



Donald P. Wagner  
Chairman

Melissa Fox  
Vice Chairwoman

Jeffrey Lalloway  
Director

Lynn Schott  
Director

Christina Shea  
Director

# AGENDA

## ORANGE COUNTY GREAT PARK BOARD REGULAR MEETING

July 25, 2017

2:00 PM

City Council Chamber  
One Civic Center Plaza  
Irvine, CA 92606

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**Speaker's Card/Request to Speak:** If you would like to address the Board on a scheduled agenda item – including a Consent Calendar item, a Regular Business item, a Public Hearing item, or Public Comments – please complete the [Request to Speak Form](#). The card is at the table at the entrance to the City Council Chamber. Please identify on the card your name and the item on which you would like to speak and return to the Clerk of the Board. The [Request to Speak Form](#) assists the Chair in ensuring that all persons wishing to address the Board are recognized. It also ensures the accurate identification of meeting participants in the Board minutes. Your name will be called at the time the matter is heard by the Board. Board policy is to limit public testimony to up to three minutes per speaker depending on relevant circumstances (unless the time limit is extended by the Chair), which includes the presentation of electronic or audio visual information. Speakers may not yield their time to other persons.

**Please take notice that** the order of scheduled agenda items below and/or the time they are actually heard, considered and decided may be modified by the Chair or the Board during the course of the meeting, so please stay alert.

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### CALL TO ORDER

### ROLL CALL

### PLEDGE OF ALLEGIANCE

### DIRECTOR, OCGP, REPORT

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the Great Park Board Agenda and staff  
reports



## BOARDMEMBER REPORTS

### 1. PRESENTATIONS

- 1.1 *Request by Director Shea for Presentation by Laguna Greenbelt, Inc. Regarding Wildlife Corridor***

### ADDITIONS AND DELETIONS

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Additions to the agenda are limited by California Government Code Section 54954.2 of the Brown Act and for those items that arise after the posting of the Agenda and must be acted upon prior to the next Board meeting.

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### 2. CONSENT CALENDAR

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All matters listed under Consent Calendar are considered by the Director, Orange County Great Park, and the City Manager to be routine and will be enacted by one roll call vote. There will be no discussion of these items unless members of the Orange County Great Park Board request items to be removed from the Consent Calendar for separate discussion. Any member of the public may address the Board on items on the Consent Calendar. See information for Speaker's Card/Request to Speak on first page.

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#### 2.1 MINUTES

**ACTION:**

Approve the minutes of a regular meeting of the Orange County Great Park Board held on June 27, 2017.

#### 2.2 **BUDGET ADJUSTMENT FOR ENHANCEMENTS TO SPORTS PARK SUBAREA OF THE ORANGE COUNTY GREAT PARK**

**ACTION:**

- 1) Recommend that the City Council authorize the City Manager to execute Amendment No. 3 to Letter Agreement regarding Sports Park design enhancements.
- 2) Recommend that the City Council approve a budget appropriation of \$71,000 from the unallocated Great Park Fund balance to the Capital Improvement Project Fund, Project No. 361616, Sports Park Subarea Improvements, for the recommended Sports Park design enhancements.

**2.3 AWARD OF CONTRACT FOR WIRELESS MARKETING AND MANAGEMENT SERVICES AT THE ORANGE COUNTY GREAT PARK**

**ACTION:**

- 1) Recommend the City Council authorize the Orange County Great Park Director to execute a contract with 5 BARS Communities, LLC for wireless marketing and management services and subsequent sublicenses at the Orange County Great Park.
- 2) Recommend the City Council approve a budget adjustment to appropriate \$85,000 in the Orange County Great Park Fund for a wireless infrastructure master plan funded from future lease revenue.

**3. BOARD BUSINESS**

**3.1 CONSIDERATION OF VICE CHAIRWOMAN FOX'S REQUEST TO GRANT LAND AT THE CULTURAL TERRACE TO PRETEND CITY CHILDREN'S MUSEUM**

**ACTION:**

- 1) Consider Vice Chairwoman Fox's request to grant land at the Cultural Terrace to Pretend City Children's Museum.
- 2) If there is Board consensus to support Vice Chairwoman Fox's request, direct the City Attorney and City staff to negotiate a Memorandum of Understanding with Pretend City along the terms specified by the Great Park Board of Directors and return to the City Council for its consideration and action at the first City Council meeting in August.

**3.2 UPDATE ON PREPARATIONS FOR COMPLETION AND TURNOVER OF PHASE ONE OF THE SPORTS PARK**

**ACTION:**

Receive and file an update regarding preparations for completion and turnover of Phase 1 of the Sports Park.

**3.3 CONSIDERATION OF CHAIRMAN WAGNER'S REQUEST FOR RECONSIDERATION OF STREET NAMES PREVIOUSLY APPROVED BY THE GREAT PARK BOARD OF DIRECTORS**

**ACTION:**

Board discussion and direction.

**PUBLIC COMMENTS (Limited to 3 minutes per speaker.)**

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Any member of the public may address the Board on items within the Orange County Great Park Board's subject matter jurisdiction but which are not listed on this agenda during Public Comments; however, no action may be taken on matters that are not part of the posted agenda. See information for Speaker's Card/Request to Speak on the first page.

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**ADJOURNMENT****NOTICE TO THE PUBLIC****LIVE BROADCASTING AND REBROADCASTING**

Regular Orange County Great Park Board meetings are broadcast live every 4<sup>th</sup> Tuesday of the month at 2 p.m. and are replayed on Tuesdays at 2 p.m. (in weeks in which there is not a live Great Park Board meeting), Wednesdays at 8 a.m., Thursdays at 7 p.m., and Saturdays at 7 p.m. (in weeks in which there is not a live Orange County Great Park meeting) until the next Orange County Great Park Board meeting. All broadcasts can be viewed on Cox Communications Local Access Channel 30 and U-Verse Channel 99. Orange County Great Park Board meetings are also available via live webcast and at any time for replaying through the City's ICTV webpage at [cityofirvine.org/ictv](http://cityofirvine.org/ictv). For more information, please contact the Clerk of the Board/City Clerk's Office at (949) 724-6205.

**STAFF REPORTS**

As a general rule, staff reports or other written documentation have been prepared or organized with respect to each item of business listed on the agenda. Copies of these materials are on file with the Clerk of the Board and are available for public inspection and copying once the agenda is publicly posted (at least 72 hours prior to a regular Orange County Great Park Board meeting). Staff reports can also be downloaded from the City's website at [cityofirvine.org](http://cityofirvine.org) and [ocgp.org](http://ocgp.org) beginning the Friday prior to the scheduled regular Orange County Great Park Board meeting on the 4<sup>th</sup> Tuesday of each month.

In addition, meetings can be viewed live at the time posted on the agenda and related staff reports can be opened and viewed simultaneously along with the streaming of the meeting. To view the meeting, go to [cityofirvine.org/ictv](http://cityofirvine.org/ictv).

If you have any questions regarding any item of business on the agenda for this meeting, or any of the staff reports or other documentation relating to any agenda item, please contact Clerk of the Board/City Clerk staff at (949)724-6205.

**SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA**

Any supplemental writings or documents distributed to a majority of the Orange County Great Park Board regarding any item on this agenda after the posting of the agenda will be available for public review in the Clerk of the Board/City Clerk's Office, One Civic Center Plaza, Irvine, California, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

If you have any questions regarding any item of business on the agenda for this meeting, or any of the staff reports or other documentation relating to any agenda item, please contact Clerk of the Board/City Clerk staff at (949)724-6205.



**SUBMITTAL OF INFORMATION BY MEMBERS OF THE PUBLIC FOR  
DISSEMINATION OR PRESENTATION AT PUBLIC MEETINGS****Media Types and Guidelines****1. Written Materials/Handouts:**

Any member of the public who desires to submit documentation in hard copy form may do so prior to the meeting or at the time he/she addresses the Orange County Great Park Board. Please provide 15 copies of the information to be submitted and file with the Clerk of the Board at the time of arrival to the meeting. This information will be disseminated to the Orange County Great Park Board at the time testimony is given.

**2. Large Displays/Maps/Renderings:**

Any member of the public who desires to display freestanding large displays or renderings in conjunction with their public testimony is asked to notify the Clerk of the Board/City Clerk's Office at (949)724-6205 no later than 10 a.m. on the day of the scheduled meeting so that an easel can be made available, if necessary.

**3. Electronic Documents/Audio-Visuals:**

Any member of the public who desires to display information electronically in conjunction with their public testimony is asked to submit the information to the Public Information Office (PIO) no later than 10 a.m. on the day of the scheduled meeting. To facilitate your request contact the PIO Office at (949)724-6253 or the City Clerk's Office at (949)724-6205.

Information must be provided on CD, DVD, or VHS; or, emailed by 12:00 noon on the day of the scheduled meeting to [pio@ci.irvine.ca.us](mailto:pio@ci.irvine.ca.us). Members of the public will be asked to provide their name, identify the meeting and the agenda item to be addressed, and a daytime phone number.

The PIO office will notify the person submitting the information as soon as possible prior to the meeting if the information cannot be accessed or if the version provided is incompatible with the City's system. Every effort will be made by City staff to facilitate the presentation.

**CITY SERVICES TO FACILITATE ACCESS TO PUBLIC MEETINGS**

It is the intention of the City of Irvine to comply with the Americans With Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Irvine will attempt to accommodate you in every reasonable manner. Please contact the Clerk of the Board/City Clerk's Office at (949)724-6205.

Assisted listening devices are available at the meeting for individuals with hearing impairments. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35. 102-35. 104 ADA Title II)

**CHALLENGING BOARD DECISIONS**

If a person wishes to challenge the validity or reasonableness of any Board action or decision in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the Orange County Great Park Corporation, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

**COMMUNICATION AND ELECTRONIC DEVICES**

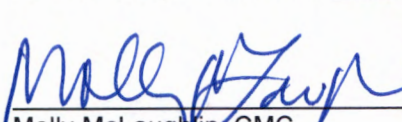
To minimize distractions, please be sure all personal communication and electronic devices are turned off or on silent mode.

**MEETING SCHEDULE**

Regular meetings of the Orange County Great Park Board are held on the fourth Tuesdays of each month at 2 p.m. Agendas are available at the following locations:

- Clerk of the Board/City Clerk's Office
- Police Department
- Front Entrance of City Hall
- University Park Center (Culver/Michelson)
- Walnut Village Center (Culver/Walnut)
- Northwood Town Center (Irvine Blvd./Yale)
- City's web page at [cityofirvine.org](http://cityofirvine.org)
- Orange County Great Park's web page at [ocgp.org](http://ocgp.org)

I hereby certify that the agenda for the Regular Orange County Great Park Board meeting was posted in accordance with law in the posting book located in the Public Safety Lobby of City Hall, One Civic Center Plaza, Irvine, California on July 20, 2017 by 8 p.m. as well as on the City's web page.

  
Molly McLaughlin, CMC  
Secretary / Clerk of the Board

# PRESENTATIONS

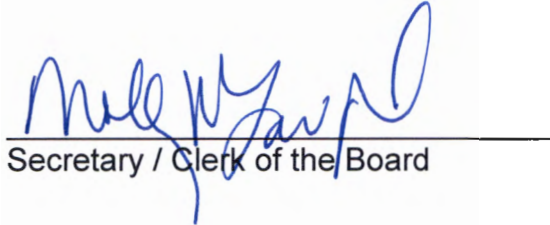
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## REQUEST FOR BOARD ACTION

**MEETING DATE:** JULY 25, 2017

**TITLE:** PRESENTATIONS



Secretary / Clerk of the Board

**RECOMMENDED ACTION:**

Request by Director Shea for Presentation by Laguna Greenbelt, Inc. Regarding Wildlife Corridor.

**RECEIVED**

**JUN 27 2017**

**CITY OF IRVINE  
CITY MANAGER'S OFFICE**

# Memo



To: Sean Joyce, City Manager  
From: Orange County Great Park Board Member Christina Shea  
Date: June 27, 2017  
Re: **Presentation by Laguna Greenbelt, Inc. Regarding Wildlife Corridor**

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Please place a presentation by representatives from Laguna Greenbelt, Inc. on the July 25, 2017 Orange County Great Park Board agenda.

Laguna Greenbelt is a non-profit grassroots organization focused on preservation of coastal wilderness areas in Orange County. The organization has worked closely with the City of Irvine, Five Point Communities, and others to restore the connection between the Laguna Coast and the Cleveland National Forest, resulting in the Wildlife Corridor planned to run through the Great Park and broader Irvine area.

It has come to my attention that the County's proposed projects at the West Alton and 100-Acre sites threaten to destroy the functionality of the Wildlife Corridor. Laguna Greenbelt has identified a set of specific challenges created by the County's proposed development, as well as, potential solutions to preserve the Corridor's functionality. I would like to provide an opportunity for Laguna Greenbelt representatives to present more information on this matter at the July Board meeting and to receive a brief update from City staff regarding the status of the County's plans for this area and the associated Environmental Impact Report.

c: Orange County Great Park Board  
City Attorney  
City Clerk

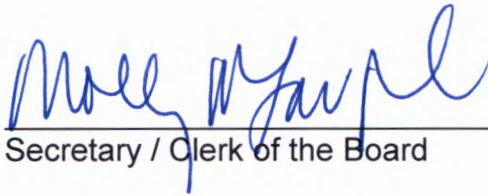
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## REQUEST FOR BOARD ACTION

**MEETING DATE:** JULY 25, 2017

**TITLE:** MINUTES

A handwritten signature in blue ink, appearing to read "Molly W. Taylor", written over a horizontal line.

Secretary / Clerk of the Board

**RECOMMENDED ACTION:**

Approve the minutes of a regular meeting of the Orange County Great Park Board held on June 27, 2017.



## **MINUTES**

### **ORANGE COUNTY GREAT PARK BOARD REGULAR MEETING**

**June 27, 2017**

City Council Chamber  
One Civic Center Plaza  
Irvine, CA 92606

#### **CALL TO ORDER**

A regular meeting of the Orange County Great Park Board of Directors was called to order on June 27, 2017 at 2:02 p.m. in the City Council Chamber; Chairman Wagner presiding.

#### **ROLL CALL**

Present:	3	Director:	Christina Shea
		Vice Chairwoman:	Melissa Fox
		Chairman:	Donald P. Wagner

Absent:	2	Director:	Jeffery Lalloway
		Director:	Lynn Schott

#### **PLEDGE OF ALLEGIANCE**

Chairman Wagner led the Pledge of Allegiance.

#### **DIRECTOR, OCGP, REPORT**

Pete Carmichael, Director, Orange County Great Park, provided a brief update on forward planning and construction progress, noting the upcoming Great Park Grand Opening and Opening Day festivities on August 5 and 6; and invited Laurie Hoffman,



Director of Community Services, to provide information on scheduled activities, as well as Sports Park Phase 1 program and operations.

Board discussion included: requesting new Great Park operator contracts be brought before the Board for informational purposes; suggested a promotional reel highlighting the festivities of the Great Park Opening Day be played during the Movies on the Lawn series; and announced that the Orange County Soccer Club would be offering Irvine residents half price tickets to its July 1 game, with the City's Animal Services Unit being recognized that evening.

Sean Joyce, City Manager, thanked L.J. Edgecomb for hosting a tour of the Sports Park; and noted Barry Curtis, Manager of Planning Services, was appointed as the Director of Community Development for the City of Costa Mesa.

## **BOARDMEMBER REPORTS**

There were no reports.

## **ADDITIONS AND DELETIONS**

There were no additions or deletions to the agenda.

### **1. CONSENT CALENDAR**

**ACTION: Moved by Director Shea, seconded by Vice Chairwoman Fox, and unanimously carried by those members present (Directors Lalloway and Schott absent) to approve Consent Calendar Item Nos. 1.1 and 1.2.**

#### **1.1 MINUTES**

##### **ACTION:**

- 1) Approved the minutes of a regular meeting of the Orange County Great Park Board held on May 23, 2017.
- 2) Approved the minutes of a special joint meeting of the Irvine City Council and the Orange County Great Park Board held on June 13, 2017.

#### **1.2 AMENDMENT TO FARMING LEASE BETWEEN CITY OF IRVINE AND EL TORO FARMS, LLC**

##### **ACTION:**

- 1) Recommended that the City Council approve a Twelfth Amendment to Farming Lease, authorizing a two-year lease extension with El Toro Farms, LLC.
- 2) Recommended that the City Council authorize the City Manager or his designee to execute the Twelfth Amendment to Farming Lease.

## **2. BOARD BUSINESS**

### **2.1 EXCLUSIVE NEGOTIATING AGREEMENT WITH WILD RIVERS, LLC. FOR A WATER PARK AT THE ORANGE COUNTY GREAT PARK**

Pete Carmichael, Director, Orange County Great Park, presented the staff report and responded to questions.

Sean Joyce, City Manager, clarified that this was not a sole-source contract; rather, that after an extensive national solicitation of proposals for the Great Park, the Board directed staff to enter into an exclusive negotiation agreement with Wild Rivers, LLC.

Board discussion included: expressing concern with the proposed construction timeline; and whether the potential for inclement weather was considered.

Mr. Carmichael noted that collaborative efforts were made with Wild Rivers, the City Attorney and City staff in order to provide the most efficient and expeditious process possible.

Mike Riedel, Wild Rivers Waterpark, reiterated an approximate timeframe for building the waterpark.

**ACTION: Moved by Director Shea, seconded by Vice Chairwoman Fox, and unanimously carried by those members present (Directors Lalloway and Schott absent) to:**

**ACTION:**

Recommend that the City Council approve the Exclusive Negotiating Agreement with Wild Rivers, LLC.

### **2.2 FEASIBILITY ANALYSIS FOR ORANGE COUNTY GREAT PARK GOLF COURSE**

This item was agenized at the request of Vice Chairwoman Fox who questioned financial feasibility of a golf course, and further noted that upon additional review, she was ready to move forward with staff's original recommendation.

Ed Getherall, National Golf Foundation Senior Project Director, provided an overview of the proposed golf course and responded to Board questions.

The following individuals spoke in favor of the golf course:

Andy Frank  
Charles Davidson  
Dave Chapple  
Patrick Burke  
Robert Ford  
Rick Adams  
Paul Smolinsky

A.D. Zelinko, Irvine resident, spoke in opposition, noting a preference to reduce the acreage of the golf course and suggested dedicating the remainder of the acreage to other amenities.

Board discussion included: noting that the golf course provided the economic engine to support of other amenities at the Great Park; and clarified that the proposed golf course, along with other amenities, would provide balance to the community.

**ACTION: Moved by Vice Chairwoman Fox, seconded by Director Shea, and unanimously carried by those members present (Directors Lalloway and Schott absent) to:**

Affirm the Golf Course use at the Orange County Great Park.

### **2.3 MODIFICATIONS TO GREAT PARK CONCEPTUAL DESIGN AND SPACE PLANNING**

Pete Carmichael, Director, Orange County Great Park, and Chris Koster, Manager of Great Park Planning & Development, presented the staff report and responded to questions. Mr. Carmichael requested removing action number 2 based on a request from Five Point Communities (FivePoint) to postpone extension of Great Park Boulevard.

Board discussion included: questioning the relocation of the Farm + Food Lab; ensuring accessibility and walkability within the Cultural Terrace and the Farm + Food Lab; and suggested coordinating the designs of the botanical gardens with the Farm + Food Lab.

Teena Spindler, Irvine resident, thanked the Board for its commitment to gardens and open space; and expressed concern that acreage taken away from the Cultural Terrace would decrease overall size of garden and open space use.

**ACTION: Moved by Vice Chairwoman Fox, seconded by Director Shea, and unanimously carried by those members present (Directors Lalloway and Schott absent) to:**

Recommend that the City Council approve a modification to the Boundary of the Great Park Improvement Area and direct staff to return to the Great Park Board and City Council with a budget and Letter Agreement making any modifications necessary to implement the City Council's direction.

**2.4 FULL CIRCLE FARM CONCEPT AT THE ORANGE COUNTY GREAT PARK**

Chris Koster, Manager Planning Development Great Park, presented the staff report and responded to questions. A.G. Kawamura and Jordan Perkins, representing Kawamura, Solutions for Urban Agricultural, also provided a PowerPoint presentation and responded to questions.

The following spoke in support of the project:

Nick Melquiades, Riverside Garden Council  
Sue Struthers, Riverside Food Systems Alliance Boardmember  
Joyce Jong, Riverside resident  
Mark Lowry, Orange County Food Bank  
Bruce Firestone, Riverside resident  
Casey Anderson, Orange County Food Bureau  
Christine Montevideo, 2<sup>nd</sup> Harvest Food Bank

Board discussion included: noting the uniqueness and innovativeness of this type of use; noted that the proposed concept would bring back the agricultural history of Orange County and Irvine; noted the synergy between the Sports Park and healthy locally grown foods; suggested connectivity to the Cultural Terrace and other amenities; and reiterated the need to reinvigorate the Farmer's Market.

**ACTION: Moved by Director Shea, and seconded by Vice Chairwoman Fox, and unanimously carried by those members present (Directors Lalloway and Schott absent) to:**

Direct staff to negotiate an agreement allowing for the implementation of the Full Circle Farm at the Orange County Great Park and return to the Board for consideration.

## **PUBLIC COMMENTS**

Don Croucher, California Fire Museum, spoke in support of a fire museum at the Great Park.

Katrina Kirkeby, spoke in favor of a botanical garden at the Great Park.

## **ADJOURNMENT**

**Moved by Director Shea, seconded by Vice Chairwoman Fox, and unanimously carried to adjourn the meeting at 4:01 p.m.**

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CHAIRMAN

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SECRETARY/CLERK OF THE BOARD

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July 25, 2017

DATE

2.2



## REQUEST FOR BOARD ACTION

**MEETING DATE:** JULY 25, 2017

**TITLE:** BUDGET ADJUSTMENT FOR ENHANCEMENTS TO SPORTS PARK SUBAREA OF THE ORANGE COUNTY GREAT PARK

A blue ink signature of Peter Quinn, written in a cursive style.

Director, Orange County Great Park

A blue ink signature of Sean Joyce, written in a cursive style.

City Manager

### RECOMMENDED ACTION

1. Recommend that the City Council authorize the City Manager to execute Amendment No. 3 to Letter Agreement regarding Sports Park design enhancements.
2. Recommend that the City Council approve a budget appropriation of \$71,000 from the unallocated Great Park Fund balance to the Capital Improvement Project Fund, Project No. 361616, Sports Park Subarea Improvements, for the recommended Sports Park design enhancements.

### EXECUTIVE SUMMARY

On September 8, 2015, the City Council approved the use of \$4,686,314 for design and construction enhancements within the Sports Park. On August 9, 2016, the City Council approved a Letter Agreement with Heritage Fields specifying the terms and procedures governing the payment for those Sports Park enhancements. The letter authorized an escrow account through which Heritage Fields has drawn funds for construction of the approved enhancements. The Letter Agreement has been amended at City Council direction to accommodate additional design enhancements identified during design and construction. These enhancements can be implemented with less disruption and at lower cost during construction than if they were to be undertaken by the City after construction is completed. The Letter Agreement is included as Attachment 1.

