

WIRELESS MARKETING AGREEMENT BETWEEN THE CITY OF ROSEVILLE AND 5 BARS COMMUNITIES

This Wireless Marketing Agreement (“**AGREEMENT**”) is made and entered into on _____, 2017 (the “**Effective Date**”) between the City of Roseville, a municipal corporation (“**CITY**”) and 5 Bars Communities a dba of XG Communities, LLC a Delaware limited liability company (“**5 BARS**”) (each a “**PARTY**” and collectively the “**PARTIES**”), with reference to the following facts and intentions, which the PARTIES agree are true and correct to the best of their knowledge and belief:

BACKGROUND

- A. CITY is a municipal corporation formed under the laws of the State of California, operating under its charter.
- B. 5 BARS a dba of XG Communities, LLC is a limited liability company formed under the laws of Delaware.
- C. 5 Bars offers master planning services and tools that merge technical expertise on coverage needs with surveys of existing and forecasted wireless coverage conditions. 5 Bars evaluates that information to identify existing municipal assets that can meet wireless coverage needs.
- D. 5 BARS provides planning tools so that subscribing municipal corporations may access the information and identify intelligent options and solutions for the processing of applications for wireless telecommunications facilities on a real time basis.
- E. CITY desires to engage 5 BARS to provide wireless consulting, management and development services related to the use of CITY assets for the purpose of planning and implementing a marketing plan for Wireless Telecommunications Facilities (as that term is defined in Section 2, below), as further described herein.
- F. CITY desires to engage 5 BARS to proactively market CITY-owned assets on terms that maximize revenue and minimize planning impacts and visual blight.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing background, which is incorporated into the operative provisions of this Agreement by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES AGREE as follows:

1. **Term and Termination.** This Agreement shall be effective on the date it is executed by all PARTIES and shall be in effect for an initial term of five (5) years. This Agreement shall automatically renew for four (4) additional successive periods of five years each unless either party notifies the other party of their intention to not renew at least thirty (30) calendar days prior to the expiration of the initial term or any extended term then in effect. The full potential term of the Agreement is twenty-five (25) years (“**Agreement Term**”). Notwithstanding the foregoing, CITY may terminate this Agreement without cause and without prejudice to any other right or remedy of CITY, by giving 5 BARS ninety (90) days advance written notice from the City Manager. In such case, CITY shall not pay damages, costs, or other payments due to 5 BARS except for any percentage payment due to 5 BARS for any agreements approved by the City Council on a date prior to date of termination of agreement.

2. **Scope and Nature of Services.** 5 BARS shall provide the services described in this section ("**Services**") for the purposes of 5 BARS's planning, marketing, sublicensing, development, maintenance, and/or operation of certain tower(s), pole(s), building(s), fiber, conduit(s), data room(s), street furniture, and any structure(s) or object(s) of any kind or character not particularly mentioned herein ("**City Asset(s)**"), which 5 BARS proposes to locate or cause to be located on City Property and within City Right of Way for the purposes of promoting, transmitting or facilitating wireless communication of telephone, video, cable, or data or any other means ("**Wireless Telecommunications Facilities**"). CITY in its sole discretion shall identify a list ("**Asset List**") of City Assets to be included in services provided by 5 BARS. CITY shall elect to add or remove one or more assets from the Asset List at any time and notify 5 BARS in writing.

a. **Consulting Services.** 5 BARS shall provide CITY the following consulting services at no cost to CITY: a comprehensive radio frequency ("**RF**") analysis, which will, among other things, (i) describe, using state-of-the-art metrics, the current state of wireless coverage within CITY's jurisdiction for each major wireless telecommunications carrier, (ii) identify key areas of multiple wireless broadband service provider coverage needs ("**Coverage Needs**"), (iii) identify available City Assets that would satisfy or partially satisfy Coverage Needs, and (iv) provide RF modeling to show how the selection of additional sites for Wireless Telecommunications Facilities will address Coverage Needs. The items referred to in clauses (i), (ii), and (iii) from the preceding sentence are hereinafter referred to as the "**Master Plan**," while the items referred to in clauses (i), (ii), (iii), and (iv) in the preceding sentence are hereinafter referred to as the "**Consulting Services**". For the duration of the Agreement Term, 5 BARS shall also provide, on a quarterly basis, a written update summarizing investments, technology changes, financial gains and provider plans, and on an annual basis, ongoing RF analysis with reports, feasibility analysis, pricing and fee recommendations, form factor and aesthetic policy development, technology refresh and advancement updates, and other consultation specific to wireless broadband service providers, unless 5 BARS and CITY mutually waive the annual ongoing study, to ensure CITY is capitalizing on opportunities to improve wireless broadband service to the community. The Consulting Services may be used by CITY for the enhancement and evolution of the Master Plan.

b. **Marketing Services.** At no cost to CITY, 5 BARS shall market city assets to wireless carriers, cable or video companies, internet service providers (ISPs), street light providers, and Internet of Things (IoT) companies, ("**Wireless Services Providers**") to obtain their feedback and interest in locating and/or collocating on any existing and/or proposed site(s) included in the Master Plan. CITY grants 5 BARS the exclusive right to market, license, sublicense, and facilitate construction upon, at 5 BAR's sole cost and expense, City Assets for the development of Wireless Telecommunications Facilities. 5 BARS shall market the Master Plan to all Wireless Services Providers equally, and without any discrimination and/or favoritism between Wireless Services Providers, with a goal of ensuring that residents, visitors, and businesses within CITY's jurisdiction receive the maximum benefit of all available services from all existing wireless services providers.

c. **Management Services.** During the Agreement Term, 5 BARS may at any time request in writing that CITY make City Assets available for the development of Wireless Telecommunications Facilities. CITY shall have sole and absolute discretion to approve or disapprove any such request. Upon a determination of approval, CITY shall notify 5 BARS of such determination in writing, and shall offer to enter into a license with 5 BARS, which license shall be in a form that is substantially consistent with the form set forth in **Exhibit "A"** to this Agreement. Thereafter 5 BARS or an affiliate of 5 BARS, at no cost to CITY, shall construct or cause the construction of the Wireless Telecommunications Facilities, and sublicense the City Assets (either as improved with Wireless Telecommunications Facilities, or subject to improvement with Wireless Telecommunications Facilities) in accordance with the terms of this Agreement and a license agreement to be executed for each designated City Asset (provided, however, that a single license agreement may be utilized for multiple or all sites that are the subject of this Agreement). 5 BARS understands and acknowledges that CITY shall have the final

determination as to whether 5 BARS moves forward with the execution of a license and/or other agreement of substantially equivalent purpose (or an amendment to any such license and/or other agreement) for any existing structure (e.g., rooftop, existing CITY owned tower, etc.). 5 BARS further understands and acknowledges that it must comply (or cause compliance) with and receive (or cause receipt of) all necessary entitlements and permits from CITY in CITY's regulatory capacity as a local public agency and electric utility, including but not limited to complying (or causing compliance) with CITY's ordinance governing Wireless Telecommunications Facilities, all applicable building codes and public works requirements, all safety, reliability, and engineering policies of CITY, all applicable rules adopted by the California Public Utilities Commission including but not limited to General Orders 95 and 128, as well as comply (or cause compliance) with and receive (or cause receipt of) all necessary and applicable permits from any other regulatory agency, before 5 BARS undertakes (or causes the undertaking of) any construction on a City Asset.

