

AMENDMENT TO WIRELESS USE AGREEMENT

This Amendment to Wireless Use Agreement ("this Amendment") is executed to be effective the 1st day of November, 2007 (the "Effective Date"), by and between the City of Las Vegas, a municipal corporation of the State of Nevada (the "City"), and NextG Networks of California, Inc., a Delaware corporation, d.b.a. NextG Networks West ("NextG").

Recitals

WHEREAS, the City and NextG entered into a Wireless Use Agreement dated March 1, 2006 (the "Agreement"), by which the City granted NextG the right to use the City's Streetlight Poles and the City's Rights-of-Way (as defined in Sections 1.14 and 1.15 of the Agreement) for purposes of providing Telecommunications Service (as defined in Section 1.16 of the Agreement); and

WHEREAS, the City and NextG wish to modify certain provisions of the Agreement to expand NextG's rights to use poles located in the Rights-of-Way, to allow NextG to use the existing power sources that service the City's pole facilities, to require NextG to reimburse the City for increased costs resulting from such power sharing, and to increase the allowable number of poles in the Rights-of-Way that NextG may use.

Agreement

NOW, THEREFORE, the City and NextG hereby agree as follows:

SECTION 1. MODIFICATION OF SUBSECTION 1.10 OF THE AGREEMENT

Subsection 1.10 of the Agreement is hereby modified to read as follows:

1.10 *Municipal Facilities.* "Municipal Facilities" means ROW Poles, lighting fixtures or electroliers located within the ROW and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

SECTION 2. ADDITIONAL MODIFICATIONS OF SECTION 1 OF THE AGREEMENT

Section 1 of the Agreement is hereby modified to add Subsections 1.8(A), 1.14(A), 1.14(B) and 1.17, to read as follows:

1.8(A) *Information Service.* "Information Service" has the same meaning as that term is defined in the United States Code, 47 U.S.C. 153(20).

1.14(A) *ROW Pole.* "ROW Pole" means any Streetlight Pole, Traffic Signal Pole or School Zone Flasher.

1.14(B) School Zone Flasher. “School Zone Flasher” means any metal pole that is owned by the City, is located in the ROW, and is used for traffic signal or traffic control purposes for schools. School Zone Flasher does not include any pole that is made from any material other than metal.

1.17 Traffic Signal Pole. “Traffic Signal Pole” means any standard-design metal pole that is owned by the City, is located in the ROW, and is used for traffic signal or traffic control purposes, including School Zone Flashers. Traffic Signal Pole does not include any pole that is made from any material other than metal.

SECTION 3. MODIFICATION OF SUBSECTION 4.1.2 OF THE AGREEMENT.

Subsection 4.1.2 of the Agreement is hereby modified to read as follows:

4.1.2 NextG shall not attach its Equipment to more than a total of 25 poles in the ROW within one square mile, regardless of whether such poles are owned by the City, NextG or third parties.

SECTION 4. MODIFICATION OF SUBSECTION 4.1.4 OF THE AGREEMENT

4.1.4 To reduce the disruption to Municipal Facilities, NextG may power its Equipment by using the power sources that service the existing ROW Pole structure and its components. The power used by NextG’s Equipment shall be determined by the usage identified on the specifications for the Equipment installed pursuant to this Agreement, provided that the City may verify the actual power consumed by NextG’s Equipment using measurements of the power consumed prior to the installation of the Equipment compared to the power consumed after the installation of the Equipment. All electrical work and installations related to the power-sharing authorized by this Subsection 4.1.4 shall be performed by a licensed contractor that is approved by the City and in a manner that is approved by the City. NextG shall make all requests for power-sharing arrangements pursuant to the Subsection 4.1.4 in advance and in writing. NextG shall reimburse the City, as provided in Subsection 5.7, for the increased power costs that the City incurs as a result of any power-sharing authorized by this Subsection 4.1.4.

