

COPY

**FIRST AMENDMENT TO
RIGHT-OF-WAY USE AGREEMENT
WITH NEXTG NETWORKS OF CALIFORNIA, INC.**

This Amendment is made and entered into as of the date signed by the City ("Effective Date"), and shall be identified as the First Amendment to the Right of Way Use Agreement ("Use Agreement"), entered into by and between the CITY OF SAN DIEGO, a California municipal corporation (the "City"), and NEXTG NETWORKS OF CALIFORNIA, INC., a Delaware corporation ("NextG," collectively the "Parties").

RECITALS

A. WHEREAS, The Parties entered into a Use Agreement (on file with the Clerk of The City of San Diego and identified as Document No. OO-19281) on May 24, 2004, whereby NextG acquired the right to occupy portions of the public rights-of-way upon City owned infrastructure for providing telecommunication services; and

B. WHEREAS, the Use Agreement initially contemplated that NextG would attached its equipment upon "Municipal Facilities" (as defined in section 1.8 of the Use Agreement); and

C. WHEREAS, the Council for the City of San Diego has expressed a desire that where practical, a wireless carrier and City staff should consider the use of traffic signals for the attachment of wireless equipment in lieu of a "Streetlight Pole" (as defined in section 1.14 of the Use Agreement); and

D. WHEREAS, the Use Agreement contemplated that as technology advances, so may the equipment and that if there was a material change in Equipment (as defined in section 1.3 of the Use Agreement) configuration not contained in Exhibit A to the Use Agreement, NextG would obtain City approval before using the changed equipment upon a City Municipal Facility; and

E. WHEREAS, the City of San Diego and NextG desire to amend the terms of the Use Agreement so that NextG may locate upon additional Municipal Facilities and to use new equipment that integrates NextG's operational needs into an aesthetic pleasing design.

NOW, THEREFORE, in consideration of the Recitals stated above, and incorporated herein by this reference, and the mutual obligations of the Parties expressed herein, the City and NextG, agree as follows:

1. That all the terms and conditions of the original Right-of-Way Use Agreement, dated May 24, 2004, between The City of San Diego and NextG Networks of California, Inc. (see, Use Agreement attached and incorporated herein as Exhibit 1) are of full force and effect except as expressly and specifically amended herein.

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2. That a new subsection 1.15 is added to Section 1 of the Use Agreement to read as follows:

Traffic Signal. "Traffic Signal" shall mean any standard-design concrete, fiber glass, or metal pole that has a mast arm for electrolifer support and is used for traffic signal control purposes. Traffic Signal may also integrate a streetlight.

3. Notwithstanding any provision to the contrary, NextG will be permitted to attach its approved equipment configurations to streetlight poles mounted above Traffic Signals at intersections in the City if no other suitable and technically feasible poles are available for attachment within the area; provided, that NextG must bring its own electrical circuit to such streetlight poles to serve its Equipment if an unmetered circuit does not already exist separate from the metered circuit serving the Traffic Signal for traffic control purposes.

4. That a new antenna design, identified as PCS Panel Antenna – Shoulder Mount with Radome (attached as Exhibit 2 and incorporated herein) be added to Exhibit A of the Use Agreement and that such cylindrical antenna shall be categorized as exempt from the application of § 141.0405 of the San Diego Municipal Code and shall be deemed a "single remote panel antennas less than 24-inches in length and width" as defined in Subsection (a) thereof.

5. Any modifications to this Amendment or the underlying Use Agreement shall be mutually agreed upon, in writing and signed by an authorized person from NextG and the City.

6. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

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In witness whereof, and in order to bind themselves legally to the terms and conditions of this First Amendment to the Right-of-Way Use Agreement, the duly authorized representatives of the parties have executed this First Amendment as of the Effective Date.

CITY OF SAN DIEGO, a
California municipal corporation

NEXTG NETWORKS OF CALIFORNIA,
INC., a Delaware corporation

By: *Rey Arellano*
Rey Arellano, Deputy City Manager
& Chief Information Officer

By: *John B. Georges*
John B. Georges, CEO

Date: June 15, 2005

Date: 1/31, 2005

I HEREBY APPROVE the form and legality of the foregoing First Amendment to the Right-of-Way Use Agreement this 15, day of June, 2005.

MICHAEL J. AGUIRRE, City Attorney

By: *Paul G. Edmonson*
Paul G. Edmonson, Deputy City Attorney

Exhibits:

- Exhibit 1 – Right-of-Way Use Agreement
- Exhibit 2 – Equipment