d. **Exclusions.**

i. This Agreement shall not require or allow 5 BARS to market, license, sublicense, and/or construct Wireless Telecommunications Facilities on City Assets that are not on the Asset List or that are being used for City purposes (e.g., P25/800 MHz radio system, flood alert systems, irrigation communications, SCADA, traffic communication systems, etc.).

ii. City Assets intended for direct-marketing by the City for macro-cell site development are identified in writing by the City ("City Marketed Assets"). City Marketed Assets shall be marketed, if at all, directly by the City only; marketing rights for such assets shall not be granted, delegated, or contracted to any third party. CITY may, in its sole and absolute discretion, elect to add or remove one or more City Marketed Assets from the City Marketed Asset list at any time by notifying 5 BARS in writing.

iii. This Agreement shall not require or allow the provision of Services by 5 BARS for facilities licensed to any municipal, county, district, agency, state or Federal government for stations in the Private Land Mobile Radio Services, Maritime Radio Services, Aviation Radio Services, other stations designated for Homeland Security or Law Enforcement communications or the circuits necessary to support such facilities ("***Excluded Services***"). This Agreement shall not limit, control, or govern the provision of the Excluded Services by CITY.

e. **Professional Standards.** It is further mutually understood and agreed by and between the PARTIES hereto that inasmuch as 5 BARS represents to CITY that 5 BARS and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of 5 BARS and any subcontractors to do and perform such services in a skillful manner and 5 BARS agrees to thus perform the services and require the same of any subcontractors. If 5 BARS and its subcontractors appear to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the request of the CITY, and that person shall not again be allowed to perform work for the CITY. Therefore, any acceptance of such services by CITY shall not operate as a release of 5 BARS or any subcontractors from said professional standards.

3. **Telecommunications Ordinance Revision.** Within one hundred eighty (180) days after the Effective Date, CITY shall reasonably consider revisions to its telecommunications ordinance to specify that the CITY's review of Wireless Telecommunications Facilities that are (i) on City Assets, and (ii) subject to a license agreement that substantially conforms to the form attached as **Exhibit "A"**, will be accomplished exclusively through the licensing process described in this Agreement. At no cost to CITY,

5 BARS shall review and provide comments on any draft telecommunications ordinance.

4. **Right of Entry Agreement.** 5 BARS shall have the right to analyze the suitability of the City Property designated by CITY for 5 BARS' intended use. CITY and 5 BARS shall enter into a Right of Entry Agreement for 5 BARS and its employees, agents, contractors, engineers, and surveyors to have the right to enter upon City Property, upon reasonable written notice to CITY and in compliance with all City Standards as that term is defined in **Exhibit "A"**, to inspect, conduct, perform and examine soil borings, drainage testing, material sampling, surveys and other geological or engineering tests or studies of City Property, to apply for all licenses and permits required for 5 BARS' use of the designated City Property from all applicable governmental or regulatory entities, and to do those things on or off the designated City Property that, in the sole opinion of 5 BARS, are necessary to determine the physical condition of designated City Property, the environmental history of the designated City Property, and the feasibility or suitability of the designated City Property for 5 BARS' use ("***Due Diligence Investigation***"). Activities conducted in connection with 5 BARS' Due Diligence Investigation shall be at the sole expense and cost of 5 BARS. The Right of Entry Agreement shall grant 5 BARS access to the designated City Property for a defined and specific period of time as set forth in the Right of Entry Agreement. The proposed form of Right of Entry Agreement is attached hereto and incorporated by reference herein as **Exhibit "B"**. Notwithstanding anything in this Agreement or any Right of Entry Agreement to the contrary, CITY shall have the right to (a) refuse access to the designated City Assets when the requested access would interfere with CITY's municipal functions and (b) observe access to the designated City Assets and any on-site Due Diligence Investigation.

5. **CITY-Owned Wireless Telecommunications Facilities and CITY Licenses.** CITY shall retain ownership of all CITY leases, licenses, and other agreements in existence as of the Effective Date with wireless providers located within CITY's jurisdictional boundaries. CITY shall retain ownership of any Wireless Telecommunications Facilities CITY subsequently develops on property owned or leased by CITY for CITY's own non-commercial use. 5 BARS and/or its sublicensees shall own the Wireless Telecommunications Facilities developed on City Assets pursuant to this Agreement. CITY leases, licenses, and other agreements in existence as of the Effective Date and any CITY owned/developed Wireless Telecommunications Facilities in existence as of the Effective Date shall not be subject to this Agreement and/or any accompanying agreements between CITY and 5 BARS, unless specifically designated otherwise in writing.

6. **Compensation.**

a. **65% (CITY) / 35% 5 BARS Revenue Shares.** CITY shall be entitled to sixty percent (65%) of recurring gross payments that are:

i. Received by 5 BARS from sublicensees on new Wireless Telecommunications Facilities that are on City Assets licensed to 5 BARS pursuant to this Agreement.

b. **75% (CITY) / 25% 5 BARS Revenue Shares.** CITY shall be entitled to seventy percent (75%) of recurring gross payments that are:

i. Received by either 5 BARS as a result of the addition of one or more Wireless Telecommunications Facilities to the site of a CITY-owned Wireless Telecommunications Facility that was constructed prior to the Effective Date of this Agreement.

c. **Payment of Compensation.** All sums payable to CITY under Section 6(a) and Section 6(b) are referred to as "***Compensation***". 5 BARS shall pay CITY all Compensation, without

setoff, deduction or counterclaim, promptly upon receipt from the Wireless Service Provider or any other licensee or sublicensee of City Assets. Any Compensation not received by CITY within sixty (60) business days from the date the recurring gross payment is due to 5 BARS, shall be subject to an immediately due and payable late charge equal to six percent (6%) of the outstanding amount unless otherwise waived by CITY. In addition to any late charge, any Compensation not received by CITY within ninety (90) calendar days from the date the recurring gross payment is due to 5 BARS, shall bear interest at ten percent (10%) per annum or the highest rate permitted by law (whichever is greater) unless otherwise waived by CITY.

d. Reports. Annual reports reflecting the revenue generated to CITY will be provided by 5 BARS. Each annual report shall contain a list of all licenses, sublicenses and/or other agreements in connection with City Assets, and a ledger that shows the date and amount for all sums received by 5 BARS in connection with said licenses, sublicenses and/or other agreements.

e. Payments after Termination. In the event of termination of this Agreement without cause by CITY, 5 BARS shall continue to pay CITY its share of all recurring gross payments received by 5 BARS from all licenses, sublicenses and/or other agreements entered into by 5 BARS in connection with City Assets until expiration of said agreements.

7. Construction, Engineering, and Other Costs. CITY shall have no financial responsibility for planning, construction, and engineering costs associated with the implementation of this Agreement. 5 BARS may recover from Wireless Service Providers construction costs, installation costs, utilities, or other expenses incurred by 5 BARS, to the extent said reimbursement does not reduce the rent to be paid by Wireless Service Providers, and such recovered sums shall not be included in the computation of compensation hereunder.

8. Default. If there is a default by either PARTY to this Agreement, the PARTY claiming a default of any term or condition of this Agreement shall provide the defaulting PARTY with written notice of the default pursuant to the provisions contained in this Paragraph 8. After receipt of such notice, the defaulting PARTY shall have thirty (30) calendar days in which to cure any monetary default and sixty (60) calendar days in which to cure a non-monetary default. If a non-monetary default reasonably requires more than a sixty (60) calendar day cure period, the defaulting PARTY shall have such extended period provided that the defaulting PARTY commences the cure within the sixty (60) calendar day period and thereafter continuously and diligently pursues the cure to completion. Subject to and without limiting the foregoing, the PARTIES agree that the following events shall constitute a default: (i) failure by 5 BARS to diligently market the Master Plan in accordance with Paragraph 2(b), above; (ii) the appointment of a receiver due to 5 BARS' insolvency to take possession of all or substantially all of the assets of 5 BARS; (iii) an assignment by 5 BARS for the benefit of creditors; or (iv) any action taken by or against 5 Bars under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief laws, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within sixty (60) calendar days.

