

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made as of the date of the final signature below, by and between the City of Alameda, a municipal corporation, having a mailing address of Alameda City Hall, 2263 Santa Clara Avenue, Room 320, Alameda, CA 94501 (“Licensor”) and XG Communities, LLC, a Delaware limited liability company, dba 5 Bars Communities, with an address at 19200 Von Karman Ave, Suite 100, Irvine, CA 92612 (“Licensee”) (each a “Party” and collectively the “Parties”).

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 Properties for the purpose intended by this Agreement.

“Company Facilities” means any and all Small Wireless Telecommunications Facilities to be developed by Licensee on the Licensed Properties.

“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 or of other safety service 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 (viii) 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 Small Wireless Telecommunications Facility(ies) installed or caused to be installed by Licensee.

“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.

“License Term” means the term of this Agreement, inclusive of exercised option terms, if any.

“Licensed Premises” or “Licensed Properties” means those portions of Licensor's Property described in the sketches, maps, photographs, or other descriptive documents attached hereto as Exhibit “A”, which are subject to this License Agreement.

“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 Alameda, a municipal corporation.

“Licensor's Notice Address” means Alameda City Hall, 2263 Santa Clara Avenue, Room 320, Alameda, CA 94501; Attn: City Manager.

“Licensor's Properties” means those properties owned by the City.

“Marketing Agreement” means that Professional Services Agreement between the City of Alameda and XG Communities, LLC, dba 5 BARS Communities entered into between the parties to this Agreement on September ___, 2017.

“Micro wireless facility” shall have the meaning established in the Professional Services Agreement, as the meaning may be amended from time to time by State law.

“Non-Defaulting Party” means the Party to this Agreement that has not defaulted as provided for in Section 26 of this Agreement.

“Rent” means sixty-five percent (65%) of the Sublicense Revenue received by Licensee from Sublicenses on new Wireless Telecommunication Facilities constructed on Licensed Property under or pursuant to this Agreement.

“Small cell” shall have the meaning established in the Professional Services Agreement, as the meaning may be amended from time to time by State law.

“Small Wireless Telecommunications Facilities” shall mean small cells and micro wireless facilities as set forth in the Professional Services Agreement.

“Sublicense Revenue” means the total amount of revenue received from any party utilizing the Licensed Properties pursuant to the Professional Services Agreement.

“Sublicensee” means a third party to which Licensee has granted the right to use and occupancy of one or more of the Licensed Properties, 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, as defined in paragraph (2) of subdivision (d) of Government Code Section 65850.6. 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 License Term, Licensor shall cooperate with Licensee in its efforts to obtain all of the Approvals. 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 Facilities on the Licensed Properties. 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 reasonable cooperation, which Licensor hereby agrees to provide. Licensor shall not knowingly unreasonably interfere with any Approvals pertaining to the authorized Improvements or Licensed Properties 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, and agrees to be named as the applicant for said Approvals. The provisions of this Section shall not apply in the event of any dispute between and/or involving Licensor and Licensee. Nothing in this Agreement shall be construed to interfere with Licensor's legislative authority, its ability to act as regulator, or Licensor's police powers.

3. **Term.** The term of this Agreement shall commence on September __, 2017 (“Commencement Date”). The term of this Agreement shall continue for a period of five (5) years with four (4) five (5) year options, each of which is subject to the written mutual consent of the Licensor and Licensee, prior to the expiration of the existing term. At the termination of this Agreement, 5 BARS will cause the removal of all Improvements unless mutually agreed upon by both Parties.

4. **Rent.**

a. Rent. From and after the Commencement Date and effective upon Licensee's receipt of Sublicense Revenue, Licensee shall pay Rent for the each of the Licensed Properties.

