
- 14.2.3. The City Manager may reasonably require the keeping of additional records or accounts reasonably necessary to determine the Licensee's compliance with the terms of this Agreement.

14.3. CONFIDENTIAL INFORMATION

The City Manager shall not disclose any confidential information reproduced for documentation of audit issues unless required by law. If the City receives a request to review or copy confidential information under the Texas Public Information Act or related law (the "Act"), the City shall comply with the requirements for handling third party information under the Act, including notifying the Licensee that a request to review or copy Confidential Information has been submitted to the City. Confidential information deemed subject to disclosure under the Act by the Attorney General of the State of Texas shall be disclosed.

ARTICLE 15. MISCELLANEOUS

15.1. FORCE MAJEURE

Other than the Licensee's failure to pay amounts due and payable under this Agreement, the Licensee shall not be in default or be subject to sanction under any provision of this Agreement when its performance is prevented by Force Majeure. Force Majeure means an event caused by epidemic; act of God; fire, flood, hurricanes, tornadoes, or other natural disasters; explosions; terrorist acts against the City or Licensee; act of military or superior governmental authority that Licensee is unable to prevent by exercise of reasonable diligence; war; riots; or civil disorder; provided, however, that such causes are beyond the reasonable control and without the willful act, fault, failure or negligence of the Licensee. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Performance is not excused under this section following the end of the applicable event of Force Majeure. Licensee is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Force Majeure does not entitle Licensee to reimbursement of payments.

This relief is not applicable unless the affected party does the following:

- 15.1.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- 15.1.2. provides the other party with prompt written notice of the cause and its anticipated effect.

The City Manager will review claims that a Force Majeure that directly impacts the City or Licensee has occurred and render a written decision within 14 days. The decision of the City Manager is final.

Licensee is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Licensee shall employ only fully trained and qualified personnel during a strike.

15.2. DISPUTE RESOLUTION

- 15.2.1. In the event of a dispute between the Parties that arises during the Term of this Agreement, the Parties shall attempt to expeditiously and amicably resolve any dispute through good faith discussions in the ordinary course of business at the level at which the dispute originates.
- 15.2.2. If the Parties are not able to resolve the dispute in the ordinary course of business, the City Manager and representatives of other City departments that are involved

in the dispute will meet with Licensee's authorized representative in an attempt to resolve the dispute.

- 15.2.3. If the Parties are unable to resolve the dispute pursuant to Article 15.2.2 of this Agreement and if either of the Parties intends to file suit, the Parties shall agree to first refer the matter to mediation before a mutually-agreed upon neutral, third-party mediator and to diligently pursue a mediated settlement. If within thirty (30) days of the request to mediate, the Parties cannot agree on a mediator, the mediator selected by the City shall be the default mediator. Mediation shall begin within thirty (30) days of choosing a mediator, unless the Parties otherwise agree, in writing, to a later date.

15.2.3.1. The Parties shall initiate mediation by providing written notice to the other Party stating a desire to mediate the dispute and describing the disputed issues.

15.2.3.2. Mediation shall occur in Corpus Christi, Texas and each party shall bear its own costs incurred in connection with the mediation, including traveling expenses. The parties shall equally share the costs of the mediator's fees.

15.2.3.3. The resolution of any dispute during mediation will be in writing and made available to both Parties by the mediator.

15.2.3.4. If a party receiving a mediation request refuses to mediate, participate in selecting a mediator, to attend mediation, or fails to attend the mediation, this dispute resolution provision will be deemed to have been fulfilled by the aggrieved party and the aggrieved party is permitted to pursue any other remedies it may have.

- 15.2.4. Except in emergencies, no lawsuit under or related to this Agreement by one party against the other may be filed until mediation of the issue has ended as determined by the mediator or has ended in accordance with section 15.2.3.4. Before initiating litigation, either party shall notify the other party of its intent to sue.

- 15.2.5. This section does not apply to disputes that involve a question of law.

- 15.2.6. Notwithstanding the existence of any dispute between the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction or unless this Agreement terminates or expires under the terms provided herein.

15.3. ACCEPTANCE AND APPROVAL; CONSENT

An approval by the City Manager, or any other instrumentality of City, of any part of the Licensee's performance shall not be construed to waive compliance with this Agreement or to establish a standard of performance other than required by this Agreement or by law. Where this Agreement

contains a provision that either party approve or consent to any action of the other party, such approval or consent shall not be unreasonably withheld or delayed. Except as provided for in this Agreement, the City Manager are not authorized to vary the terms of this Agreement.