SECTION 5. MODIFICATION OF SUBSECTION 4.7 OF THE AGREEMENT

Subsection 4.7 of the Agreement is hereby modified to read as follows:

4.7 No Authorization to Provide Other Services. NextG represents, warrants and covenants that its Equipment installed pursuant to this Agreement will be utilized solely for providing the Telecommunications Service identified herein and any Information Service that may be provided over the Telecommunications Service Network, and NextG is not authorized to and shall not use its Equipment to offer or provide any other services not specified herein.

SECTION 6. MODIFICATION OF SECTION 5 OF THE AGREEMENT

Section 5 of the Agreement is hereby modified by adding a new Subsection 5.7, to read as follows:

5.7 Reimbursement of City's Increased Power Costs. The City may, in its discretion and on a calendar quarterly basis: (a) calculate and bill NextG, as provided herein, for the City's increased power costs resulting from power-sharing at any Municipal Facility by using the power consumption estimates noted on the specifications for the Equipment, multiplied by the applicable energy charges for such consumption based on twenty-four hours per day, seven days per week usage; or (b) measure the actual increase in power consumption at any Municipal Facility resulting from power-sharing, and bill NextG, as provided herein, for the City's increased power costs based on such measurements. If the City's increased power costs for any ROW Pole are \$30.00 or less for a quarter, the increased power costs shall be deemed to be included as part of the Municipal Facilities Attachment Fee required by Subsection 5.2 above, and NextG shall not be required to pay any separate power costs for that ROW Pole for that quarter. If the City's increased power costs for any ROW pole are more than \$30.00 for a quarter, the City shall bill NextG only for the incremental power costs that are above the first \$30.00 in increased power costs. The City shall bill NextG for the reimbursements due under this Subsection 5.7 at the end of each calendar quarter, and NextG's reimbursements for the City's increased power costs shall be due and payable not later than 45 days after each calendar quarter. The City may change its methodology for determining reimbursement costs on an annual basis, and any change in methodology shall take effect on July 1 of each year.

SECTION 7. MODIFICATION OF SUBSECTION 6.3 OF THE AGREEMENT

Subsection 6.3 of the Agreement is hereby modified to read as follows:

6.3 Location of Equipment. The proposed locations of NextG's planned initial installation of Equipment shall be provided to the City in the form of a map or on an annotated aerial photograph, either of which must be in a format acceptable to the City, promptly after NextG's field review of available ROW Poles and prior to deployment of the Equipment. Prior to Commencement of Installation of the Equipment in the ROW or upon any Municipal Facility, NextG shall obtain written approval from an authorized representative of the City for such installation in the ROW or upon such Municipal Facility from the City pursuant to Subsection 6.2 above. The City may approve or disapprove a location and installation, based upon reasonable regulatory factors, including but not limited to the ability of the Municipal Facility to structurally support the Equipment, the location of other present or future communication facilities, efficient use of scarce physical space to avoid premature exhaustion, potential interference with other communication facilities and services, the public safety and other critical services. Upon the completion of each installation, NextG promptly shall furnish to the City a current ROW Pole list and as-built map or annotated aerial photograph, either of which must be in a format acceptable to the City, showing the exact location of the Equipment in the ROW and on Municipal Facilities or third-party facilities.

SECTION 8. MODIFICATION OF SUBSECTION 6.7 OF THE AGREEMENT

Subsection 6.7 of the Agreement is hereby modified to read as follows:

6.7 Relocation and Displacement of Equipment. NextG understands and acknowledges that City may require NextG to relocate one or more of its Equipment installations. NextG shall at City's direction relocate such Equipment at NextG's sole cost and expense whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a City or other public agency project; (b) because the Equipment is interfering with or adversely affecting proper operation of ROW Poles, traffic signals, communications, or other Municipal Facilities; or (c) to protect or preserve the public health or safety. In any such case, City shall use reasonable efforts to afford NextG a reasonably equivalent alternate location. If NextG shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, City shall be entitled to remove or relocate the Equipment at NextG's sole cost and expense, without further notice to NextG. NextG shall pay to the City actual costs and expenses incurred by the City in performing any removal work and any storage of NextG's property after removal within thirty days of the date of a written demand for this payment from the City. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform NextG of the displacement or removal of any ROW Pole on which any Equipment is located. If the Municipal Facility is damaged or downed for any reason, and as a result is not able to safely hold the Equipment, the City will have no obligation to repair or replace such Municipal Facility for the use of NextG's Equipment. NextG shall bear all risk of loss as a result of damaged or downed Municipal Facilities pursuant to Subsection 6.12 below, and may choose to replace such Municipal Facilities pursuant to the provisions of Subsection 4.1.6 above.

