

Meeting Date: 6/21/2016

Report Type: Consent

Report ID: 2016-00570

Title: Purchase/Cooperative Agreements: FY2016/17 Citywide Information Technology Related Goods and Services (Published for 10-Day Review 06/10/2016)

Location: Citywide

Recommendation: Pass a Motion 1) authorizing the City Manager or his designee to approve the use of cooperative purchasing agreements with Adobe, Anixter, AT&T, AT&T Mobility, CDW-G, Cisco Systems, County of Ventura, Data911, Dell Computer, DLT Solutions, EMC, GovConnection, Graybar, Howard Technology Solutions, HP, Kovarus, Lenovo, Microsoft, Motorola, Panasonic, Patriot Technologies, Inc., RSM, SoftwareOne, Inc., Sprint Nextel Corporation, T-Mobile, Verizon, and VMWare for the purchase of information technology-related goods and services citywide; and 2) authorizing the City Manager or his designee to issue the required purchase orders for the not-to-exceed amount specified for the vendors under the cooperative purchasing agreements for a total amount not-to-exceed \$9.628 million during Fiscal Year 2016/17.

Contact: Ignacio Estevez, IT Manager, (916) 808-7349, Maria MacGunigal, (916) 808-7998, Chief Information Officer, Information Technology Department

Presenter: None

Department: Information Technology

Division: IT Business Management

Dept ID: 07001011

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Contract
- 4-Exhibit A

City Attorney Review

Approved as to Form
Audreyell A. Anderson
6/6/2016 10:54:34 AM

Approvals/Acknowledgements

Department Director or Designee: Maria MacGunigal - 5/31/2016 11:52:20 AM

Description/Analysis

Issue Detail: The City has ongoing needs to purchase information technology (IT) related goods and services. In May 2016, the IT Department conducted its annual review of all citywide IT related purchases made in FY2015/16. Based on this annual review, staff has prepared an estimate of the anticipated purchases citywide of a variety of IT-related goods and services for FY2016/17. Staff requests approval and spending authorization to cover the estimated expenditures through the use of cooperative purchasing agreements. If any of the cooperative agreements listed in Exhibit A expire during this purchase approval period, those agreements may be substituted with the appropriate replacement agreement issued by the same cooperative organization. The cooperative purchasing agreements and vendors that will be used to procure the IT related goods and services for FY2016/17 are listed in Exhibit A.

Policy Considerations: The recommendations in this report are in accordance with City Code section 3.56.240 which authorizes the City Manager, where advantageous to the City, to utilize cooperative purchasing agreements approved by the City Council to purchase supplies or nonprofessional services through legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities and government fiscal activities that do not constitute a “project” as defined by the CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4) and are not subject to the provisions of CEQA (CEQA Guidelines 15060(c)(3)).

Sustainability: Under Phase 1 of the City of Sacramento’s Climate Action Plan, all applicable “Green” technology initiatives will be considered prior to the purchase of IT equipment hardware and software.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: In an ongoing effort to maximize cost savings and staff resources, many government agencies share contracting efforts through cooperative purchasing. This procurement approach increases pricing competitiveness and lowers operating costs through volume purchasing. When comparing the administrative costs of procurement, staff considers product research, source selection, specifications, advertising, staff reports, awarding, protest, and administration of the contract. It is often more cost-effective to eliminate the cost and time spent on these administrative processes and purchase items and services through a cooperative purchasing program. The City has used both regional and national cooperative purchasing agreements to

complement its own contracting initiatives. Cooperative purchasing enables City departments and the Procurement Services Division to evaluate a broader range of contracting opportunities and to share resources with other jurisdictions. Cooperative purchasing also leverages internal and external resources to maximize cost savings opportunities for the City.

Financial Considerations: The total amount requested for FY2016/17 will not exceed \$9.628 million. Purchases will be made from various departmental operating and Capital Improvement Program (CIP) budgets through competitive/cooperative purchasing agreements listed in Exhibit A. Funding for the purchases has been included in the FY2016/17 operating and CIP budgets.