As Sports Park construction has progressed, City staff has worked closely with Five Point Communities' (Five Point), Development Manager for Heritage Fields El Toro, LLC., (Heritage Fields) to finalize design and identify opportunities for enhancements that will lead to improved operations and visitor experience. The most recent round of recommended enhancements includes additional park storage at electrical utility yards and extension of required cabling in the information technology (IT) rooms within the buildings in Sports Park Phase 1.

Staff recommends a budget modification appropriating \$71,000 from the unallocated Great Park Fund balance to pay for the enhancements as well as approval of Amendment No. 3 to the Letter Agreement with Heritage Fields governing the payment for Sports Park design enhancements. The amendment will allow Heritage Fields to draw on the established escrow account to pay for materials and installation, subject to required documentation and City review. Amendment No. 3 is included as Attachment 2.

## **COMMISSION/BOARD/COMMITTEE RECOMMENDATION**

Not applicable.

## **ANALYSIS**

On November 26, 2013, the City Council approved the Second Agreement with City of Irvine as Adjacent Landowner (ALA II) between the City of Irvine and Heritage Fields El Toro, LLC. (Heritage Fields). The ALA II set forth the concept plans and programming for the development of 688 acres within the Orange County Great Park. The ALA II further subdivided the 688-acre Great Park Improvement Area into a number of subareas, one of which is the Sports Park. Construction of Phase 1 of the Sports Park is underway and includes a 2,500-seat soccer stadium, six soccer fields, six volleyball courts, 25 tennis courts and associated support buildings.

On September 8, 2015, the City Council approved \$4,686,314 in Quimby Funds for selected design enhancements within the Sports Park. The Quimby Fund appropriation was necessary as the cost of the City Council-directed enhancements exceeded the Additional Allowance Fund, a set-aside designated in the ALA II for City-selected improvements beyond the basic scope of work.

As construction commenced on the Sports Park in 2016, it became necessary to create a process through which Heritage Fields could draw upon the approved funds to order materials and pay for construction associated with the enhancements. On August 9, 2016, the City Council approved a Letter Agreement with Heritage Fields specifying the terms and procedures governing the payment for the enhancements previously approved by the City Council. The letter authorized an escrow account through which Heritage Fields has drawn funds for construction of the designated enhancements. The letter includes control provisions regarding required City review of costs and the request for release of funds.

As planning and construction have progressed at the Sports Park, additional design enhancements that improve park operations and enhance the visitor experience have been identified by City staff and the design team from Five Point. By implementing these enhancements now, during construction, rather than after completion, disruptions will be limited and costs will be reduced.

The cost of the proposed enhancements is \$71,000 as summarized below.



- Additional storage room in three utility enclosures in Phases 2, 3, and 4: \$21,000. There are five utility enclosures within the Sports Park. The utility enclosures have extra space that can be adapted to create storage areas through the construction of a dividing block wall and an access door. The enclosures can be used for much needed recreational equipment and landscape material storage. The structures are located near each of the sports fields: soccer; tennis; softball; and, baseball. The Board and City Council previously approved the addition of two similar storage areas located within Phase 1. The additional three storage rooms are located in Phases 2, 3, and 4. The total additional cost is \$21,000.
- Redesigned and Enhanced IT Rooms in Phase 1 Buildings: \$50,000. The design for the IT equipment spaces in the Sports Park buildings includes a room accessible to wireless carriers and a secure room behind a separately-keyed second door. The proposed expenditure provides for the extension of communications cabling and reconfiguration of racks so that the City's network connectivity and security systems can be relocated into the secured room. In addition, the enhancements will maximize the space use in the room and support additional equipment. These changes have been made to the design for Phases 2, 3 and 4 so there will not be any subsequent cost. The expenditure is necessary for Phase 1 because the buildings have already been constructed and the initial cabling is complete.

The costs outlined above were provided by Five Point and were reviewed by the City's consultant, DMC Engineering for conformance with market pricing and industry standards. The recommended enhancements are beyond the base design obligations required of Heritage Fields for the Sports Park, per the ALA II. As such, these additional costs, totaling \$71,000, are the responsibility of the City. Staff is recommending a budget modification, appropriating funds from the unallocated Great Park Fund balance in order to pay for these design enhancements.

Staff is recommending that these funds, once appropriated, be made available to Five Point for draw down during construction by way of the escrow account approved by the City Council on August 9, 2016. The Letter Agreement between the City and Heritage Fields approved at that time authorized the account and specified the terms and procedures governing the payment for Sports Park design enhancements out of the account. Amendment No. 3 to that Letter Agreement modifies the agreement to include the recommended enhancements described in this report. All other provisions in the Letter Agreement remain unchanged, including Heritage Fields' obligation to provide written release requests supported by executed contracts and invoices for all expenditures.

## **ALTERNATIVES CONSIDERED**

The Board could decide not to recommend authorization of the Sports Park design enhancements or make modifications thereto. Further, the Board could choose to recommend that the enhancements be deferred until such time as the Sports Park is

completed and turned over to the City, allowing the City to make the enhancements after completion rather than Five Point implementing the enhancements during construction. The Board could also recommend an alternative source of funds.

### **FINANCIAL IMPACT**

The cost for the staff recommended design enhancements for the Sports Park is \$71,000. Unless otherwise directed, these funds are to be drawn from the unallocated Great Park Fund balance. The available balance within this account is approximately \$50 million.

**REPORT PREPARED BY** Debby Platt, Great Park Real Property Administrator

### **ATTACHMENTS**

1. Letter Agreement dated August 4, 2016 regarding Sports Park design enhancements
2. Amendment No. 3 to August 4, 2016 Letter Agreement between the City of Irvine and Heritage Fields El Toro, LLC regarding Sports Park design enhancements

## Heritage Fields El Toro, LLC

August 4, 2016

City of Irvine  
City Hall  
One Civic Center Plaza  
Irvine, California 92623-9575  
Attention: Eric Tolles, Assistant City Manager–Great Park

Re: Second Agreement with City of Irvine as Adjacent Landowner, dated November 26, 2013 (“**ALA2**”), by and between HERITAGE FIELDS EL TORO, LLC, a Delaware limited liability company (“**Heritage Fields**”), and THE CITY OF IRVINE, a California charter city (the “**City**”)

Dear Mr. Tolles:

Reference is hereby made to the ALA2; capitalized terms not defined in this letter agreement (“**Letter Agreement**”) shall have the meaning ascribed to such terms in the ALA2, unless otherwise indicated.

On July 28, 2015, the Orange County Great Park Board approved the plans for the 175-acre Sports Park Subarea and recommended allocating the entire Additional Allowance Fund for this particular Subarea in the amount of \$5,040,000 to enhancements to be incorporated into the Sports Park Subarea. On September 8, 2015, the City Council took several actions, including appropriating funds in the amount of \$4,686,314.00 from available City Quimby funds to pay for additional enhancements to the Sports Park (the “**Quimby Allowance**”), and approving the list of specific enhancements to be financed by the Quimby Allowance, including an additional restroom facility, additional shade structure, entry gates, fencing, upgraded scoreboards and backstops, and other items, all as more particularly detailed on Exhibit A attached to this Letter Agreement (the “**Quimby Improvements**”). Given the integrated nature of the Quimby Improvements with the Sports Park Subarea improvements being designed and constructed by Heritage Fields, the City desires to have Heritage Fields design and construct the Quimby Improvements as part of its overall work on the Sports Park Subarea, subject to the City’s obligation to fund such design and construction.

While Heritage Fields has no obligation to design, construct or otherwise install the Quimby Improvements (also referred to as the “**Additional Sports Park Work**”), in order to allow for the efficient completion of the Additional Sports Park Work, Heritage Fields and the City agree to follow the procedures set forth in this Letter Agreement with respect to completion of the Additional Sports Park Work.

1. **Appointing Representatives** – For purposes of implementing the Additional Sports Park Work, Heritage Fields hereby appoints LJ Edgcomb (the “**Heritage Fields Representative**”), and the City appoints Eric Tolles (the “**City Representative**,” and together with the Heritage Fields Representative, each a “**Representative**”), each to be the point of contact for his respective Party. Either Party may change that Party’s representative by written notice to the other Party.
2. **Improvements to be Incorporated into the Great Park Improvements** – Subject to the City’s satisfaction of the terms and conditions specified in this Letter Agreement, including without limitation the obligation to pay Heritage Fields for all the fees, costs (including design costs) and expenses of the Additional Sports Park Work, Heritage Fields shall design and cause the construction of the Additional Sports Park Work as part of the Great Park Improvements. The provisions of the ALA2 applicable to Heritage Fields’ construction of the Great Park Improvements shall also apply to the Additional Sports Park Work, provided that, in all cases the cost of the Additional Sports Park Work shall be paid to Heritage Fields by the City in accordance with this Letter Agreement. The City acknowledges and agrees that the Additional Sports Park Work may



be built in phases, and that disbursements from the Escrow Agent (defined below) may be requested in accordance with the terms of this Letter Agreement in order to fund such phased construction of the Additional Sports Park Work. The Additional Sports Park Work shall be performed concurrently with the corresponding phases of Sports Park Subarea improvements being designed and constructed by Heritage Fields.

3. **Finalization of the Improvement Plans / Responsibility for Cost Overruns** – Heritage Fields has caused design drawings and plans to be prepared and has obtained bids for the Additional Sports Park Work. The Quimby Allowance is based on those bids and Heritage Fields' estimate of the cost of the Quimby Improvements at the time the Quimby Allowance was approved by the City Council. However, the Parties recognize that the plans and specifications for the Quimby Improvements have not yet been approved by the City, and may not reflect the final design, construction, soft costs and other costs associated with construction of the Quimby Improvements.

- a. **Design** - Heritage Fields will cause engineers, architects and other consultants to prepare plans and specifications for the Additional Sports Park Work to be reviewed by the City pursuant to its normal regulatory process. Such plans and specifications shall indicate the scope and parameters of the Additional Sports Park Work separate and apart from the remainder of the Great Park Improvements.

- b. **City Changes** - If there are any changes to the scope or design of the Additional Sports Park Work resulting from the plan check or other regulatory review or inspection process, such changes shall be subject to Heritage Fields' review and approval. Notwithstanding Section 2(c) of the ALA2, or anything else to the contrary, to the extent any changes to the Additional Sports Park Work are required by the City during the plan check process, or at any time prior to the acceptance of the Additional Sports Park Work by the City, such changes shall be undertaken by Heritage Fields at the sole cost and expense of the City, and if necessary the City shall allocate additional funding for the Quimby Allowance (in the case of the Quimby Improvements) to cover such additional costs. Upon imposition of a change or additional requirement by the City (whether through the regulatory review process or otherwise), Heritage Fields shall deliver written notice to the City which notice shall set forth in reasonable detail the estimated additional costs of such change or requirement and the City shall allocate additional funding for the Additional Sports Park Work to cover such additional costs. If the City Representative does not commit in writing to fund such change or additional requirement within ten (10) business days after receipt of the notice, Heritage Fields shall have no obligation to implement such requested change or additional requirement, provided that if such change or additional requirement is required to conform to a mandated code change, Uniform Construction Codes or a building or construction requirement pursuant to state or federal law, and the City does not commit in writing to fund such change or additional requirement within ten (10) business days of receipt of the notice, then Heritage Fields shall not proceed with the Additional Sports Park Work impacted by such change.

- c. **Cost Increases** - To the extent the price of the Additional Sports Park Work, as reflected in the final bids for such contracts or in any change order with respect to such contracts, exceeds the Quimby Allowance, Heritage Fields shall deliver written notice to the City which notice shall set forth in reasonable detail the estimated additional costs to complete the applicable Additional Sports Park Work and the City shall allocate additional funding for the Quimby Allowance to cover such additional costs. Cost savings with respect to the Quimby Improvements may be used to off-set any increase in costs. If additional funds as required to fully fund the applicable Additional Sports Park Work are not allocated by the City within forty-five (45) calendar days after receipt of written notice from Heritage Fields to the City of such increased costs, then Heritage Fields shall not proceed with the applicable Additional Sports Park Work impacted by such additional costs.

4. **City Payment for Additional Sports Park Work** – City is responsible to pay for all the fees, costs and expenses of the Additional Sports Park Work, including (without limitation) design, permitting,



construction, inspection and any other costs incurred by Heritage Fields prior to acceptance of the Additional Sports Park Work by the City (the “**Additional Work Project Costs**”). The City agrees to pay for the Additional Work Project Costs as follows:

a. **Initial Quimby Budget; Quimby Improvements Account** – Heritage Fields currently estimates the Quimby Improvements will total approximately Four Million, Five Hundred Seventy-One Thousand, Three Hundred Thirty-Six Dollars (\$4,571,336) (the “**Initial Quimby Budget**”), which excludes permit fees. The City and Heritage Fields shall enter into separate written escrow instructions with the Irvine, California, office of First American Title Insurance Company (the “**Escrow Agent**”), and cause Escrow Agent to establish and maintain an interest bearing escrow account, denominated the “**Quimby Improvements Account**” at a banking institution mutually acceptable to the City and Heritage Fields in the Parties’ reasonable discretion. The purpose of the Quimby Improvements Account is to administer the distribution of funds from the account to Heritage Fields to pay for the Additional Work Project Costs attributable to the Quimby Improvements. Interest or investment earnings on funds deposited in the Quimby Improvements Account shall be deposited into, and become a part of, the Quimby Improvements Account. All fees, costs and expenses of the Escrow Agent with respect to the Quimby Improvements Account established pursuant to this Letter Agreement shall be paid for by the City.

b. **Initial Deposit** – Within ten (10) days following execution of this Letter Agreement by both Parties, the City shall make an initial deposit into the Quimby Improvements Account in an amount equal to the Initial Quimby Budget (the “**Initial Deposit**”).

c. **Required City Deposit** – To the extent that after the Initial Deposit the City imposes changes or additional requirements or the cost of the Quimby Improvements increases (as contemplated in Section 3 of this Letter Agreement), the City shall deposit into the Quimby Improvements Account an amount at least equal to the amount specified in the notice of estimated additional costs, within thirty (30) days of the City’s receipt of such notice.

d. **Release of Funds** – From and after the execution of this Letter Agreement, the Escrow Agent will release funds from the Quimby Improvements Account to Heritage Fields as follows:

- i. From time to time (but not more frequently than two times per calendar month), Heritage Fields may submit a written request (a “**Release Request**”) to the City and Escrow Agent to release funds from the Quimby Improvements Account when Heritage Fields: (i) is prepared to issue a notice to proceed to any contractor or consultant with respect to work on one or more Quimby Improvements (a “**Notice to Proceed**”) pursuant to a binding consulting agreement, construction contract, or other written agreement (each, a “**Sports Park Work Contract**”); and/or (ii) has entered into a binding contractual agreement and is prepared to issue a notice under such agreement to purchase materials or supplies (“**Construction Materials**”) to be used in connection with the Quimby Improvements (a “**Materials Contract Order**”). Heritage Fields shall deliver to the City with any Release Request reasonably satisfactory evidence that Heritage Fields has either: (i) entered into a binding Sports Park Work Contract, and/or (ii) issued a Materials Contract Order. A Release Request shall also include an estimated schedule showing when the funds are anticipated to be spent.
- ii. Within five (5) business days of the City’s receipt of the Release Request, the City Representative shall deliver to the Escrow Agent and Heritage Fields’ Representative a “**Release Approval Letter**” (substantially in the form attached hereto as **Exhibit B**), authorizing the Escrow Agent to release funds from the Quimby Improvements Account to Heritage Fields in an amount equal to the requested amount. If the City Representative does not respond to Heritage Fields Representative and Escrow Agent



in writing within such five (5) business day period, either approving the release of funds specified in the Release Request or specifying valid reasons why such amounts should not be released, then Heritage Fields may submit a written notice to the City (a "**Reminder Notice**") reminding the City of the Release Request. If the City Representative does not respond to the Reminder Notice within five (5) business days after receipt, then the City shall be deemed to have approved of the Release Request, after which the Escrow Agent shall release funds from the Quimby Improvements Account in an amount equal to the amount specified in the Release Request. Heritage Fields shall cause any Release Request, which is the subject of an objection by the City, to be revised to respond to such objection and subsequently re-submitted and processed as provided in this Section 4. Heritage Fields shall have no obligation to issue a Notice to Proceed or authorize procurement of Construction Materials unless and until it has actually received funds from the Quimby Improvements Account in the full amount of the cost to complete the work authorized by such Notice to Proceed and/or the full cost to purchase the Construction Materials to be authorized by Heritage Fields for purchase under the applicable Sports Park Work Contract or Materials Contract Order.

- iii. Heritage Fields shall, prior to the first release of funds and quarterly thereafter, submit to City Notices to Proceed with contracted scope and price, cancelled checks, invoices, or receipts, documenting the hard and soft costs spent or committed to be spent in connection with the Quimby Improvements (the "**Documented Costs**"). Submittals may include Documented Costs that were expended, incurred or committed to prior to the date of this Letter Agreement.
- e. **True Up** - The City shall close the Quimby Improvements Account upon the completion of the Quimby Improvements. Prior to closing the Quimby Improvements Account, the Parties shall meet and confer to agree upon a reconciliation of the actual Documented Costs spent with respect to the Quimby Improvements ("**Actual Costs**") against the aggregate amounts of funds disbursed from the Quimby Improvements Account ("**Projected Costs**"). This meet and confer shall occur within 90 days of the later of: (i) completion of the Quimby Improvements and payment by Heritage Fields of all Documented Costs (including retention), or (ii) the Acceptance Date for all of the Quimby Improvements. If such reconciliation discloses a positive difference between Projected Costs and Actual Costs, then Heritage Fields shall deposit into the Quimby Improvements Account an amount equal to such positive difference (the "**True-Up Deposit**") within 120 days of the later of: (i) completion of the Quimby Improvements and payment by Heritage Fields of all Documented Costs (including retention), or (ii) the Acceptance Date for all of the Quimby Improvements. Any remaining funds in the Quimby Improvements Account (including the True-Up Deposit, if any) shall be returned to the City.

Nothing set forth in this Letter Agreement shall amend, modify or alter the terms of the ALA2, except as expressly provided herein.

If the provisions of this Letter Agreement are acceptable to the City, please sign and return a copy of this Letter Agreement to Heritage Fields.

Except as implemented and/or clarified by the terms of this Letter Agreement, each of the City and Heritage Fields acknowledges that the ALA2 remains unchanged and in full force and effect. This Letter Agreement is governed by the laws of the State of California, without regard to conflicts of laws principles. This Letter

Agreement may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument; facsimile and pdf signatures of this Letter Agreement shall be valid as if manually signed.

Sincerely,


**HERITAGE FIELDS EL TORO, LLC,**  
a Delaware limited liability company

By: Heritage Fields El Toro Sole Member LLC,  
a Delaware limited liability company  
Its: Sole Member

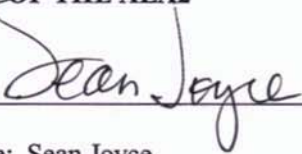
By: Heritage Fields LLC,  
a Delaware limited liability company  
Its: Sole Member

By: Five Point Heritage Fields, LLC,  
a Delaware limited liability company  
Its: Administrative Member

By: Five Point Operating Company, LLC,  
a Delaware limited liability company  
Its: Sole Member

By:   
Print Name: LJ Edgcomb  
Print Title: Vice President

**ACKNOWLEDGED AND AGREED TO ON BEHALF OF CITY  
PURSUANT TO THE AUTHORITY GRANTED BY SECTION  
15(o) OF THE ALA2**

  
Name: Sean Joyce  
Title: City Manager

## **EXHIBIT A**

### **Quimby Improvements**



EXHIBIT A  
Quimby Improvements

**Description of Quimby Plans:**

Phase 1

OCGP Sports Park Design Package #6 Quimby Phase 1 Enhancements, Plan Check No. 00650933-PARK, submitted for 5th plancheck, not yet approved by City of Irvine.

Phase 2

OCGP Sports Park Design Package #6 Quimby Phase 2 Enhancements, Plan Check No. 00650942-PARK, submitted - for 5th plancheck, not yet approved by City of Irvine.

Phase 3

OCGP Sports Park Design Package #6 Quimby Phase 3 Enhancements including Building C, Plan Check No. 00650984-PARK, submitted for 5th plancheck, not yet approved by City of Irvine.

Phase 4

OCGP Sports Park Design Package #6 Quimby Phase 4 Enhancements, Plan Check No. 00650968-PARK, submitted for 5th plancheck, not yet approved by City of Irvine.