15.4. REPRESENTATIONS AND WARRANTIES

In addition to the representations, warranties, and covenants of the Licensee to the City set forth elsewhere herein, the Licensee represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Effective Date and throughout the term of this Agreement:

- 15.4.1. *Organization, Standing and Power.* The Licensee is a Neutral Host Provider provider duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to do business in the State of Texas and in the City. The Licensee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted and to execute, deliver and perform this License and all other agreements entered into or delivered in connection with or as contemplated hereby.
- 15.4.2. *Truthful Statements.* The Licensee warrants, to the best of its knowledge and belief, that information provided and statements made in connection with its this Agreement were true and correct when made and are true and correct upon execution hereof.
- 15.4.3. *Condition of Right-of-Way.* Licensee accepts the Right-of-Way where Wireless Facilities and Licensee Poles are authorized to be located "AS IS," without any express or implied warranties of any kind.

15.5. STATEMENT OF ACCEPTANCE

Licensee and City, for themselves, their successors and assigns, hereby accept and agrees to be bound by all terms, conditions and provisions of this Agreement.

15.6. RELATIONSHIP OF THE PARTIES

Licensee shall be responsible and liable for its contractors, subcontractors, and sublicensees. The City has no control or supervisory powers over the manner or method of Licensees' contractors' and subcontractors' performance under this Agreement. All personnel Licensee uses or provides are its employees, contractors, or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever.

15.7 SEVERABILITY

If any part of this agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

15.8. ENTIRE AGREEMENT

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

15.9. WRITTEN AMENDMENT

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Licensee. The City Manager is only authorized to perform the functions specifically delegated to him or her in this Agreement.

15.10. APPLICABLE LAWS AND VENUE

15.10.1. This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction (collectively "Law"), including any lawful court or administrative decisions, judgments or orders that have been fully and finally adjudicated, including any appeals of such decisions judgments, or orders ("Decisions"). This Agreement shall be governed, construed, and enforced according to the laws of the State of Texas, without regard to its choice of law provisions.

If any material provision of this Agreement is superseded or affected by Law, then the Parties shall negotiate in good faith to revise this Agreement.

15.10.2. Subject to the Parties' obligation to submit to the dispute resolution process or mediation as described in this Agreement, Licensee shall submit any and all litigation and legal proceedings between any of them and the City to the exclusive jurisdiction of the state or federal courts in the State of Texas and waive any objections or right as to forum non conveniens, lack of personal jurisdiction, or similar grounds. Venue for any litigation relating to this Agreement is Nueces County, Texas.

15.11. NOTICES

15.11.1. All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne

Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article I, Section 1.1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

15.11.2. Licensee shall address a copy to the City Manager at the address set out in Article I, Section 1.1 of all notices pertaining to Article 6 and 8 and other notices to the City Manager required under this Agreement.

15.12. CAPTIONS

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

15.13. NON-WAIVER

If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

15.14. ENFORCEMENT

The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Licensee shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Licensee's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

15.15. AMBIGUITIES

If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

15.16. SURVIVAL

Licensee and the City shall remain obligated to the other Party under all provisions of this Agreement that expressly or by their nature extend beyond the termination or expiration of this Agreement, including, but not limited to, the provisions regarding warranty, indemnification and confidentiality.

All representations and warranties contained in this Agreement shall survive the term of the Agreement.

15.17. CERTIFICATE OF INTERESTED PARTIES

Licensee agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this agreement.

Form 1295 requires disclosure of “interested parties” with respect to entities that enter contracts with cities. These interested parties include:

- (1) persons with a “controlling interest” in the entity, which includes:
 - a. an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10 percent;
 - b. membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
 - c. service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
- (2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser or attorney for the business entity.

Form 1295 must be electronically filed with the Texas Ethics Commission at

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The form must then be printed, signed, notarized and filed with the City. For more information, please review the Texas Ethics Commission Rules at <https://www.ethics.state.tx.us/legal/ch46.html>.

15.18. PARTIES IN INTEREST

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Licensee only.