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

- i. Licensee shall make every reasonable effort to ensure that each proposed Small Wireless Telecommunications Facility will not affect, detract, or impact the operation of existing Licensor facilities. Licensee shall not allow interference with signal control or street lighting devices.
- ii. Licensee shall ensure that each proposed Small Wireless Telecommunications Facility is not dependent on the resources dedicated to Licensor facilities. For example, no Wireless Telecommunication Facility may draw power from Licensor's facilities.
- iii. Licensee may propose new locations for Wireless Telecommunications Facilities to Licensor, and Licensor shall have the final authority to approve or reject said locations.
- iv. In the event of damage, Licensor shall not be obligated to repair or restore the Improvements to normal operating conditions unless Licensor is the primary and direct cause of such damage. For these purposes, "damage" excludes any requirement that such facilities be moved to an alternate location for any legitimate governmental purpose, such as street realignment or widening. As between Licensee and Licensor, Licensee shall bear all other costs incurred to repair, restore, or remove Wireless Telecommunications Facilities.
- v. Licensee shall make every reasonable effort to restore Licensor facilities in a safe and efficient manner, and in no event shall Licensor fail to repair or restore facilities so as to threaten public safety.
- vi. Licensee shall give Licensor fourteen (14) days' notice, or reasonable notice (whichever amount is greater) prior to impacting Licensor facilities in a manner that is beyond the routine maintenance and operation of Wireless Telecommunications Facilities. Licensee shall coordinate the work consistent with direction from the City in an effort to limit the negative impacts of such activities.
- vii. Any sublicense agreement shall include the requirement that the Sublicensee must comply with the terms and conditions of this Agreement.
- viii. Any sublicense agreement shall include a provision substantially consistent with the following, relating to interference with city facilities and communications systems:

Notwithstanding any other provisions this Sublicense Agreement, Sublicensee agrees to operate any and all of its Wireless Telecommunications Facilities 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 promptly take all steps

necessary to bring its operation into full compliance. Licensee and Sublicensee both recognize and stipulate that City's public safety communications systems are vital to the life, health, and safety of the public safety 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 each other and the City on a case-by-case basis to resolve City's concerns regarding interference or other issues. Sublicensee further agree, 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 public safety or City installed communications system(s), or with pre-existing Wireless Telecommunications Facilities located on City's property, such interference shall immediately be stopped.

Licensee and Sublicensee agree that in the event of harmful interference or degradation public safety radio operations, City may require on a case-by-case basis that the use of the interfering Wireless Telecommunications Facility be suspended 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.

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

Licensee may not enter into any sublicense or similar agreement unless Licensor agrees to the terms of such agreement. Licensor may withhold such approval for any reason or no reason, so long as there is no unlawful discrimination as between Wireless Telecommunications Providers. For example, Licensor may deny a sublicense if Licensor determines the Licensor will not receive sufficient compensation. Licensor may also deny such sublicense if Licensor objects to the design of a proposed facility.

c. Accounting/ Adjustments. The parties agree that Licensee may base Rent on Sublicensee agreements, and later make adjustments if overpayments or underpayments occur. In addition to the annual report of revenue required by the Professional Services Agreement, at any time, Licensor may request that Licensee provide an accounting of the Sublicensee Revenue and Rent in such form and content as Licensor may reasonably request.

5. 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 or any sublicensees shall obtain, and pay for, all required permits or other governmental approvals. For example, Licensee or any sublicensees shall obtain and pay for any required encroachment, excavation, or building permits.

c. Licensee may recover from sublicensees reasonable actual construction costs, installation costs, utilities, or other reasonable actual expenses incurred by Licensee, to the extent said reimbursement does not reduce the rent or other payments to be paid by sublicensees, and such recovered sums shall not be included in the computation of compensation hereunder. Licensee shall include a record of all such payments, in its annual report to Licensor, and shall include all detail support to the reasonable satisfaction of the Licensor.

6. Licensed Properties; Survey. Prior to any sublicensing being effective, Licensee shall provide Licensor with a copy of an "as-built" survey for each Licensed Property, which survey shall depict and identify the boundaries of each Licensed Property and any easements of record. If accepted by the CITY, the survey shall appear as Exhibit "A" to this Agreement and shall control in the event of any discrepancies between what is listed on the Asset List and Exhibit "A" hereto.

7. Access. Conditioned upon and subject to commencement of the License Term, Licensor grants to Licensee and Licensee's employees, agents, contractors, sublicensees, licensees and their employees, agents and contractors access to land located within Licensor's Property to Licensee, for the purpose of constructing, repairing, maintaining, replacing, demolishing and removing the Improvements upon each Licensed Property as necessary to obtain or comply with any Approvals, provided, however, that access to areas of Licensor's Property which are not included within the Licensed Properties, shall be limited in scope and time so as not to unreasonably interfere with the City's or the public's use of such Licensed Property.