9. Right to Audit. During the Term of this Agreement the PARTIES shall maintain originals, or when originals are not available copies, of all records, books, papers and documents relating to this Agreement and all accompanying License Agreements between the PARTIES. At all reasonable times, the PARTIES shall allow each other to have access to examine, copy, and audit such records. Additionally, 5 BARS shall allow CITY, and CITY shall have the right, at any time, to have access to and examine, copy and audit records, books, papers and documents relating to or evidencing 5 BARS' efforts to obtain sublicenses as such records, books, papers and documents may or may not exist in the normal course of 5 BARS' business.

10. **Indemnification.** 5 BARS shall indemnify, defend, and hold harmless CITY, its elected and appointed officials, officers, employees, volunteers, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense, to the extent directly or proximately resulting from 5 BARS' activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of CITY, its elected and appointed officials, officers, employees, volunteers, agents, or contractors.

11. **Insurance.** At the time 5 BARS signs and delivers this Agreement to CITY, as well as at all times during the Agreement Term, 5 BARS shall maintain, at a minimum, the required insurance as set forth in the attached **Exhibit "C"** to this Agreement. CITY shall be entitled to coverage at the maximum policy limits for the required insurance maintained by 5 BARS, which shall at no time be less than the amounts required set forth in the attached **Exhibit "C"** to this Agreement. This Agreement's insurance provisions shall be separate and independent from the indemnification and defense provisions of Section 10 of this Agreement and shall not in any way limit the applicability, scope or obligations of the indemnification defense provisions in Section 10.

12. **Compliance With Local Ordinances.** Subject to Section 3 above, 5 BARS shall comply with all CITY ordinances pertaining to Wireless Telecommunications Facilities, and all such additional CITY regulations that are consistent with such ordinances (such ordinances and regulations are collectively referred to hereinafter as the "***Ordinance***").

13. **Intellectual Property.**

a. **Ownership of Services.** 5 BARS retains all right, title, and interest in any underlying software subject to the limitations set forth in this Agreement.

b. **License.** 5 BARS hereby grants to CITY a limited, non-exclusive, non-transferable, non-sublicensable license during the term of this Agreement to use the Services for the purposes of offering, promoting, managing, tracking, the development and use of Wireless Telecommunications Facilities

c. **Exclusivity.** During the term of this Agreement, 5 BARS will be the sole and exclusive provider of services as defined as Services in this Agreement, subject to the City's right to directly market City Marketed Assets. CITY expressly understands and agrees that the exclusivity set forth in this Agreement is consideration in exchange for the pricing and other benefits being provided to CITY hereunder.

d. **Additional CITY Commitments.** CITY acknowledges that it is using licensed software containing propriety and intellectual property and shall: (i) not copy, modify, transfer, display, share, or use any portion of the licensed software except as expressly authorized in this Agreement or in the applicable documentation; (ii) not contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or intellectual property rights, title, or interest of 5 BARS in and to any software; (iii) not engage in any activity that interferes with or disrupts 5 BARS' provision of the Services; and (iv) use the Services exclusively for authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others.

14. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of California. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie.

15. **General Provisions.**

a. **Independent Contractor.** 5 BARS shall, during the Agreement Term, be construed as an independent contractor and not an employee of CITY. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow CITY to exercise discretion or control over the professional manner in which 5 BARS performs the services which are the subject matter of this Agreement; however, the services to be provided by 5 BARS and its staff shall be provided in a professional manner consistent with all applicable standards and regulations governing such services. 5 BARS shall pay all salaries and wages, employer's social security taxes, unemployment and workers' compensation insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

b. **Authorizations.** All individuals executing this Agreement on behalf of the respective PARTIES certify and warrant that they have the capacity, and have been duly authorized to so execute this Agreement on behalf of the entity so indicated.

c. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

d. **Entire Agreement and Amendment.** This Agreement captures all terms, agreements, and understandings of the PARTIES and supersedes any prior promises, representations, agreements, warranties or undertakings by any of the PARTIES, either oral or written, of any character or nature binding except as stated herein. This Agreement may be modified, altered or amended only by an instrument in writing, executed by the PARTIES to this Agreement, and by no other means. Each PARTY waives its right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

e. **Good Faith.** The PARTIES agree to exercise their reasonable best efforts and utmost good faith to effectuate all the terms and conditions of this Agreement, and to execute such further instruments and documents as are necessary or appropriate to effectuate all of the terms and conditions of this Agreement.

f. **Assignment.** 5 BARS may assign this Agreement to a person or entity with demonstrated capacity to carry out 5 BARS' obligations under this Agreement after receiving written CITY consent. 5 BARS shall provide any information requested or necessary for CITY to determine whether the proposed assignee has the capacity to fulfil 5 BARS obligations under this Agreement. 5 BARS shall provide thirty (30) calendar days prior written notice of such assignment to CITY.

g. **Discrimination.** 5 BARS shall not discriminate because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. 5 BARS affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

h. **Notices.** All notices, approvals, acceptances, demands and other communication required or permitted under this Agreement, to be effective, shall be in writing and, unless otherwise

provided herein, shall be deemed validly given on the date either: (1) personally delivered to the address indicated below; or (2) on the third business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post Office; or (3) one business day after the dispatch date by overnight delivery service; or (4) on the date of transmission by facsimile to the number provided below. All notices, demands, or requests shall be addressed to the following:

CITY: Hong Sae, Chief Information Officer
Information Technology
City of Roseville
316 Vernon Street, Suite 300
Roseville, California 95678
Phone: 916-774-5200
Fax: 916-774-5511

With a copy to:

City Attorney
City of Roseville
311 Vernon Street
Roseville, CA 95678
Phone: 916-774-5325
Fax: 916-773-7348

5 BARS: Kevin Muldoon, VP & General Counsel
5 Bars Communities
19200 Von Karman Ave, Suite 100
Irvine, CA 92612
Phone: 949-514-4617
Fax: 949-266-9160

With a copy to:

Rutan & Tucker, LLP
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626
Phone: 714-641-5100
Fax: 714-546-9035

Any PARTY may change its address by giving the other PARTIES written notice of its new address as provided above.

i. Successors. This Agreement shall be binding on and shall inure to the benefit of the PARTIES and their respective successors.

j. Severability. If any of the provisions contained in this Agreement are for any reason held invalid or unenforceable, such holding shall not affect the remaining provisions or the validity and enforceability of the Agreement as a whole.

16. **Waiver.** No waiver of any provision of this Agreement, or consent to any action, shall constitute a waiver of any other provision of this Agreement, or consent to any other action. No waiver or consent shall constitute a continuing waiver or consent or commit a PARTY to provide a waiver or consent in the future except to the extent specifically stated in writing. No waiver shall be binding unless executed in writing by the PARTY making the waiver, based on a full and complete disclosure of all material facts relevant to the waiver requested.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ____ day of _____, 20__, and 5 BARS has caused this Agreement to be executed.