Local Business Enterprise (LBE): The City's LBE program does not apply to cooperative purchasing agreements that result from another public agency's competitively-bid process.

Background

1. Cooperative Purchase Agreements: The use of cooperative purchasing agreements maximizes cost savings and staff resources by sharing contracting and purchasing efforts with other government agencies. Utilizing cooperative purchasing agreements is advantageous to the City because it provides an opportunity for the City to obtain lower pricing through volume purchasing. As cooperative agreements reach expiration, they are automatically renewed allowing government agencies to continue to leverage cost savings. Below is a brief explanation of competitive agreements the City will use to make cooperative IT purchases:

U.S. General Services Administration (GSA) Schedule contracts: Negotiated by the federal government with the intent of “most favored customer” pricing plus a discount offered to GSA and other authorized purchasers. Purchasing from GSA Schedule contracts offers the following advantages over procuring on the open market: (1) prices are determined to be fair and reasonable, (2) purchasers are in compliance with all applicable laws and regulations, (3) administrative time is reduced, and (4) a wide selection of state-of-the-art commercial supplies and services is offered.

National Association of State Procurement Officials (NASPO) (Formerly Western States Contracting Alliance (WSCA)): NASPO establishes cooperative multi-state contracts where participating states may join together in order to achieve cost-effective and efficient acquisition of quality products and services. Government purchasing benefits from cumulative volume discounts. Resulting NASPO agreements are available to all State of California governmental entities (state agencies, cities, counties, school districts, universities, etc.) that expends public funds for the acquisition of both goods and services.

State of California Software Licensing Program (SLP): The SLP offers extensive discounts that are negotiated with major software publishers that are then passed through SLP contracts established with authorized participating resellers. The SLP streamlines the purchasing process by reducing the need for individual departments and other public entities to conduct repetitive bids for their software needs. The customers that use the SLP consist of state departments, boards and commissions; cities, counties and special districts; educational entities; and public entities that can expend public funds.

State of California Strategic Sourcing Contract: This process is designed to allow the State of California to purchase the best products and best services for the best value. Using this purchasing approach, the buyer (California) analyzes what it's buying, what the market conditions are, and who can supply those goods or services. The buyer then uses that information--plus innovative contracting techniques – to find the best values available in the marketplace.

The Cooperative Purchasing Network (TCPN): The TCPN assists in helping other

public agencies and non-profits reap the benefits of national leveraged pricing, with no cost to the member. TCPN leverages one of the largest pools of purchasing potential. This is accomplished by competitively soliciting proposals and awarding contracts for commonly purchased products and services including technology and other goods and services.

Houston-Galveston Area Council of Government (H-GACBuy): The H-GACBuy Cooperative Purchasing Program assists local governments in reducing costs through this government-to-government procurement service available nationwide. This program is available to local government entities and qualifying non-profit corporations.

U.S. Communities Contract: U.S. Communities is a leading national government purchasing cooperative, providing world class government procurement resources and solutions to local and state government agencies, school districts (K-12), higher education institutions, and nonprofits looking for the best overall supplier government pricing.

State of California Master Services Agreement: Master Service Agreements are contracts that are competitively bid by the State of California, Department of General Services, and available to any agency that expend public funds. These type of agreements establish a pre-qualified list of vendors and simplify the purchasing process for the end user.

2. Ongoing Multiyear Cooperative IT Purchase Agreements: Below is a list of multiyear IT cooperative purchase agreements that have been previously approved by City Council:

Microsoft Enterprise Agreement: On April 29, 2015, City Council approved the purchase of Microsoft Licenses and Maintenance for a five year period through the use of the County of Riverside's cooperative purchasing agreement (ITARC054) (Reso 2010-167 & 2015-0577).