8. Use of Property. The Licensed Properties 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, shall comply with the requirements of the Alameda Municipal Code and all other laws and regulations applicable thereto, and Licensee shall obtain all required and necessary governmental agency Approvals and permits, including any necessary encroachment permits. Licensee will maintain the Licensed Properties in a safe condition. It is the intent of the Parties that Licensee's Improvements shall not constitute a fixture unless otherwise agreed by the Removal of Obstructions. Licensee may request in writing the right to remove obstructions from Licensor's Property, as approved by the Licensor, which approval shall be requested in writing by Licensee and such approval shall not be unreasonably withheld, conditioned or delayed by

Licensors; notwithstanding the foregoing the City has unfettered discretion to prevent or regulate the trimming or removal of trees or of pre-existing Wireless Telecommunications Facilities, regulatory signs and signals. 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 Properties. Licensee shall dispose of any materials removed. If vegetation is removed, similarly sized vegetation shall be planted in a manner reasonably agreeable to Licensors; Licensors may require that replacement vegetation be drought tolerant. To the extent that there is loss of screening as a result of any such removal, Licensors may require commensurate actions to mitigate the loss of screening.

9. 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 Properties in any manner prohibited by law. Licensee shall indemnify and hold Licensors 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 Properties if caused by Licensee, its officers, employees, agents, assigns, or by a sublicensee or any party acting under color of a sublicense or contract approved by Licensee.

b. Licensors' Obligation and Indemnity. Licensors shall not, with gross negligence or intentional misconduct, cause the escape, disposal or release of any Hazardous Materials on or from Licensors' Property or Licensed Premises in any manner prohibited by law. Licensors shall 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 Licensors' Property or Licensed Properties unless caused by Licensee, its officers, employees agents or assigns, or by a sublicensee or any party acting under color of a sublicense or contract approved by Licensee.

10. 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 and Licensee shall pay all applicable (federal, state, county, city, local) excise, sales, consumer use, possessory interest, or other similar taxes required by law. Licensee agrees to reimburse Licensors for any documented increase in real estate or personal property taxes levied against Licensors' Property that are attributable to the Improvements. Licensee reserves the right to challenge any such assessment, and Licensors agrees to reasonably cooperate with Licensee in connection with any such challenge.

11. 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 Licensor and shall not in any way limit the applicability, scope or obligations of the indemnification defense provisions in Section 14.

12. Indemnification.

a. Licensee shall indemnify, defend, and hold harmless Licensor, its elected and appointed officials, officers, employees, 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 the activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the gross negligence or willful misconduct of Licensor, its elected and appointed officials, officers, employees, agents, or contractors. Licensor shall promptly notify Licensee of any claim, action or proceeding covered by this Section 14(a).

This duty to indemnify, defend, and hold harmless Licensor, its elected and appointed officials, officers, employees, agents, and contractors applies to, among other things, situations where it is alleged that prevailing wages were required to be but were not properly paid. Notwithstanding anything in this Agreement to the contrary, these responsibilities shall be solely the responsibility of Licensee, and not the responsibility of the Licensor.

b. Right to Audit. During the term of this Agreement, 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. At all reasonable times, Licensee shall allow Licensor to have access to, examine, copy, and audit such records, to the extent they exist. Additionally, Licensor may at any time access and/or examine, copy and audit records, books, papers and documents relating to or evidencing Licensee's efforts to obtain sublicenses as such records, books, papers and documents may or may not exist in the normal course of Licensee's business, 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 Properties. City shall not disclose documents which Licensee has expressly marked as proprietary, confidential or a trade secret, except as required by the California Public Records Act, court order, or other applicable law. If City receives a public records request for such documents, Licensor shall provide Licensee five (5) days' prior notice of the City's intent to disclose such documents. Licensee may petition a court to prevent said disclosure, and City will not object to such petition.

13. Waiver of Claims and Rights of Subrogation. All policies of property insurance carried by either Party for the Improvements, Licensor's Property or the Licensed Properties 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. Nothing in this section shall require Licensor to obtain property insurance policies on any property, including the Improvements. Licensor's self-insurance fund shall not be treated as a policy of insurance under this Agreement.

14. **Eminent Domain.** If Licensor receives notice of a proposed taking by eminent domain of any part of the Licensed Properties, Licensor will notify Licensee of the proposed taking within twenty one (21) business days of receiving said notice. If eminent domain is exercised as to any particular Licensed Property, portion thereof, Improvement or facility, either Party may: (i) declare this Agreement terminated as to that Licensed Property, portion thereof, Improvement or facility 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 Property(ies); or (ii) remain in possession of that portion of the Licensed Premises that will not be taken, in which event there shall be an equitable adjustment in Rent if the taking of a portion of the Licensed Property(ies) results in removal or inoperability of Improvement(s).

15. **Sale of Property.** If during the License Term, Licensor sells all or part of Licensor's Property, of which some or all of the Licensed Properties is a part, and such sale is not subject to this Agreement, then Licensee shall be entitled to move the Improvements to a feasible alternate location at Licensor's sole and reasonable cost, with execution of a new License Agreement for the alternate location.