15.19. REMEDIES CUMULATIVE

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

15.20. LICENSEE DEBT

IF CITY MANAGER BECOMES AWARE THAT LICENSEE OWES ANY DELINQUENT SUM OF MONEY IN AN AMOUNT GREATER THAN \$100.00 TO THE CITY OR ANY RELATED ENTITY FOR AD VALOREM TAXES ON REAL OR PERSONAL PROPERTY LOCATED WITHIN THE BOUNDARIES OF THE CITY ("DEBT"), IT SHALL NOTIFY LICENSEE IN WRITING. IF LICENSEE DOES NOT PAY THE DEBT WITHIN 30 DAYS OF SUCH NOTIFICATION, THE CITY MANAGER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO LICENSEE UNDER THIS AGREEMENT.

15.21. PARTS INCORPORATED

All of the above-described sections listed in the Table of Contents and the listed exhibits are made a part of and incorporated into this Agreement.

15.22. CONTROLLING PARTS

If a conflict between the sections of the Agreement and any of the exhibits arises, the sections of the Agreement control over the exhibits.


15.23 CHANGE OF LAW

If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency, and those issued by the Public Utility Commission of Texas) and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the Parties under this Agreement shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the Parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change

15.24 SIGNATURES

EXECUTED IN DUPLICATE by the PARTIES, both of which hereby represent that the signatures to this AGREEMENT, below, are of those persons with the capacity and authority to legally bind the PARTIES.

LICENSEE



Chris Glass

SVP, General Counsel

Mobilitie, LLC

ACKNOWLEDGMENT

STATE OF GEORGIA §

§

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____ 2017,
by Chris Glass, SVP, General Counsel of Mobilitie, LLC, on behalf of said company.

Notary Public's Signature

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)

On 6/21/2017 before me, Mackenzie Gee
(here insert name and title of the officer)

personally appeared Christopher Glas

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Mackenzie Gee



(Seal)

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-fact
☐ Corporate Officer(s) _____
Title(s)

- ☐ Guardian/Conservator
☐ Partner Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:
Page # _____ Entry # _____

Notary contact: _____

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

IN TESTIMONY WHEREOF, the City of Corpus Christi has caused these presents to be executed on this the ____ day of _____, 2017.

ATTEST:

CITY OF CORPUS CHRISTI

Rebecca Huerta,
City Secretary

By: _____
Margie C. Rose
City Manager

THE STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2017, by Margie C. Rose, as City Manager of the City of Corpus Christi, a Texas Municipal Corporation, on behalf of said corporation.

Notary Public, State of Texas

APPROVED AS TO LEGAL FORM:

Buck Brice 7-7-17
Buck Brice (Date)
Assistant City Attorney
For City Attorney

Exhibit A

Licensed Locations

<u>Candidate Code</u>	<u>Nearest Street Address</u>	<u>GIS or GPS Coordinates</u>
SA90XS170F	4809 Castenon Street	27.745127, -97.435146
SA90XS171B	5002 Prescott Street	27.742201, -97.432774
SA90XS629G	3905 Fred's Folly Drive	27.652794, -97.356687
SA90XSA19A	638 Timon Boulevard	27.835629, -97.380256
SA90XSDQJA	3033 McKinzie Road	27.839803, -97.573663
SA90XSDQUB	2509 Buford Street	27.780771, -97.416525
SA90XSDQVA	2320 Ruth Street	27.782888, -97.414815
SA90XSDQXB	5186 Oakhurst Drive	27.718091, -97.395105
SA90XSDQYB	4002 Brett Street	27.720654, -97.398718
SA90XSDRGD	2414 Viola Drive	27.743879, -97.421130
SA90XSDRID	904 Mustang Trail	27.720661, -97.371213
SA90XSDRLB	5704 Hall Avenue	27.798978, -97.470478
SA90XSDSFA	809 Skyline Drive	27.802628, -97.476207
SA90XSDSJA	11168 Leopard Street	27.846105, -97.586056
SA90XSDSMC	5510 Gollihar Road	27.718671, -97.367026
SA90XSDSRA	5011 Deepwood Circle	27.722359, -97.401800
SA90XSDSTC	8609 County Road 54	27.830029, -97.533984
SA90XSDTCC	4789 Whataburger Way	27.724518, -97.378449
SA90XSDTMC	1199 Flour Bluff Drive	27.673593, -97.297612
SA90XSDTUB	1337 Crescent Drive	27.705819, -97.359655
SA90XSDTYB	1678 6 th Street	27.774462, -97.399103
SA90XSDTZC	300 Cole Street	27.773499, -97.395561