CITY OF ROSEVILLE, a

5 BARS COMMUNITIES A DBA OF XG COMMUNITIES, LLC, a Delaware limited liability company

BY: _____
ROB JENSEN
City Manager

BY: _____
its: KEVIN MALDONADO
GENERAL COUNSEL

ATTEST:

BY: _____
SONIA OROZCO
City Clerk

APPROVED AS TO FORM:

BY: _____
ROBERT R. SCHMITT
City Attorney

APPROVED AS TO SUBSTANCE:

BY: _____
HONG SAE
Chief Information Officer

EXHIBIT A

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made as of the date of the final signature below, by and between the City of Roseville, a municipal corporation, having a mailing address of 311 Vernon Street, Roseville, CA 95678 ("**Licenser**" or "**City**") and 5 Bars Communities a dba of XG Communities, LLC, a Delaware limited liability company, with an address at 19200 Von Karman Ave, Suite 100, Irvine, CA 92612 ("**Licensee**").

1. Definitions.

"**Agreement**" means this License Agreement.

"**Approvals**" means all certificates, permits, licenses and other approvals that Licensee must obtain as required by law in order for Licensee or its agents or sublicensees to use the Licensed Premises for the purpose intended by this Agreement.

"**Company Facilities**" means any and all Wireless Telecommunications Facilities to be developed by Licensee on the Licensed Premises.

"**City Facilities**" means any and all poles or similar facilities owned or controlled by the City that are in the public rights-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic controls, or similar functions.

"**City Standards**" means the City's Design and Construction Standards, latest edition, including all amendments, all safety, reliability, and engineering policies of the City, and all applicable rules adopted by the California Public Utilities Commission including but not limited to General Orders 95 and 128.

"**Defaulting Party**" means the party to this Agreement that has defaulted as provided for in Section 26 of this Agreement.

"**Harmful Interference**" means Interference that endangers the functioning of a radio navigation service of other safety services, or any current or planned City communication system, or seriously degrades, obstructs, or repeatedly interrupts a radio communication service operating in accordance with both International Telecommunications Union Radio Regulations and the regulations of the Federal Communications Commission.

"**Hazardous Material**" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (vii) radioactive materials.

"**Environmental Law(s)**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 *et seq.*, and the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance that regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

“Improvements” means a Wireless Telecommunications Facility(ies).

“Interference” means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information.

“Licensed Premises” means those portions of Licensor's Property described in the sketches attached hereto as **Exhibit “A”**.

“Licensee” means 5 Bars Communities a dba of XG Communities, LLC, a Delaware limited liability company.

“Licensee's Notice Address” means 19200 Von Karman Ave, Suite 100, Irvine CA 92612.

“Licensor” means City of Roseville, a municipal corporation.

“Licensor's Notice Address” means 311 Vernon Street, Roseville, CA 95678.

“Licensor's Properties” means those properties (each of which is a subject of this License Agreement). ***“Non-Defaulting Party”*** means the party to this Agreement that has not defaulted as provided for in Section 26 of this Agreement.

“Marketing Agreement” means the Wireless Marketing Agreement, between Licensor and Licensee, dated _____.

“Rent” means _____ percent (___%) of recurring Sublicense Revenue received by Licensee from Sublicensees on new Wireless Telecommunications Facilities constructed on Licensed Premises under or pursuant to this Agreement.

“Sublicense Revenue” means the total amount of rent (excluding any reimbursement from Sublicensee(s) of taxes, construction costs, installation costs, utilities, or other expenses incurred by Licensee to the extent said reimbursement is not an offset of rent to be paid by Sublicensee(s)) paid to Licensee by all Sublicensee(s) using each of the Licensed Premises, whether pursuant to a license or other similar agreement, as modified, renewed, or assigned.

“Sublicensee” means a third party to which Licensee has granted the right to use and occupancy of one or more of the Licensed Premises, subject to the terms and conditions contained herein.

“Wireless Telecommunications Facilities” means the equipment and associated structures needed to transmit and/or receive electromagnetic signals intended for profit. A wireless telecommunication facility typically includes antennas, supporting structures, enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.

2. **Licensor's Cooperation.** During the Lease Term, Licensor shall: (i) cooperate with Licensee in its efforts to obtain all of the Approvals and (ii) take no action that would adversely affect any of the Licensed Premises; provided, however, that if Licensor elects to replace infrastructure on the Licensed Premises that is unrelated to the delivery of Wireless Telecommunications services, then such replacement shall be accomplished in a manner calculated to minimize interference with the Wireless Telecommunications infrastructure on the Licensed Premises. Licensor acknowledges that Licensee's ability to use each of the Licensed Premises is contingent upon Licensee obtaining and maintaining the Approvals. Additionally, Licensor authorizes Licensee and its employees, representatives, agents and consultants to prepare, and submit,

file and present on behalf of Licensor building, permitting, zoning or land-use applications with the appropriate local, state and/or federal agencies necessary to obtain land use changes, special exceptions, zoning variances, conditional use permits, special use permits, administrative permits, construction permits, operation permits and/or building permits. Licensor understands that any such application and/or the satisfaction of any requirements thereof may require Licensor's cooperation, which Licensor hereby agrees to provide. Licensor shall not knowingly do or permit anything that will interfere with or negate any Approvals pertaining to the Improvements or Licensed Premises or cause them to be in nonconformance with applicable local, state or federal laws. Licensor agrees to execute such documents as may be necessary to obtain and thereafter maintain the Approvals. The provisions of this Section shall not apply in the event of any dispute between and/or involving Licensor and Licensee.

3. **Subdivision.** In the event that a subdivision of Licensor's Property is legally required to license any of the Licensed Premises to Licensee, Licensor agrees to seek subdivision approval at Licensee's expense.

4. **Term and Termination.** The Term of this Agreement shall commence on _____, 20____ ("Commencement Date") and shall continue until the license for each Licensed Premise listed in **Exhibit "B"** has expired. The term of each License listed in **Exhibit "B"** shall begin on the commencement date listed for such Licensed Premises on **Exhibit "B"**, and shall continue for a period of ten (10) years. This Agreement shall automatically renew for three (3) additional successive periods of five (5) years each unless either party notifies the other party of their intention to not renew at least thirty (30) calendar days prior to the expiration of the initial term or any extended term then in effect. At the end of term of the lease agreement Licensee will hand over the administration of the lease to the CITY unless mutually agreed upon by both parties. Notwithstanding the foregoing, Licensor may terminate this Agreement without cause and without prejudice to any other right or remedy of Licensor, by giving Licensee ninety (90) days advance written notice from the City Manager. In such case, Licensor shall not pay damages, costs, or other payments due Licensee except for any percentage payment due to Licensee for any agreements approved by the City Council on a date prior to date of termination of agreement.

5. **Rent.**

a. **Rent.** From and after the Commencement Date and effective upon Licensee's receipt of Sublicense Revenue or thirty (30) calendar days after the Sublicense Revenue is due and payable to Licensee, Licensee shall pay Rent for the each of the Licensed Premises. In the event of termination of this Agreement without cause by Licensor, Licensee shall continue to pay Licensor Rent for each of the Licensed Premises until expiration of the licenses for each of the Licensed Premises.

b. **Sublicenses.** Licensee shall exercise discretion as to whether, and on what terms, to sublicense, license or otherwise allow occupancy of the Licensed Premises, subject to the following:

- i. Licensee shall make every reasonable effort to ensure that each proposed Wireless Telecommunications Facility will not affect, detract, or impact the operation of existing Licensor facilities or Licensor's municipal functions.
- ii. Licensee shall not interfere, or permit, allow or suffer others to interfere, with any traffic signal control, street lighting device, or electrical pole. Licensee shall immediately notify Licensor in the event that Licensor discovers any such interference.
- iii. Licensee shall ensure that the proposed Wireless Telecommunications Facility is not dependent on the resources dedicated to Licensor facilities, which includes without limitation electrical or telephone utilities.