Item Ref.	Item	# of Units	Unit
<b>Phase 1</b>			
1	Upgraded Seating - Championship Tennis		
	Permanent Seats	132	EA
2	Upgraded Seating - Volleyball		
	Permanent Seats	156	EA
3	Added Drinking Fountains - Tennis		
	Haws model with 1" PVC piping+sump	3	EA
4	Added Entry Gates		
	Building A		
	Type A Main Gate (3 Pairs)	3	PR
	Building B		
	Type A Gate Single	2	EA
	Type A Main Gate	3	PR
5	Added Championship Soccer Fencing		
	6' Gates - Decorative 2 Type	2	EA
	6' Fencing - Decorative 2 Type	1274	LF
6	Upgraded Championship Soccer Scoreboard		
	"Platinum" style	1	EA
7	Added Tennis Scoreboard	1	EA
8	Added Volleyball Scoreboard	1	EA
9	Shade Structure at Children's Play Area	4	EA
10	Added CCTV Cameras		
	Building A (3) day 1 cameras (fully installed), and infrastructure for (8) future cameras	See Item	
	Building B: (2) day 1 cameras, and infrastructure for (5) future cameras	See Item	
	Buildings H1 & H2: infrastructure for (2) future cameras	See Item	
<b>Phase 2</b>			
11	Added Drinking Fountain		
	Haws model with 1" PVC piping+sump	1	EA
12	Added CCTV Cameras		
	Building D Infrastructure for (4) future cameras	See Item	
<b>Phase 3</b>			
13	Upgraded Seating at Baseball Fields #1-#3		
	Permanent Seats	408	EA
14	Upgraded Seating at Multipurpose Fields #1-#3		
	Permanent Seats	312	EA
15	Added Drinking Fountains		
	Haws model with 1" PVC piping+sump	3	EA
16	Added Entry Gates		
	Building E		
	Type A Gate Single	1	EA
	Type A Main Gates	2	PR
17	Added Championship Baseball Fencing		
	6' Gates - Decorative 2 Type	2	EA
	6' Fencing - Decorative 2 Type	1382	LF
18	Upgraded/ Added Scoreboards		
	Upgraded Championship Baseball		
	Upgraded "Gold" style	1	EA
	Credit "Bronze" style	1	EA
	Relocate conduit	560	LF
	Added 3 Baseball Fields & 3 Multi-Purpose Fields		
	Added "Silver" style	6	EA

EXHIBIT A  
Quimby Improvements

Item Ref.	Item	# of Units	Unit
	Added conduit	3207	LF
19	Upgraded Non-Championship Baseball Backstops		
	Added Masonry Wall	6	EA
	Added Channel Padding	6	EA
20	Added Baseball Batting Cage		
	Baseball Batting Cages	4	EA
	Perimeter Lighting-Pole Fixture & Conduit	8	EA
21	Added Restroom (Building "C")		
	Similar to Bldg. D	1554	SF
22	Added CCTV Cameras		
	Building E: (3) day 1 cameras, and infrastructure for (13) future cameras	See Item	
	Building F: Infrastructure for (2) future cameras	See Item	
<b>Phase 4</b>			
23	Upgraded Seating at Softball Fields #2 & #3		
	Permanent Seats x 2 fields	120	EA
24	Upgraded Seating at Softball Fields #4 & #5		
	Bleachers, 2 per field	4	EA
25	Added Drinking Fountains		
	Haws model with 1" PVC piping+sump	2	EA
26	Added Entry Gates		
	Building G		
	Type A Main Gate (3 Pairs)	3	PR
27	Added Championship Softball Fencing		
	6' Gates - Decorative 2 Type	2	EA
	6' Fencing - Decorative 2 Type	837	LF
28	Upgraded/Added Scoreboards		
	Upgraded Championship Softball Scoreboard		
	Upgraded "Silver"	1	EA
	Credit "Bronze"	-1	EA
	Added Conduit	385	LF
	Added Softball Scoreboards		
	Added "Silver" style	4	EA
	Added Conduit	1784	LF
29	Upgraded Non Championship-Softball Backstops		
	Added Masonry Wall	4	EA
	Channel Padding	4	EA
30	Added Softball Batting Cages		
	Softball Batting Cages	4	EA
	Perimeter Lighting-Pole Fixture & Conduit	8	EA
31	Added CCTV Cameras		
	Building G: (2) day 1 cameras, and infrastructure for (8) future cameras	See Item	
<b>All Phases</b>			
<b>Public Safety</b>			
32	Added Security Cameras (Site Only)		
	Camera Ready Pole and Mount	23	EA
	Conduit, Wire and Fiber Including Boxes & Structure	15720	LF
	Axis Network Camera	23	EA
33	Added Command Vehicle		
	Turf Block	15710	SF
	Rolled Curb	570	LF
	Cam-Lock System	3	EA
34	Added Parking Lot Gates		
	Manual Barrier Gate	9	SETS
35	Added Controlled Access Bollards		
	Removable Bollard	25	EA
36	Added Middle Arm Benches		
		1	EA
<b>Functionality/Sustainability</b>			
37	Added Conduit to Parking Lots for Future Solar		
	Conduit Only-Includes Trenching & Backfill	26780	LF

**EXHIBIT B**

**Form of Release Approval Letter**

EXHIBIT B  
(Sample) Release Approval Letter

\_\_\_\_\_, 201\_\_

Eric Tolles  
City of Irvine  
1 Civic Center Plaza  
Irvine, CA 92606

\_\_\_\_\_  
First American Title Insurance Company

\_\_\_\_\_  
Irvine, CA

**Re: Letter Agreement dated July 20, 2016 ("Letter Agreement") between Heritage Fields El Toro, LLC ("Heritage Fields") and the City of Irvine ("City") – Release Request for Release of Funds from the Quimby Improvements Account (Escrow Account No. \_\_\_\_)**

Capitalized terms used but not specifically defined in this Release Request shall have the meaning assigned to them in the Letter Agreement.

As provided for in the Letter Agreement, Heritage Fields hereby provides to the City and Escrow Agent this Release Request for release of funds from the Quimby Improvements Account (First American Title Insurance Company Escrow Account No.\_\_\_\_, referred to herein as the "**Escrow Account**") in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_) (the "**Requested Amount**"). The conditions set forth in Section 4.d.i which are precedent to a Release Request have been met for the entire Requested Amount.

Heritage Fields requests that within five (5) business days of the City's receipt of this Release Request, the City Representative shall deliver to the Escrow Agent and the Heritage Fields Representative a copy of this letter, executed below by the City Representative, authorizing the Escrow Agent to release to Heritage Fields funds from the Escrow Account in an amount equal to the Requested Amount.

**Total Release Request**

**\$ \_\_\_\_\_**



If you have any questions or require any additional information, please do not hesitate to contact Lacie Daniels at (949) 349-1086.

Kind Regards,

LJ Edgcomb  
Community President  
Five Point Communities Management, Inc.  
Development Manager for Heritage Fields El Toro, LLC

cc: Lacie Daniels

\*\*\*\*\*

City Representative Authorization:

Escrow Agent is authorized to release to Heritage Fields funds from the Escrow Account equal to the Requested Amount.

\_\_\_\_\_  
City Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



July 25, 2017

City Manager's Office

[cityofirvine.org](http://cityofirvine.org)

City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575

949-724-6246

Mr. LJ Edgcomb  
Five Point Communities Management, Inc.  
25 Enterprise, Suite 300  
Aliso Viejo, CA 92656

**RE: Third Amendment to August 4, 2016 Letter Agreement Between the City of Irvine and Heritage Fields El Toro, LLC Regarding Expenditure of Funds for Additional Sports Park Improvements**

Dear Mr. Edgcomb:

This letter constitutes a third amendment ("Third Amendment") to that Letter Agreement dated August 4, 2016, between the City of Irvine ("City") and Heritage Fields El Toro, LLC ("Heritage Fields"). Said August 4, 2016 Letter Agreement is referred to herein as the "Enhancement Agreement." Capitalized terms not defined in this Third Amendment shall have the meanings ascribed to such terms in the Enhancement Agreement, unless otherwise indicated.

The Enhancement Agreement provides for funding and procedures for the construction by Heritage Fields of additional Sports Park work in the Orange County Great Park, and reimbursement of Heritage Fields by the City for the cost of those improvements. The City and Heritage Fields desire to add additional improvements to be constructed under the Enhancement Agreement, which were not specified therein. The City and Heritage Fields agree that Heritage Fields will construct the additional improvements described in Exhibit E attached hereto, and the City will reimburse Heritage Fields for the cost of that construction, the estimated costs of which are also set forth in Exhibit E, subject to all of the conditions stated in the Enhancement Agreement.

Nothing set forth in this Third Amendment shall amend, modify or alter the terms of the Enhancement Agreement, except as expressly provided herein. This Third Amendment may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. Electronically transmitted signatures of this Third Amendment shall be valid as if manually signed.

Sincerely,

Sean Joyce  
City Manager

cc: Pete Carmichael, Director, Orange County Great Park

ATTACHMENT 2

Mr. LJ Edgcomb  
July 25, 2017  
Page 2

ACKNOWLEDGED AND AGREED TO ON BEHALF OF HERITAGE FIELDS

**HERITAGE FIELDS EL TORO, LLC,**  
a Delaware limited liability company

By: Heritage Fields El Toro Sole Member LLC,  
a Delaware limited liability company  
Its: Sole Member

By: Heritage Fields LLC,  
a Delaware limited liability company  
Its: Sole Member\

By: Five Point Heritage Fields, LLC,  
a Delaware limited liability company  
Its: Administrative Member

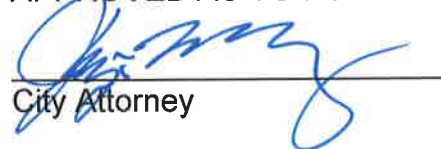
By: Five Point Operating Company, LLC,  
a Delaware limited liability company  
Its: Sole Member

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Mr. LJ Edgcomb  
July 25, 2017  
Page 3

**EXHIBIT "E"**

<b>Description of Improvement</b>	<b>Cost Change</b>
Additional Storage Rooms – Phase 2, 3, 4 Utility Enclosures	\$21,000
Revisions and Enhancements to IT Rooms – Phase 1	\$50,000
<b>Total</b>	<b>\$71,000</b>



2.3



## REQUEST FOR BOARD ACTION

**MEETING DATE:** JULY 25, 2017

**TITLE:** AWARD OF CONTRACT FOR WIRELESS MARKETING AND MANAGEMENT SERVICES AT THE ORANGE COUNTY GREAT PARK

A black ink signature of the Director of Orange County Great Park.

Director, Orange County Great Park

A blue ink signature of the City Manager.

City Manager

### RECOMMENDED ACTION

1. Recommend the City Council authorize the Orange County Great Park Director to execute a contract with 5 BARS Communities, LLC for wireless marketing and management services and subsequent sublicenses at the Orange County Great Park.
2. Recommend the City Council approve a budget adjustment to appropriate \$85,000 in the Orange County Great Park Fund for a wireless infrastructure master plan funded from future lease revenue.

### EXECUTIVE SUMMARY

On April 25, 2017, City Council and the Great Park Board directed staff to open negotiations with 5 BARS Communities, LLC (5 BARS) for wireless marketing services at the Great Park due to an immediate need to protect the City's proprietary interests in light of pending state regulatory and legislative changes. Due to a conflict of interest with Rutan & Tucker, LLP, the City engaged Telecom Law Firm PC (Telecom) to assist with negotiations and contracting with 5 BARS. Staff has concluded negotiations with 5 BARS and presents the proposed Great Park Wireless Marketing Agreement (Agreement) for consideration. A separate agreement for citywide wireless and marketing services is being presented to City Council for consideration. The two agreements were separated due to distinct funding sources and approval processes for Great Park Fund and General Fund contracting based on the rules established by Measure V, the Great Park Fiscal Transparency and Reforms Act.

Highlights of the Great Park Agreement are:

- Services provided by 5 BARS:
  - Conduct a Radio Frequency (RF) study
  - Prepare an inventory of potential Great Park assets for leasing to 5 BARS and sublicensing to third parties for wireless communications purposes
  - Develop a marketing plan for Great Park assets
  - Develop cellular facility design standards for City review and approval

- Provide, at the City's option, certain add-on services for cellular, Wi-Fi and fiber optics master planning for the Great Park
- Costs to the Great Park:
  - No up-front costs for services
  - Add on services, such as cellular, Wi-Fi and fiber optics master planning paid from the Great Park's share of gross revenues derived from licenses and sublicenses
- Term:
  - 5 year initial term with four 5-year optional renewal periods for a maximum term of 25 years
- Revenue Share:
  - 65 percent Great Park Fund and 35 percent 5 BARS for new wireless facilities on Great Park assets
  - 75 percent Great Park Fund and 25 percent 5 BARS for each additional wireless facility sublicense added to Great Park assets
  - 80 percent Great Park Fund and 20 percent 5 BARS for managing existing wireless facility agreements on Great Park property
  - 5 BARS retains compensation rights for the term of the new licenses and sublicenses, even after the Agreement ends
- Control of Great Park Assets:
  - City retains the right to determine which Great Park-owned property is marketed, including the right to make adjustments to approved marketing asset lists
  - City has final approval on rental amounts
  - All agreements will be subject to conditions that require 5 BARS and related third parties to respect the City's municipal functions in connection with the Great Park's assets (e.g., street lighting operations, traffic signal maintenance, right-of-way maintenance, City communications equipment)
  - City may terminate Agreement with 90-day notice
- Liability:
  - City's standard insurance and indemnification provisions
  - If marketing plan is terminated or insufficient revenue is generated, the Great Park is responsible for cost of add-on services

While there are no guarantees that this Agreement will preserve the Great Park's proprietary interests in its assets, it is the best attempt to carry out the Great Park Board's stated objective to maximize local control over proprietary assets while encouraging and accelerating the deployment of advanced communications technologies for the City's residents, businesses, and visitors. The Agreement also contemplates providing a wireless infrastructure master plan, originally sought through the Request for Proposals for wireless and telecommunication consulting services, to be paid from the Great Park's portion of the Revenue Share. The proposed budget adjustment of \$85,000 appropriates the amount for the master plan to be paid from future revenues.

## **COMMISSION/BOARD/COMMITTEE RECOMMENDATION**

Not applicable in light of the fact that the City Council and Great Park Board previously deliberated on the policy matter and provided direction to staff.

## **ANALYSIS**

On April 25, 2017, staff brought for consideration an award of contract and budget adjustment for wireless and telecommunication consulting services. The City Council and Great Park Board, on a 3-1-1 vote (Mayor Pro Tem/Boardmember Schott voted no; Councilmember/Boardmember Lalloway absent) cancelled the Request for Proposals (RFP) and directed staff to begin negotiating with 5 BARS for wireless marketing services as a sole source contract. Due to a conflict of interest with the City Attorney's Office, Rutan & Tucker, LLP, staff contracted with Telecom to assist with negotiations and contracting. Telecom has specific expertise in wireless facilities and has advised the City on many previous telecommunication-related matters.

The Agreement (Attachment 1) carries out the intent of the motion. The final Agreement includes several exhibits. Of specific importance is the license agreement (Exhibit A to the Agreement). Combined, the Agreement and license agreement provide the authority for 5 BARS to market and manage Great Park assets. The license agreement authorizes 5 BARS to enter into sublicenses for the Great Park's benefit, subject to specific limitations in the areas of interference, insurance, indemnification, and coordination with municipal functions. To ensure the delivery of a strategic comprehensive plan and to maximize the benefit to the Great Park, a master plan is included as Additional Services, to assist the Great Park in fulfilling the original intent of the RFP.

### Services

Once the Agreement is executed, 5 BARS will conduct a radio frequency (RF) study to identify the current state of wireless coverage within the Great Park. This will allow 5 BARS to identify wireless provider needs, and help identify potential new sites for wireless telecommunication facilities to address those needs. This will take 90 days.

In addition to benchmarking and identifying assets, 5 BARS will develop a marketing plan and actively market Great Park assets to wireless providers. 5 BARS will execute license agreements with the Great Park and wireless provider sublicenses with the City's approval.

### Additional Services

With each carrier needing their own individual sites, fiber optic, and supporting infrastructure, an uncoordinated process will lead to inefficient use of assets, duplicative construction, and detrimental impacts on Great Park infrastructure. 5 BARS will, at the City's request and approval, undertake a cellular, fiber optic, and infrastructure master plan to meet the competing demands for the Great Park finite assets and minimize service disruption caused by uncoordinated construction deployments. These services are described in Exhibit D of the Agreement. 5 BARS and the City will mutually agree on the scope, cost and timeframe for such studies prior to commencement. Staff estimates the



total cost for the master plan to be \$85,000. The cost of Additional Services will be paid from a portion of the Great Park's recurring revenue share, such that 5 BARS will be able to recoup its out-of-pocket costs for the add-on services over time. If the revenue share is insufficient to cover these expenses, or the Agreement is terminated prior to these services being paid for, the Great Park will be liable for the remaining cost of the services. A budget adjustment is needed to appropriate the expenditure and the corresponding lease revenue.

#### Costs

The Great Park will bear no up-front cost for any services. The RF study, inventory, marketing and leasing/licensing services will be paid for through the Revenue Share provisions of the Agreement. 5 BARS will be entitled to their portion of the Revenue Share for the term of the license agreements they implement. The costs of Additional Services will be paid from the Great Park's revenue share, unless the Great Park share is insufficient to cover the cost, in which case the Great Park will be responsible for payment.

#### Revenue

The Great Park Fund will receive the majority of lease payments via a revenue share plan. There are three levels of revenue share: for new facilities, collocations to new facilities and for existing facilities. For new facilities procured by 5 BARS, the Great Park Fund will receive a 65 percent share and 5 BARS will receive a 35 percent share of lease revenues. For collocations to such new facilities procured by 5 BARS, the Great Park Fund will receive a 75 percent share and 5 BARS will receive a 25 percent share. For existing wireless facility leases that 5 BARS manages, the Great Park Fund will receive an 80 percent share and 5 BARS will receive a 20 percent share. All compensation due to the Great Park is payable within 30 days after receipt by 5 BARS and subject to a late penalty. 5 BARS will be responsible for providing written annual reports containing summary information on all licenses, revenues and assets pertaining to the Agreement.

#### Control

While 5 BARS will make recommendations for the marketing of Great Park assets, the City will retain the right to determine which assets are marketed. The City will also retain the right to determine lease/license amounts, and reject proposed agreements that would be detrimental to the City's best interests. Once a license is entered into, 5 BARS will be entitled to its share of revenue for the life of the license, even if the Agreement ends. The City has the right to terminate the Agreement with a 90-day notice, and 5 BARS has the right to appeal any such termination to the Great Park Board. The City may also lease or license its own assets and add or withdraw assets from the inventory of 5 BARS authorized assets.

#### Liability

The Great Park will have no liability to pay 5 BARS any upfront costs for any services. The Great Park will have the obligation to pay for any pre-approved add-on services from its share of the revenue; provided, however, that if the revenue is insufficient the Great Park will be obligated to directly pay for the services. General City insurance and indemnification provisions are included in the Agreement, licenses and sublicenses.

### Update on Pending State Legislation and Impact on the Proposed Agreement

SB 649 (Hueso), which would define “small cells” as a permitted use not subject to discretionary review, require cities and counties to grant access to municipal property, and would mandate the rates, terms and conditions. This bill is currently pending before the State Assembly Committee on Appropriations. So far the bill has passed through two Assembly committees with amendments attached that will need to be approved by the Senate before it can be presented to the Governor. If the bill passes into law in this legislative session, its provisions would most likely take effect on January 1, 2018.

SB 649 contains a “grandfathering clause” that preserves agreements between local governments and wireless providers entered into prior to the bill’s effective date. The proposed Agreement with 5 BARS, and any subsequent sublicenses between 5 BARS and wireless providers entered prior to the effective date, would be “grandfathered in” and therefore not subject to state-mandated rates, terms, and conditions under SB 649.

The following considerations are noteworthy regarding the grandfathering clause:

- **Loophole:** The grandfathering clause contains a loophole in which agreements that can be terminated may be re-entered under the state-mandated rates, terms and conditions. Accordingly, if the proposed Agreement or any sublicenses are terminated for any reason, SB 649 would then become applicable to the sites covered by the proposed Agreement and any related sublicenses.
- **City/Great Park Assets Covered by the Proposed Agreement:** The marketing, licensing, and administrative services component in the proposed Agreement covers only those Great Park assets that the City identifies as available for marketing by 5 BARS, and then agrees to license to 5 BARS, who will then sublicense the assets to wireless providers. Although there is some speculation that the grandfathering clause would extend to all the City’s assets, the more conservative view is that the grandfathering provision would most likely be applicable only to those assets the City actually licenses to 5 BARS. Accordingly, assets not licensed to 5 BARS may still be subject to SB 649 even if the City enters into the proposed Agreement.

Lastly, SB 649 has evolved significantly as it winds its way through the legislative process. This analysis, provided by Telecom, may need to be adjusted if additional amendments are added.

### **ALTERNATIVES CONSIDERED**

The proposed Agreement is the result of negotiations as directed by the Great Park Board/City Council. Any changes to the Agreement would need to be negotiated with 5 BARS.

## **FINANCIAL IMPACT**

Prospective new revenue attained by this Agreement will be a net gain to the Great Park, but could vary widely based on pending state and federal regulations. The cost of the master plan, not-to-exceed \$85,000, will affect the Great Park's share of lease revenue received. 5 BARS will deduct 10 percent from the Great Park's recurring revenue share until its costs are fully recouped. In the event the recurring payments are insufficient to recoup the costs, the Great Park Fund will directly reimburse 5 BARS for the balance within 24 months from acceptance of the master plan.

**REPORT PREPARED BY**                      Khaled Tawfik, Chief Information Officer

## **ATTACHMENTS**

1. Wireless Marketing Agreement
2. Budget Adjustment

## WIRELESS MARKETING AGREEMENT BETWEEN THE CITY OF IRVINE AND 5 BARS COMMUNITIES

This Wireless Marketing Agreement (this “**AGREEMENT**”) is made and entered into on \_\_\_\_\_, 2017 (the “**Effective Date**”) between the City of Irvine, a chartered California municipal corporation (“**CITY**”), and XG Communities, LLC, a Delaware limited liability company dba 5 Bars Communities (“**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 chartered 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 wireless 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. Subject to the terms and conditions in this Agreement, CITY desires to engage 5 BARS to provide wireless consulting, management and development services related to the use of certain CITY assets within the “Orange County Great Park” portion of the CITY for the purpose of planning and implementing a marketing plan for Wireless Telecommunications Facilities (as that term is defined in Section 2, below), as further described herein.
- F. Subject to the terms and conditions in this Agreement, CITY desires to engage 5 BARS to proactively market certain 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. This Agreement may be renewed for four (4) five (5) year renewals subject to the written mutual consent of the PARTIES. The full potential term of the Agreement is twenty five (25) years (the “**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 Assets and within the public rights-of-way



within CITY's territorial boundaries ("**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 shall, in CITY's sole and absolute discretion, identify a list ("**Asset List**") of City Assets to be included in Services provided by 5 BARS. CITY may, in CITY's sole and absolute discretion, elect to add or remove one or more City Assets from the Asset List at any time by notifying 5 BARS in writing. Any changes by CITY to the Asset List shall be effective immediately upon receipt by 5 BARS. Notwithstanding the foregoing, the Scope of this Agreement shall be limited to only those Properties within the boundary containing the "Orange County Great Park" in the CITY.

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 potentially available City Assets (whether identified on the Asset List or not) 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 collectively referred to as the "**Master Plan**," while the items referred to in clauses (i), (ii), (iii) and (iv) in the preceding sentence are hereinafter collectively referred to as the "**Consulting Services**". 5 BARS shall deliver the Master Plan to CITY within ninety (90) days from the Effective Date. In addition to the Master Plan and Consulting Services, and at no additional cost to CITY, 5 BARS shall perform the services described **Exhibit "D"** (the "**Additional Services**"), attached hereto and incorporated herein by this reference. For the duration of the Agreement Term, 5 BARS shall also provide: (I) on a quarterly basis, a written report summarizing investments, technology changes, financial gains and provider plans; and (II) on an annual basis, ongoing RF analysis with written 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.