16. **Surrender of Property.** Upon expiration or termination of this Agreement, Licensee shall, within a reasonable time, but in no event later than six (6) months after expiration or termination, remove all above and below ground Improvements and all related equipment and/or infrastructure not owned or accepted by Licensor and restore the Licensed Premises to its original condition, without, however, being required to replace any trees or other plants lawfully removed, or alter the then existing grading.

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

18. **Licensor's Covenant of Title.** Licensor covenants that Licensor holds the legal right to Licensor's Property and each of the Licensed Properties (which may include easements) and has full authority to enter into and execute this Agreement.

19. **Interference with Licensee's Business.** Licensee shall have the exclusive right to construct, install and operate Small Wireless Telecommunications Facilities on the Licensed Properties, except to the extent that Licensor elects to construct, install and operate such facilities for its own use, and except for any pre-existing Wireless Telecommunications Facilities on the Licensed Premises. Except as herein provided, Licensor agrees that it will not permit the construction, installation or operation on the Licensed Properties of (i) any additional Small Wireless Telecommunications Facilities or (ii) any equipment or device that unreasonably interferes with Licensee's use of the Licensed Properties for a Small Wireless Telecommunications Facility; provided, however, that installations or collocations that are permitted by law without Licensor's approval shall not be deemed a violation of this section or this Agreement. Each of the covenants made by Licensor in this Section is a covenant running with the land for the benefit of the Licensed Properties.

20. **Quiet Enjoyment.** Licensor covenants that Licensee, on paying Rent and performing the covenants of this Agreement, shall peaceably and quietly have, hold and enjoy

the Licensed Properties, subject to City's right to upgrade its own facilities, to widen and repair its streets, to engage in street realignment, and similar conduct as deemed necessary by its Public Works Director, City Manager or City Council. In the event that any such public works project is deemed necessary, Licensor shall provide reasonable notice to Licensee to allow Licensee or its sublicensee to remove and preserve any Improvement. At such time as the Public Works Director deems appropriate, the Improvement may be reinstalled within the Licensed Property affected by the public works project, or to a feasible alternate location agreed upon by the Parties. In connection with removal and reinstallation of Improvements as a result of a public works project, Licensee shall bear all costs incurred to repair, restore, remove or reinstall Improvements. Licensee is aware that infrastructure in the public right of way is subject to being damaged by motor vehicles, bicycles, pedestrians, vandals, taggers, graffiti, earthquakes, storms, winds, other weather events, criminal activity, and Acts of God. Licensor shall not be responsible for any damage to, destruction of, or loss of use of any Improvements as a result of any of the enumerated causes or any other cause beyond Licensor's control.

21. **Title Insurance.** Licensee, at Licensee's option, may obtain title insurance on each of the Licensed Properties at Licensee's sole cost and expense. Licensor shall cooperate with Licensee's efforts to obtain title insurance by executing documents or obtaining requested documentation as required by the title insurance company.

22. **Default.**

a. Notice of Default; Cure Period. If there is a default by Licensor or Licensee (the “**Defaulting Party**”) with respect to any of the provisions of this Agreement or Licensor's 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) days in which to cure any monetary default and sixty (60) days in which to cure any non-monetary default, provided however, that any default by Licensee which impairs the City's public safety communications or otherwise threatens public safety shall be cured immediately, or if it cannot be cured, the conduct causing the impairment or threat shall be immediately ceased. The Defaulting Party shall have such extended periods as may be required beyond the sixty (60) 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) days to cure, and the Defaulting Party commences the cure within the sixty (60) 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. If Licensee is in default beyond the applicable periods set forth above in Section 26(a), Licensor may, at its option, upon written notice: (i) terminate the License, require Licensee to promptly vacate the Licensed Properties and be relieved from all further obligations under this Agreement; (ii) require the Rent to be paid up to the date of complete removal and (iii) take any actions that are consistent with Licensor's rights, up to and including assuming some or all of the sublicenses; and (iv) sue for injunctive relief; (v) require payment amount reasonably expended by Licensor as a result of such default.

In no event shall Licensee be liable to Licensor for indirect or speculative damages in connection with or arising out of any default.

c. **Consequences of Licensor's Default.** If Licensor 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 License, vacate the Licensed Properties and be relieved from all further obligations under this Agreement; (ii) take any actions that are consistent with Licensee's rights; (iii) sue for injunctive relief, and/or (iv) set-off from Rent any amount reasonably expended by Licensee as a result of such default. In no event shall Licensor be liable to Licensee for indirect or speculative damages in connection with or arising out of any default.