- iv. Licensee shall propose new locations for Wireless Telecommunications Facilities to Licensor, and Licensor shall have the final authority to approve or reject said locations in its sole and absolute discretion.
- v. In the event of damage to any Wireless Telecommunications Facilities, Licensor shall not be obligated to repair or restore the Wireless Telecommunications Facility to normal operating conditions unless Licensor is the primary and direct cause of such damage. As between Licensee and Licensor, Licensee shall bear all other costs incurred to repair or restore Wireless Telecommunications Facilities; provided, however, the Licensee may allocate its responsibility under this sentence to a third party, including a Sublicensee, so long as such allocation does not cause any damage to go un-remediated for more than thirty (30) calendar days (or sooner time if the damage threatens public safety as determined by Licensor).
- vi. In the event of any damage to Licensor's Facilities caused by Licensee, its agents, employees, licensees, sublicensees, invitees, contractors, or subcontractors, Licensee shall promptly restore Licensor's Facilities in a safe and efficient manner.
- vii. Licensee shall give Licensor reasonable notice (or no less than fourteen (14) calendar days) prior to impacting Licensor facilities in a manner that is beyond the routine maintenance and operation of Wireless Telecommunications Facilities.
- viii. Any sublicense or other similar agreement shall include the requirement that the Sublicensee must comply with the terms and conditions of this Agreement.
- ix. Any sublicense or other similar agreement shall include a provision substantially consistent with the following, relating to interference with city facilities and communications systems:

Notwithstanding any other provisions in this Sublicense Agreement, Sublicensee agrees to operate any and all of its Wireless Telecommunications Facilities on the Property in full compliance with the technical standards set forth in the Rules and Regulations of the Federal Communications Commission ("FCC") as codified in 47 C.F.R. and upon notice of non-compliance agree to take all steps necessary to bring its operation into full compliance. Licensee and Sublicensee both recognize and stipulate that City's communications systems are vital to the life, health, and safety of the City's personnel and of members of the general public, and agree that protecting such systems against harmful interference is an integral responsibility of this agreement.

Licensee and Sublicensee agree to meet and confer with the City on a case-by-case basis within seven (7) calendar days, and at the request of any Party and/or the City, in the event that additions or changes to Wireless Telecommunications Facilities on the property cause incompatibilities with the City's installed communications system(s).

Licensee and Sublicensee agree that in the event of harmful interference or degradation to City's public safety radio operations or other vital communication systems, City may require on a case-by-case basis that the use of the interfering

Wireless Telecommunications Facility be suspended upon reasonable notice by the City to Licensee and the applicable Sublicensee pending resolution of the cause and cure of such interference or degradation.

The findings of the City's communications engineering representative shall be determinant in declaring harmful interference caused by such non-compliance, and in the event of a dispute the burden of seeking a determination of compliance from the Federal Communications Commissions shall be on the Sublicensee.

This procedure shall not be invoked unless absolutely necessary.

These provisions shall be binding on Licensee, Sublicensee, and any successor, assignee, or service provider designated by Licensee and/or Sublicensee.

- x. Except as specified in this Section 5(b), Licensors shall not unreasonably interfere with Licensee's discretion relating to the terms of sublicenses, licenses or the grants of occupancy of the Licensed Premises.

c. Accounting/Adjustments. The parties hereto acknowledge that all information needed to calculate Rent may, from time to time, not be readily available. Accordingly, the parties agree that Licensee may base Rent on Sublicensee agreements, and later make adjustments if overpayments or underpayments occur. At any time, Licensors may request that Licensee provide an accounting of the Rent in such form and content as Licensors may reasonably request.

6. Construction, Engineering, and Other Costs

- a. Licensors shall have no financial responsibility for planning, construction, and engineering costs associated with the implementation of this License Agreement.
- b. Licensee may recover from Sublicensees's taxes, construction costs, installation costs, utilities, or other expenses incurred by Licensee, to the extent said reimbursement is not an offset of rent to be paid by Sublicensee(s), and such recovered sums shall not be included in the computation of Rent.

7. **Licensed Premises; Survey**. Within sixty (60) calendar days after any construction, installation or other alteration to the Licenses Premises or the personal property thereon, Licensee shall provide Licensors with a copy of an as-built survey for each Licenses Premises, which shall depict and identify the boundaries of each Licensed Premises and any easements that relate to or affect the Licensed Premises. The description of the each Licensed Premises set forth in Exhibit "A" shall control in the event of any discrepancies.

8. **Access**. Conditioned upon and subject to commencement of the License Term, Licensors grants to Licensee and Licensee's employees, agents, contractors, sublicenses, licensees and their employees, agents and contractors access to land located within Licensors's Property to Licensee, for the purpose of constructing, repairing, maintaining, replacing, demolishing and removing the facility to be located upon each Licensed Premises as necessary to obtain or comply with any Approvals (the "**Access License**"). Access in Licensors's right-of-way shall be in compliance with Licensors's traffic control standards and includes Licensors's review of traffic control plans and potential restricted working hours if necessary for the public benefit. Licensee may request and Licensors shall not unreasonably deny or withhold the granting of an alternate Utility License either to Licensee or directly to the public utility at no cost and in a location acceptable to Licensee and the public utility. The Access Licenses and Utility Licenses (collectively, the "**Access/Utility Licenses**") shall be utilized

for the purposes provided during the License Term and thereafter for a reasonable period of time necessary for Licensee to remove the Improvements.

9. **Use of Property.** The Licensed Premises and the Access/Utility Licenses shall be used for the purpose of constructing, maintaining and operating the Improvements and for uses incidental thereto. All Improvements shall be constructed at no expense to Licensor. All Improvements, inclusive of security fences (when permitted by Licensor), shall comply with the requirements of the Roseville Municipal Code and all other laws, regulations, and City Standards applicable thereto, and Licensee shall obtain all required and necessary governmental agency Approvals and permits. Licensee will maintain the Licensed Premises in a safe condition. It is the intent of the parties that Licensee's Improvements shall not constitute a fixture.

a. Maintenance and Operation. At its sole cost and expense, Licensee shall construct, install, and maintain Wireless Telecommunication Facilities on the Leased Premises in accordance and conformity with all applicable laws, policies, guidelines, and contractual obligations to Licensor. Licensor shall not be responsible for any cost of maintaining or operating any Wireless Telecommunication Facility. If the Licensor elects, in its sole discretion, to remove or relocate any pole, Licensee shall promptly remove and reinstall its Wireless Telecommunications Facility, at no cost to Licensor. In the event of a pole relocation, Licensor shall provide thirty (30) days' notice to Licensee. Licensor shall not be responsible for any damage to any Wireless Telecommunication Facility in the event that a pole falls or is knocked down. Nor shall Licensor be responsible for any damage to Licensee's Wireless Telecommunication Facilities caused by a pole removal or relocation.

10. **Removal of Obstructions.** Licensee has the right to remove obstructions from Licensor's Property, as approved by the Licensor, which approval shall be requested in writing by Licensee and shall not be unreasonably withheld, conditioned or delayed by Licensor. Potential obstructions include but are not limited to vegetation, which may encroach upon, interfere with or present a hazard to Licensee's use of the Licensed Premises or the Access/Utility Licenses. Licensee shall lawfully dispose of any materials removed.