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 (collectively referred to as "**Wireless Services Providers**") to obtain their feedback and solicit their interest in locating and/or collocating on any existing and/or proposed site(s) included in the Master Plan. Except as otherwise provided in this Agreement, CITY grants 5 BARS the exclusive right to market, license, sublicense, and construct upon, at 5 BAR's sole cost and expense, City Assets identified on the then-current Asset List for the development of Wireless Telecommunications Facilities. 5 BARS shall market the Master Plan to all Wireless Services Providers equally, without any discrimination and/or favoritism between Wireless Services Providers, and 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.**

i. During the Agreement Term, 5 BARS may at any time request in writing that CITY make any City Assets available for the development of Wireless Telecommunications Facilities. CITY shall have sole and absolute discretion to approve or disapprove any such request. Upon a determination of approval, CITY shall notify 5 BARS of such determination in writing, and shall offer to enter into a license with 5 BARS, which license shall be in a form that is substantially consistent with the form set forth in **Exhibit "A"** (each a "**License**") attached hereto and incorporated herein by this reference.

ii. After the PARTIES fully execute a License, 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 the License to be executed for each designated City Asset (provided, however, that CITY may authorize 5 BARS to use a single License for multiple or all sites that are the subject of this Agreement).

iii. 5 BARS understands and acknowledges that CITY shall have the final determination as to whether to approve or disapprove 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 City Asset. 5 BARS further understands and acknowledges that it must comply (or cause compliance) with and receive (or cause receipt of) all necessary entitlements and permits from CITY, in CITY's regulatory capacity as a local public agency, including but not limited to complying (or causing compliance) with CITY's ordinances, regulations, guidelines, policies and procedures governing Wireless Telecommunications Facilities, all applicable building codes and public works requirements, as well as complying (or causing compliance) with and receiving (or causing receipt of) all necessary and applicable permits from any other regulatory agency, before 5 BARS undertakes (or causes the undertaking of) any construction, installation or other work subject to any prior permit or other regulatory approval on any 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 approved Asset List.

ii. City Assets intended for direct-marketing by the City for macrocell site development are identified in writing by the City ("***City Marketed Assets***"). City Marketed Assets shall be marketed, if at all, directly by the City only; marketing rights for such assets shall not be granted, delegated or contracted to any third party. CITY may, in its sole and absolute discretion, elect to add or remove one or more City Marketed Assets from the City Marketed Asset List at any time and notify 5 BARS in writing. Any changes by CITY to the City Marketed Asset List shall be effective immediately upon receipt by 5 BARS. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not prohibit or limit CITY's ability to assign or in any other manner transfer to any third parties any CITY interest, in whole or in part, in any CITY leases, licenses, and other agreements in existence as of the Effective Date.

iii. This Agreement shall not require 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. **[intentionally omitted from this Agreement]**

4. **Right of Entry Agreement.** Subject to the terms and conditions in this Agreement, 5 BARS shall have the right to analyze the suitability of the City Assets designated by CITY for 5 BARS' Services. CITY and 5 BARS shall enter into a Right of Entry Agreement for 5 BARS, substantially in the form shown in **Exhibit "B"** attached hereto and incorporated herein, and its employees, agents, contractors, engineers and surveyors to have the right to enter upon City Assets, upon reasonable written notice to CITY, to (i) inspect, conduct, perform and examine soil borings, drainage testing, material sampling, surveys and other geological or engineering tests or studies of City Assets; (ii) to apply for all licenses and permits required

for 5 BARS' use of the designated City Assets from all applicable governmental or regulatory entities; (iii) to do those things on or off the designated City Assets that, in the sole opinion of 5 BARS, are necessary to determine the physical condition of designated City Assets; (iv) and the feasibility or suitability of the designated City Assets 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 non-exclusive access to the designated City Assets for a defined and specific period of time as set forth in the Right of Entry Agreement. Notwithstanding anything in this Agreement or any Right of Entry Agreement to the contrary, CITY shall have the right to (a) refuse access to the designated City Assets when the requested access would interfere with CITY's municipal functions and (b) observe access to the designated City Assets and any on-site Due Diligence Investigation.

5. **CITY-Owned Wireless Telecommunications Facilities and CITY Licenses.** CITY shall retain ownership of all CITY leases, licenses, and other agreements in existence as of the Effective Date with wireless providers located within CITY's jurisdictional boundaries, provided, however that 5 BARS shall, upon CITY's written request, enter into a license in a form substantially similar to Exhibit "A" (but adapted for the purposes of 5 BARS' management of macrocell facilities on CITY's private property) to manage any such existing CITY lease, license, or other agreement with wireless providers ("***Managed Macrocells***"). 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.

6. **Compensation.**

a. CITY shall be entitled to **sixty-five percent (65%)** of recurring gross payments that are received by 5 BARS from sublicensees on new Wireless Telecommunications Facilities that are on City Assets licensed to 5 BARS pursuant to this Agreement. 5 BARS shall be entitled to keep the remaining **thirty-five percent (35%)** of recurring gross payments.

b. CITY shall be entitled to **seventy-five percent (75%)** of recurring gross payments that are received by 5 BARS as a result of the addition of one (1) or more Wireless Telecommunications Facilities to the site of a Wireless Telecommunications Facility. 5 BARS shall be entitled to keep the remaining **twenty-five percent (25%)** of recurring gross payments.

c. CITY shall be entitled to **eighty percent (80%)** of recurring gross payments that are received by either 5 BARS in connection with any Managed Macrocells. 5 BARS shall be entitled to keep the remaining **twenty percent (20%)** of recurring gross payments.

d. All sums payable to CITY under Section 6(a) and Section 6(b) are referred to as "***Compensation***". 5 BARS shall pay CITY all Compensation, without setoff, deduction or counterclaim, promptly upon receipt from the Wireless Service Provider or any other licensee or sublicensee of City Assets. Any Compensation not received by CITY within thirty (30) business days from the date the recurring gross payment is due to 5 BARS shall be subject to an immediately due and payable late charge equal to six percent (6%) of the outstanding amount. In addition to any late charge, any Compensation not received by CITY within sixty (60) calendar days from the date the recurring gross payment is due to 5 BARS shall bear interest at ten percent (10%) per annum or the highest rate permitted by law (whichever is greater).

e. **Reports.** Annual written reports reflecting the revenue generated by 5 BARS from City Assets and revenues generated to CITY will be provided by 5 BARS (each an "***Annual Report***"). Each Annual Report shall contain a list of all licenses, sublicenses and/or other agreements in connection with City Assets, and a ledger that shows the date and amount for all sums received by 5 BARS in connection

with said licenses, sublicenses and/or other agreements.

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 the reasonable 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; provided, however, that any such reimbursement shall be disclosed in the Annual Report immediately following 5 BARS' receipt of such sums. For the avoidance of doubt, no sums payable by a Wireless Service Provider to 5 BARS as reimbursement for expenses in connection with the implementation of this Agreement shall be added to or deducted from "gross payments" for purposes of Section 6.

8. **Default; Termination.**

a. 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 Section 15(h) of this Agreement. After receipt of such notice, the defaulting PARTY shall have ten (10) calendar 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 diligently pursues the cure to completion.

b. Subject to and without limiting the foregoing, the PARTIES agree that the following events shall constitute a default: (i) failure by 5 BARS to diligently market the Master Plan in accordance with Section 2(b), above, shall constitute a default under this Section 8; (ii) the appointment of a receiver due to 5 BARS' insolvency to take possession of all or substantially all of the assets of 5 BARS; (iii) an assignment by 5 BARS for the benefit of creditors; or (iv) any action taken by or against 5 BARS under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief laws, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within 60 calendar days.

c. In addition to all CITY's other termination rights, CITY may terminate this Agreement for any reason upon ninety (90) days written notice to 5 BARS; provided, however, that 5 BARS shall have a right to file an appeal to the City Council within such 90-day period. If 5 BARS fails to timely appeal, the termination will be effective upon the end of the 90-day period. If 5 BARS timely appeals, then the effective date of the termination will be stayed until the City Council reaches a final determination.

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, correspondence and documents relating to this Agreement and all accompanying licenses, sublicenses or other agreements between the PARTIES. 5 BARS shall maintain originals or, when originals are not available, copies of all records, books, papers, correspondence and documents relating to any licenses, sublicenses or other agreements between 5 BARS and any third parties in connection with City Assets. At all reasonable times, the PARTIES shall allow each other to have access to examine and audit such all records, books, papers, correspondence and documents. Additionally, 5 BARS shall allow CITY, and CITY shall have the right, at any time, to have access to and examine and audit records, books, papers, correspondence and documents relating to or evidencing 5 BARS' efforts to obtain sublicenses as such records, books, papers, correspondence and documents may or may not exist in the normal course of 5 BARS' business. CITY shall have the right to copy, carry away and disclose to others any and all records, books, papers, correspondence and other documents in connection with this Agreement to the extent that such copying, carrying away and disclosing is required by applicable laws or any judicial or administrative order.

10. **Indemnification.** 5 BARS shall indemnify, defend, and hold CITY and its employees, representatives, officers and agents (collectively hereinafter “***City Personnel***”) harmless from and against any and all actions, suits, claims, demands, judgments, attorney’s fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (hereinafter “***claims***” or “***liabilities***”) that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of 5 BARS, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of CITY and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of CITY or City Personnel in connection therewith: (a) 5 BARS shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney’s fees incurred in connection therewith; (b) 5 BARS shall promptly pay any judgment rendered against CITY or any City Personnel for any such claims or liabilities; and (3) in the event CITY and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, 5 BARS shall pay to CITY any and all costs and expenses incurred by CITY or City Personnel in such action or proceeding, together with reasonable attorney’s fees and expert witness fees.

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. Neither 5 BARS nor any 5 BARS employee, agent, representative or subcontractor shall be permitted to exercise any rights to access or market any City Assets under this Agreement until CITY receives copies of all insurance policies, endorsements and other documentation required under this Agreement, including without limitation **Exhibit “C”**. 5 BARS’ obligations under this Section 11 will survive the expiration or termination of this Agreement.

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 and tracking the development and use of Wireless Telecommunications Facilities. At the time this Agreement expires or terminates, all documents, reports, charts, graphs, diagrams, maps, things and other work product related to the Master Plan and the Additional Services shall become the CITY’s property.

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 and continue to do all acts and things in connection with any CITY

leases, licenses, and other agreements in existence as of the Effective Date. 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. 5 BARS expressly understands and agrees that the value and timely performance of the Services are consideration in exchange for the exclusivity granted in this Agreement.

d. Additional CITY Commitments. CITY acknowledges that it is using licensed software containing proprietary 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, as may be required by law 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 undertaken in CITY's proprietary capacity that unreasonably interferes with or unreasonably 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 and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of California. The parties agree that the venue for any litigation regarding this Agreement shall be in the California Superior Court for the County of Orange.

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

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

e. Good Faith. The PARTIES agree to exercise their reasonable best efforts and utmost good faith to effectuate all the terms and conditions of this Agreement, and to execute such further instruments and documents, in forms reasonably acceptable to both CITY and 5 BARS, as are necessary or appropriate to effectuate all of the terms and conditions of this Agreement.

f. Assignment. 5 BARS may assign this Agreement to a person or entity with demonstrated capacity to carry out 5 BARS' obligations under this Agreement after receiving written CITY consent, which shall not be unreasonably withheld or delayed. 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. Any assignment in violation this Section 15(f) shall be void.

g. 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.

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

CITY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

5 BARS:

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

With a copy to:

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

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

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

j. Waiver. No failure by either PARTY to insist upon the strict performance of any obligation of the other under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, will constitute a waiver of such breach. No acceptance by CITY of full or partial payment of Rent during the continuance of any such breach will constitute a waiver of such breach or of CITY's right to demand strict compliance with such term, covenant or condition, or operate as a waiver of any requirement of this Agreement. No express waiver by either PARTY of any default or the performance of any provision hereof will affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more waivers of a default or the performance of any provision hereof by either party will not be deemed to be a waiver of a subsequent default or performance. A PARTY's consent given in any instance under the terms of this Agreement will not relieve the other party of any obligation to secure the consenting PARTY's consent in any other or future instance under the terms of this Agreement.

k. 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.

l. Construction of Document. CITY and 5 BARS 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 5 BARS. Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all correlating forms of the terms (e.g., the definition of "indemnify" applies to "indemnity," "indemnification," etc.). The use of the term "including," "such as," or words of similar import when following any general or specific term, statement or matter may not be construed to limit the term, statement or matter to the stated terms, statements or matters, whether or not language of non-limitation, such as "including, but not limited to" and "including without limitation" are used. Rather, the stated term, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within the broadest scope of the term, statement or matter.

m. Partial Invalidity. If any provision of this Agreement or the application thereof to any person, entity or circumstance is invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this Agreement will be valid and be enforced to the full extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

n. Survival. Expiration or earlier termination of this Agreement will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement, or any provision of this Agreement that expressly survives termination or expiration, or by its sense or context contains an obligation that either should survive expiration or termination or would necessarily be performed after expiration or termination.

o. Attorneys' Fees. In the event that either PARTY prevails in an action to enforce its



rights under this Agreement, the prevailing PARTY shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.


[SIGNATURES APPEAR ON FOLLOWING PAGE]

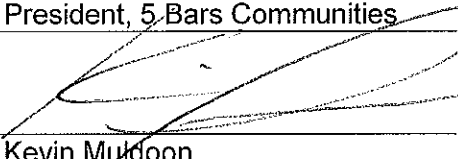
IN WITNESS WHEREOF, CITY and 5 BARS having read the foregoing and intending to be legally bound hereby, have executed this Agreement as of the day and year this Agreement is fully executed.

**CITY OF IRVINE**

By: \_\_\_\_\_  
Pete Carmichael  
Its: Director, Great County Great Park

**5 BARS  
XG COMMUNITIES, LLC, a Delaware  
limited liability company,  
dba 5 Bars Communities**

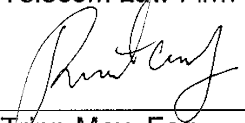
By: \_\_\_\_\_  
Monnie McGaffigan  
Its: President, 5 Bars Communities

By: \_\_\_\_\_  
Kevin Muldoon  
Its: VP & General Counsel, 5 Bars  
Communities

Attest:

By: \_\_\_\_\_  
Molly McLaughlin  
City Clerk

APPROVED AS TO FORM:  
Telecom Law Firm PC

\_\_\_\_\_  
Tripp May, Esq.

## **EXHIBIT A**

### **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT is made as of the date of the final signature below, by and between the City of Irvine, a chartered California municipal corporation, with an address at One Civic Center Plaza, Irvine, California 92623-9575 ("**Licensors**") and XG Communities, LLC, a Delaware limited liability company dba 5 Bars Communities, with an address at 19200 Von Karman Avenue, Suite 100, Irvine, California 92612 ("**Licensee**").

#### **1. Definitions.**

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

"**Approvals**" means all certificates, permits, licenses and other regulatory 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.

"**Defaulting Party**" means the party to this Agreement that has defaulted as provided for in Section 27 of this Agreement.

"**Due Diligence Investigation**" means to (i) inspect, conduct, perform and examine soil borings, drainage testing, material sampling, surveys and other geological or engineering tests or studies of Licensors' Property; (ii) to apply for all licenses and permits required for Licensee's use of the designated Licensors' Property from all applicable governmental or regulatory entities; (iii) to do those things on or off the designated Licensors' Property that, in the sole opinion of Licensee, are necessary to determine the physical condition of designated Licensors' Property; (iv) and the feasibility or suitability of the designated Licensors' Property for Licensee's use.

"**Harmful Interference**" means Interference (as defined in this Section 1) that endangers the functioning of a radio navigation service or other safety services, or seriously degrades, obstructs, or repeatedly interrupts a radio communication service operating in accordance with 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) polychlorinated biphenyls ("**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. §§ 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 *et seq.*, and the Clean Water Act, 33 U.S.C. §§ 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.

"**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 more particularly described and depicted in **Exhibit “A-1”** attached hereto and incorporated herein by this reference.

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

**“Licensee’s Notice Address”** means 19200 Von Karman Avenue, Suite 100, Irvine, California 92612.

**“Licensor”** means City of Irvine, a chartered California municipal corporation.

**“Licensor 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 Licensor, 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.

**“Licensor’s Notice Address”** means One Civic Center Plaza, Irvine, California 92623-9575.

**“Licensor’s Properties”** means those properties identified on Exhibit “A-1” (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 27 of this Agreement.

**“Release”** when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing on, under or about the Licensed Premises, other Licensor’s Property or the environment.

**“Rent”** means **sixty-five percent (65%)** of recurring Sublicense Revenue receivable by Licensee from Sublicensees pursuant to a license, sublicense or other similar agreement between Licensee and a Sublicensee for a Wireless Telecommunications Facilities constructed on the 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 actual, reasonable and documented expenses incurred by Licensee to the extent said reimbursement is not an offset of rent to be paid by Sublicensee(s)) payable to Licensee by all Sublicensee(s) using each of the Licensed Premises, whether pursuant to a license, sublicense or other similar agreement, as modified, renewed or assigned.

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

**“Subscription Agreement”** means the Wireless Marketing Agreement between the City of Irvine and 5 Bars Communities, dated \_\_\_\_\_, 2017.

**“Wireless Telecommunications Facilities”** or **“Wireless Facilities”** means the equipment and associated structures needed to transmit and/or receive electromagnetic signals. A Wireless Telecommunications Facility typically includes antennas, supporting structures, enclosures and/or cabinets housing associated equipment, cable, access roads and other accessories.

2. **Licensor’s Cooperation.** During the Term, Licensor, in its proprietary capacity as the owner of the Licensed Premises, shall: (i) reasonably 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. 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, in its proprietary capacity as the owner of the Licensed Premises, shall not knowingly do or permit anything that will unreasonably interfere with or negate any Approvals pertaining to the Wireless Telecommunications Facility(ies) 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 reasonably 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. **[intentionally omitted from this Agreement]**

4. **Term.** The term of this Agreement shall commence on \_\_\_\_\_, 2017 ("**Commencement Date**") and continue until the license for each Licensed Premises listed in Exhibit "A-1" has expired, unless earlier terminated as provided in this Agreement. The term of each license listed in Exhibit "A-1" shall begin on the commencement date listed for such Licensed Premises on Exhibit "B", and shall continue for a period not to exceed fifteen (15) years without Licensor's prior written consent, and with three (3) five (5) year options subject to the written mutual consent of the Licensor and Licensee. Licensee acknowledges that, upon the termination or expiration of any license for any Licensed Premises, Licensee shall have no further right, title or interest in such license for such Licensed Premises.

5. **Rent.**

a. **Licensee's Obligation to Pay Rent.** From and after the Commencement Date and effective upon Licensee's receipt of Sublicense Revenue or thirty (30) days after the Sublicense Revenue is due and payable to Licensee, Licensee shall pay Licensor Rent for the each of the Licensed Premises.

b. **Sublicenses.** Licensee shall exercise commercially reasonable discretion as to whether, and on what terms, to sublicense, license or otherwise allow use or 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 from or impact the operation of existing Licensor facilities or Licensor's municipal functions.
- ii. Licensee shall not interfere, or permit, allow or suffer others to interfere, with any traffic signal control and street lighting devices. Licensee shall immediately notify Licensor in the event that Licensor discovers any such interference.
- iii. Licensee shall ensure that the proposed Wireless Telecommunications Facility is not dependent on the resources dedicated to Licensor facilities, which includes without limitation electrical or telephone utilities.
- iv. Licensee shall propose new locations for Wireless Telecommunications Facilities to Licensor, and Licensor shall have the final authority to approve or reject said locations in its sole and absolute discretion.

- v. In the event of any damage to any Wireless Telecommunications Facility, Licensor shall not be obligated to repair or restore the Wireless Telecommunications Facility to normal operating conditions except to the extent that Licensor caused such damage. As between Licensee and Licensor, Licensee shall bear all other costs incurred to repair or restore Wireless Telecommunications Facilities; provided, however, the Licensee may allocate its responsibility under this sentence to a third party, including a Sublicensee, so long as such allocation does not cause any damage to go un-remediated for more than thirty (30) days (or sooner time if the damage threatens public safety).
- vi. In the event of any damage to Licensor's Properties caused by Licensee, its agents, employees, licensees, sublicensees, invitees, contractors or subcontractors, Licensee shall promptly restore Licensor facilities in a safe and efficient manner.
- vii. 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.
- viii. Any license, sublicense or other similar agreement between Licensee and any third party in connection with the Licensed Premises shall include the requirement that the Sublicensee must comply with the terms and conditions of this Agreement.
- ix. Any license, sublicense or other similar agreement between Licensee and any third party in connection with Licensed Premises shall include a provision substantially consistent with the following, relating to interference with Licensor 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. or as may be otherwise required in any order or declaratory ruling adopted by the FCC 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 Sublicense Agreement.*

*Licensee and Sublicensee agree to meet and confer with City on a case-by-case basis, and at the request of any Party and/or City, in the event that additions or changes to Wireless Telecommunications Facilities on the property cause incompatibilities with 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 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 FCC shall be on the Sublicensee.*

*The meet and confer procedure shall not be invoked unless absolutely necessary.*

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

- x. Any license, sublicense or other similar agreement between Licensee and any third party in connection with Licensed Premises shall include provisions substantially consistent with the following:

*Sublicensee shall indemnify, defend, and hold the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "**City Personnel**") harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (hereinafter "**claims**" or "**liabilities**") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Sublicensee, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Sublicense, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:*

*(1) Sublicensee shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.*

*(2) Sublicensee shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.*

*(3) In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Sublicense, Sublicensee shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.*

- xi. Any license, sublicense or other similar agreement between Licensee and any third party in connection with Licensed Premises shall include provisions substantially consistent with the following:

*Without limiting Sublicensee's indemnification obligations, Sublicensee shall procure and maintain, at its sole cost and for the duration of this Sublicense, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Sublicensee, its agents, representatives,*

*employees and/or subcontractors. In the event that Sublicensee subcontracts any portion of the work contemplated in this Sublicense, the contract between Sublicensee and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the contractor is required to maintain pursuant to this Section.*

*The policies and amounts of insurance required hereunder shall be as follows:*

*(1) **Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Sublicensee's performance of this Sublicense. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to: (a) name the City of Irvine and employees, representatives, officers and agents as additional insured for claims arising out of Sublicensee's performance of this Sublicense; and (b) provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.*

*(2) **Automobile Liability Insurance** with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles or coverage for "any auto." Such insurance shall be endorsed to: (a) name the City of Irvine and employees, representatives, officers and agents as additional insured for claims arising out of Sublicensee's performance of this Sublicense; and (b) provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.*

*(3) **Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of Sublicensee providing any service in the performance of this Sublicense. Such insurance shall be endorsed to waive the insurer's right of subrogation against the City of Irvine and employees, representatives, officers and agents. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement, unless your insurance carrier is the State of California Insurance Fund ("**SCIF**") and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.*

*(4) **Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Sublicense and delete any exclusion that may potentially affect the work to be performed. Sublicensee shall provide to Licensor and to the*

*City of Irvine a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of any work to be performed under this Sublicense and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to the City of Irvine by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.*

*A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City of Irvine for approval. Further, all Additional Insured Endorsements shall not: (1) be limited to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Sublicensee; (4) contain any other exclusion contrary to this Sublicense.*

*Any deductible in excess of \$50,000 and/or self-insured retentions must be approved in writing by the City of Irvine.*

*Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City of Irvine.*

*Sublicensee shall be responsible for causing any and all Sublicensee's contractors and subcontractors in connection with this Sublicense to maintain the same types and limits of coverage in compliance with this Sublicense, including naming the City of Irvine as an additional insured to the contractor's or subcontractor's policies.*

- xii. Licensee shall use best efforts to maximize Rent to Licensor and shall not enter into any license, sublicense or other similar agreement that contains any terms, conditions or other provisions that are manifestly designed or intended to defeat Licensor's interest in receiving Rent from such agreement.
- xiii. Licensee shall not permit or allow any Sublicensee to deduct, withhold or offset any sums from rent or other fees payable to Licensee for any reason whatsoever.
- xiv. 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. Licensors shall have no financial responsibility for any planning, construction and/or engineering costs associated with the implementation of this License Agreement.

b. Licensee may recover from Sublicensee(s) taxes, construction costs, installation costs, utilities or other expenses incurred by Licensee, to the extent said reimbursement is not an offset of rent to be paid by Sublicensee(s), and such recovered sums shall not be included in the computation of Rent.