3. Staff Review: For the past several years, the City Council has approved and authorized use of cooperative purchasing agreements to procure a variety of IT-related goods and services citywide, such as computer hardware, software, and technical support services.

- a. Fiscal Year 2009/10: not-to-exceed \$8,610,000 (Resolution 2009-417)
- b. Fiscal Year 2010/11: not-to-exceed \$7,410,000 (Resolution 2010-362)
- c. Fiscal Year 2011/12: not-to-exceed \$6,008,000 (Resolution 2011-384)
- d. Fiscal Year 2012/13: not-to-exceed \$8,331,000 (Resolution 2012-425)
- e. Fiscal Year 2013/14: not-to-exceed \$6,935,000 (Motion 2013-00466)
- f. Fiscal Year 2014/15: not-to-exceed \$7,445,000 (Motion 2014-00458)
- g. Fiscal Year 2015/16: not-to-exceed \$9,593,000 (Motion 2015-0158)

**WIRELESS MARKETING AGREEMENT BETWEEN
THE CITY OF SACRAMENTO AND 5 BARS, LLC**

This Wireless Marketing Agreement (“**AGREEMENT**”) is made and entered into on June 9, 2016 (the “**Effective Date**”) between the City of Sacramento (“**CITY**”) and 5 Bars, 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 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. In June 2015, CITY partnered with 5 BARS to provide the CITY with information that included a radio frequency (“RF”) benchmark survey, a technical survey of existing infrastructure, and projections of wireless requirements.
- F. In February 2016, CITY invited interested parties to demonstrate their knowledge and expertise in the development of a Wireless Marketing Plan. A review committee invited responders who met the requirements specified in the RFQ to participate in an oral interview. 5 BARS was chosen as the most qualified responder.
- G. 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.
- H. CITY desires to engage 5 BARS to proactively market CITY-owned underutilized 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**. 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, with four (4) five year renewals subject to the written mutual consent of the PARTIES. The full potential term of the Agreement is twenty five (25) years

("Agreement Term").

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 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 anytime 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 the Master Plan to wireless carriers, cable 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 construct 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. 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 to move 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, 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, 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.
- 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.
- 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.

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.

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, 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"**.

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 five 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 five 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. **Reports.** Annual reports reflecting the revenue generated to CITY will be provided by 5 BARS.

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 Paragraph 14(i) of this Agreement. After receipt of such notice, the defaulting PARTY shall have thirty (30) days in which to cure any monetary default and sixty (60) days in which to cure a non-monetary default. If a non-monetary default reasonably requires more than a sixty (60) day cure period, the defaulting PARTY shall have such extended period provided that the defaulting PARTY commences the cure within the sixty (60) day period and thereafter continuously and diligently pursues the cure to completion.

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, 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, agents, or contractors. CITY shall promptly notify 5 BARS of any claim, action or proceeding covered by this Section 9.

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 9 of this Agreement and shall not in any way limit the applicability, scope or obligations of the indemnification defense provisions in Section 9.

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.** This Agreement shall be governed by the laws of the State of California.

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 shall be provided in a 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 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. **Cooperative Purchasing.** CITY acknowledges and agrees that it has followed all applicable purchasing and procurement procedures in entering into this Agreement, and that 5 BARS shall have the right and ability to offer this Agreement as a template for cooperative or piggybacking purchasing agreements with other public agencies which, to the extent allowed by California or applicable State law and the ordinances and regulations of those other public agencies, may serve as a basis to forego competitive procurement processes for such future agreement(s). As used in this article, "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, or any joint powers authority formed pursuant to this article by any of these agencies. In furtherance of the foregoing, 5 BARS agrees other public agencies may purchase additional items on the same terms as are set forth in this Agreement. To the extent 5 BARS enters into such subsequent agreement(s), this Agreement shall be construed to contain an express "Assignment" clause that provides for the assignment of all or part of the specified deliverables and/or provided, however, that CITY shall not be a signatory, obligee, beneficiary, or third party beneficiary under such future agreements with other public agencies. 5 BARS shall remit monthly to CITY a 2% revenue share of all gross revenues received from subsequent agreements executed with public agencies who benefit from this Agreement.

d. **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.

e. **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.

f. **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.

g. 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 30 days prior written notice of such assignment to CITY.

h. Discrimination. 5 BARS shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, 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.

i. 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:

Phone: _____
Fax: _____

With a copy to:

Phone: _____
Fax: _____

5 BARS:

Kevin Muldoon, VP & General Counsel
5 Bars, LLC
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.

