



Legislation Details (With Text)

**File #:** ID 20-00918    **Version:** 1    **Name:**

**Type:** Action Item    **Status:** Agenda Ready

**File created:** 7/3/2020    **In control:** City Council

**On agenda:** 9/24/2020    **Final action:**

**Title:** Approve the Amended and Restated Wireless Agreement between the City of Fresno and XG Communities, LLC. for small cell implementations on City-owned assets.

**Sponsors:** Information Services Department

**Indexes:**

**Code sections:**

**Attachments:** 1. 5 Bars XG Communities Wireless Marketing and License Agreement - 9.15.20\_SIGNED\_REDACTED\_Final.pdf

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

**REPORT TO THE CITY COUNCIL**

**September 24, 2020**

**FROM:** BRYON HORN, Chief Information Officer  
Information Services Department

**SUBJECT**

Approve the Amended and Restated Wireless Agreement between the City of Fresno and XG Communities, LLC. for small cell implementations on City-owned assets.

**RECOMMENDATION**

Staff recommends that City Council approve, and allow the City Manager or designee to enter into the attached Amended and Restated Wireless Marketing Agreement between the City of Fresno (City) and XG Communities, LLC. (XG) for small cell implementations on City-owned assets. This will allow the City to continue to work with XG on a non-exclusive basis for the implementation of small cell telecommunication equipment on City assets.

**EXECUTIVE SUMMARY**

Staff recommends approval of the Amended and Restated Wireless Marketing Agreement and authorize the City Manager or designee to enter into such agreement. The agreement will allow the City to continue to work with XG as well as third party (carriers) allowing small cell telecommunications equipment to be placed on City assets, subject to the following general terms:

- Removes the exclusivity from the original XG Marketing Agreement.
- Assigns an annual fee of \$270 per attachment, pursuant to FCC (18-33) and allows the City to directly collect the fees.
- Preserves provisions for prior licensing agreements with carriers.
- Requires carriers to pay all costs of attaching equipment.

Staff has worked with XG in crafting the revisions to the agreement.

## **BACKGROUND**

On June 20, 2017, City and XG entered into a Wireless Marketing Agreement and License Agreement for small cell implementations on City-owned assets. The agreement was executed in good faith as both the City and XG would benefit from the marketing and rental of the City's assets.

On September 27, 2018, the FCC issued FCC Order 18-33 placing strict limits on state and local government's ability to manage and control government assets relating to small cell infrastructure. FCC Order 18-33 also limits the compensation cities can receive for such implementations to \$270 per pole per year. Since then, the City has been diligently working with carriers on a Master License Agreement (MLA) that would meet the needs of the City as well as comply with the requirements of the FCC Order 18-33. The proposed MLA would be used by any carrier interested in installing telecommunication equipment on City assets.

On August 27, 2019, the City sent a cancellation notice to XG due to the nature of the FCC order and the inability to amicably fulfil the good faith effort between the City and XG.

On October 24, 2019, the City extended the cancellation date to November 30, 2019 to allow the completion of negotiation with Verizon in that XG needed more time to negotiate conditions that are favorable to all parties.

On November 25, 2019, the City rescinded the termination of the XG agreement with the following understanding:

1. The City, XG and Verizon have mutually agreed that the City has the ability to cancel the license agreements after the initial term or at the beginning of any additional five (5) year renewal.
2. The City and XG will be billing and retaining the \$270 license fee in full from Verizon and will not owe XG any additional fees.
3. The City and XG have agreed that the City will have the ability to enter into Master License Agreements with other carriers (i.e., XG is removing the exclusivity clause from the Master Lease Agreement).

Subsequently, both parties agreed to amend the Wireless Marketing Agreement.

## **ENVIRONMENTAL FINDINGS**

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this item is not a project for the purposes of CEQA.

## **LOCAL PREFERENCE**

Local preference was not considered because this is an amendment to an existing agreement.

Attachment: Amended and Restated Wireless Marketing Agreement

## **FISCAL IMPACT**

No funds shall be expended for this agreement. The revenues from this agreement (currently estimated at \$100,000 annually) have been assumed in the General Fund five-year projections.

Attachment:  
Amended and Restated Wireless Marketing Agreement