SA90XSDUCA	2702 McArdle Road	27.736300, -97.419869
SA90XSDUWC	5576 Weber Road	27.714440, -97.403255
SA90XSDUXA	3917 Capri Drive	27.715316, -97.404304
SA90XSDVAC	5321 Weber Road	27.718008, -97.401017
SA90XSDVBF	5282 Wilkinson Drive	27.720844, -97.404852
SA90XSDVSC	7174 Althea Court	27.671976, -97.389881

Exhibit B

Approved Wireless Facilities and Equipment List

- (1) RF Omni Antenna- 3'Tall x 6" Diameter**
- (2) 2 Runs of ½" coax- From the antenna to the Radio**
- (3) GPS Antenna- 3" Tall x 3" Diameter**
- (4) Nokia Radio- 10"x12"x6"**
- (5) Nokia GemTek UE Relay- 25" Tall x 8" Diameter**
- (6) RayCap Breaker box- 13"x11"x5"**
- (7) Disconnect- 11"x9"x5"**
- (8) Meter Can- 16"x8"x5"**
- (9) 2" Rigid Conduit – 20' AGL (For Aerial Power Only)**

Exhibit C – Sample Letter of Credit

Issuance. At the request and for the account of Licensee, _____ (Name/Address), (“Applicant”), we, [Name of Bank, Address, City, Zip Code], (“Issuer”) issue this irrevocable independent standby letter of credit number _____ (“Standby”) in favor of City of Corpus Christi, Director of Finance, 1201 Leopard Street 4th Floor, Corpus Christi, Texas 78401 (“Beneficiary”) in the maximum aggregate amount of USD _____.

Undertaking. Issuer undertakes to Beneficiary to pay Beneficiary’s demand for payment in the form of Annex A (Payment Demand) or Annex B (Payment Demand after Notice of Non-extension) completed as indicated and presented to Issuer at the above address of Issuer at or before the close of business on the expiration date. Presentation of any demand under this Standby may be made by telefax sent from 361-826-3601 to [Issuer’s telephone number(s)] with a cover sheet marked 'URGENT. FAX PRESENTATION UNDER STANDBY LETTER OF CREDIT [REFERENCE NO.]', and the document(s) received and printed out by Issuer shall be deemed to be original under ISP98 Rule 4.15 (Original, Copy, and Multiple Documents). Beneficiary is requested to telephone Issuer at [telephone number(s)] and to identify this Standby and Beneficiary’s presentation being telefaxed that same business day, as a courtesy and not as a condition limiting Issuer’s obligations.

Overdrawing. If a demand exceeds the amount available, but the presentation otherwise complies, Issuer undertakes to pay the amount available.

Expiration. The expiration date of this Standby is _____.

Automatic Extension. The expiration date of this Standby shall be automatically extended for successive one-year periods from the then current expiration date, unless 90 or more calendar days before the then current expiration date, Issuer notifies Beneficiary in writing by certified mail or nationally recognized overnight courier at the above address that Issuer elects not to extend the expiration date.

Payment. Payment against a complying presentation shall be made within three business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary.

ISP98. This Standby is issued subject to the International Standby Practices 1998 (ISP98), (International Chamber of Commerce Publication No. 590), to the extent not inconsistent with the laws of the State of Texas, which laws govern this Letter of Credit, and more particularly with the provisions of Chapter 5 of the Texas Business and Commerce Code currently in effect.

Issuer’s Charges and Fees. Issuer’s charges and fees for issuing, amending, or honoring this Standby are for Applicant’s account and shall not be deducted from any payment Issuer makes under this Standby.

Very Truly Yours,

Authorized Signatory

Annex A: Payment Demand

DATE

NAME/ADDRESS OF ISSUER (ABOVE)

Re: Standby Letter of Credit number _____, dated _____, issued by (Issuer) ("Standby").

The undersigned Beneficiary demands payment of USD _____ under the Standby.

Beneficiary states that Applicant is obligated to pay to Beneficiary the amount demanded as provided in the License Agreement between Beneficiary and Applicant, as Applicant has failed to comply with its material obligations under the License Agreement. This Standby supports Applicant's obligations to Beneficiary under that Agreement.