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

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.

"CITY"
The City of Sacramento

Date: _____

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

"5 BARS"
5 BARS, LLC

Date: 5-26-16

By:  _____

Title: Kevin Muldoon, VP/General Counsel

APPROVED AS TO FORM:

EXHIBIT A

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made as of the date of the final signature below, by and between the City of Sacramento, a municipal corporation, having a mailing address of 915 I Street, Sacramento, CA 95864 (“*Licensors*”) and 5 Bars, 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 existing facilities, inclusive of but not limited to all buildings and improvements owned by and under the possession and control of Licensors, including but not limited to utility poles, lamp posts, other utility facilities, fences, gates, and all roof tops of all such buildings, facilities and/or improvements.

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

“*Easement*” and “*Utility Easement*” have the meanings set forth in Section 7 of this Agreement.

“*Harmful Interference*” means Interference that endangers the functioning of a radio navigation service or of other safety services 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 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, LLC, a Delaware limited liability company.

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

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

“Licensor's Notice Address” means 915 I Street, Sacramento, CA 95864.

“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.

“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.

“Subscription Agreement” means the Wireless Marketing Agreement Regarding Licenses and Sublicenses of Publicly-Owned Properties Pertaining To Wireless Telecommunications Facilities, between Licensor and Licensee, dated June 9, 2016.

“Wireless Telecommunications Facilities” means the equipment and associated structures needed to transmit and/or receive electromagnetic signals. 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, 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.

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

4. **Term.** The Term of this Agreement shall continue commence on _____, 20__ ("**Commencement Date**") and 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 with three five (5) year options subject to the written mutual consent of the Licensor and Licensee. At the end of term of the lease agreement 5 BARS will hand over the administration of the lease to the CITY unless mutually agreed upon by both parties.

5. **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 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, particularly traffic signal control and street lighting devices.
- ii. Licensee shall ensure that the proposed Wireless Telecommunications Facility is not dependent on the resources dedicated to Licensor facilities.
- iii. Licensee shall 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 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.
- v. Licensee shall make every reasonable effort to restore Licensor facilities in a safe and efficient manner. Licensor shall not be held responsible for lack of revenue during the down time.

- vi. Licensee shall give Licensor reasonable notice (or no less than fourteen (14) days) prior to impacting Licensor facilities in a manner that is beyond the routine maintenance and operation of Wireless Telecommunications Facilities.
- 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 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 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 the City on a case-by-case basis, 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, 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.

- ix. Except as specified in this Section 5(b), Licensor 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, Licensor may request that Licensee provide an accounting of the Rent in such form and content as Licensor may reasonably request.

6. Construction, Engineering, and Other Costs

- a. Licensor 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.** Licensee has provided Licensor with a copy of an "as-built" survey for each Licensed Premises, which shall depict and identify the boundaries of each Licensed Premises and the Easements. 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, 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 facility to be located upon each Licensed Premises as necessary to obtain or comply with any Approvals (the "**Access License**"). Licensee may request and Licensor 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, shall comply with the requirements of the Sacramento City Code and all other laws and regulations 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.

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 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 indemnify and hold Licensor 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 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 Licensor for any documented increase in real estate or personal property taxes levied against Licensor's Property that are directly attributable to the Improvements. Licensor agrees 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 Licensor agrees 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". Licensor 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.

14. **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 Licensee's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the 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).