7. **Licensed Premises; Survey.** Within sixty (60) days after any construction, installation or other alteration to the Licensed Premises or the personal property thereon, Licensee shall provide Licensors with a copy of an as-built survey for each Licensed Premises, which shall depict and identify the boundaries of each Licensed Premises and any easements that relate to or affect the Licensed Premises. The description of the each Licensed Premises set forth in Exhibit "A-1" shall control in the event of any discrepancies.

8. **Access.** After the Commencement Date and after Licensee delivers to Licensors all required insurance certificates, endorsements and other documentation required under Section 13, Licensors grants to Licensee and Licensee's employees, agents, contractors, sublicensees, licensees and their employees, agents and contractors non-exclusive access to land located within Licensors's Property to Licensee, for the purpose of constructing, repairing, maintaining, replacing, demolishing and removing the facility to be located upon each Licensed Premises as necessary to obtain or comply with any Approvals, but subject to the reasonable rules and regulations that Licensors may adopt and from time to time amend upon written notice to Licensee (the "**Access License**"). Licensors shall grant to Licensee or Licensee's public utility provider a non-exclusive right-of-way in a location within the Access License and mutually acceptable to Licensors, Licensee and Licensee's public utility provider for the purpose of providing utilities to the Licensed Premises. Licensee may request and Licensors shall not unreasonably deny or withhold the granting of an alternate Utility License either to Licensee or directly to the public utility at no cost and in a location acceptable to Licensors, 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 term of this Agreement and thereafter for a reasonable period of time necessary for Licensee to remove the Wireless Facilities.

9. **Use of Property.** The Licensed Premises and the Access/Utility Licenses shall be used for the purpose of constructing, maintaining and operating Wireless Facilities, for uses reasonably incidental thereto and for no other purposes. All Wireless Facilities shall be constructed at no expense to Licensors. All Wireless Facilities, inclusive of security fences (when permitted by Licensors), shall comply with the requirements of the City of Irvine Municipal 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 clean and safe condition. It is the intent of the parties that Licensee's Wireless Facilities shall not constitute a fixture. Notwithstanding the foregoing, the Scope of this Agreement shall be limited to only those Properties within the boundary containing the "Orange County Great Park" in the CITY.

10. **Removal of Obstructions.** Licensee has the right to remove obstructions from Licensors's Property, subject to Licensors's prior approval, which approval shall be requested in writing by Licensee and shall not be unreasonably withheld, conditioned or delayed by Licensors. 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. Licensee covenants and agrees that neither Licensee nor any of its employees, contractors, subcontractors, agents or Sublicensees shall cause or permit any Hazardous Material to

be brought upon, kept, used, stored, generated, disposed of or Released in, on, under or about the Licensed Premises or any other part of Licensors' Property, or transported to or from any Licensors' Property in violation of Environmental Laws, except that Licensee and its Sublicensees may use small quantities of Hazardous Materials as needed for routine operation, cleaning and maintenance of the Wireless Facilities that are customarily used for routine operation, cleaning and maintenance of such equipment and so long as all such Hazardous Materials are contained, handled and used in compliance with Environmental Laws. Licensee shall immediately notify Licensors if and when Licensee learns or has reason to believe any Release of Hazardous Material has occurred in, on, under or about the License Area or other Licensors' Property.

b. [intentionally omitted from this Agreement]

c. Licensee's Environmental Indemnity. If Licensee breaches any of its obligations contained in this Section 11, or if any act, omission, or negligence of Licensee or any of its employees, contractors, subcontractors, agents or Sublicensees results in any contamination of the Licensed Premises or other Licensors' Property, or in a Release of Hazardous Material from, on, about, in or beneath any part of the Licensed Premises or other Licensors' Property, or the violation of any Environmental Law, then Licensee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless Licensors, including its employees, representatives, officers and agents, and their respective successors and assigns from and against any and all claims (including damages for decrease in value of the Licensed Premises or other Licensors' Property, the loss or restriction of the use of usable space in the Licensed Premises or other Licensors' Property and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and related costs) arising during or after the term of this Agreement relating to such Release or violation of Environmental Laws; provided, however, Licensee shall not be liable for any claims to the extent such Release was caused by the gross negligence or willful misconduct of the Licensors or its employees, representatives, officers and agents. Licensee's indemnification obligation includes costs incurred in connection with any activities required to investigate and remediate any Hazardous Material brought onto the Licensed Premises or other Licensors' Property by Licensee or any of its employees, contractors, subcontractors, agents or Sublicensees and to restore the Licensed Premises or other Licensors' Property to its condition prior to Licensee's introduction of such Hazardous Material or to correct any violation of Environmental Laws. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Licensors and the other indemnified parties from any claim that actually or potentially falls within this indemnity provision even if the allegations supporting the claim are or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Licensee by the indemnified party and continues until the claim is finally resolved. Without limiting the foregoing, if Licensee or any of its employees, contractors, subcontractors, agents or Sublicensees causes the Release of any Hazardous Material on, about, in, or beneath the Licensed Premises or other Licensors' Property, then in any such event Licensee shall, immediately, at no expense to any indemnified party, take any and all necessary actions to return the Licensed Premises or other Licensors' Property, as applicable, to the condition existing prior to the Release of any such Hazardous Materials on the Licensed Premises or other Licensors' Property or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused by the gross negligence or willful misconduct of Licensors or its employees, representatives, officers and agents. Licensee shall afford Licensors a full opportunity to participate in any discussions with regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise or proceeding involving Hazardous Material.

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 Wireless Facilities. 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; provided, however, that Licensee shall either pay any challenged tax or assessment or post any required bond as a prerequisite to Licensee's challenge.

13. **Insurance.** At all times during the performance of its Due Diligence Investigation and during the term of this Agreement, Licensee, at its sole expense, shall obtain and keep in force the required insurance as set forth in the attached **Exhibit "A-2"**. 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 "2" 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. Neither Licensee, any Sublicensee or any party acting for them shall be permitted to exercise any rights to access Licensor's Property under this Agreement until Licensor receives copies of all insurance policies, endorsements and other documentation required under this Agreement, including without limitation Exhibit "C". Licensor's obligations under this Section 13 will survive the expiration or termination of this Agreement.

14. **Indemnification.** Licensee shall indemnify, defend, and hold Licensor and its employees, representatives, officers and agents (collectively hereinafter "**City Personnel**") harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (hereinafter "**claims**" or "**liabilities**") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Licensee, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of Licensor and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of Licensor or City Personnel in connection therewith: (a) Licensee shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith; (b) Licensee shall promptly pay any judgment rendered against Licensor or any City Personnel for any such claims or liabilities; and (3) in the event Licensor and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Licensee shall pay to Licensor any and all costs and expenses incurred by Licensor or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

15. **Right to Audit.** During the term of this Agreement and for a three (3) year period after this Agreement expires or terminates, Licensee shall maintain originals, or when originals are not available copies, of all records, books, papers and documents relating to this Agreement and all accompanying agreements between Licensee and Sublicensees (subject to Licensee's right to reasonably redact such records, books, papers and documents for information other than financial information pertinent to Rent to the extent such non-Rent information is proprietary, confidential or constitute a trade secret). At all reasonable times, Licensee shall allow Licensor and its attorneys, accountants, representatives, agents or other duly authorized designee to have access to, examine 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. Licensor shall have the right to copy, carry away and disclose to others any and all records, books, papers, correspondence and other documents in connection with this Agreement to the extent that such copying, carrying away and disclosing is required by applicable laws or any judicial or administrative order.



16. **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 Wireless Facilities, Licensors' Property or to the Licensed Premises resulting from any fire or other casualty of the kind covered by property insurance policies with extended coverage, regardless of whether or not, or in what amount, such insurance is carried by the parties. All policies of property insurance carried by either party for the Wireless Facilities, Licensors' Property or the Licensed Premises shall include a clause or endorsement denying to the insurer rights by way of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss.

17. **Eminent Domain.** If Licensors receive notice of a proposed taking by eminent domain of any part of the Licensed Premises or the Access/Utility Licenses, Licensors will notify Licensee of the proposed taking within five (5) days of receiving said notice and Licensee will have the option to: (i) terminate this Agreement upon written notice to Licensors; 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.

18. **[intentionally omitted from this Agreement]**

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

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

21. **Recording.** To the extent that this Agreement covers any Licensors' Property outside the public rights-of-way, Licensee shall have the right to record a memorandum, in a form reasonably acceptable to both Licensors and Licensee, of the Agreement with the County of Orange Recorder's Office. Licensors shall execute and deliver each such memorandum, for no additional consideration, promptly upon Licensee's request. Licensee shall be solely responsible for all costs associated with recording any such memorandum.

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

23. **Interference with Licensee's Business.** Licensee shall have the exclusive right to construct, install and operate Wireless Telecommunications Facilities that emit radio frequencies on Licensors' Property that contains the Licensed Premises. Licensors agrees that it will not permit the construction, installation or operation on Licensors' Property that contains the Licensed Premises 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; provided, however, that the limitations in this Section 23 shall not be applicable to wireless telecommunication facilities, equipment or devices installed by the City of Irvine in connection with municipal and/or public safety purposes. Each of the covenants made by Licensors in this Section is a covenant running with the land for the benefit of the Licensed Premises.

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

25. **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. The cost to obtain such non-disturbance agreement shall be paid by Licensee if the mortgage or other encumbrance predates this Agreement.

26. **Title Insurance.** Licensee, at Licensee's option, may obtain title insurance on each of the Licensed Premises and Access/Utility Licenses outside the public rights-of-way at Licensee's sole cost and expense. Licensor shall reasonably cooperate with Licensee's efforts to obtain title insurance by executing documents or obtaining requested documentation as required by the title insurance company.

27. **Default.**

a. Notice of Default; Cure Period. If there is a default by Defaulting Party with respect to any of the provisions of this Agreement or the Defaulting Party's obligations under this Agreement, 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 diligently pursues the cure to completion. The Non-Defaulting Party may not maintain any action or effect any remedies for the 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. [intentionally omitted from this Agreement]

c. [intentionally omitted from this Agreement]

d. No Consequential Damages. Without limiting any indemnification obligations of Licensor or Licensee or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Licensor and Licensee fully release, waive and discharge forever any and all claims against the other for consequential and incidental damages arising out of this Agreement, including without limitation any lost profits arising from the disruption to Wireless Telecommunications Facilities, any interference with uses conducted by Licensee under this Agreement, regardless of the cause, and whether or not due to the active or passive negligence or willful misconduct, and covenants not to sue for such damages the other party or their respective employees, directors, officers, officials or agents.

28. **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 from performing or fulfilling an obligation under this Agreement, said party is not in default, under Section 27 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. Licensor and Licensee shall prepare and sign an appropriate and mutually acceptable document acknowledging any extension of time under this Section 28.

29. **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 in the California Superior Court for the County of Orange.

30. **Assignment, Sublease, Licensing and Encumbrance.** Licensee may assign this Agreement to a person or entity with demonstrated capacity to carry out Licensee's obligations under this Agreement, subject to Licensors' prior written consent, which shall not be unreasonably withheld or delayed. Subject to the terms and conditions in this Agreement and Licensors' prior written consent, which Licensors shall not be entitled to condition on any additional monetary consideration, Licensee may enter into sublicenses to allow a Sublicensee to utilize and operate from the Licensed Premises, so long as such Sublicensee is a provider of services that utilize Wireless Telecommunications Facilities.

31. **Miscellaneous.**

a. Entire Agreement. Licensors and Licensee agree that this Agreement, together with that certain Wireless Marketing Agreement dated \_\_\_\_\_, 2017 between Licensors and Licensee, contain all of the agreements, promises and understandings between Licensors and Licensee with regard to the Licensed Premises. No oral agreements, promises or understandings shall be binding upon either Licensors or Licensee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.

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

c. Construction of Document. Licensors and Licensee acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said party being the drafter and that this Agreement shall not be construed as a binding offer until signed by Licensee. Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all correlating forms of the terms (e.g., the definition of "indemnify" applies to "indemnity," "indemnification," etc.). The use of the term "including," "such as," or words of similar import when following any general or specific term, statement or matter may not be construed to limit the term, statement or matter to the stated terms, statements or matters, whether or not language of non-limitation, such as "including, but not limited to" and "including without limitation" are used. Rather, the stated term, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within the broadest scope of the term, statement or matter.

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

e. Partial Invalidity. If any provision of this Agreement or the application thereof to any person, entity or circumstance is invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this Agreement will be valid and be enforced to the full extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

f. IRS Form W-9. Licensors agree to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Licensee. In the event that Licensors' Property is transferred, the succeeding Licensors shall have a duty at the

time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the succeeding Licensor. Licensor's failure to provide the IRS Form W-9 within thirty (30) days after Licensee's request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from Rent payments.

g. Attorneys' Fees. In the event that either party prevails in an action to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

h. Survival. Expiration or earlier termination of this Agreement will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement, or any provision of this Agreement that expressly survives termination or expiration, or by its sense or context contains an obligation that either should survive expiration or termination or would necessarily be performed after expiration or termination.

i. Waivers. No failure by either party to insist upon the strict performance of any obligation of the other under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, will constitute a waiver of such breach. No acceptance by Licensor of full or partial payment of Rent during the continuance of any such breach will constitute a waiver of such breach or of Licensor's right to demand strict compliance with such term, covenant or condition, or operate as a waiver of any requirement of this Agreement. No express waiver by either party of any default or the performance of any provision hereof will affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more waivers of a default or the performance of any provision hereof by either party will not be deemed to be a waiver of a subsequent default or performance. A party's consent given in any instance under the terms of this Agreement will not relieve the other party of any obligation to secure the consenting party's consent in any other or future instance under the terms of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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.

“LICENSOR”  
City of Irvine,  
a chartered California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

“LICENSEE”  
XG COMMUNITIES, LLC,  
a Delaware limited liability company,  
dba 5 BARS COMMUNITIES

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**EXHIBIT “A-1”**

**LICENSED PREMISES & LICENSOR’S PROPERTY**



## **EXHIBIT "A-2"**

### **INSURANCE REQUIREMENTS**

Without limiting Licensee's indemnification obligations, Licensee shall procure and maintain and shall cause all contractors, subcontractors and Sublicensees to procure and maintain (Licensee and/or sublicensees shall be referred to hereinafter, as the context dictates, as "**Contractor**"), prior to any activities on Licensor's Property in connection with the Agreement, for the duration of the Agreement and any applicable sublicense entered into under and/or pursuant to the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Licensee, a sublicensee, its agents, representatives, or employees as provided below:

#### **Insurance Coverage Required**

The policies and amounts of insurance required hereunder shall be as follows:

1. **Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to: (1) name the City of Irvine and employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement; and (b) provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.
2. **Automobile Liability Insurance** with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles or coverage for "any auto." Such insurance shall be endorsed to: (a) name the City of Irvine and employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement; and (b) provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.
3. **Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of Contractor providing any service in the performance of this Agreement. Such insurance shall be endorsed to waive the insurer's right of subrogation against the City of Irvine and employees, representatives, officers and agents. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement, unless your insurance carrier is the State of California Insurance Fund ("SCIF") and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.
4. **Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may

potentially affect the work to be performed. Contractor shall provide to Licensor and to the City of Irvine a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of any work to be performed under this Agreement and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to the City of Irvine by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by Licensor. At the option of Licensor, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Licensor, 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 Licensor, 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 Licensor, 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 Licensor, its officers, employees and volunteers. Any insurance or self-insurance maintained by Licensor, 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 Licensor, 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 Licensor.
6. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City of Irvine for approval. Further, all additional insured endorsements shall not: (1) be limited to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Sublicensee; (4) contain any other exclusion contrary to this Sublicense.

### **Acceptability for Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law, unless otherwise acceptable to Licensor.

### **Verification of Coverage**

Contractor shall furnish Licensor 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 Licensor. All endorsements are to be received and approved by Licensor before work commences. As an alternative to Licensor'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**

5 BARS shall be responsible for causing any and all contractors and subcontractors in connection with this Agreement to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City of Irvine as an additional insured to the contractor's or subcontractor's policies. 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.

## **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 Irvine, a chartered California municipal corporation, with an address at One Civic Center Plaza, Irvine, California 92623-9575 (“**Grantor**”) and 5 Bars Communities a dba of XG Communities, LLC, a Delaware limited liability company, with an address at 19200 Von Karman Avenue, 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 within the boundary containing the “Orange County Great Park” in the CITY (the “**Property**”).
- B. Grantor and Grantee have entered into that certain Wireless Marketing Agreement dated \_\_\_\_\_, 2017 (“**Marketing Agreement**”) pursuant to which Grantee has agreed to provide certain consulting, marketing and management services relating to the placement of Wireless Telecommunications Facilities on some of the Property.
- C. Subject to the terms and conditions in the Marketing Agreement, which includes without limitation Grantee’s delivery of all required insurance certificates, endorsements and other documentation, Grantor and Grantee have agreed to enter into this Agreement so that Grantee may enter upon the Property, upon 24-hour written notice to Grantor, 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 are reasonably 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.** Subject to the terms and conditions in this Agreement and the Marketing Agreement, 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 temporarily use the Property, as is reasonable and necessary, for the express and sole purpose of conducting, at Grantee’s sole expense, the Due Diligence Investigation.
- Term.** The right of entry granted pursuant to Section 1, above, shall be for a limited term, commencing as of the date of this Agreement and expiring upon the expiration or earlier termination of the Marketing Agreement.
- Entry at Own Risk; No Duty to Warn.** Grantee and its agents, employees, contractors, subcontractors and volunteers shall access, enter and use the Property at their own risk and peril. Grantor shall have no duty to inspect the Property (or any portion thereof) and no duty to warn of any latent or patent defect, condition or risk which may exist on the Property.

4. **Liens.** Grantee shall not permit to be placed against the Property, or any part thereof, any mechanics', materialmen's, contractors' or other liens (collectively, "**Liens**") arising out of the acts or omissions of the Grantee or its agents, employees, contractors, subcontractors or volunteers hereunder. Grantee shall inform each and every contractor and material supplier that provides any work, service, equipment or material to Grantee in any way connected with Grantee's use of the Property that the Property is public property and is not subject to mechanics' liens or stop notices for equipment or other materials or services provided for the Due Diligence Investigation. 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. In the event that any Liens are placed on the Property, Grantee shall, at Grantee's sole cost and expenses, remove or cause the removal of all such Liens within.

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 substance which is 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; a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products; polychlorinated biphenyls ("**PCBs**"); lead; asbestos; flammable explosives; infectious materials; or radioactive materials (collectively, "**Hazardous Materials**") on or onto the Property. If Grantee breaches any of its obligations contained in this Section 5, or if any act, omission, or negligence of Grantee or any of its employees, contractors, subcontractors or agents results in any contamination of the Property, or in any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing on, under or about Property or the environment ("**Release**") of Hazardous Material from, on, about, in or beneath any part of the Property, or the violation of any environmental law, then Grantee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless Grantor, including the its employees, representatives, officers and agents, and their respective successors and assigns from and against any and all claims (including damages for decrease in value of the Property, the loss or restriction of the use of usable space in the Property and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and related costs) arising during or after the Term of this Agreement relating to such Release or violation of environmental laws; provided, however, Grantee shall not be liable for any claims to the extent such Release was caused by the gross negligence or willful misconduct of the Licensor or its employees, representatives, officers and agents. Grantee's indemnification obligation includes costs incurred in connection with any activities required to investigate and remediate any Hazardous Material brought onto the Property by Grantee or any of its employees, contractors, subcontractors or agents and to restore the Property to its condition prior to Grantee's introduction of such Hazardous Material or to correct any violation of environmental laws. Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Grantor and the other indemnified parties from any claim that actually or potentially falls within this indemnity provision even if the allegations supporting the claim are or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Grantee by the indemnified party and continues until the claim is finally resolved. Without limiting the foregoing, if Grantee or any of its employees, contractors, subcontractors or agents causes the Release of any Hazardous Material on, about, in, or beneath the Property, then in any such event Grantee shall, immediately, at no expense to any indemnified party, take any and all necessary actions to return the Property, as applicable, to the condition existing prior to the Release of any such Hazardous Materials on the Property or otherwise abate the Release in accordance with all environmental laws, except to the extent such Release was caused by the gross negligence or willful misconduct of Grantor or its employees, representatives, officers and agents. Grantee shall afford Grantor a full opportunity to participate in any discussions with regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise or proceeding involving Hazardous Material.

6. **Restoration of the Property.** Grantee shall, at its own cost and expense, restore the Property to the same condition in which it was prior to Grantee's entry. In the event that Grantee's Due Diligence Investigation continues for more than one (1) day, Grantee shall not leave the Property in an unsafe condition.

7. **Indemnification by Grantee.** Grantee shall indemnify, defend, and hold Grantor and its employees, representatives, officers and agents (collectively hereinafter "**City Personnel**") harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (hereinafter "**claims**" or "**liabilities**") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Grantee, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of Grantor and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of Grantor or City Personnel in connection therewith: (a) Grantee shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith; (b) Grantee shall promptly pay any judgment rendered against Grantor or any City Personnel for any such claims or liabilities; and (3) in the event Grantor and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Grantee shall pay to Grantor any and all costs and expenses incurred by Grantor or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees. Notwithstanding the foregoing, Grantee shall have no obligation to indemnify Grantor 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, or that any such permission or consent has been obtained.

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.** This Agreement and the Marketing Agreement contain the entire agreement between the Parties. No representations or covenants of any kind other than those expressly contained herein and in the Marketing Agreement 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 Agreement or the application thereof to any person, entity or circumstance is invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this Agreement will be valid and be enforced to the full extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

12. **Permits.** Prior to beginning any Due Diligence Investigation, Grantee, at its sole expense, shall obtain all necessary permits to conduct the Due Diligence Investigation.

