

## REPORT TO CITY COUNCIL

**DATE:           OCTOBER 26, 2005**

**TO:             HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM:          GREG RAMIREZ, CITY MANAGER**

**BY:            KEN BERKMAN, CITY ENGINEER**

**SUBJECT:      APPROVAL OF RIGHT-OF-WAY USE AGREEMENT WITH NEXTG  
NETWORKS FOR CITYWIDE INSTALLATION OF WIRELESS  
INFRASTRUCTURE**

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NextG Networks of California, Inc., (NextG) is a wireless communications company headquartered in Milpitas, California, which provides communications infrastructure for wireless service providers. NextG contacted the City in January 2005 to request citywide deployment of their infrastructure within the public right-of-way (PROW) under the Federal Telecommunications Act in order to improve wireless coverage and capacity in the City. NextG has a Certificate of Public Convenience and Necessity from the Public Utilities Commission and is a member of the Southern California Joint Pole Committee.

The deployment would entail the citywide installation of fiber optic conduit, telecommunications cabinetry, antennas and appurtenant structures under the roadway and on streetlights and power poles (see attached conceptual "Node Locations" plan). It is estimated by NextG that approximately 24 sites would be installed throughout the City. Some sites may require a service cabinet next to the pole if the pole cannot structurally accept the cabinet.

Per the Telecommunication Act and the fact that NextG is not a wireless service provider, the City is obligated to treat NextG in the same manner and under the same rules and regulations as other utilities, such as gas, water and electric. City staff and the City Attorney's Office have negotiated the attached agreement for Council's consideration to permit NextG to deploy its infrastructure throughout the City in accordance with all Federal, State and City laws. Each installation shall require the submittal of a site specific encroachment permit to the Engineering Department for review and approval by the City Engineer, just like other utilities.

In summary, the critical components of the agreement include:

1. The City shall receive an annual "Pole Fee" of \$500/pole.
2. The City shall receive an annual "Right-of-Way Fee", which is a 5% share of NextG's adjusted gross revenue generated from the installed sites in the City. NextG's estimate to staff of this amount is \$25/pole/month. At full deployment (24 sites), this would equate to about \$7,200/year.
3. A CPI adjustment would occur every 5 years for each installation.

4. NextG will reserve one wavelength of capacity in their fiber network for the City's exclusive use in operating a non-commercial, City-owned Wi-Fi network, or for any other City-operated non-commercial data network or communications system.
5. Each installation will be accompanied by a Faithful Performance Bond in the amount of \$2,500 to ensure future removal of the equipment, if necessary.
6. Upon the completion of each installation, NextG must promptly furnish to the City a current pole list and map that identifies the exact location of the equipment in the public way. That information must be provided in a format that is compatible with City's information technology.

NextG has similar agreements and deployment in place with the cities of Boston and San Diego. They are in negotiations with several municipalities throughout the State, including Westlake Village and a group of cities on the San Francisco peninsula that formed a JPA ("SamCat").

This report was prepared in cooperation with the City Attorney's Office.

## **RECOMMENDATION**

Staff respectfully recommends the City Council:

1. Discuss the pending citywide installation of wireless infrastructure by NextG; and
2. Authorize the Mayor to sign the Agreement; or,
3. Direct staff to modify the Agreement in accordance with any mutually-acceptable revisions proposed during the discussions and return to Council at the meeting of November 9, 2005 to ratify the Agreement.

Attachments:

- NextG Corporate Information Summary Sheet
- Agoura Hills Conceptual Node Locations Map
- PowerPoint Presentation by NextG
- Equipment Exhibits
- Right-of-Way Use Agreement