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 (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 Licensor 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, Licensor's 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, Licensor's 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 Licensor receives notice of a proposed taking by eminent domain of any part of the Licensed Premises or the Access/Utility Licenses, Licensor will notify Licensee of the proposed taking within five (5) 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, Licensor 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 Licensor's interest in this Agreement including rent, or (vi) an option to acquire any of the foregoing, Licensor shall provide written notice to Licensee of said offer ("**Licensor's Notice**"). Licensor'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 Licensor'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 Licensor's Notice, a fee simple interest in Licensor's Property or the Licensed Premises or a perpetual easement for the Licensed Premises. If the Licensor's Notice is for more than the Licensed Premises, Licensee shall have the option of purchasing the property subject to Licensor'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 Licensor given within thirty (30) days, Licensor may sell the property described in the Licensor'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, Licensor sells all or part of Licensor'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, remove all above and below ground Improvements and restore the Licensed Premises to its original condition, 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 to record a memorandum of the Agreement with the Sacramento County Recorder's Office. Licensor shall execute and deliver each such memorandum, for no additional consideration, promptly upon Licensee's request.

21. **Licensor's Covenant of Title.** Licensor covenants that Licensor holds good and marketable fee simple title to Licensor's Property and each of the Licensed Premises and has full authority to enter into and

execute this Agreement. Licensor 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 Licensor's Property. Licensor agrees that it will not permit the construction, installation or operation on Licensor'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 Licensor in this Section is a covenant running with the land for the benefit of the Licensed Premises.

23. **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 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 Licensor 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, Licensor shall obtain and furnish to Licensee a mutually agreed upon non-disturbance agreement for each such mortgage, in recordable form. If Licensor 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. 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. If Licensor fails to provide the requested documentation reasonably necessary to Licensee for Licensee to obtain title insurance within thirty (30) 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 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. 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. Licensor acknowledges that under the terms of this Agreement, Licensee has the right to terminate this Agreement at any time upon one hundred eighty (180) days' written notice to Licensor. Accordingly, in the event that Licensor 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) Licensor 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 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 Lease, vacate the Licensed Premises and be relieved from all further obligations under this Agreement; (ii) perform the obligation(s) of Licensor specified in such notice, in which case any expenditures reasonably made by Licensee in so doing shall be deemed paid for the account of Licensor and Licensor agrees 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 Licensor 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 Licensor 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 where the Licensed Premises is located. The parties agree that the venue for any litigation regarding this Agreement shall be the state where the Licensed Premises is located.

29. **Assignment, Sublease, Licensing and Encumbrance.** Lessee may assign this Agreement to a person or entity with demonstrated capacity to carry out Lessee's obligations under this Agreement. Lessee shall provide 30 days prior written notice of such assignment to Lessor. Lessee may enter into subleases, licenses, or other authorizations ("**Sub-Authorizations**") to allow a third party to utilize and operate from the Leased 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 Lessor.

30. **Miscellaneous.**

a. Entire Agreement. Licensor and Licensee agree that this Agreement, together with that certain Consulting Services Agreement Regarding Wireless Master Planning and Memorandum of Understanding and Agreement Regarding Licenses and Sublicenses of Publicly-Owned Properties Pertaining To Wireless Telecommunications Facilities between Licensor and Licensee, contain all of the agreements, promises and understandings between Licensor and Licensee with regard to the Licensed Premises. 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 Invalidation. 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. 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 paper work 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.

IN WITNESS WHEREOF, Licensor 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 Sacramento

Date: _____

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

“LICENSEE”
5 BARS, 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 Sacramento, a municipal corporation, having a mailing address of 915 I Street, Sacramento, CA 95864 ("**Grantor**") and 5 Bars, 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 (the "**Property**").
- B. Grantor and Grantee have entered into that certain Subscription Agreement Regarding Wireless Master Planning ("**Subscription 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 Subscription Agreement, Grantor and Grantee have agreed to enter into this Agreement to that Grantee may enter upon the Property, upon 24 hour written notice to Grantor, 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, 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 Subscription 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.
- 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 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.