11. **Hazardous Materials.**

a. Licensee's Obligation and Indemnity. Licensee shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from the Licensed Premises in any manner prohibited by law. Licensee shall defend, indemnify and hold Licensor, its elected and appointed officials, officers, employees, volunteers, agents, and contractors, harmless from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the release of any Hazardous Materials on the Licensed Premises if caused by Licensee or persons acting under Licensee.

b. Licensor's Obligation and Indemnity. Licensor shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from Licensor's Property or Licensed Premises in any manner prohibited by law. Licensor shall defend, indemnify and hold Licensee harmless from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the presence or release of any Hazardous Materials on Licensor's Property or Licensed Premises unless caused by Licensee or persons acting under Licensee.

12. **Real Estate Taxes.** To the extent that a possessory interest is deemed created, Licensee acknowledges that notice is and was hereby given to Licensee pursuant to California Revenue and Taxation Code Section 107.6 that use or occupancy of any public property may subject the Licensee to possessory interest taxes or other taxes levied against Licensee's right to possession, occupancy or use of any public

property. Licensee shall pay all applicable (federal, state, county, city, local) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon Licensee's services under this Agreement. Licensee agrees to reimburse Licensors for any documented increase in real estate or personal property taxes levied against Licensors' Property that are directly attributable to the Improvements. Licensors agree to provide Licensee any documentation evidencing the increase and how such increase is attributable to Licensee's use. Licensee reserves the right to challenge any such assessment, and Licensors agree to cooperate with Licensee in connection with any such challenge.

13. **Insurance.** At all times during the performance of its Due Diligence Investigation and during the License Term, Licensee, at its sole expense, shall obtain and keep in force the required insurance as set forth in the attached **Exhibit "C"**. Licensors shall be entitled to coverage at the maximum policy limits carried by Licensee for the required insurance, which shall at no time be less than the required amounts set forth in the attached **Exhibit "C"** to this Agreement. The insurance provisions shall be separate and independent from the indemnification and defense provisions between the Licensee and Licensors and shall not in any way limit the applicability, scope or obligations of the indemnification defense provisions in Section 14.

14. **Indemnification.**

a. Licensee shall indemnify, defend, and hold harmless Licensors, its elected and appointed officials, officers, employees, volunteers, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense, to the extent directly or proximately resulting from Licensee's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of Licensors, its elected and appointed officials, officers, employees, volunteers, agents, or contractors. Licensors shall promptly notify Licensee of any claim, action or proceeding covered by this Section 14(a).

b. **Right to Audit.** During the term of this Agreement and for a three (3) year period after this Agreement expires or terminates, Licensee shall maintain originals, or when originals are not available copies, of all records, books, papers and documents relating to this Agreement and all accompanying agreements between Licensee and Sublicensees (subject to Licensee's right to reasonably redact such records, books, papers and documents to the extent they are proprietary, represent confidential information, or constitute trade secrets). At all reasonable times, Licensee shall allow Licensors to have access to, examine, copy, and audit such records, including but not limited to access to and audit of information pertaining to the identities of the Sublicensees whom Licensee has attempted to sublicense the Licensed Premises.

15. **Waiver of Claims and Rights of Subrogation.** The parties hereby waive any and all rights of action for negligence against the other on account of damage to the Improvements, Licensors' Property or to the Licensed Premises resulting from any fire or other casualty of the kind covered by property insurance policies with extended coverage, regardless of whether or not, or in what amount, such insurance is carried by the parties. All policies of property insurance carried by either party for the Improvements, Licensors' Property or the Licensed Premises shall include a clause or endorsement denying to the insurer rights by way of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss.

16. **Eminent Domain.** If Licensors receives notice of a proposed taking by eminent domain of any part of the Licensed Premises or the Access/Utility Licenses, Licensors will notify Licensee of the proposed taking within five (5) calendar days of receiving said notice and Licensee will have the option to: (i) declare this Agreement null and void and thereafter neither party will have any liability or obligation hereunder other than payment of Rent for so long as Licensee remains in physical possession of the Licensed Premises; or (ii)

remain in possession of that portion of the Licensed Premises and Access/Utility Licenses that will not be taken, in which event there shall be an equitable adjustment in Rent on account of the portion of the Licensed Premises and Access/Utility Licenses so taken.

17. **Right of First Refusal.** If, during the License term, Licenser receives an offer to purchase, make a loan, or give any consideration in exchange for any of the following interests in all or a portion of any of the Licensed Premises: (i) fee title, (ii) a perpetual or other easement, (iii) a lease, (iv) any present or future possessory interest, (v) any or all portions of Licenser's interest in this Agreement including rent, or (vi) an option to acquire any of the foregoing, Licenser shall provide written notice to Licensee of said offer ("**Licenser's Notice**"). Licenser's Notice shall include the prospective buyer's name, the purchase price being offered, any other consideration being offered, the other terms and conditions of the offer, the due diligence period, the proposed closing date and, if a portion of Licenser's Property is to be sold, a description of said portion. Licensee shall have a right of first refusal to purchase, at its election and on the terms and conditions as in Licenser's Notice, a fee simple interest in Licenser's Property or the Licensed Premises or a perpetual easement for the Licensed Premises. If the Licenser's Notice is for more than the Licensed Premises, Licensee shall have the option of purchasing the property subject to Licenser's Notice in its entirety, or in the alternative, negotiating with the proposed purchaser to acquire a perpetual easement in only the Licensed Premises. If Licensee does not exercise its right of first refusal by written notice to Licenser given within thirty (30) calendar days, Licenser may sell the property described in the Licenser's Notice. If Licensee declines to exercise its right of first refusal, then this Agreement shall continue in full force and effect and Licensee's right of first refusal shall survive any such conveyance.

18. **Sale of Property.** If during the Lease Term, Licenser sells all or part of Licenser's Property, of which the Licensed Premises is a part, then such sale shall be subject to this Agreement.

19. **Surrender of Property.** Upon expiration or termination of this Agreement, Licensee shall, within a reasonable time (but not more than 90 calendar days), remove all above and below ground Improvements and restore the Licensed Premises to its original condition, normal wear and tear excepted, free of debris and hazards, and free and clear of all liens and encumbrances without, however, being required to replace any trees or other plants removed, or alter the then existing grading.

20. **Recording.** Licensee shall have the right at its expense to record a memorandum of the Agreement with the Placer County Recorder's Office. Licenser shall execute and deliver each such memorandum, for no additional consideration, promptly upon Licensee's request.

21. **Licenser's Covenant of Title.** Licenser covenants that Licenser holds good and marketable fee simple title to Licenser's Property and each of the Licensed Premises and has full authority to enter into and execute this Agreement. Licenser further covenants that there are no encumbrances or other impediments of title that might interfere with or be adverse to Licensee.

22. **Interference with Licensee's Business.** Licensee shall have the exclusive right to construct, install and operate Wireless Telecommunications Facilities that emit radio frequencies on Licenser's Property. Licenser agrees that, excluding facilities being installed, constructed, or operated for the sole use of the Licenser, it will not permit the construction, installation or operation on Licenser's Property of (i) any additional wireless telecommunications facilities or (ii) any equipment or device that interferes with Licensee's use of the Licensed Premises for a Wireless Telecommunications Facility. Each of the covenants made by Licenser in this Section is a covenant running with the land for the benefit of the Licensed Premises.

23. **Quiet Enjoyment.** Licensors covenants that Licensee, on paying Rent and performing the covenants of this Agreement, shall peaceably and quietly have, hold and enjoy the Licensed Premises and Access/Utility Licenses.