13. **All Expenses To Be Borne by Licensee.** Grantee shall bear any and all costs and expenses associated with the rights granted to Grantee to conduct the Due Diligence Investigation, or any costs or expenses incurred by Grantor relating to Grantee's use of the Property in the performance of the Due Diligence Investigation.

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

15. **Governing Law; Venue; Attorneys' Fees.** This Agreement shall be governed in accordance with the laws of the State of California. The Parties agree that the venue for any litigation regarding this Agreement shall be in the California Superior Court for the County of Orange. In the event that either Party prevails in an action to enforce its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action

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.

17. **Waivers.** No failure by either Party to insist upon the strict performance of any obligation of the other under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, will constitute a waiver of such breach. No acceptance by Grantor of full or partial payment of Rent during the continuance of any such breach will constitute a waiver of such breach or of Grantor's right to demand strict compliance with such term, covenant or condition, or operate as a waiver of any requirement of this Agreement. No express waiver by either Party of any default or the performance of any provision hereof will affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more waivers of a default or the performance of any provision hereof by either party will not be deemed to be a waiver of a subsequent default or performance. A Party's consent given in any instance under the terms of this Agreement will not relieve the other party of any obligation to secure the consenting Party's consent in any other or future instance under the terms of this Agreement.

18. **Construction of Document.** Grantor and Grantee acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said Party being the drafter. Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all correlating forms of the terms (e.g., the definition of "indemnify" applies to "indemnity," "indemnification," etc.). The use of the term "including," "such as," or words of similar import when following any general or specific term, statement or matter may not be construed to limit the term, statement or matter to the stated terms, statements or matters, whether or not language of non-limitation, such as "including, but not limited to" and "including without limitation" are used. Rather, the stated term, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within the broadest scope of the term, statement or matter.

19. **Insurance.** Prior to commencing any Due Diligence Investigation on the Property, Grantee shall deliver to Grantor all insurance certificates, endorsements and other documentation required under the Marketing Agreement. Notwithstanding anything in this Agreement or the Marketing Agreement to the contrary, Grantee shall have no right to enter any Property or conduct any activities on any Property until and unless Grantee performs its obligations under this Section 19.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



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

“GRANTOR”  
City of Irvine,  
a chartered California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

“GRANTEE”  
XG COMMUNITIES, LLC,  
a Delaware limited liability company,  
dba 5 Bars Communities

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting 5 BARS' indemnification obligations, 5 BARS shall procure and maintain and shall cause all contractors, subcontractors and Sublicensees to procure and maintain (5 BARS and/or sublicensees shall be referred to hereinafter, as the context dictates, as "**Contractor**"), prior to any activities on City Property in connection with the Agreement, for the duration of the Agreement and any applicable sublicense entered into under and/or pursuant to the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the 5 BARS, a sublicensee, its agents, representatives, or employees as provided below:

#### Insurance Coverage Required

The policies and amounts of insurance required hereunder shall be as follows:

1. **Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to: (1) name the City of Irvine and employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement; and (b) provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.
2. **Automobile Liability Insurance** with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles or coverage for "any auto." Such insurance shall be endorsed to: (a) name the City of Irvine and employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement; and (b) provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.
3. **Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of Contractor providing any service in the performance of this Agreement. Such insurance shall be endorsed to waive the insurer's right of subrogation against the City of Irvine and employees, representatives, officers and agents. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement, unless your insurance carrier is the State of California Insurance Fund ("SCIF") and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.
4. **Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed. Contractor shall provide to Licensor and to the City of Irvine a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy

endorsements no later than five (5) business days prior to commencement of any work to be performed under this Sublicense and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to the City of Irvine by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

### **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.
6. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City of Irvine for approval. Further, all additional insured endorsements shall not: (1) be limited to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Sublicensee; (4) contain any other exclusion contrary to this Sublicense.

### **Acceptability for Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines

brokers under applicable provisions of the California Insurance Code or any federal law, 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**

5 BARS shall be responsible for causing any and all contractors and subcontractors in connection with this Agreement to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City of Irvine as an additional insured to the contractor's or subcontractor's policies. 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.

## **EXHIBIT “D”**

### **ADDITIONAL SERVICES TO BE PROVIDED BY 5 BARS**

#### **Inventory of Existing sites by Carrier at the Orange County Great Park (within 60 days of commencement).**

- Develop a database and base map with carrier, address and geo-coordinates, project description, date of approved, type of facility, pictures of existing site, link to resolution (conditions of approval) or letter approving the site.

#### **Inventory of City-owned Property at the Orange County Great Park (within 60 days of commencement).**

- Develop a database and a base map of potential wireless facility sites. Database to include: individual sites, description of site, suitability for wireless facility, type of potential wireless facility, and description of potential issues.
- Develop a process for reviewing and approving sites, including leasing criteria, design standards, and public review procedures.

#### **Develop Master Plan and Evaluate Cellular Opportunities at the Orange County Great Park**

- Develop a process for reviewing and approving criteria for collocation or modification of service facilities.
- Develop proposed aesthetic threshold levels for equipment that would be used in the proposed strategy to guide the approval process (e.g. administrative approval versus public hearing).
- Provide guidelines for reviewing carrier and network proposals for equipment placement.
- Recommend a process to handle third party operator site leasing and locating.
- Analyze the advantages and disadvantages of the various business models used to deploy and manage wireless infrastructure and make a recommendation.
- Potential business options should include the City-owned and managed, privately-owned and managed, and City-private partnership (hybrid) models.

#### **Technological Solutions for Future Wireless Network in Public ROW (within 90 days of commencement).**

- Prepare an inventory of streetlights, traffic signals or other vertical elements in the ROW.
- Prepare an inventory of underground fiber and conduit.
- Prepare a technical analysis/feasibility study of potential ownership models for streetlights (e.g. SCE, City, third party, or combination) and assist the City in negotiations to acquire SCE streetlights or other vertical elements in the ROW.
- Prepare a technical analysis/feasibility study of using existing infrastructure and fiber to enhance wireless communication.
- Analyze the advantages and disadvantages of the various business models used to deploy and manage wireless infrastructure and make a recommendation. Potential business options. This should include the City-owned and managed, privately owned and managed, and City-private partnership (hybrid) models.

All technical analysis should account for the future sizing/scaling of the network to minimize community disruption. The plan analysis should also account for phasing-in or phasing-out of wireless facilities when

technological advances occur.

### **Zoning Ordinance Amendments for ROW facilities.**

- Develop proposed design standards including:
  - maximum pole heights and diameters;
  - maximum size of antenna panels and radomes;
  - location of radio equipment;
  - location of meter pedestals or standards to require flat rate power or pole-mounted meters to discourage new meter pedestals;
  - colors and materials to match surrounding poles;
  - underground cabling requirements;
  - measures to preclude exposed wires; and
  - ground-vault standards, including above-ground vent standards.

### **Changes to City Application Requirements/Procedures/Application Forms/Intake Procedures**

- Develop proposed standardized application forms/lease agreements. Documents should cover:
  - liability;
  - rights of access;
  - traffic control measures;
  - hours of operation for construction and maintenance;
  - fees;
  - insurance Requirements;
  - terms; and
  - measures to re-open when new micro-scale technologies become available.

### **Optional Fiber Master Plan Services**

At the City's option, and subject to the terms and conditions in this section, 5 Bars shall perform the following tasks:

- **Develop Master Plan and Evaluate Cellular and Wi-Fi Opportunities at the Orange County Great Park**
  - Evaluate current and future wireless infrastructure requirements to support cellular communications, Wi-Fi communications, and future technologies.
  - Develop wireless security and reliability criteria.
  - Develop an implementation strategy with cost estimates to maintain and expand capabilities.
  - Evaluate and identify opportunities for future wireless needs.
  - Propose alternative technologies/options and highlight strengths and weaknesses.
  - Develop a master plan for Cellular and Wi-Fi.
- **Evaluate Network Infrastructure at the Orange County Great Park**
  - Evaluate current and future network infrastructure requirements.
  - Evaluate existing infrastructure and recommend design enhancements based on future needs and new technologies.
  - Develop network security and reliability criteria.
  - Develop an implementation strategy with cost estimates to maintain and expand capabilities.
  - Evaluate and recommend network hardware and software.

- Assess the existing fiber infrastructure and recommend enhancements based current requirements and future growth.
- Develop a master plan for Network Infrastructure.

The City may elect to require 5 Bars to perform all or some of the foregoing tasks by written notice to 5 Bars (the “**Notice**”). Within 90 days after 5 Bars receives the Notice, 5 Bars shall submit a written proposal to the City that outlines (i) the tasks to be performed, (ii) the persons or entities that will perform such tasks, and (iii) the total cost to complete such tasks. Upon the City’s written approval of 5 Bars’ written proposal, 5 Bars shall perform or cause the performance of the foregoing tasks within 180 days from the City’s written notice (or such longer period as the City may approve in writing). The City shall have 30 days to inspect the work product delivered by 5 Bars and either accept, reject or require changes to the same.

5 Bars shall pay all costs associated with the foregoing tasks; provided, however, that 5 Bars shall be entitled to keep an additional 10% of recurring gross payments that are received by 5 BARS that would be otherwise payable to the City until 5 Bars recoups its actual, reasonable, documented and City-approved costs to perform the tasks requested by the City. In the event that recurring gross payments are insufficient to recoup the costs associated with the foregoing tasks, the City shall directly reimburse 5 Bars for the balance of its actual, reasonable, documented and City-approved costs to perform the tasks requested by the City within 24 months after the City approves the work product delivered by 5 Bars. In any case, the parties shall memorialize the reimbursement arrangement in a separate writing.





3.1




## REQUEST FOR BOARD ACTION

**MEETING DATE:** JULY 25, 2017

**TITLE:** CONSIDERATION OF VICE CHAIRWOMAN FOX'S REQUEST TO GRANT LAND AT THE CULTURAL TERRACE TO PRETEND CITY CHILDREN'S MUSEUM

FOR:   
Director, Orange County Great Park

  
City Manager

### RECOMMENDED ACTION

1. Consider Vice Chairwoman Fox's request to grant land at the Cultural Terrace to Pretend City Children's Museum.
2. If there is Board consensus to support Vice Chairwoman Fox's request, direct the City Attorney and City staff to negotiate a Memorandum of Understanding (MOU) with Pretend City along the terms specified by the Great Park Board of Directors and return to the City Council for its consideration and action at the first City Council meeting in August.

### EXECUTIVE SUMMARY

Vice Chairwoman Fox has requested the City Attorney and City staff negotiate a Memorandum of Understanding (MOU) with Pretend City Children's Museum for a new education museum at the Cultural Terrace subject to the terms specified by the Great Park Board of Directors. The MOU would return to the City Council for its consideration on August 8, 2017.

Pretend City's proposal for the Great Park Board's consideration outlines terms and conditions necessary to maximize its ability to secure and retain capital funding for a new education museum. Pretend City has a \$5 million commitment from the Children & Families Commission of Orange County to build its permanent museum. Funding from the Children & Families Commission of Orange County is contingent upon having a land lease at the Great Park.

### COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Not applicable.

## ANALYSIS

On July 11, 2017, Vice Chairwoman Fox submitted a memorandum requesting consideration of an MOU with Pretend City Children's Museum for land at the Orange County Great Park Cultural Terrace (Attachment 1). Included with the memorandum is a submittal from Pretend City that outlines the museum's request for land at the Cultural Terrace as summarized below:

- A maximum of 5 acres of land;
- A 30-year renewable lease for \$1 per year;
- Assistance with building permitting; and,
- Letters of support for a capital campaign.

The submittal includes an estimated construction timeline for the building and its exhibits of 24 months and a total project cost of \$30 million. Five million in funding has been committed by the Children & Families Commission of Orange County, contingent on a ground lease. Pretend City has operated in the City of Irvine for 7.5 years with an annual operating budget of \$5 million.

Vice Chairwoman's July 11 memorandum requests that:

*".....Staff prepare a staff report for the Great Park Board of Director's consideration that outlines potential terms of the Memorandum of Understanding that will be necessary for Pretend City to maximize its ability to secure and retain capital funding for its new education museum."*

In the context of a ground lease, an MOU is a preliminary step that can reflect a spectrum of commitment levels from the parties involved, ranging from a simple expression of mutual interest to a detailed listing of key terms that could eventually be formalized in a lease. An outline of potential basic terms for an MOU with Pretend City is provided below:

- **Rent.** An MOU may include rent terms. The rental rate for a public agency ground lease is often set based on a determination of fair market value with a potential offset based on the value of the public benefit created by the project. A ground lease rate that is set below a determined fair market value may trigger higher costs for the project. It is common for the rent to take the form of minimum rent (a base amount paid every year) plus a percentage rent (a percentage of revenue paid if revenue exceeds a certain agreed upon threshold);
- **Lease Term.** Rent and term of lease are often related, with a longer term usually yielding higher rent. A public agency in California can grant leases up to 99 years. Long-term planning and flexibility are important considerations when granting long-term leases;

- **Capital Investment.** A ground lease that contemplates initial construction usually includes investment parameters that could be included in an MOU. This may include the required amount and timing of up-front investment to fund design and construction as well as required capital reserve and reinvestment over the period of the lease. Another key factor is capital investment for shared facilities. In the case of the Cultural Terrace, there may be shared parking, landscaping, common areas, and roadways, which could generate a need for shared investment across potential tenants. This is a factor that would need to be addressed in the lease and could be included as a term in an MOU; and,
- **Operations and Maintenance.** Another fundamental term in a ground lease, and a potential term to be included in a preliminary MOU, is the responsibility for annual operations and maintenance costs. More specifically, identification of the party responsible for operating costs, utilities, property taxes, insurance, and maintenance.

Based on the information provided in the July 11 memorandum and a subsequent conversation staff had with Pretend City Executive Director Sandra Bolton, Pretend City's goal in seeking an MOU is to establish a commitment of property and an intention from the City to negotiate a lease. Ms. Bolton feels that these commitments will allow Pretend City to retain the funding commitment from the Children & Families Commission of Orange County and to engage in a capital campaign for the remainder of the necessary funds.

If it is the direction of the Board and City Council to pursue a commitment with Pretend City at this time, given the preliminary planning stage at the Cultural Terrace, the Board could consider directing staff to limit a preliminary MOU to the dedication of property and intent to negotiate, as requested by Pretend City, in exchange for proof of the \$5 million in committed capital from the Children & Families Commission of Orange County. The additional terms regarding rent, lease term, capital investment, and others could be deferred to a lease document to be determined upon conclusion of the final site plans resulting from the Joint Studies planning for the Cultural Terrace. The lease could be drawn up with specific milestone dates and fundraising targets that would have to be met as a precondition of lease commencement or construction.

## **ALTERNATIVES CONSIDERED**

The Board could await the presentation of the Cultural Terrace Joint Studies this fall prior to directing City staff to enter into an MOU with Pretend City. At that time, staff plans to bring forth for Board consideration a conceptual master plan as well as an implementation plan, which will include a systematic approach for vetting and establishing potential tenants/partners at the Cultural Terrace.

## **FINANCIAL IMPACT**

Direction to draft an MOU with Pretend City does not have an immediate financial impact to the City. The property does have value and an MOU that commits property to an exclusive use will have a financial impact. The size and timing of the financial impact to the City will be better understood once the detailed terms of a potential lease are negotiated. If staff were directed to draft an MOU and a lease, we would return with a more detailed evaluation of the estimated financial impact when those terms are defined.

**REPORT PREPARED BY**                      Pete Carmichael, Director, Orange County Great Park

## **ATTACHMENTS**

1. July 11, 2017 Memorandum from Vice Chairwoman Fox Regarding Consideration of a Memorandum of Understanding with Pretend City Children's Museum



RECEIVED

JUL 11 2017

# Memo

CITY OF IRVINE  
CITY MANAGER'S OFFICE



To: Sean Joyce, City Manager  
From: Melissa Fox, Orange County Great Park Board Member  
Date: July 11, 2017  
Re: **Consideration of a Memorandum of Understanding with Pretend City Children's Museum**

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Please place on the July 25 Orange County Great Park Board of Directors agenda consideration of the City entering into a Memorandum of Understanding with Pretend City Children's Museum for land at the Orange County Great Park Cultural Terrace for a new educational museum.

In order to serve more children and meet the need for early childhood programs, Pretend City Children's Museum, a nonprofit organization, is seeking a renewable ground lease and assistance from the City to obtain building permits and letters of support for its capital campaign. Additional details regarding Pretend City's request are in the attached proposal.

Pretend City has a \$5 million commitment from the Children & Families Commission of Orange County to build its permanent home. Funding from the Children & Families Commission of Orange County is contingent upon having a land lease at the Great Park.

I request City staff prepare a staff report for the Great Park Board of Director's consideration that outlines potential terms of the Memorandum of Understanding that will be necessary for Pretend City to maximize its ability to secure and retain capital funding for its new education museum.

I further request that the City Attorney and City staff be directed to negotiate the Memorandum of Understanding with Pretend City along the terms specified by the Great Park Board of Director's, and return to the City Council for its consideration and action at the first City Council meeting in August.

Attachment

cc: Orange County Great Park Board of Directors  
Jeffrey Melching, City Attorney  
Pete Carmichael, Director, Orange County Great Park  
Molly McLaughlin, City Clerk

ATTACHMENT 1



# Pretend City<sup>®</sup>

CHILDREN'S MUSEUM

## A WORLD CLASS CHILDREN'S MUSEUM LOCATED AT THE GREAT PARK

Pretend City Children's Museum is a world class, child-sized interactive city with a mission to build better brains. A recent study has revealed that only 48% of Orange County's kindergarten children are developmentally on track to start school<sup>1</sup>. Developmental readiness, social skills, family engagement and the best in early childhood education is what Pretend City delivers. Pretend City provides a hub of early childhood support and resources for the family and community.



Our goal is to partner with the community to continue delivering top quality evidence based education and to support services for children and their families from birth through age eight, along with volunteer opportunities for ages 12 and beyond.

In order to serve more children and meet the need for early childhood programs, Pretend City Children's Museum is seeking a new home at the Great Park. A new facility would expand the number of visitors served from our current 200,000 per year to meet the annual demand of a projected 350,000. This expansion would allow the museum to more fully close the

gap of education in our community, providing an educational continuum from birth through college and into career.

Pretend City requests a **maximum of 5 acres of land to build an iconic hands-on educational museum with inviting family programing and valuable community services**. Studies confirm this space allocation and terms would maximize our earned revenue potential, accommodate adequate parking, and include extraordinary indoor and outdoor educational exhibit experiences.

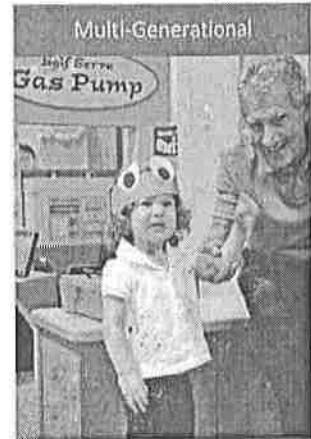
As a community public benefit, non-profit Pretend City Children's Museum requests a 30-year renewable lease for \$1 per year. Additionally, we would look to your assistance with building permitting and letters of support for our capital campaign.

Pretend City is ready to start project implementation **immediately** upon being granted a ground lease.

- \$5 million In catalytic funding is committed by the Children & Families Commission of Orange County for the purpose of moving the museum to a permanent location. Funding is contingent on having a land lease.
- Major planning studies have been conducted.
  - A Technical Assistance Panel (TAP) assessment was completed by the Urban Land Institute (ULI) in 2012 to explore site options and the feasibility of expansion.
  - Management Resources provided a business analysis of current and projected operations in 2012 and has completed an updated business plan in 2016, specific to a 5-acre site in the Cultural Terrace. This study includes comparisons of local and national institutions. Annual attendance is projected at 350,000. Children's museums attract local, regional, national and international guests. A preliminary operating budget is also provided.<sup>11</sup>



- A Visioning Process was started in 2012 by the Pretend City Board of Directors, followed by the formation of a Community Visioning Design Committee which meets regularly to continue the vetting of museum exhibits and amenities.<sup>iii</sup>
- We estimate the construction timeline for the building and exhibits to conservatively be 24 months. In addition, there are approximately 12 months of exhibit and building design and permitting work, most of which could be completed concurrently if needed. However, with seed money in place, the majority of the design work can begin immediately and be completed in advance of projected ground breaking timeline for the Cultural Terrace.
- The \$30 million project costs include: design, permits, and construction of the museum buildings, interior building design and construction, indoor and outdoor exhibit design, landscaping, as well as operation supplies and educational props.
- A capital campaign is planned to finance the building of the new museum. The Board of Directors has a successful track record, raising the initial \$17 million capital campaign to open Pretend City Children's Museum in 2009. Serving over 1.4 million visitors to date, the museum has provided an exceptional educational experience for the citizens of Irvine and Orange County with an effective business model for over 7 ½ years.
- The annual operating budget for the new museum is an estimated \$5 million per year.
- The earned revenue (admission, facility rental, etc.) is approximately 60%; and, contributed income is estimated at 40% (fund raising). Our model is typical of children's museums and similar facilities throughout the country. Annual earned revenue sources over the first 5 years of operation:



- \$2 million from admissions (general admissions and field trip participants)
- \$526,000 from museum memberships and programs
- \$382,000 from merchandise/food and beverage sales
- \$275,000 from birthday party/facility rentals

Pretend City Children's Museum has a strong Board of Directors, advisors, and community support and is ready to embark on raising the capital and opening the doors to build a firm foundation for our youngest citizens and their families.

**Contact:** Sandra Bolton, Executive Director ♦ [sandra.bolton@pretendcity.org](mailto:sandra.bolton@pretendcity.org) ♦ 949-428-3900 x215

<sup>i</sup> 2015 Early Development Index, Children & Families Commission. For a copy of the EDI fact sheet see GP Dropbox. Link: <https://www.dropbox.com/sh/uph859qkn2wzjz4/AABWTMpTcCfOWkx9x5i8pfxMa?dl=0>

<sup>ii</sup> Copies of the ULI report, Management Resources business analysis and budget are available for review upon request.

<sup>iii</sup> For copy of Visioning Report with images of exhibits and visioning work, see GP Dropbox, link above.

3.2




## REQUEST FOR BOARD ACTION

**MEETING DATE:** JULY 25, 2017

**TITLE:** UPDATE ON PREPARATIONS FOR COMPLETION AND  
TURNOVER OF PHASE ONE OF THE SPORTS PARK

*For:*   
\_\_\_\_\_  
Director, Orange County Great Park

  
\_\_\_\_\_  
City Manager

### RECOMMENDED ACTION

Receive and file this update regarding preparations for completion and turnover of Phase 1 of the Sports Park.