Beneficiary requests that payment be made (at the place of presentation) or (by wire transfer to Beneficiary's following account:

City of Corpus Christi, Texas

By its authorized officer:

(Signed and dated by the City Manager (including Interim or Acting) or any Assistant City Manager or the Director of Finance (including Interim or Acting). The signature of such official claiming such title together with title designation on the draw demand shall be conclusive on the issuer without further exemplification or other proof of identity or title.)

Annex B: Payment Demand after Notice of Non-extension

DATE

NAME/ADDRESS OF ISSUER (ABOVE)

Re: Standby Letter of Credit number _____, dated _____, issued by (Issuer) ("Standby").

The undersigned Beneficiary demands payment of USD _____ under the Standby.

Beneficiary states that the Standby is set to expire fewer than 30 days from the date hereof because Issuer has given a notice of non-extension of the Standby and no satisfactory replacement standby has been timely received. The amount demanded is required to secure the obligations of Applicant as provided in the License Agreement.

Beneficiary requests that payment be made (at the place of presentation) or (by wire transfer to Beneficiary's following account:

City of Corpus Christi, Texas

By its authorized officer:

(Signed and dated by the City Manager (including Interim or Acting) or any Assistant City Manager or the Director of Finance (including Interim or Acting). The signature of such official claiming such title together with title designation on the draw demand shall be conclusive on the issuer without further exemplification or other proof of identity or title.)

EXHIBIT "D"- SAMPLE PERFORMANCE BOND

PERFORMANCE BOND

THE STATE OF TEXAS §

§

COUNTY OF NUECES §

_____, ("Principal") and _____ ("Surety"), shall pay to the City of Corpus Christi, Texas ("City"), the sum of \$_____ in accordance with the terms and conditions stated below:

On or about this date, the Principal executed an _____ Agreement in writing with the City for _____ ("Agreement"), which is incorporated into this Bond.

The conditions of this obligation are that if the Principal performs its obligations under the terms of the Agreement and this Bond in all respects, then this obligation is void and has no further force and effect; otherwise this obligation remains in effect and the sum of \$_____ is payable to the City on demand.

The Surety relieves the City and its representatives from the exercise of any diligence whatever in securing the Principal's compliance with the terms of the Agreement, and the Surety waives any notice to it of the Principal's default or delay in the performance of the Agreement. The Surety shall take notice of and is held to have knowledge of all acts or omissions of the Principal, its agents, and representatives in all matters pertaining to the Agreement.

The City and its representatives may at any time, without notice to the Surety, make any changes in the terms and conditions of the Agreement, or extend it, and may add to or deduct from the Principal's obligations under the Agreement. Such changes, if made, do not in any way relieve, release, condition, or limit the obligation in this Bond and undertaking or release the Surety therefrom.

SURETY AND PRINCIPAL AGREE TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, AND REPRESENTATIVES FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, DAMAGES, FINES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY FAILURE ON THE PART OF THE PRINCIPAL, ITS AGENTS, AND REPRESENTATIVES, TO FULLY PERFORM UNDER THE AGREEMENT, INCLUDING ANY CHANGES OR EXTENSIONS TO IT.

If the City brings any suit or other proceeding at law on the Agreement or this Bond, or both, the Principal and the Surety shall pay to the City the additional sum of 10 percent of whatever

amount the City recovers, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of and time consumed by its City Attorney, his or her assistants, and office staff, and other costs and damages to the City. The amount of 10 percent is fixed and liquidated by the parties because the exact damage to the City would be difficult to ascertain.

This Bond and all obligations created under it shall be performable in Nueces County, Texas, and all are non-cancelable. This Bond must be automatically renewed annually on the anniversary of the effective date of the Bond for the term of the Agreement and any extensions, unless the Surety gives the Principal and the City 30 days written notice before the renewal date that the Surety will not renew this Bond, in which case the Principal shall provide the City with a replacement bond (in the same form as this Bond) before the renewal date. The provisions of V.T.C.A., Government Code Section 2253, as amended, control even though the Statute may not be applicable.

All notices required or permitted by this Bond must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out on the signature page of this Bond or at such other address as the receiving party designates by proper notice to the sending party.