24. **Mortgages.** This Agreement, Licensee's interest in the Licensed Premises and the Access/Utility Licenses shall be subordinate to any mortgage given by Licensors which currently encumbers the Licensed Premises, provided that any mortgagee shall recognize the validity of this Agreement in the event of foreclosure. In the event that the Licensed Premises is or shall be encumbered by such a mortgage, Licensors shall obtain and furnish to Licensee a mutually agreed upon non-disturbance agreement for each such mortgage, in recordable form. If Licensors fails to cooperate in providing any Licensee requested non-disturbance agreement, Licensee may withhold and accrue, without interest, the Rent until such time as Licensee receives all such documentation.

25. **Title Insurance.** Licensee, at Licensee's option, may obtain title insurance on each of the Licensed Premises and Access/Utility Licenses at Licensee's sole cost and expense. Licensors shall cooperate with Licensee's efforts to obtain title insurance by executing documents or obtaining requested documentation as required by the title insurance company. If Licensors fails to provide the requested documentation reasonably necessary to Licensee for Licensee to obtain title insurance within thirty (30) calendar days of Licensee's request, Licensee, at Licensee's option, may withhold and accrue, without interest, the Rent until such time as Licensee receives all such documentation.

26. **Default.**

a. Notice of Default; Cure Period. If there is a default by Licensors or Licensee (the "**Defaulting Party**") with respect to any of the provisions of this Agreement or Licensors' or Licensee's obligations under this Agreement, the other party (the "**Non-Defaulting Party**") shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have thirty (30) calendar days in which to cure any monetary default and sixty (60) calendar days in which to cure any non-monetary default. The Defaulting Party shall have such extended periods as may be required beyond the sixty (60) calendar day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than sixty (60) calendar days to cure, and the Defaulting Party commences the cure within the sixty (60) calendar day period and thereafter continuously and diligently pursues the cure to completion. The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section.

b. Consequences of Licensee's Default. Licensors acknowledges that under the terms of this Agreement, Licensee has the right to terminate this Agreement at any time upon one hundred eighty (180) calendar days' written notice to Licensors. Accordingly, in the event that Licensors maintains any action or effects any remedies for default against Licensee resulting in Licensee's dispossession or removal, (i) the Rent shall be paid up to the date of such physical dispossession or removal and (ii) Licensors shall be entitled to recover from Licensee, in lieu of any other damages, as liquidated, final damages, a sum equal to six months' Rent which shall be calculated at the highest value of the Rent which is in effect on the date of default and for the six month period thereafter. In no event shall Licensee be liable to Licensors for indirect or speculative damages in connection with or arising out of any default.

c. Consequences of Licensors's Default. If Licensors is in default beyond the applicable periods set forth above in Section 26(a), Licensee may, at its option, upon written notice: (i) terminate the Lease, vacate the Licensed Premises and be relieved from all further obligations under this Agreement; (ii) perform the obligation(s) of Licensors specified in such notice, in which case any expenditures reasonably made by Licensee

in so doing shall be deemed paid for the account of Licensors and Licensors agree to reimburse Licensee for said expenditures upon demand; (iii) take any actions that are consistent with Licensee's rights; (iv) sue for injunctive relief, and/or (v) set-off from Rent any amount reasonably expended by Licensee as a result of such default.

27. **Force Majeure.** If an event or condition constituting a "force majeure"—including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, or natural disaster—prevents or delays either the Licensors or the Licensee ("**Party**") from performing or fulfilling an obligation under this Agreement, said Party is not in Default, under Section 26 of this Agreement, of the obligation. A delay beyond a Party's control automatically extends the time, in an amount equal to the period of the delay, for the Party to perform the obligation under this Agreement. The Licensors and Licensee shall prepare and sign an appropriate document acknowledging any extension of time under this Section.

28. **Applicable Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of California. The parties agree that the venue for any litigation regarding this Agreement shall be brought in Placer County, California, regardless of where else venue may lie.

29. **Assignment, Sublease, Licensing and Encumbrance.** Licensee may assign this Agreement to a person or entity with demonstrated capacity to carry out Licensee's obligations under this Agreement. Licensee shall provide thirty (30) calendar days prior written notice of such assignment to Licensors. Licensee may enter into subleases, licenses, or other authorizations ("**Sub-Authorizations**") to allow a third party to utilize and operate from the Licensed Premises, so long as such third party is a provider of services that utilize Wireless Telecommunications Facilities. Sub-Authorizations shall not require the consent of Licensors.

30. **Miscellaneous.**

a. Entire Agreement. Licensors and Licensee agree that this Agreement, together with that certain Wireless Marketing Agreement and Right of Entry Agreement between Licensors and Licensee, contain all of the agreements, promises and understandings between Licensors and Licensee with regard to the Licensed Premises. No oral agreements, promises or understandings shall be binding upon either Licensors or Licensee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.

b. Captions. The captions preceding the Sections of this Agreement are intended only for convenience of reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

c. Construction of Document. Licensors and Licensee acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said party being the drafter and that this Agreement shall not be construed as a binding offer until signed by Licensee.

d. Notices. All notices hereunder shall be in writing and shall be given by (i) established national courier service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to Licensors at Licensors's Notice Address and to Licensee at Licensee's Notice Address.

e. Partial Invalidity. If any term of this Agreement is found to be void or invalid, then such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

f. IRS Form W-9. Licensors agree to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Licensee. In the event the Property is transferred, the succeeding Licensors shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new Licensors. Licensors' failure to provide the IRS Form W-9 within thirty (30) calendar days after Licensee's request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from Rent payments.

IN WITNESS WHEREOF, Licensors and Licensee having read the foregoing and intending to be legally bound hereby, have executed this Agreement as of the day and year this Agreement is fully executed.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“LICENSOR”
City of Roseville

Date: _____

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

“LICENSEE”
5 BARS COMMUNITIES A DBA OF
XG COMMUNITIES, LLC

Date: _____

By: _____

Title: _____

APPROVED AS TO FORM:

EXHIBIT B

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this “**Agreement**”) is made as of the date of the final signature below, by and between the City of Roseville, a municipal corporation, having a mailing address of 311 Vernon Street, Roseville, CA 95678 (“**Grantor**”) and 5 Bars Communities a dba of XG Communities, LLC, a Delaware limited liability company, with an address at 19200 Von Karman Ave, Suite 100, Irvine, CA 92612 (“**Grantee**”). Grantor and Grantee are sometimes collectively referred to as “Parties” or individually as “Party.”

