



Office of the City Manager

CONSENT CALENDAR
July 25, 2017

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Savita Chaudhary, Director, Information Technology
 Subject: Contract: 5 BARS Communities dba XG Communities, LLC (“5 BARS”) for Wireless Marketing and License Agreement, Small Cell Program.

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with 5 BARS Communities a dba of XG Communities, LLC (“5 BARS”) for Wireless Marketing and License Agreement, Small Cell Program at no capital investment cost to the City to market City designated sites for wireless service infrastructure. The contract is for an initial five-year period with four five-year renewals for a potential total contract term of 25 years.

FISCAL IMPACTS OF RECOMMENDATION

5 BARS services are provided at no capital investment cost to the City. The City shall have no financial responsibility for planning, construction, and engineering costs associated with the implementation of this contract. 5 BARS will recover its investment and program costs solely through revenue sharing generated from wireless carrier marketing program.

The contract has been entered into the City’s contract management system and assigned CMS No. UJPDS.

CURRENT SITUATION AND ITS EFFECTS

The use of wireless data communication is growing rapidly and the expectations of continuous data connectivity from residents, businesses, and visitors are on the rise in all segments of society. While smart city technologies are being applied to a number of areas within a city including public safety, transportation, and energy, they all require the foundation backbone of fast, pervasive connectivity (both wired and wireless) to collect, manage, and visualize the data received. The traditional approaches to increased capacity are no longer adequate to meet the increased demand for wireless data. Cities are challenged with the demand to meet the need while balancing affordability, transparency, equity, timeliness, and visual blight.

The proposed contract, represents an innovative public-private partnership that establishes a partnership with 5 BARS to assist the City in addressing both long and

short term wireless broadband infrastructure needs. This is strategic and is in alignment with the City's broader equity and economic development goals and the Digital Strategic Plan.

The Public Private Partnership of the City of Berkeley with 5 BARS Communities is based on maintaining local control, preventing visual blight and increasing connectivity for businesses, residents and citizens. The solution will be the basis to deploy smart city initiatives, enhance business investment, address digital divide, and be used to improve city services.

As wireless carriers look to densify existing networks, it is estimated that the wireless industry will deploy hundreds of thousands of small cells, making it increasingly difficult for cities to manage the application and installation process. In collaboration with the carriers, 5 BARS Communities will streamline applications with a predictable process while preserving aesthetics. As the Federal Communications Commission (FCC) and State of California look to pass preemptive legislation SB 649 intended to reduce local control over rights of way, finding a proactive path to protect assets and secure streamlined permitting is imperative.

5 Bars is a premier provider of Wireless Master and Marketing Plans for counties, cities, communities and large scale venues and develops comprehensive wireless marketing strategies through a unique holistic view of all assets, coverage and capacity. 5 BARS will act as an advocate for the City, offering its intelligent platform which provides an ongoing solution that identifies opportunities for wireless collocation, while minimizing impacts from wireless facility siting decisions.

5 BARS will function as the City's expert technical resource for managed wireless services. 5 BARS will provide consulting services and work with the City for Telecommunications Ordinance Review. 5 BARS will act on the City's behalf to negotiate agreements with other parties such as telecommunication service providers to meet the needs of the community, service providers, and utilize City assets to manage and streamline the wireless development process. 5 BARS is a premier provider of intelligent, connected wireless planning and marketing of assets. The intelligence provides Cities the organization and control of available public assets, creation of new revenue from carriers, prevention of visual blight and increased coverage for residents, citizens and businesses.

BACKGROUND

The wireless industry sponsored bill SB 649 restricts the ability of local agencies to control access to their public right-of-ways and caps the ability of local agencies to collect rent related to small cell siting on that public infrastructure. It eliminates public input, full local environmental and design review as well as the ability for local governments to negotiate leases or any public benefit for the installation of "small cell" equipment on taxpayer-funded property.

Should SB 649 pass, cities will have no ability to deny wireless attachments in the city and cannot mandate reasonable aesthetic modifications such as shrouding or stealthing. Therefore, applications for pole attachments in residential, historic or high-end commercial districts can be constructed without any city input.