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.

7. **Indemnification by Grantee.** Except to the extent otherwise provided below, Grantee agrees to hold harmless and indemnify Grantor 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, Licensee, at its sole expense, shall obtain all necessary permits to use the Premises as permitted under this Agreement.

13. **All Expenses To Be Borne by Licensee.** Licensee shall bear any and all costs and expenses associated with the rights granted to Licensee to use the Premises, or any unforeseen costs or expenses incurred by the City relating to Licensee's use of the Premises in the performance of this Agreement.

14. **Hours of Operation.** The hours of operation that Licensee shall be permitted to conduct its project shall be between 7 am and 5 pm, Monday through Friday. No weekend work shall be permitted.

15. **Governing Law.** This Agreement shall be governed in accordance with the laws of the State of California.

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 Sacramento

Date: _____

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

“GRANTEE”
5 BARS, 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 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 Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence for CG 0001)

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability for Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Contractor shall furnish the City with original endorsements effecting coverage required by this clause. The Endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.



CERTIFICATE OF LIABILITY INSURANCE

FIVEB-1 OP ID: JC

DATE (MM/DD/YYYY)

08/25/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER GREG LERUM INS AGENCY, INC 302 N. EL CAMINO REAL #118 SAN CLEMENTE, CA 92672 Greg Lerum	CONTACT NAME:	FAX (A/C, No):
	PHONE (A/C, No, EXT):	ADDRESS:
INSURER A: Atain Specialty Ins Co		NAIC # 17159
INSURER B: Evanston Insurance Company		35378
INSURER C: Underwriters At Lloyds		15792
INSURER D: Farmers Insurance Exchange		21652
INSURER E: Truck Insurance Exchange		21709
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

FORM LTR	TYPE OF INSURANCE	ADDITIONAL RISK W/O	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY						
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		CIP248443	06/13/2015	06/13/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000
A	<input checked="" type="checkbox"/> Liability Ded. is \$500.00					PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOG					
AUTOMOBILE LIABILITY						
D	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	605466668/CIP248443	06/13/2015	06/13/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per person) \$ PROPERTY DAMAGE (PER ACCIDENT) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	XOBW5970115-45585185	06/13/2015	06/13/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED (Mandatory in NH) Free description under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	B09473365	08/04/2015	08/04/2016	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab		B0621P0027635601	06/19/2015	06/19/2016	15000 Ret 3,000,000
A	Valuable Papers		CIP248443	06/13/2015	06/13/2016	500 Ded 25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
THE CITY OF SACRAMENTO, ITS OFFICIALS, EMPLOYEES, AND VOLUNTEERS ARE NAMED ADDITIONAL INSURED PER ATTACHED CG20370413 & CG20100704 ENDORSEMENTS.

CERTIFICATE HOLDER

THECIT1	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
CITY OF SACRAMENTO C/O EBIX RCS REFERENCE #:106-2377162 PO BOX 257 PORTLAND, MI 48875-0257	AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
THE CITY OF SACRAMENTO, ITS OFFICIALS, EMPLOYEES AND VOLUNTEERS C/O EBIX RCS PO BOX 257 PORTLAND, MI 48875-0257	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
- Your acts or omissions; or
 - The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.
- However:
- The insurance afforded to such additional insured only applies to the extent permitted by law; and
 - If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**
- This insurance does not apply to "bodily injury" or "property damage" occurring after:
- All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



FARMERS

WC 99 06 20

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

Named • 5 BARS LLC
Insured • 19200 VON KARMAN AVE # 100
• IRVINE CA 92612
•
•

Agent
97 61 32K

B09473365

2015

Policy Number
of the Company

Policy
Year

Effective
Date 08/04/15

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - SPECIFIC

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 3% of the Workers' Compensation premium otherwise due such remuneration, subject to a minimum charge of \$250.