23. **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 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 Licensor and Licensee shall prepare and sign an appropriate document acknowledging any extension of time under this Section.

24. **Applicable Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The parties agree that the venue for any litigation regarding this Agreement shall be in the courts of the County of Alameda, State of California.

25. **Assignment, Sublicense, Licensing and Encumbrance.** Licensee shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Licensee shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager may consent or reject such request in his/her sole and absolute discretion. Any attempt to assign this Agreement without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Licensee to a bank, trust company or other financial institution without prior written consent. The foregoing notwithstanding, Licensee may enter into sublicenses or other authorizations (“**Sub-Authorizations**”) to allow a third party to utilize and operate from the Licensed Properties, so long as such third party is a provider of services that utilizes Small Wireless Telecommunications Facilities and Licensee receives Rent for such use of such facilities. Sub-Authorizations shall require the consent of Licensor to the terms of the Sublicense or Sub-Authorization.

26. **Miscellaneous.**

a. **Entire Agreement.** Licensor and Licensee agree that this Agreement, together with the Professional Services Agreement [and executed right of entry], contain all of

the agreements, promises and understandings between Licensor and Licensee with regard to the Licensed Properties. No oral agreements, promises or understandings shall be binding upon either Licensor 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. Licensor 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 Licensor at Licensor'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. If necessary, Licensor agrees 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 Licensor 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 paperwork to effect a transfer in Rent to the new Licensor. Licensor's failure to provide the IRS Form W-9 within thirty (30) 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.

g. Termination for Convenience. In addition to any rights either Party may have for termination for cause, Licensor, in its sole and absolute discretion, may terminate this Agreement without cause on ninety (90) days' prior notice to Licensee of its intent to terminate. If Licensor exercises this right to terminate without cause, Licensor will continue to receive Rent and Licensee shall continue to receive Sublicense Revenue pursuant to Section 4 of this Agreement to the extent it would otherwise be entitled to receive compensation, up to the end of the then existing Term as if no termination had occurred, but not thereafter. Licensee shall not enter into any new sublicense agreements after it receives Licensor's notice of termination, unless Licensee can demonstrate to the satisfaction of Licensor that such sublicense application was pending prior to Licensee's receipt of the Licensor's notice of termination.

h. Prevailing Wages. To the extent applicable, each contractor or subcontractor performing construction work (“**Work**”) for 5 BARS or any Wireless Service Provider on or about CITY Property shall pay no less than the prevailing wage for the Work as set by the Department of Industrial Relations (“DIR”). In addition, each contractor or subcontractor shall comply with all applicable labor laws and regulations.

i. Payment to Alameda Municipal Power (AMP) for Electrical Services. Licensee shall cause its sublicensees to install a separate electric line to be run to their telecommunication. Licensee shall cause its sublicensees to pay all electricity costs directly to Alameda Municipal Power (AMP). Neither Licensee nor its sublicensees shall use CITY’s electricity to power its equipment. Licensee shall cause its sublicensees to make good faith efforts to negotiate a flat rate (unmetered) with AMP to avoid above ground metering facilities where practicable. Should a sublicensee be unable to secure a flat rate service from AMP then a pole mounted smart meter may be used with written approval by the City Engineer. Telecommunication Facilities shall have a master cutoff switch installed which will allow power shut down to the equipment in case of emergencies.

27. **Supremacy Clause.** If during the Term of the Professional Services Agreement between the City and 5 BARS, there is a conflict between the provisions of this License Agreement and the Professional Services Agreement, the Parties hereby agree that the provisions of the Professional Services Agreement shall prevail.

28. **Operating Memorandum.** The PARTIES acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the PARTIES under this Agreement. The PARTIES desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the PARTIES find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an “**Operating Memorandum**”, and collectively, “**Operating Memoranda**”) approved by the PARTIES which, after execution, shall be attached to this Agreement as addenda and become a part hereof. Operating Memoranda that implement the provisions of this Agreement or that provide clarification to existing terms of this Agreement may be executed on the City's behalf by its City Manager, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not change material terms of this Agreement or extend the Term of this Agreement.

[Remainder of Page Intentionally Left Blank]

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.

CITY OF ALAMEDA

By: _____
Jill Keimach
City Manager


Date: _____

**XG COMMUNITIES, LLC dba 5 BARS
COMMUNITIES**


By: _____
Kevin Muldoon
Vice President / General Counsel

Date: 8/23/17

Recommended for Approval:


Carolyn Hogg
Information Technology Director

Approved as to Form:


Andrico Q. Penick 8/24/17
Assistant City Attorney