The City of Berkeley Council has opposed the Bill SB649 on May 30, 2017 Council meeting

[http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_37_Oppose_SB_649_\(Hueso\)_Wireless.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_37_Oppose_SB_649_(Hueso)_Wireless.aspx)

About 120 Cities are opposing the legislation and I've included the link from League of California Cities regarding the opposition for the Bill

http://www.cacities.org/Top/News/News-Articles/2017/June/120-Cities-and-Counting-Oppose-Legislation-Strippi?utm_campaign=website&utm_source=cacities.org&utm_medium=email

A public-private partnership model will provide a fast, well-engineered, and professionally managed system that maximizes the overall benefits to the City's diverse neighborhoods, businesses, telecommunication providers, and the City's operations. The driver behind this effort is to build out wireless capacity Citywide that lays the foundation for sustained economic growth that will drive forward Berkeley and 5 BARS will market the use of City assets for lease/license to all wireless service providers equally and without any exclusive rights for any wireless service provider.

5 BARS will act on the City's behalf with a goal of ensuring that residents and businesses within the city jurisdiction receive the maximum benefit of all available services from all existing wireless services providers.

- Maximize the use of underutilized City assets
- Maintain control of City owned assets and generate revenue for your City
- Lower visual impact and control aesthetics in the community
- Create a long-term solution for wireless connectivity
- Reduce visual blight in crowded areas

ENVIRONMENTAL SUSTAINABILITY

5 BARS will conduct some of their work remotely, and when they do come on-site for face to face meetings, they will cluster those visits over multiple days to minimize both travel costs and greenhouse gas emissions related to travel.

RATIONALE FOR RECOMMENDATION

Staff recommends to establish a contract with 5 BARS Communities to provide wireless consulting, marketing, 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 through the National IPA purchasing channel *Cooperative Contract #R123456* <http://www.nationalipa.org/Vendors/Pages/5Bars.aspx>

This agreement is expected to increase the number of opportunities for revenue generating leases to the City. 5 BARS has the requisite industry knowledge and expertise to maximize the number of leases issued, optimally manage leases, and develop a revenue stream that currently does not exist for the City.

The City, residents, businesses, and visitors will benefit from better wireless services coverage, revenue generated from better utilization of City assets, and improved management of visual clutter in the rights-of-way. Service providers will benefit from a better managed, timely, and streamlined process for wireless development in the City.

ALTERNATIVE ACTIONS CONSIDERED

5 BARS has unique knowledge of the telecommunications marketplace. It proactively markets city assets to see that coverage solutions are identified, and satisfied, on terms that maximize revenue and minimize planning impacts. Because it has expertise in telecommunications leasing, 5 BARS also ensures that that non-monetary contract terms are uniform and favorable to the City interests. 5 BARS does not own competing infrastructure and acts as an advocate for the City.

CONTACT PERSON

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Attachments:
1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT: NEW WIRELESS MARKETING AND LICENSE AGREEMENT, SMALL CELL PROGRAM WITH 5 BARS COMMUNITIES A DBA OF XG COMMUNITIES, LLC ("5 BARS")

WHEREAS, 5 BARS has unique knowledge of the telecommunications marketplace. It proactively markets city assets to see that coverage solutions are identified, and satisfied, on terms that maximize revenue and minimize planning impacts; and

WHEREAS, 5 BARS provides wireless master planning, marketing, network development, and end-to-end program management, representing cities and counties as the city or community advocate. 5 BARS delivers commercial indoor and outdoor Distributed Antenna Systems (DAS), carrier-grade Wi-Fi networks, and small cell systems as the city advocate working with owners and service providers; and

WHEREAS, the Public Private Partnership of City of Berkeley with 5 BARS Communities is based on maintaining local control, preventing visual blight and increasing connectivity for businesses, residents and citizens. The solution will be the basis to deploy smart city initiatives, enhance business investment, address digital divide, and be used to improve city services; and

WHEREAS, the City of Berkeley will use the National IPA purchasing channel *Cooperative Contract #R123456* to acquire services with 5 BARS Communities [http://www.nationalipa.org/Vendors/Pages/5 BARS .aspx](http://www.nationalipa.org/Vendors/Pages/5%20BARS.aspx); and

WHEREAS, there is no capital cost investment to get in contract with 5 BARS Communities and the contract has been entered into the citywide contract database as CMS No. UJPDS.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with 5 BARS Communities a dba of XG Communities, LLC ("5 BARS") for a New Wireless Marketing and License agreement, Small Cell Program, at no capital cost to the City from Initial five (5) year agreement 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.