Schedule

Person or Organization
CITY OF SACRAMENTO
C/O EBIX RCS
PO BOX 257
PORTLAND MI 48875-0257

Job Description
CONSULTING

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all the terms of the policy.

Countersigned
Authorized Representative

Cooperative IT Purchases

Vendor Name	Amount	Cooperative Purchase Agreement	Description
Adobe (and all authorized resellers)	\$125,000	State of California Software Licensing Program (SLP) SLP-16-70-0090K - Ablegov, Inc. SLP-16-70-0027M - Allied Network Solutions SLP-16-70-0127E - Bridge Micro SLP-16-70-0180A - I.M.P.Group Limited SLP-16-70-0029D - NWN Solutions SLP-16-70-0169M - SoftwareOne, Inc. SLP-16-70-0063W - Taborda Solutions, Inc.	Adobe software / maintenance purchases.
Anixter	\$120,000	The Cooperative Purchasing Network (TCPN) Contract R5136 (Cabling and Networking Products) TCPN Contract R5166 (Security Services)	Cabling and Networking Products and Services; Security Services.
AT&T	\$1,250,000	State of California CALNET 3, C3-A12-10-TS-01	Telephone billing, data lines, telecommunication services, and system maintenance.
AT&T Mobility	\$180,000	National Association of State Procurement Officials (NASPO) Wireless Communication & Equipment Contract (State of California Participating Addendum # 7-11-70-17) (WSCA/NASPO Contract # 1907)	Cellular phone services
CDW-G	\$550,000	National IPA Contract 130733 TCPN R5106 (Technology Solutions Agreement)	Routine IT hardware, software and services such as personal computers, laptops, and servers.
Cisco Systems (and all authorized resellers including: CCT, CDW Government, Datalink Corporation, Development Group, ePlus Technology Inc., En Pointe Technologies Sales, Insight Investments, Insight Public Sector, Nexus IS, NWN Corporation, PCMG, Quest Media & Supplies)	\$1,130,000	NASPO Computer Equipment, Peripherals & Related Services 2015-2020 (WSCA-NASPO Contract # MNWNC-105) NASPO Data Communications Products & Services (State of California Participating Addendum # 7-14-70-04) (State of Utah Contract AR-233).	Telecommunication/Network hardware, software, maintenance, and services.
County of Ventura	\$110,000	County of Ventura Contract 4667	Gartner Technology Advisory Services
Data911	\$250,000	Houston-Galveston Area Council of Government (HGACBuy) Contract EF04-13	Law Enforcement Speed Detection & Video Equipment.
Dell Computer	\$850,000	NASPO Computer Equipment, Peripherals & Related Services 2015-2020 (NASPO/ Minnesota Master Agreement # MNWNC-108) (State of California Participating Addendum # 7-15-70-34-003)	Routine IT purchases; hardware equipment that includes personal computers, laptops and related accessories.