RECITALS

- A. Grantor is the fee owner of record of that certain real property more particularly described as follows:

(the “**Property**”).
- B. Grantor and Grantee have entered into that certain Wireless Marketing Agreement (“**Marketing Agreement**”) pursuant to which Grantee has agreed to provide certain consulting, marketing, and management services relating to the placement of Wireless Telecommunications Facilities on some or all of the Property.
- C. Pursuant to the Marketing Agreement, Grantor and Grantee have agreed to enter into this Agreement so that Grantee may enter upon the Property, upon 24 hour written notice to Grantor and in conformance with City Standards including traffic control within Grantor’s right-of-way, to inspect, conduct, perform and examine soil borings, drainage testing, material sampling, surveys and other geological or engineering tests or studies of the Property, to apply for and obtain all licenses and permits required for Grantee’s use of the designated Property from all applicable governmental or regulatory entities, and to do those things on or off the designated Property that, in the sole opinion of Grantee, are necessary to determine the physical condition of designated Property, the environmental history of the designated Property, and the feasibility or suitability of the designated Property for Grantee’s use (“**Due Diligence Investigation**”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties agree as follows:

AGREEMENT

- Right of Entry.** Grantor hereby grants to Grantee and its agents, employees, contractors, subcontractors, and volunteers non-exclusive permission to enter over and across, as well as to use the Property as is reasonable and necessary and not in conflict with Grantor’s current or future use, for the express purpose of conducting, at Grantee’s sole expense, the Due Diligence Investigation. (The above-described activities are collectively referred to hereafter as the “**Work**”).
- Term.** The Right of Entry granted pursuant to Section 1, above, shall be for a limited term, commencing as of the date of this Agreement and expiring upon the expiration or earlier termination of the Marketing Agreement.
- Entry at Own Risk; No Duty to Warn.** Grantee and its agents, employees, contractors, subcontractors, and volunteers shall access, enter and use the Property at their own risk and peril. Grantor shall have no duty to inspect the Property (or any portion thereof) and no duty to warn of any latent or patent defect, condition or risk which may exist on the Property.

4. **Liens.** Grantee shall not permit to be placed against the Property, or any part thereof, any mechanics', materialmen's, contractors' or other liens (collectively, the "**Liens**") arising out of the acts or omissions of the Grantee or its agents, employees, contractors, subcontractors, or volunteers hereunder. Grantee hereby defends, indemnifies and agrees to hold the Grantor and the Property free and harmless from all liability for any and all such Liens, together with all costs and expenses, including, but not limited to, attorneys' fees and court costs reasonably incurred by Grantor in connection therewith. In the event that any Liens are placed on the Property, Grantee shall, at Grantee's sole cost and expense, remove or cause the removal of all such Liens.
5. **Hazardous Substances.** Grantee and its agents, employees, contractors, subcontractors, and volunteers shall not use, store or transport or allow the use, storage or transportation of any hazardous substances on or onto the Property.
6. **Restoration of the Property.** Except to the extent otherwise contemplated by this Agreement, Grantee shall, at its own cost and expense, restore the Property to the same condition in which it was prior to Grantee's entry. In the event that Grantee's Due Diligence Investigation continues for more than one (1) day, Grantee shall not leave the Property in an unsafe condition.
7. **Indemnification by Grantee.** Except to the extent otherwise provided below, Grantee agrees to defend, hold harmless and indemnify Grantor, its officers, agents, employees, and volunteers, from and against any and all, claims, demands, actions, and causes of action for injury or death of any person, or damages to property, arising out of or resulting from the use or access of the Property by the Grantee or its agents, employees, contractors, subcontractors, and volunteers pursuant to this Agreement. Notwithstanding the foregoing, the Grantee shall have no obligation to indemnify Grantor from a pre-existing condition at the Property, any encroachments of the wall on any other property or for claims related to the gross negligence or willful misconduct of Grantor.
8. **Authority to Execute.** Grantor(s) warrants and represents to Grantee that he/she/it/they is/are the sole owner(s) of the Property and may execute and approve this Agreement and no permission or consent of any other person is required to approve this Agreement.
9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.
10. **Entire Agreement.** No representations or covenants of any kind other than those expressly contained herein have been made by either party hereto. This Agreement may only be modified or amended by an agreement in writing duly executed and delivered by each of the parties hereto.
11. **Severability.** If any provision of this instrument, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
12. **Permits.** Prior to beginning any work, Grantee, at its sole expense, shall obtain all necessary permits to use the Property as permitted under this Agreement.
13. **All Expenses To Be Borne by Grantee.** Grantee shall bear any and all costs and expenses associated with the rights granted to Grantee to use the Property, or any unforeseen costs or expenses incurred by Grantor relating to Grantee's use of the Property in the performance of this Agreement.
14. **Hours of Operation.** The hours of operation that Grantee shall be permitted to conduct the Work shall be between 7 am and 5 pm, Monday through Friday. No weekend work shall be permitted.

15. **Governing Law; Venue.** This Agreement shall be governed in accordance with the laws of the State of California. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

“GRANTOR”
City of Roseville

Date: _____

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

“GRANTEE”
5 BARS COMMUNITIES A DBA OF
XG COMMUNITIES, LLC

Date: _____

By: _____

Title: _____

APPROVED AS TO FORM:

EXHIBIT C

INSURANCE REQUIREMENTS

5 BARS shall procure and maintain or shall cause a sublicensee to procure and maintain (5 BARS and/or sublicensees shall be referred to hereinafter, as the context dictates, as "Contractor"), for the duration of the Agreement and any applicable sublicense entered into under and/or pursuant to the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the 5 BARS, a sublicensee, its agents, representatives, or employees. Minimum policies of insurance shall be as follows:

COVERAGE

LIMITS OF LIABILITY

Workers' Compensation	Statutory
Commercial General Liability	\$2,000,000 each occurrence \$4,000,000 aggregate Personal Injury: \$2,000,000 each occurrence \$4,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit
Professional Liability (errors and omissions)	\$1,000,000 per claim \$2,000,000 aggregate

Form

Contractor shall submit a certificate evidencing such coverage for the period covered by the Agreement in a form satisfactory to Risk Management and the City Attorney, prior to undertaking any work hereunder. Any insurance written on a claims made basis is subject to the approval of Risk Management and the City Attorney.

Additional Insureds

Contractor shall also provide a separate endorsement form or section of the policy showing City, its officers, agents, employees and volunteers as additional insureds for each type of coverage, except for Workers' Compensation and Professional Liability. Such insurance shall specifically cover the contractual liability of Contractor. The additional insured coverage under the Contractor's policy shall be primary and noncontributory, as evidenced by a separate endorsement or section of the policy, and shall not seek contribution from City's insurance or self-insurance. In addition, the additional insured coverage shall be at least as broad as the Insurance Services Office ("ISO") CG 20 01 Endorsement. Any available insurance proceeds in excess of the specified minimum insurance coverage requirements and limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in the Agreement; or (2) the full coverage and maximum limits of any insurance proceeds available to the named insureds, whichever is greater.

Cancellation/Modification

Contractor shall provide ten (10) days written notice to City prior to cancellation or modification of any insurance required by the Agreement.

Umbrella/Excess Insurance

The limits of insurance required in the Agreement may be satisfied by a combination of primary and excess insurance. Any excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of City (if agreed to in a written contract) before City's own insurance shall be called upon to protect it as a named insured.

Subcontractors

Contractor agrees to include in its contracts with all subcontractors the same requirements and provisions of the Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Furthermore, Contractor shall require its subcontractors to agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the Agreement. Additionally, Contractor shall obligate its subcontractors to comply with these same provisions with respect to any tertiary subcontractor, regardless of tier. A copy of City's indemnity and insurance provisions will be furnished to the subcontractor or tertiary subcontractor upon request.

Self-Insured Retentions

All self-insured retentions ("SIR") must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or City. City reserves the right to obtain a full certified copy of any insurance policy and endorsements. The failure to exercise this right shall not constitute a waiver of such right.

Waiver of Subrogation

Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss under a Workers Compensation, Commercial General Liability or Automobile Liability policy. All Workers Compensation, Commercial General Liability and Automobile Liability policies shall be endorsed with a waiver of subrogation in favor of City, its officers, agents, employees and volunteers for all work performed by Contractor, its employees, agents and subcontractors.

Liability/Remedies

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Contractor of liability in excess of such coverage, nor shall it preclude City from taking such other actions as are available to it under any other provisions of this Agreement or law.