

DATE ISSUED: May 5, 2004 REPORT NO.04-089

ATTENTION: Honorable Mayor and City Council  
Docket of May 10, 2004

SUBJECT: Right-of-Way Use Agreement With NextG Networks, Inc.

REFERENCE: Manager's Report No. 02-189, date August 28, 2002  
Manager's Report No. 01-022, dated February 7, 2001

#### SUMMARY

Issue - Should the City Council approve a public Right-of-Way Use Agreement with NextG Networks of California, Inc. for the nonexclusive use of the public right-of-way and City-owned street light poles to provide microcell telecommunications services for local wireless telecommunications carriers.

Manager's Recommendation - Approve the Right-of-Way Use Agreement.

Other Recommendations - None.

Fiscal Impact - Revenues from the Agreement are estimated to be \$100,000 annually following initial service activation. Additional compensation will flow to the City in the form of no cost fiber and wireless broadband services.

#### BACKGROUND

NextG Networks of California, Inc. is a facilities-based voice/data telecommunications provider that provides services to commercial wireless mobile telecommunications carriers through microcell and fiber optic technology. NextG's services are designed to amplify and extend existing wireless mobile telecommunications carrier's radio-frequency signal in difficult coverage areas. NextG Networks contracts with wireless telecommunications providers and does not directly provide wireless telecommunications services to the public.

For the purpose of designing and operating its network, NextG Networks proposes to locate, install, and operate telecommunications equipment in the public right-of-way; including installation of microcell technology equipment on selected streetlight pole facilities owned by the City. The proposed streetlight pole based microcell equipment includes low-power radio frequency 30-inch antennas and equipment cabinets with the approximate dimensions of 17"x10"x7". In addition, some right-of-way cabinets are designated as part of NextG's infrastructure. Attached are photo illustrations and diagrams of the network equipment that NextG is proposing to establish within the City. An initial deployment of 35 microcell sites in the downtown area has been identified by NextG Networks. Additional sites in the City will be installed in selected areas where current wireless coverage is lacking.

The City has drafted a proposed Right-of-way Use Agreement with NextG Networks for the nonexclusive use of the City's right-of-way and the ability to place equipment on approved City streetlight poles. The term of the proposed Agreement is for 10 years with one 5-year extension option. NextG is required to meet all City permitting, construction, and zoning requirements consistent with the City's current wireless telecommunications policies and regulations. Each individual location installation is subject to City review and approval.

Under the proposed Agreement and, unlike traditional wireless providers, NextG will pay the City a Right-of-way Fee equivalent to 5% of the total gross revenues received by the company for the provision of services and sales within the City of San Diego. The City will also receive an Annual Fee in the amount of \$500 per year for the use of each City facility occupied by NextG. Consistent with the City's draft wireless telecommunications policy, revenues associated with the annual per site fee are to be directed toward the Transportation Department while the Right-of-way Fees are to be dedicated to the City's General Fund.

The City will also obtain a specified amount of bandwidth capacity on the network owned or operated by NextG Networks for exclusive City use including data transmission, Wi-Fi networking, and other exclusive telecommunications functions.

## DISCUSSION

The proposed Right of-Way Usage Agreement between the City and NextG Networks is consistent with the objectives of Council Policy 900-13 pertaining to the promotion of new telecommunications technologies and for obtaining fair compensation for the use of City property by telecommunications providers. Because NextG will only utilize a small portion of the City's total number of streetlight poles, there appears to be no significant barriers to competitive entrants providing similar services within the City.

The NextG Agreement is similar to an existing agreement that the City maintains with Ricochet Networks for the use of City streetlight pole facilities for the lease and placement of microcell radios. One significant difference from the Ricochet Agreement is the integration of additional permitting restrictions placed on NextG Networks' use of City facilities in order to be consistent with the City's revised wireless telecommunications policies. All individual NextG installations,

including all individual right-of-way cabinetry will be subject to appropriate permitting and conditional use permits similar to the requirements placed on other City-wide telecommunications providers. In addition, the proposed Agreement with NextG mandates faithful construction and performance bonds to protect the City against any loss attributable to NextG's performance under the Agreement.

The microcell wireless telecommunications technology that is proposed by NextG Networks is consistent with the City's wireless telecommunications policy directing preference for microcell telecommunications technologies and for use of City facilities by commercial providers. NextG's stated paradigm combines multi-provider usage at each site which also promotes the City's policy to facilitate service provider co-location and non-replication of infrastructure. Antenna power consumption will be paid directly by NextG to the power company and there are restrictions against the placement of antennas on non-standard or decorative streetlight poles and traffic signal.

### FISCAL IMPACT

The unique right-of-way usage fee and per site revenues from the Agreement are estimated to be \$100,000 annually following the initial service distribution of the system. This amount will increase as additional service pockets are identified, installed, and activated around the City. Additional compensation will be realized by the City in the form of no-cost broadband capacity that the City will be able to use for fiber data transmission and Wi-Fi network technology. This broadband technology will supplement the existing City-owned wireless data systems and promote the use of new wireless technology.

### ALTERNATIVE

Do not approve the License Agreement with NextG Networks, of California Inc.

Respectfully submitted,

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Rey Arellano  
Deputy City Manager & CIO

ARELLANO/MSJ

Note: The attachment is not available in electronic format. A copy is available for review in the Office of the City Clerk.

ATTACHMENT      Right-of-Way Use Agreement with NextG Networks of California, Inc.