Exhibit A

Cooperative IT Purchases

Vendor Name	Amount	Cooperative Purchase Agreement	Description
Dell Computer	\$515,000	State of Montana Master IT Equipment Lease Agreement 6525772 (City Agreement 2012-0579 and 2012-0579-1)	Lease of Dell hardware equipment.
DLT Solutions	\$120,000	U.S. General Services Administration (GSA) Contract GS-35F-4543G	Autodesk software / maintenance purchases.
EMC Authorized resellers include Allied Network Solutions, Inc. (ANS), DDW-G, HF Tech Services, Inc., HSB Solutions, Inc., INX LLC, Kovarus, Nexus, NWN, Quest Media and Supplies, SAIC	\$600,000	NASPO Computer Equipment, Peripherals & Related Services 2015-2020 (WSCA-NASPO Contract # MNWNC-109) NASPO Data Communications Products & Services (State of California Participating Addendum # 7-14-70-14) (State of Utah Contract AR-620).	EMC hardware, software, and maintenance.
GovConnection	\$10,000	TCPN Contract R5110	Routine IT purchases; hardware/software equipment including peripherals and IT services.
Graybar	\$100,000	US Communities Contract MA-IS-1340234 (Electrical Products) US Communities Contract MA-IS-1540125 (Telecommunications Supplies)	Electrical products and telecommunications supplies and accessories.
Howard Technologies	\$55,000	NASPO Computer Equipment, Peripherals & Related Services 205-2020 (WSCA-NASPO Contract # MNWNC-114)	Routine IT purchases such as Toughbook computer laptops and related accessories and supplies.
HP (HP, Inc. and Hewlett Packard Enterprise)	\$530,000	NASPO Computer Equipment, Peripherals & Related Services 2015-2020 (State of California Participating Addendum # 7-15-70-34-002) (WSCA-NASPO Contract # MNWNC-115, MNWNC-133, MNWNC-134) NASPO Data Communications Products & Services (State of California Participating Addendum # 7-14-70-06) (State of Utah Contract AR-1464). NASPO Copiers, Printers & Related Devices 2014-2019	Routine IT purchases (hardware equipment that includes printers, servers, personal computers, and monitors).
Kovarus	\$250,000	State of California Contract 1-13-70-10A, 1-13-70-10B and 1-13-70-14C	Routine entry level and mid-range data storage and Storage Area Network (SAN) supplies.
Lenovo	\$400,000	NASPO Computer Equipment, Peripherals & Related Services 2015-2020 (State of California Participating Addendum # 7-15-70-34-007) (WSCA-NASPO Contract # MNWNC-117)	Routine IT purchases such as computer laptops and accessories.

Exhibit A

Cooperative IT Purchases

Vendor Name	Amount	Cooperative Purchase Agreement	Description
Microsoft	\$50,000	State of Minnesota Cooperative Purchasing Venture	Microsoft tablets.
Motorola	\$400,000	Public Safety Communication Equipment – Radios (State of California Participating Addendum # 7-12-58-03) (WSCA-NASPO Contract # 02702) Public Safety Communication Equipment – Radios 2015-2020 (State of California Participating Addendum # 7-16-58-11) (NASPO Value Point Master Price Agreement # 06913) County of Los Angeles Contract MA-IS-1240419-1 County of San Diego Contract 43095 Amendment No. 28	Radios, communication equipment and supplies.
Panasonic	\$25,000	NASPO Computer Equipment, Peripherals & Related Services 2015-2020 National Intergovernmental Purchasing Alliance (IPA) 120471	Routine IT Purchases (Toughbook laptops, projectors, AV and Camera equipment, and related accessories and supplies).
Patriot Technologies Inc.	\$130,000	GSA Contract GS-35F-4363D	Network security equipment, services, and software.
RSM	\$63,000	State of California Master Services Agreement 5137002-121	Technical services associated with the City's PCI compliance efforts and IT Security.
SoftwareOne, Inc.	\$300,000	County of Riverside Microsoft Master Enterprise Agreement 01E73134 SCA-15-70-0013B – SoftwareOne, Inc.	Microsoft software / maintenance purchases.
Sprint Nextel Corporation	\$75,000	NASPO Wireless Communication & Equipment Contract (State of California Participating Addendum # 7-10-70-15) (WSCA/NASPO Contract # 1907)	Cellular phone services.
T-Mobile	\$75,000	NASPO Wireless Communication & Equipment Contract (WSCA/NASPO Contract # 1907)	Cellular phone services.
Verizon	\$1,140,000	NASPO Wireless Communication & Equipment Contract (State of California Participating Addendum # 7-10-70-16) (WSCA/NASPO Contract # 1907)	Cellular phone services.
VMWare	\$225,000	NASPO/WSCA Contract 7-12-70-21 (EnPointe), 7-12-70-20 (Insight), 7-12-70-19 (SHI)	Software, Software Maintenance, and Technical Support.
TOTAL	\$9,628,000		