### EXECUTIVE SUMMARY

The first phase of the Sports Park will open to the public at a grand opening event on August 5, 2017 and will mark the City's official full acceptance of the Phase 1 facilities per the terms of the Second Agreement with the City of Irvine as Adjacent Landowner (ALA II). Phase 1 includes the Championship Soccer Stadium, Championship Tennis Stadium and 25 tennis courts, six soccer fields, Championship Volleyball Stadium and five sand volleyball courts, the children's playground, two parking lots, landscaping, pedestrian walkways, and all of the associated support buildings and restrooms serving the Phase I facilities.

Due to the accelerated timeframe and the increased speed of construction activity required to meet an August opening, City staff has been working with Five Point and its contractors on a variety of important turnover related issues that are key to the City's ability to properly maintain and operate the facilities for public use. Ordinarily, City staff would be able to go directly to the general contractor for the construction of a facility to cure any defects or corrections under the warranty terms. In this case, subsequent to City acceptance, correction of defects or resolution of other disputes can only be addressed through contractor warranties or through a sub-contractor's one-year defect bond. Staff has received a draft form of the defect bond from Five Point with the intent to have a final document at the time of City acceptance of Phase 1. Five Point is working with each of the contractors to assemble the close out documents needed to maintain and operate the facilities, including all the required warranties, and has assured staff those materials will be provided to the City at the time of acceptance.

Additionally, Five Point has provided in writing a procedure to correct any identified punch list-type finish items that are not resolved prior to the August 5 opening (see letter from Heritage Fields, dated July 17, 2017 and included as Attachment 1). The City and Five Point have also agreed upon a solution to expedite the Public Works landscape maintenance requirement. The standard practice is for the installing contractor to be responsible for maintaining the landscaping, replacing plants, adjusting equipment, monitoring irrigation and making any other identified corrections for 120 days prior to acceptance. The City has agreed to begin maintaining the landscaping upon opening and Five Point will make its contractors available for any equipment, irrigation, operations corrections or replacement plantings needed for a 60-day period.

#### **COMMISSION/BOARD/COMMITTEE RECOMMENDATION**

Not applicable.

#### **ANALYSIS**

The ALA II between the City of Irvine and Heritage Fields created a contractual arrangement whereby Heritage Fields is to design and build 688 acres of the Orange County Great Park, in accordance with the approved conceptual design, in a phased manner over five years, beginning in October 2014. The plan for the 688-acre Great Park Improvement area included a set of distinct subareas:

- Upper Bee
- Bosque
- Sports Park
- Golf Course
- Agriculture
- Wildlife Corridor

Based on the most recent information provided by Five Point, the anticipated completion for the subareas under construction are shown below:

<b>Reference Location</b>	<b>Year 2 ALA Improvements</b>
Sports Park Phase 1	August 5, 2017
Upper Bosque and Upper Bee	Fall, 2017
Sports Park Phase 2	Fall, 2017
Sports Park Phases 3,4	First Quarter, 2018



Staff has requested, but not yet received, an estimated completion date for Sports Park Phase 5, a large parking lot adjacent to the Soccer Stadium.

### Grand Opening

A grand opening has been scheduled for the first phase of the Sports Park on August 5 from 2 – 9 p.m. City staff and representatives from Five Point are organizing the event jointly. A summary of key event details is included below.

- The event will begin at 2 p.m. with a variety of family-oriented activities and refreshments throughout the soccer and tennis areas within the Sports Park Phase 1 until approximately 7 p.m.
- A ribbon cutting in the soccer stadium will take place at 3:30 p.m.
- A concert in the soccer stadium will begin at 7 p.m. and conclude by 9 p.m.
- Access to the event will be from Great Park Boulevard, off Sand Canyon Boulevard, and Marine Way.
- Parking is provided at newly completed and temporary lots adjacent to the Phase 1 area and the Festival and Timeline lots in the Western Sector.

### Programming and Operations

Preparations are well underway for programming and operation of the Sports Park after the Grand Opening. The Community Services Department has aligned Great Park work teams to focus on permitting, scheduling, and operations to meet City Council adopted cost recovery goals. The team is preparing new marketing materials and reaching out to sports organizations such as US Soccer, USA Baseball, USA Softball, and US Tennis Association (USTA), in addition to event promotion organizations. These efforts are intended to draw both local play and national and international teams. A more detailed summary of the planned programming within the Sports Park Phase 1 tennis and soccer facilities is included below.

With 25 tennis courts, a championship court, and central building featuring a pro shop and concessions, the Great Park Tennis Center will serve all ages and skill levels. The Great Park Tennis Center will feature junior tennis camps, junior and adult tennis leagues, adult recreational lessons, and drop-in courts. Two top tennis professionals will open the City's first Tennis Academy at the Great Park Tennis Center on Monday August 7, 2017. Brymer Lewis Tennis Academy will provide instruction and training to youth tennis players from throughout Southern California. Group and private lessons, camps, and the popular "10 and Under Tennis Program" are scheduled for youth, teens, and adults at the new Tennis Center.

CrossFit Tennis and the popular World Team Tennis Leagues will begin in the fall. The World Team Tennis Leagues are offered throughout Irvine's parks system, but will expand to accommodate close to 200 additional players with the opening of the Great Park Tennis Center. Match play and championship tournaments are scheduled, including USTA leagues for juniors. The 30th Annual Top Gun Tennis Tournament is moving to the Great Park Tennis Center in October and is projected to host 200 juniors and 300 adults throughout the weekend tournament.

The Soccer Complex and Championship Soccer Stadium have 37 youth and adult organizations scheduled for team practices and games throughout the remainder of the year. In addition, the Soccer Complex has 31 local, national, and international tournaments scheduled over the next 12 months. The Championship Soccer Stadium is booked for seven professional soccer games for the remainder of the summer and fall season. In total, this represents more than 50 organizations hosting team activities and tournaments through June 2018. Some of these tournaments will host as many as 600 teams. Many of the tournaments will draw between 10,000 and 11,000 daily in attendance and several will be multiple-day events driving local hotel stays. Some of the highlight events planned for the soccer facilities include:

- Orange County Soccer Club playing matches with other professional clubs in the Championship Soccer Stadium;
- LA Galaxy hosting the Galaxy Cup, a week-long showcase event at the park including elite youth soccer teams from the English Premier League competing against the top youth soccer teams across the United States;
- Hall of Fame UCLA Football Coach Terry Donahue and the NFL Foundation will be at the Great Park to host the California High School Football Showcase;
- The Adrenaline Lacrosse Fall Brawl;
- Victory Lacrosse's Air Station Shootout; and,
- Coca Cola's World Series of Youth Lacrosse Regional Qualifier.

In preparation of the park opening, Public Works has implemented contracts for both landscape and facilities maintenance to cover all of the Phase 1 facilities. Merchants Landscaping has been notified of the expected turnover and is prepared to commence overall maintenance services on August 6, 2017. The City's facilities maintenance staff have conducted numerous inspections on the new facilities/buildings. Contracted services including custodial services, fire panel monitoring and pest control, have all been notified and are scheduled to begin services on August 6, 2017.

#### Other Completion and Turnover Considerations

City staff has worked with Five Point on a variety of other issues related to the completion and turnover of the Park. A summary and status of each is provided below.



#### *City Acceptance*

Section 2(o) of the ALA II provides for City acceptance by way of two distinct, City-controlled, trigger events:

1. Issuance of a Certificate of Occupancy, Temporary Certificate of Occupancy or the functional equivalent, or
2. When the City authorizes such portion to be opened or made available for use by the public.

The grand opening on August 5 will signify the City's acceptance of Phase 1 of the Sports Park per the trigger events in the agreement outlined above. City acceptance is significant, because not only does it mark the inception of City programming, but it will also mark a shift in the way potential disputes are to be resolved. Section 2(k) of the ALA II states that, in the event of a dispute between the parties regarding performance of the work, once City acceptance occurs, correction of defects or resolution of other disputes can only be addressed through contractor warranties or a one-year defect bond required to be included in Heritage Fields construction contracts.

City staff is working closely with Five Point and its contractors to resolve any final finish work or punch list-type issues prior the August 5 opening. Five Point has indicated that it will continue to work with the City to resolve identified punch list-type items beyond the August 5 opening date, if not resolved prior. Per the ALA II, corrections, defects, or other disputes would be resolved via contractor warranties or a one-year defect bond. Staff has received a draft form of the defect bond from Five Point that has been reviewed by the City Attorney. While specific language must still be further refined the City Attorney has found the draft form to be acceptable. The intent is to have a final defect bond document complete as well as all warranties, and operations and maintenance manuals turned over to City staff at the time of final acceptance of Phase 1.

#### *Landscape Completion and Maintenance Period*

One of the key features in the City's policy for acceptance of a landscaped area, such as a park, is the maintenance period. This period usually lasts 120 days, beginning at the time when all work is complete and punch list items have been satisfied consistent with approved plans. During the maintenance period, landscaping is maintained by the installing contractor, providing time for monitoring of irrigation systems, water pressure, establishment of turf and plant material, audit of automatic control systems, and new operator orientation. Given the expedited completion and turnover planned for the first phase of the Sports Park, there is insufficient time for the standard maintenance period. While standard practice is 120 days for the maintenance period, in order to facilitate the opening, staff has developed and Five Point has agreed to, a compromise. The City will take over maintenance of the landscaping upon opening and Five Point and its contractors will respond as necessary in the event plants need replacing, equipment needs adjustment or other corrective action is required for a 60-day period.

### *Safety and Accessibility Conditions*

In addition to the more prescriptive detail related to the inspection of landscaping and building systems, staff is also working with Five Point on general safety and accessibility conditions for the first phase of the Sports Park.

- Vehicle Access. Two access routes will be complete and open for the grand opening event and for regular park operations thereafter. This includes Marine Way from Sand Canyon to Flying Tiger and Great Park Boulevard around the southern end of the Sports Park and Great Park Boulevard from Sand Canyon at the north end of the Sports Park. An exhibit showing planned access routes and parking locations is included as Attachment 2.
- Parking. Two new parking lots will be complete, one at the northeast end of phase 1 (lot SP-4) and one at the southwest end of the phase 1 (lot SP-3). The existing Festival Parking Lot is also available. (Attachment 2)
- Pedestrian Circulation. The timeline will be open allowing pedestrians to access all of the opened portions of the Sports Park. Pathways within Phase 1 and linkages between parking and facilities will be completed and open. A construction fence will be placed along the south edge of the Timeline, restricting access to subsequent phases of the park that are still under construction.

### **ALTERNATIVES CONSIDERED**

Not applicable.

### **FINANCIAL IMPACT**

The Sports Park is being constructed on the City's behalf by Heritage Fields pursuant to the terms of the ALA II. Construction is at Heritage Fields cost and there is no financial impact to the City associated with the completion and turnover of the first phase of the Sports Park. Costs associated with staffing, operations and maintenance of the Great Park Phase I and additional phases expected to open at later dates in the next year are all included in the approved FY 2017/18 budget. Ensuring that City facilities meet the comprehensive inspection regiment, maintenance requirements and general safety and accessibility conditions as summarized above, is likely to lower the City's long-term ownership and maintenance costs.

**REPORT PREPARED BY** Pete Carmichael, Director, Orange County Great Park

### **ATTACHMENT**

1. Letter Dated July 17, 2017 from Heritage Fields concerning completion and turnover of the Sports Park, Upper Bee and Bosque A
2. Great Park diagram showing access routes and parking locations

HERITAGE FIELDS EL TORO, LLC  
25 Enterprise, Suite 300  
Aliso Viejo, CA 92656

July 17, 2017

Mr. Pete Carmichael  
Director, Orange County Great Park  
City of Irvine  
One Civic Center Plaza  
P.O. Box 19575  
Irvine, CA 92623-9575

Re: Completion and Turnover of Sports Park, Upper Bee and Bosque A

Dear Pete,

This letter is in response to your letter dated June 7, 2017 (received June 16, 2017) regarding the above-referenced matters.

Completion Schedule:

As you are aware from the numerous meetings we have had over the course of the last several weeks, we are excited to be jointly planning with you the grand opening of Phase 1 of the Sports Park to occur on August 5, 2017. Phase 1 includes: the Championship Soccer Stadium and Buildings A and B; the 25 tennis courts and Buildings H1 and H2; the 6 soccer fields; the 5 volleyball courts; and, the Children's Playground. These Phase 1 improvements, as well Building C (the Quimby bathroom) (collectively the "Improvements"), are more particularly depicted on the site plan enclosed with this letter as Exhibit 1.

The Second Agreement With City of Irvine As Adjacent Landowner ("ALA2") between the City of Irvine ("City") and Heritage Fields El Toro, LLC ("Heritage Fields") provides the City shall be deemed to have accepted the Improvements, or any portion thereof, and fee title to such Improvements shall pass to the City on the earlier to occur of "(i) issuance of a certificate of occupancy, temporary certificate of occupancy, or the functional equivalent, or (ii) when the City authorizes such portion to be opened or made available for use by the public." We anticipate that City acceptance (as defined in the ALA2) of the Improvements will occur prior to August 5, 2017, with issuance of temporary certificates of occupancy or the functional equivalent, but no later than the joint public event on August 5, 2017. Heritage Fields anticipates the City will continue to allow public access to those Improvements after City acceptance. Per the terms of the ALA2, once the Improvements are available for use by the public on August 5, 2017, the City will be responsible for maintenance of those Improvements in such a manner as the City determines.

Page 2  
Mr. Pete Carmichael  
July 17, 2017

The updated schedule for estimated completion and turnover of the remaining ALA2 facilities *currently under construction* is:

Upper Bee: Fall 2017

Upper Bosque/Bosque A: Fall 2017

Lower Bosque/Bosque B: Approximately 12 months from the date the City issues building permits based on the plans previously submitted.<sup>1</sup>

Sports Park Phase 2: Fall 2017

Sports Park Phase 3: Spring 2018

Sports Park Phase 4 (not including permanent maintenance facility): Spring 2018

We do not have an anticipated commencement date for construction of the permanent maintenance building (originally to be constructed at the same time as Phase 4 of the Sports Park) due to the City's determination that it wants a 23,000 square foot facility, rather than the 5,000 square foot facility contemplated in the ALA2. Heritage Fields has agreed to fund the cost of building a 5,000 square foot facility (at no more than \$100/square foot) but the City must fund the entire cost of building design and construction of the larger building, less Heritage Fields' agreed contribution of \$500,000. Heritage Fields will commence construction of this larger facility when the design is completed, and the City issues the building permits and funds the difference between the cost of the larger facility (including design costs) and Heritage Fields' agreed contribution. We will require a separate letter agreement be entered into between the City and Heritage Fields, just like what was done for the Quimby improvements the City asked Heritage Fields to construct and install in other phases of the Sports Park.

#### Inspection and Maintenance of the Improvements:

Buildings B, H-1, H-2 and C were walked and inspected by the City Public Works staff on July 11, 2017. We anticipate Public Works staff will complete an inspection of Building A by July 24, 2017. We anticipate the City Building Inspectors will perform final inspections of the Improvements (for TCOs and building permit sign-offs) by July 25, 2017.

---

<sup>1</sup> As acknowledged in your November 3, 2016 letter, Heritage Fields submitted Precise Grading, and Landscape plans to the City on October 18, 2016. The correspondence from the City to our consultant on November 7, 2016 indicated the City had "cancelled" the plans. On January 20, 2017, Heritage Fields resubmitted the Bosque B plans for second plan check. The City initially responded that it would not process the plans; an email on January 30, 2017 to our consultant indicated the City had reconsidered that decision but needed new plans and applications to be submitted because the City had cancelled the plan check numbers assigned to the initial plans. The City then informed Heritage Fields' representatives that it intended to pursue Logical Evolution on the Bosque B area in connection with the Logical Evolution study of the Golf Subarea. The City's March 2, 2017 letter acknowledged the delays caused by the City's Logical Evolution process, but confirmed that City staff felt it would be more productive to finalize a revised conceptual plan for the area before review of the submitted construction plans for Bosque B. We await the City processing of those submitted plans. As soon as the City processes those submitted plans and issues building permits for Bosque B, Heritage Fields will commence construction of Bosque B.

Landscape Maintenance:

The maintenance obligation for the Great Park Improvements is specifically addressed in the ALA2. Section 8 of the ALA2 provided two options to the City: (1) the City could have opted to have Heritage Fields maintain the Great Park Improvements for 10 years, or (2) the City could (and did) opt to “retain the obligation to operate and maintain the Great Park Improvements...” Under the second scenario (selected by the City), Heritage Fields is required to pay to the City an annual fee of \$1,250,000 to fund the maintenance beginning in August 2016 and continue that annual payment through August 2023, in lieu of maintaining the Great Park Improvements. Heritage Fields began making those payments of \$1,250,000 /year in 2016. As noted above, the maintenance obligation for the Great Park Improvements (other than specified components of the Wildlife Corridor as addressed in the ALA2) belongs solely to the City.

Acceptance of the Improvements; Punch List Items:

Based on Section 2(o) of the ALA2, resolution of punch list items are separate from acceptance of the Great Park Improvements by the City and/or issuance of certificates of occupancy, temporary certificates of occupancy, functional equivalents, or the sign off on building permits by City inspectors.

Nevertheless, Heritage Fields and its contractors for the Improvements (“Contractors”) want to make sure that all of the improvements turned over to the City are completed in compliance with the approved plans and in a workmanlike manner. I therefore suggest the following procedure for creation of a City punch list and resolution of those items:

1. As soon as the City building inspectors sign off on all paperwork necessary for a temporary certificate of occupancy (in the case of a building) or complete a final sign off of a building permit (in the case of horizontal work), Heritage Fields will schedule a walk through of the building or horizontal work area within 2 business days of the City’s sign off, with City and Contractor representatives.
2. During the walk through, the City will compile a single punch list and the City will provide the list to Heritage Fields in writing within 2 business days of the walk through.
3. Within 3 business days from receipt of the punch list, Heritage Fields and its Contractors will respond in writing to the City punch list by acknowledging items to be corrected and timing of correction. Any items on the punch list that Heritage Fields and/or Contractors disagree with will be subject to a meet and confer between a Heritage Fields representative and Pete Carmichael of the City.

Access and Circulation:

The attached Exhibit 1 also shows a fencing plan developed by Heritage Fields to separate the construction areas from the completed areas of the Sports Park under City control. This fencing plan will be implemented on or before August 5, 2017. All vehicle, pedestrian and bus access plans are the responsibility of the City.



Page 4  
Mr. Pete Carmichael  
July 17, 2017

Defect Bond, Contractor Warranties and Turn-Over Packages:

The Contractors for the Improvements will provide a defect (maintenance) bond ("Maintenance Bond") to the City concurrent with acceptance of the Improvements by the City. The form of the Maintenance Bond will be provided to the City this week.

In light of the City's request for a Maintenance Bond, the City will be constrained from making any changes or modifications to any covered Improvements turned over to the City during the one year period of the Maintenance Bond. If the City makes any changes or modifications during that one year period, Heritage Fields and/or Heritage Fields' Contractors will have no liability for the item changed or modified and any continuing obligation of Heritage Fields or its Contractors under the ALA2, or the Maintenance Bond, for the changed or modified improvement shall cease. No Maintenance Bond will be supplied for Building C or other Quimby improvements, since their construction was funded by City Quimby funds outside the terms of the ALA2.

As part of the contractual agreement with the Contractors engaged by Heritage Fields to construct the Sports Park, the Contractors are required to provide information on warranties and other specified information assembled in an organized manner (a "Turn-Over Package"). A copy of each Turn-Over Package received from the Contractors will be forwarded to the City as soon as received from the Contractors. Please specify who at the City should receive the Turn-Over Packages.

Please feel free to contact me with any questions. We look forward to a smooth turnover of the Improvements to the City and the joint celebration on August 5, 2017.

Sincerely,



LJ Edgcomb

cc: Greg McWilliams (via-email)  
Debra Steel (via-email)  
Sean Joyce, City Manager (via-email)  
Jeff Melching, City Attorney (via-email)  
Mike Hammel, Chief of Police (via-email)  
Susan Emery, Community Development Director (via-email)  
Manuel Gomez, Public Works Director (via-email)  
Laurie Hoffman, Community Service Director (via-email)  
Chris Koster, Manager Great Park Planning and Development (via-email)



## ORANGE COUNTY GREAT PARK - SPORTS PARK

PHASE 1 - TURN OVER PLAN AUGUST 5, 2017



Date: 06-06-2017

**BrightView**





June 7, 2017

LJ Edgcomb  
Five Point Communities Management, Inc.  
25 Enterprise, Suite 300  
Aliso Viejo, CA 92656

Re: Completion and Turnover of Sports Park, Upper Bee and Bosque

Dear LJ:

I understand that a grand opening event for a portion of the Great Park is being scheduled for August 5. Congratulations to you and your team and those at the City who have collaborated with you to get to this milestone. I want to assure we do all that we can to make the event and the subsequent park programming and maintenance a success. With that in mind, there are several items that I would like to seek clarification on in order to ensure the various City departments are prepared for success.

#### Completion Scheduling

What portions of the Park are intended to be opened on August 5, and is it your intent that these areas would then be open to the public and subject to City maintenance responsibility after such date? If so, will Five Point identify a temporary maintenance facility to service the Park after opening and prior to completion of the planned permanent maintenance facility?

We would like to get an updated schedule showing your estimated date for completion and turnover of the various portions of the Upper Bee, Bosque, Sports Park, and permanent park maintenance facility.

#### Pre-Acceptance Review and 120-Day Landscape Maintenance Period

The City performs a pre-acceptance review prior to turnover of new public facilities to inspect buildings, systems, and accessory structures. This pre-acceptance review occurs when work is complete and has passed regulatory inspections. We have a team ready to perform this review on an expedited basis for Five Point's planned opening in August. Please advise when you think you are ready to start these inspections and we will make it an immediate priority.



The approved plans for the Great Park Improvement Area call for a 120-day landscape maintenance period, during which time Five Point is to maintain the landscaping. The 120-day period typically starts when final landscaping and irrigation is in place and inspected. Given the short timeframe prior to the planned opening, modifications to this process may be needed. Please advise what your intent is relative to the maintenance period.

#### ALA II Provisions for Acceptance of Improvements

Based on provisions in the ALA II, the City's opening of facilities for public use triggers the City's Acceptance Date for those Great Park Improvements that are opened. Further, the agreement states that, after the Acceptance Date, the City shall look solely to Heritage Fields' contractors for redress or resolution of disputes and not to Heritage Fields. Based on the current state of construction and the fact that there have not yet been any Pre-Acceptance Reviews of the facilities, there is potential for unresolved punch list and finishing items beyond the August 5 date. What is your intent for how these types of unresolved punch list items would be handled after opening, in light of the ALA II provisions?

#### Safe Access and Circulation

Is there a plan that you can share for vehicle, pedestrian, and bus access to the site, and for protective fencing between portions of the Great Park planned for turnover on August 5 and portions of the park still under construction? An early review of these plans with Public Safety and Public Works can help eliminate delays in the run-up to the opening.

#### Warranties and Defect Bonds

Please provide documentation on any applicable architect, engineer, or contractor warranties, as well as, defect bonds applicable to the portions of the park planned for opening on August 5.