SECTION 9. MODIFICATION OF SUBSECTION 6.10 OF THE AGREEMENT

Subsection 6.10 of the Agreement is hereby modified to read as follows:

6.10 Change in Equipment. If NextG proposes to install Equipment which is different in any material way from the pre-approved configurations and Equipment specifications attached hereto as Exhibit A, then NextG shall first obtain the written approval for the use and installation of the unauthorized Equipment from an authorized representative of the City. In addition to any other submittal requirements, NextG shall provide "load" (structural) calculations for all ROW Poles it intends to install in the ROW, notwithstanding original installation or by way of Equipment type changes. The City may approve or disapprove of the use of the different Equipment from the specifications set forth in Exhibit A, pursuant to the factors enumerated in Subsection 6.3 above, and such approval shall not be unreasonably withheld.

SECTION 10. MODIFICATION OF SECTION 7 OF THE AGREEMENT

Section 7 of the Agreement is hereby modified to read as follows:

7. INDEMNIFICATION AND WAIVER. NextG agrees to indemnify, defend, protect, and hold harmless the City, its Council members, officers, and employees from and against any and all claims, demands, losses, including ROW Pole warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from NextG's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the sole negligence or sole willful misconduct of the City, its City Council members, officers, employees, agents, or contractors.

7.1 Waiver of Claims. NextG waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Telecommunications Service or Information Service as a result of any event or occurrence which is beyond the reasonable control of the City.

7.2 Limitation of City's Liability. The City shall be liable only for the cost of repair to damaged Equipment arising from the sole negligence or sole willful misconduct of City, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. City's total liability under this Agreement shall be limited to the Municipal Facilities Attachment Fee paid by NextG to the City in the year under which such liability arises.

SECTION 11. CONFIRMATION OF REMAINDER OF AGREEMENT

Except to the extent that the Agreement has been expressly modified above, the parties hereby confirm that the terms and conditions of the Agreement as originally executed remain in full force and effect.

.....
.....
.....
.....
.....

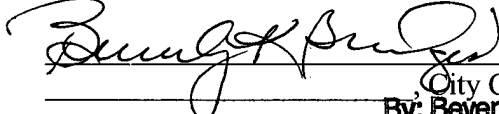
EXECUTED to be effective on the date specified above.

CITY OF LAS VEGAS

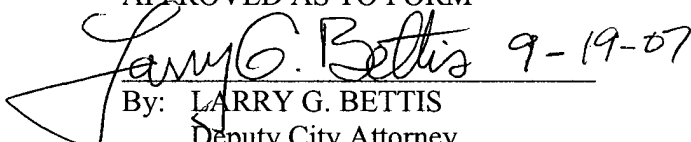
By: 
~~OSCAR B. GOODMAN, Mayor~~

Gary Reese, Mayor Pro-Tem

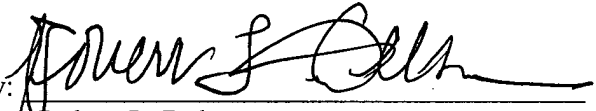
ATTEST:


City Clerk
By: **Beverly K. Bridges, CMC**
City Clerk

APPROVED AS TO FORM

 9-19-07
By: **LARRY G. BETTIS**
Deputy City Attorney

**NEXTG NETWORKS OF CALIFORNIA, INC.,
a Delaware Corporation**

By: 
Robert L. Delsman

Its: VP, Government Relations and Regulatory Affairs