Once you have had a chance to review the above items, please let me know. I am happy to coordinate a meeting with the appropriate City staff to work through these items if you think that is productive. As always, please feel free to reach me at 949-724-6092 if you would like to discuss further.

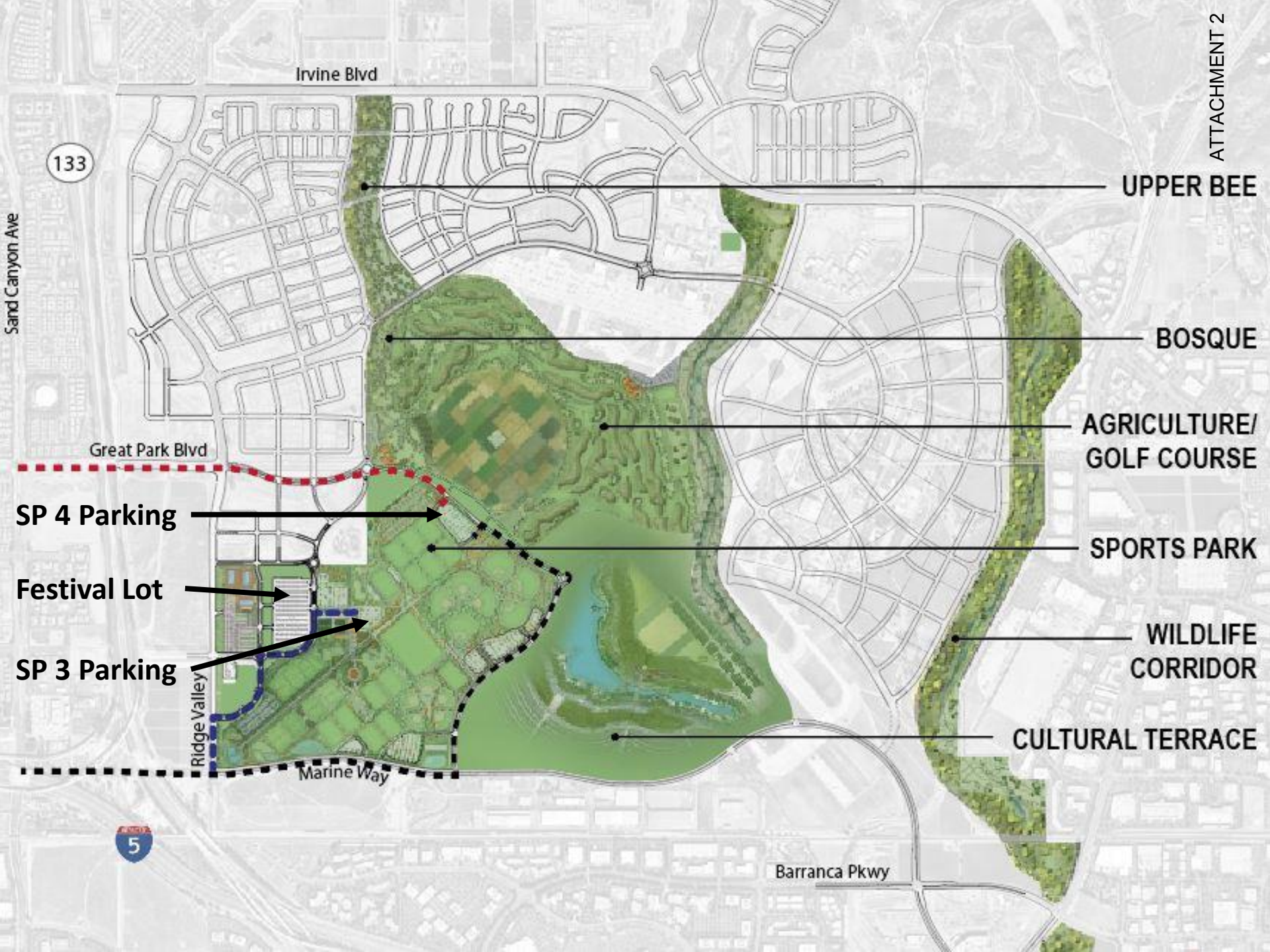
Sincerely yours,



Pete Carmichael  
Director, Orange County Great Park

LJ Edgcomb  
June 7, 2017  
Page 2

cc: Sean Joyce, City Manager  
Jeffrey Melching, City Attorney  
Mike Hamel, Chief of Police  
Susan Emery, Community Development Director  
Manuel Gomez, Public Works Director  
Laurie Hoffman, Community Services Director  
Chris Koster, Manager Great Park Planning and Development



Irvine Blvd

133

Sand Canyon Ave

UPPER BEE

BOSQUE

AGRICULTURE/  
GOLF COURSE

SPORTS PARK

WILDLIFE  
CORRIDOR

CULTURAL TERRACE

Great Park Blvd

SP 4 Parking

Festival Lot

SP 3 Parking

Ridge Valley

Marine Way

Barranca Pkwy

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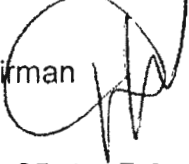
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JUL 19 2017

CITY OF IRVINE  
CITY MANAGER'S OFFICE

# Memo

To: Sean Joyce, City Manager  
From: Donald P. Wagner, Mayor/Chairman  
Date: July 17, 2017  
Re: Request Placing Item on July 25, 2017 Agenda



I have been contacted by several retired Marines who served at the former El Toro Marine Corps Air Station sharing with me their disappointment with the street names approved by the Orange County Great Park Board on March 28, 2017.

I am aware that naming major streets in the Great Park has been the subject of thoughtful consideration for some time and that it has long been accepted by members of the Board of Directors that the street names should pay homage to the men and women who served our nation while stationed at El Toro Marine Corps Air Station. While I understand that the street names previously approved by the Board arguably meets that interest, I find the passionate arguments to the contrary compelling enough to warrant reconsideration of the street names to those that more earnestly resonate with those who served at El Toro, in some cases, for many years.

After considering alternatives that included naming streets for distinguished Marines and (arguably) noteworthy squadrons, on March 28, the Board approved the naming of four streets for the following squadrons: Greyhawk, Wolfpack, Warhorse, and Flying Tiger. The strong preference of those contacting me has been for the designation of street names that are more reminiscent of the fixed wing aircraft and/or squadrons for which the former air base is better known than for helicopter squadrons arguably more apt for the former Tustin Marine Corps Air Station.

Relying upon information (see attached) provided to the City Manager on behalf of those who contacted me, I suggest renaming the aforementioned streets to names more meaningful to those who served at the former base and more reminiscent of the activity for which the El Toro Marine Station was so well known, training and deploying our nation's finest fighter pilots. Thus, I suggest the Board approve renaming the subject streets after fixed-winged aircraft. To start the conversation, I respectfully suggest one plane from each of the eras identified by the advocates who reached out to me. Specifically, Corsair, Tigercat, Phantom, and Hornet.

The City Manager assures me that the street names are not duplicative of other Irvine street names and that the cost of renaming the streets is of minimal cost and inconvenience.

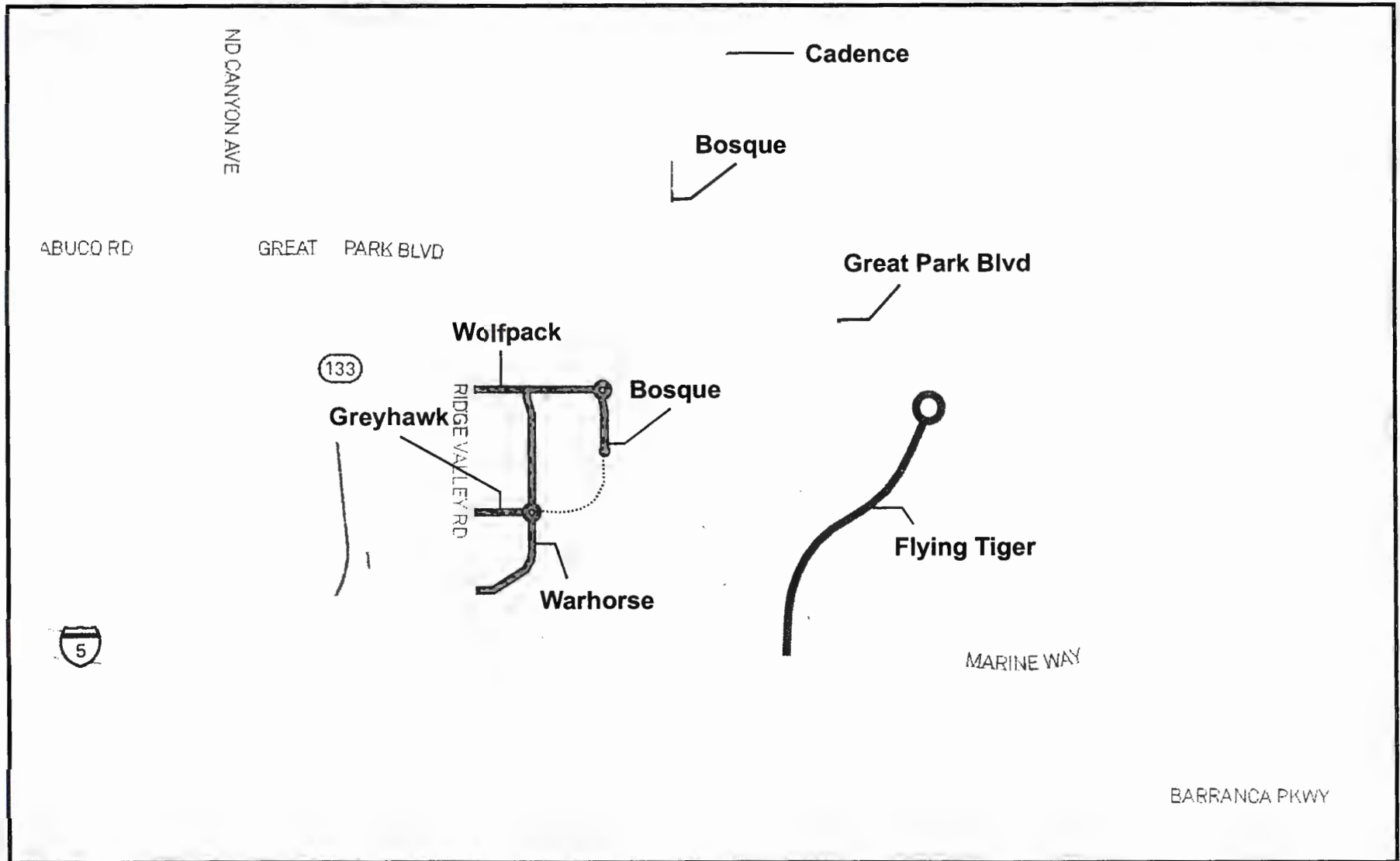
Alternatively, if squadrons are still preferred, it has been suggested that there are more appropriate names to those previously suggested to staff by local retired Marines and approved by the Board. These include: Vikings, Green Knights, Blacksheep, and Avengers. Again, my preference is the aforementioned Corsair, Tigercat, Phantom, and Hornet.

Please place on the Great Park Board's July 25, 2017 agenda an item that will allow reconsideration of street names previously approved by the Great Park Board of Directors.

cc: Orange County Great Park Board of Directors  
J Molly McLaughlin, City Clerk

# Street Names within the Orange County Great Park

(As Approved by Orange County Great Park Board on March 28, 2017)



July 17, 2017

## Marine Aircraft and Squadrons Which Served at MCAS El Toro

### Squadrons and Call Signs (not all-inclusive, using current designators)

VMA-214 **Blacksheep**  
VMA-211 **Wake Island Avengers**  
VMA-311 **Tomcats**  
VMA-542 **Tigers**  
VMFA-121 **Green Knights**  
VMFA-232 **Red Devils**  
VMFA-314 **Black Knights**  
VMFA-323 **Death Rattlers**  
VMFA(AW)-225 **Vikings**  
VMFA(AW)-242 **Bats**  
VMGR-352 **Raiders**

#### Original Squadrons:

VMF-113 **Whistling Devils**  
VMSB-142 **Flying Gators**  
VMF-224 **Fighting Wildcats**  
VMSB-231 **Ace of Spades**  
VMSB-232 **Red Devils**

### Aircraft and Nicknames (not all-inclusive)

#### WWII and up to Korean Conflict

North American PBJ-1 **Mitchell** (B-25) Medium bomber  
Douglas SBD **Dauntless** Scout-bombing aircraft  
Curtiss SB2C **Helldiver** Scout-bombing aircraft  
Grumman F8F **Bearcat** Fighter aircraft served through mid-1950's  
Grumman F4F **Wildcat** Fighter aircraft  
Grumman F6F **Hellcat** Fighter aircraft  
Vought F4U **Corsair** Fighter aircraft served also in Korea and into the late '50's  
Grumman TBF **Avenger** Torpedo bombers

#### Korean Conflict through late 1950's

Grumman F7F **Tigercat** Night fighter  
Douglas AD-1 **Skyraider** Ground attack aircraft  
Grumman F9F **Panther** and **Cougar** Fighter aircraft used in late '40's through late-50's  
Douglas F3D **Skyknight** Night fighter and EW aircraft Korean and Vietnam conflicts  
North American FJ **Fury** Mid '50's fighter aircraft

#### Late 1950's through early 1990's

Douglas A-4 **Skyhawk** Ground attack aircraft  
Grumman A-6 **Intruder** Ground attack all weather aircraft  
Vought F-8 **Crusader** Fighter aircraft  
McDonnell F-4 **Phantom** Fighter aircraft

#### Early to late 1970's to current

McDonnell Douglas AV-8 **Harrier** Ground attack aircraft (Never actually based at El Toro)  
McDonnell Douglas F/A-18 **Hornet** Fighter/bomber aircraft

#### Miscellany

North American SNJ (AT-6) **Texan** US trainer aircraft by all services late '30's thru '50's  
Beechcraft T-34 **Mentor** US trainer aircraft late '40's thru still in service  
North American T-39 **Sabreliner** US trainer aircraft Late '50's thru still in service  
Beechcraft C-12 **Huron** US general purpose support aircraft Mid '70's thru still in service  
R4D **Skytrain** (C-47 and C-117) Cargo aircraft  
Curtiss R5C **Commando** Cargo aircraft



## **Medal of Honor Awards in Naval Aviation to Marine Corps Pilots**

To Marine Corps Naval Aviators and Naval Aviation Pilots in Connection with Aviation

<b>Name</b>	<b>Rank/Service</b>	<b>N.A. Number</b>	<b>Occasion for Award</b>
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Bauer, Harold W.*	Lt. Col., USMC	4189	Action in air combat, South Pacific area; 28 Sep–3 Oct 1942 *
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Boyington, Gregory Maj.,	USMC	5160	Action in air combat, Central Solomons area; 12 Sep 1943–3 Jan 1944 *
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DeBlanc, Jefferson J. Capt.,	USMC	12504	Action as leader of a fighter mission in air combat off Kolombangara Island, South Pacific; 31 Jan 1943 *
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Elrod, Henry T.*	Capt., USMC	4093	Action in air and ground combat in defense of Wake Island; 8–23 Dec 1941
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Fleming, Richard E.*	Capt., USMC	6889	Action as leader of dive bombing attack, Battle of Midway; 4–6 Jun 1942
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Foss, Joseph J. Capt.,	USMC	7290	Action in air combat in defense of Guadalcanal; 9 Oct–19 Nov 1942 *
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Galer, Robert E. Maj.,	USMC	5197	Action in air combat, South Pacific area; Aug– Sep 1942 *
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Hanson, Robert M.*	1st Lt., USMC		Action in air combat at Bougainville; 1 Nov 1943, and New Britain; 24 Jun 1944 *
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Pless, Stephen W. Capt.,	USMC		Helicopter rescue under enemy fire of four American soldiers beset by a large group of Viet Cong; 19 Aug 1967
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Schilt, Christian F. 1st Lt.,	USMC	2741	Air evacuation of wounded under fire, Qualili, Nicaragua; 6–8 Jan 1928
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Smith, John L. Maj.,	USMC	5978	Action in air combat in defense of Guadalcanal; 21 Aug–15 Sep 1942 *
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Swett, James E. 1st Lt.,	USMC	11893	Action in air combat, Solomon Islands area; 7 Apr 1943 *
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Talbot, Ralph 2d Lt.,	USMC	802	Action in air combat, Europe; 8 and 14 Oct 1918 (predates MCAS El Toro)
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Walsh, Kenneth A. 1st Lt.,	USMC		Action in air combat at Vella Lavella; 15 and 30 Aug 1943 *
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Source: Naval History and Heritage Command, [United States Naval Aviation, 1910-2010](#), Evans and Grossnick, 2015

Note: Same source lists all Marine Corps and Navy known aces (5 or more air to air kills). There are too many to list here, but I can do a list if desired. All Medal of Honor awardees who are also aces are so indicated with a red asterisk (\*) after their entry above. There is one Marine Corps ace from the Korean War, the rest are all WWII. The Marine Corps did very little air to air engaging against enemy aircraft in the Vietnam War.



## **MINUTES**

### **ORANGE COUNTY GREAT PARK BOARD REGULAR MEETING**

**March 28, 2017**  
City Council Chamber  
One Civic Center Plaza  
Irvine, CA 92606

#### **CALL TO ORDER**

A regular meeting of the Orange County Great Park Board of Directors was called to order on March 28, 2017 at 2:05 p.m. in the City Council Chamber; Chairman Wagner presiding.

#### **ROLL CALL**

Present:	5	Director:	Jeffrey Lalloway
		Director:	Lynn Schott
		Director:	Christina Shea
		Vice Chairwomen:	Melissa Fox
		Chairman:	Donald P. Wagner

#### **PLEDGE OF ALLEGIANCE**

Chairman Wagner led the Pledge of Allegiance.

#### **DIRECTOR, OCGP, REPORT**

Pete Carmichael, Director, Orange County Great Park, provided a brief update on construction progress, forward planning, signage at the Great Park, and public outreach efforts.

Board discussion included: including signage for large events; questioned the reference to the "golf district" and whether that designation was based on part of the plan to date; and inquired about light emitting diode (LED) sign types.

## **BOARDMEMBER REPORTS**

Director Schott expressed her appreciation to those who attended the recent public outreach event as part of the City's public outreach regarding the Orange County Great Park at the Honda Center in Anaheim; and invited Irvine and Orange County residents to the last of five community meetings on Sunday, April 2 at 10 a.m. at the South Coast Chinese Cultural Center in Irvine. The presentation will be provided in English and Mandarin. No RSVP is needed. For information, visit [cityofirvine.org](http://cityofirvine.org).

Vice Chairwoman Fox noted the number of e-mails received from members of the community with respect to public outreach efforts.

## **ADDITIONS AND DELETIONS**

There were none.

### **1. CONSENT CALENDAR**

**ACTION:** Moved by Director Lalloway, seconded by Director Shea, and unanimously carried to approve Consent Calendar Item Nos. 1.1 – 1.3.

#### **1.1 MINUTES**

**ACTION:**

Approved the minutes of a regular meeting of the Orange County Great Park Board held on February 28, 2017.

#### **1.2 NAMING OF THE ARENA RINK AT THE GREAT PARK COMMUNITY ICE FACILITY**

Courtney Santos, Irvine resident, spoke in support of naming rights at the Great Park Community Ice Facility.

**ACTION:**

Recommended that the City Council authorize the City Manager to execute a letter approving the Irvine Ice Foundation's request to name the Arena at the Great Park Community Ice Facility.

**1.3 BUDGET ADJUSTMENT FOR CONSTRUCTION OF TEMPORARY PEDESTRIAN WALKWAY FOR PARKING LOT ACCESS IN THE WESTERN SECTOR**

**ACTION:**

Recommended that the City Council approve a budget appropriation in the amount of \$16,080 from the Orange County Great Park Fund unallocated fund balance to construct a temporary pedestrian walkway between the Festival Lot and North Athletic Fields in the Western Sector of the Orange County Great Park.

**2. BOARD BUSINESS**

**2.1 ORANGE COUNTY GREAT PARK FINANCIAL PROJECTIONS**

Angelina Garcia, Manager of Budget and Business Planning; Pete Carmichael, Director, Orange County Great Park; and Kristin Griffith, Director of Financial Services, presented the staff report and responded to questions.

Board discussion included: questioning assumptions with respect to the decline of expenditures during Fiscal Year 2023-24; noted market factors that could result in construction delays, and considering a contingency in the event of a real estate downturn; whether similar costs would be realized if operations were outsourced and requested a comparison of costs between in-house and contracted services; requested frequent financial reports to the Board; and noted financial benefits to leasing valuable land.

Received and filed the presentation on financial projections for the Orange County Great Park.

**2.2 ORANGE COUNTY GREAT PARK STREET NAMING**

Barry Curtis, Manager of Planning Services, presented the staff report and responded to questions.

Board discussion included: noting the practicality of street naming themes and a preference for squadron names; expressed concern that names of battles and wars could provide a negative connotation; questioned how to recognize marines as an alternative to street naming; and suggested expanding the list of distinguished service members for the inclusion of onsite memorials or venues at the Great Park.

**ACTION: Moved by Director Lalloway, seconded by Director Schott, and unanimously carried to:**

Approve the Squadron theme for street names within the Orange County Great Park.

**PUBLIC COMMENTS**

The following individuals spoke in support of the inclusion of botanical gardens at the Orange County Great Park:

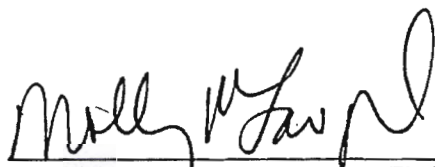
Jon Schara  
Ed Andrade  
Teena Spindler  
Dr. Ken Schwarz  
Sharon Stolen  
Katrina Kirkeby

Tim Lane spoke in support of a bike facility at the Orange County Great Park.

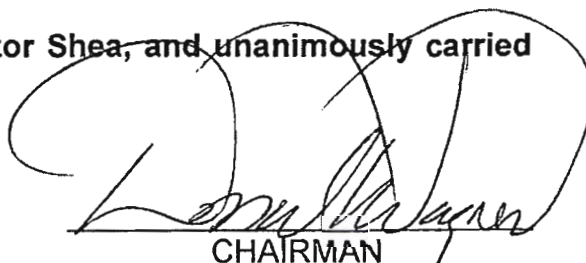
Patricia Martz spoke in support of an Orange County Museum of Cultural and Natural History at the Orange County Great Park.

**ADJOURNMENT**

**Moved by Director Schott, seconded by Director Shea, and unanimously carried to adjourn the meeting at 3:08 p.m.**



\_\_\_\_\_  
SECRETARY/CLERK OF THE BOARD

  
CHAIRMAN

\_\_\_\_\_  
April 25, 2017

\_\_\_\_\_  
DATE