

STAFF REPORT



ITEM NO. 10
CITY OF OCEANSIDE

DATE: October 21, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF A TELECOMMUNICATIONS NETWORK LICENSE AND ENCROACHMENT AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND NEXTG NETWORKS OF CALIFORNIA, INC., AUTHORIZING LICENSEE TO ENCROACH UPON PUBLIC RIGHTS-OF-WAY WITHIN THE CITY, FOR WIRELESS TELECOMMUNICATION PURPOSES**

SYNOPSIS

Staff recommends that the City Council approve a Telecommunications Network License and Encroachment Agreement with NextG Networks of California, Inc., (NextG) to encroach upon a portion of the public rights-of-way within the City, for telecommunications purposes, for a minimum total revenue of \$70,000 for a ten-year period; and authorize the City Manager to execute the agreement.

BACKGROUND

NextG has received approval from the California Public Utilities Commission (CPUC) to construct a Distributed Antenna System (DAS) in the City of Oceanside. The DAS allows NextG to provide RF-over-Fiber transport solutions that enable wireless carriers to expand their coverage and/or capacity in the area. As part of this network, NextG has requested an agreement with the City to encroach upon portions of the public rights-of-way for the installation of NextG's wireless service antennas and equipment at locations within the City. The initial deployment includes eight sites. The antenna and related equipment ("Node" or collectively "Nodes") are as described and illustrated in the attached Exhibit "A". Eight of the ten locations for the Nodes that are proposed within the public rights-of-way are described and depicted in the attached Exhibit "B". The ninth and tenth locations shall be determined at a later date by NextG and approved by staff.

ANALYSIS

NextG holds a Certificate of Public Convenience and Necessity (CPCN) issued by the CPUC which authorizes them to provide limited facilities-based and resold inter-

exchange telecommunications services. Pursuant to the CPCN, the CPUC is designated as the lead agency for California Environmental Quality Act purposes. The City may regulate the placement, construction and modification of personal wireless service facilities, including the facilities of those companies holding a CPCN as long as such regulations are nondiscriminatory and do not have the effect of prohibiting the provision of wireless phone services.

By entering into this agreement with NextG, the City will be given a preference by NextG to locate on City-owned facilities (e.g., street light poles) within the public rights-of-way ("City Facility" or collectively "City Facilities") in lieu of privately owned facilities within the public rights-of-way or on private property. If NextG locates any of the Nodes on City Facilities, NextG will pay City an annual fee for each Node. Additionally, the agreement affords the opportunity for the City to exclusively utilize and control two strands of fiber throughout the NextG deployment for the operation of the City communications network and traffic control center or for any other noncommercial, City-operated data network or communications function.

FISCAL IMPACT

The agreement requires a one-time initial payment in the amount of \$3,000 to the City for administrative activities related to the ten proposed Nodes, excluding any permit issuance and inspection fees. NextG will pay the City \$500 per year for each City Facility used within the public rights-of-way as an "infrastructure use fee". In addition to the infrastructure use fee, Licensee will pay the City the greater of \$500 or a five percent annual revenue-sharing fee per Node per year as a "right-of-way use fee". The infrastructure use fee will be adjusted annually, based upon the percentage change in the Consumer Price Index, but no less than three percent. Further, City is to receive additional compensation from NextG in the form of the two strands of fiber for City's exclusive use.

Initially, NextG anticipates using six City Facilities within the public rights-of-way. Accordingly, under the agreement NextG will initially pay City: 1) a minimum total infrastructure use fee revenue of \$30,000 for the ten-year period (for use of the five City Facilities within the public rights-of-way); and 2) a minimum total right-of-way use fee revenue of \$40,000 for the ten-year period (for eight Nodes within the public rights of way). Revenues generated by all the cellular sites on City-owned property and within the public rights-of-way accrue to the City's General Fund and the value with this and other agreements is approximately \$611,000 annually.

COMMISSION OR COMMITTEE REPORT

Does not apply.

INSURANCE REQUIREMENTS

Licensee will be required to maintain the City's standard insurance requirements over the term of the agreement, as well as a performance bond.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

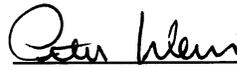
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PREPARED BY:



Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:



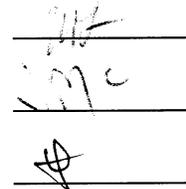
Peter A. Weiss
City Manager

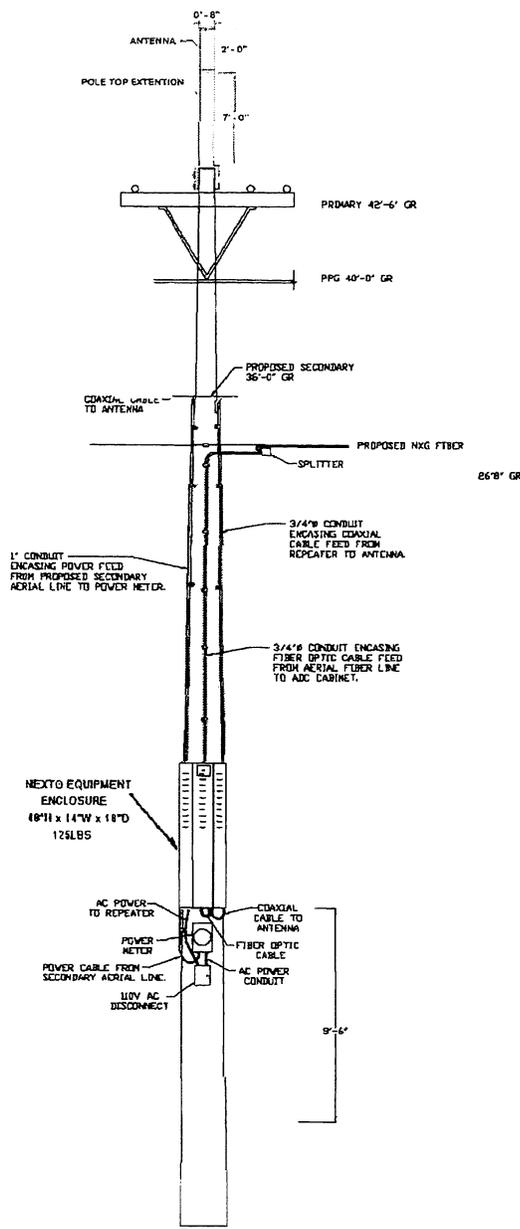
REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

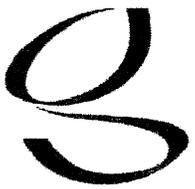
Jane McVey, Economic and Community Development Director

Teri Ferro, Financial Services Director





WOOD UTILITY POLE LAYOUT

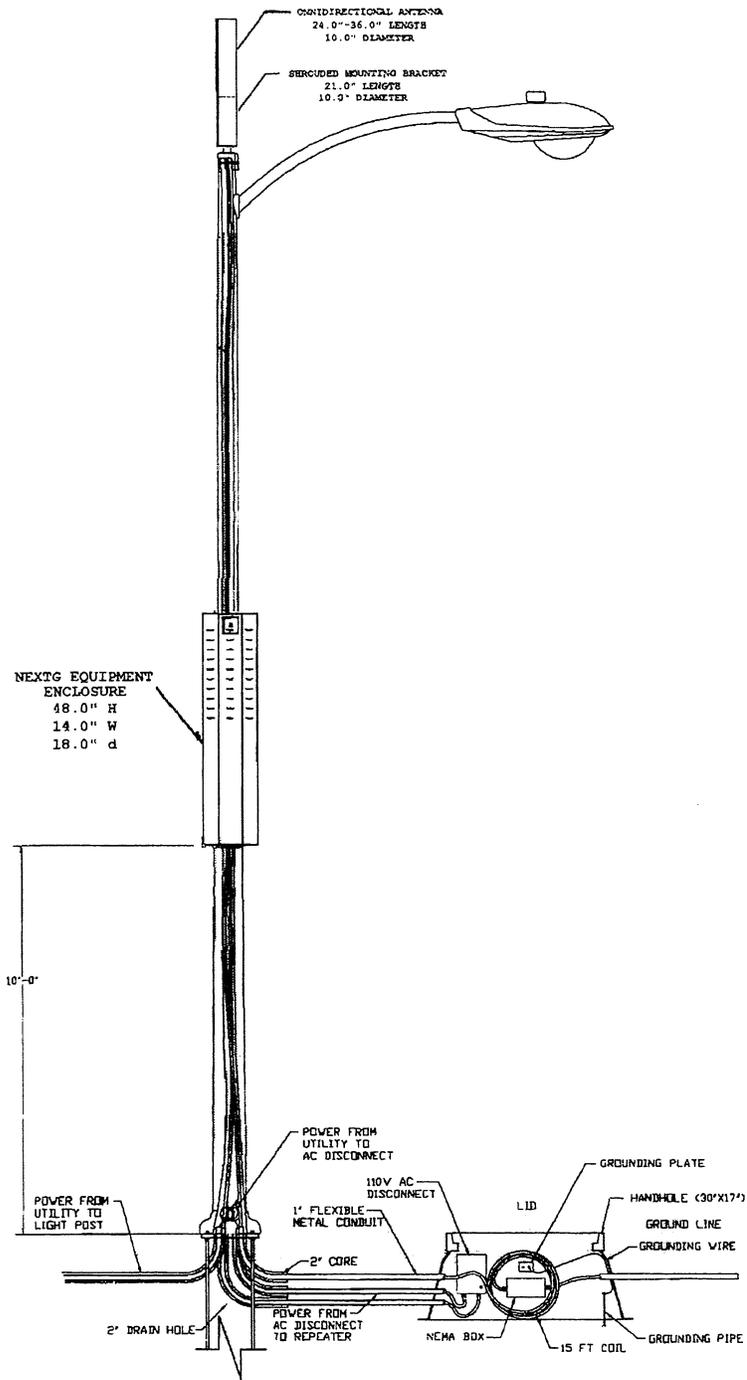


NextG Networks

NEXTG NETWORKS
EQUIPMENT CONFIGURATIONS

EXHIBIT "A"

SITE ADDRESS:	
TITLE: WOODEN DISTRIBUTION POLE LARGE ADC DUAL BAND CABINET NON-METERED UNIT CONFIGURATION	
CONTRACT NO.	SHEET: 1
DRAWING NO.	
DATE DRAWN: 06-11-2009	
SCALE: AS SHOWN	
PLOT DATE: 06-06-2010	



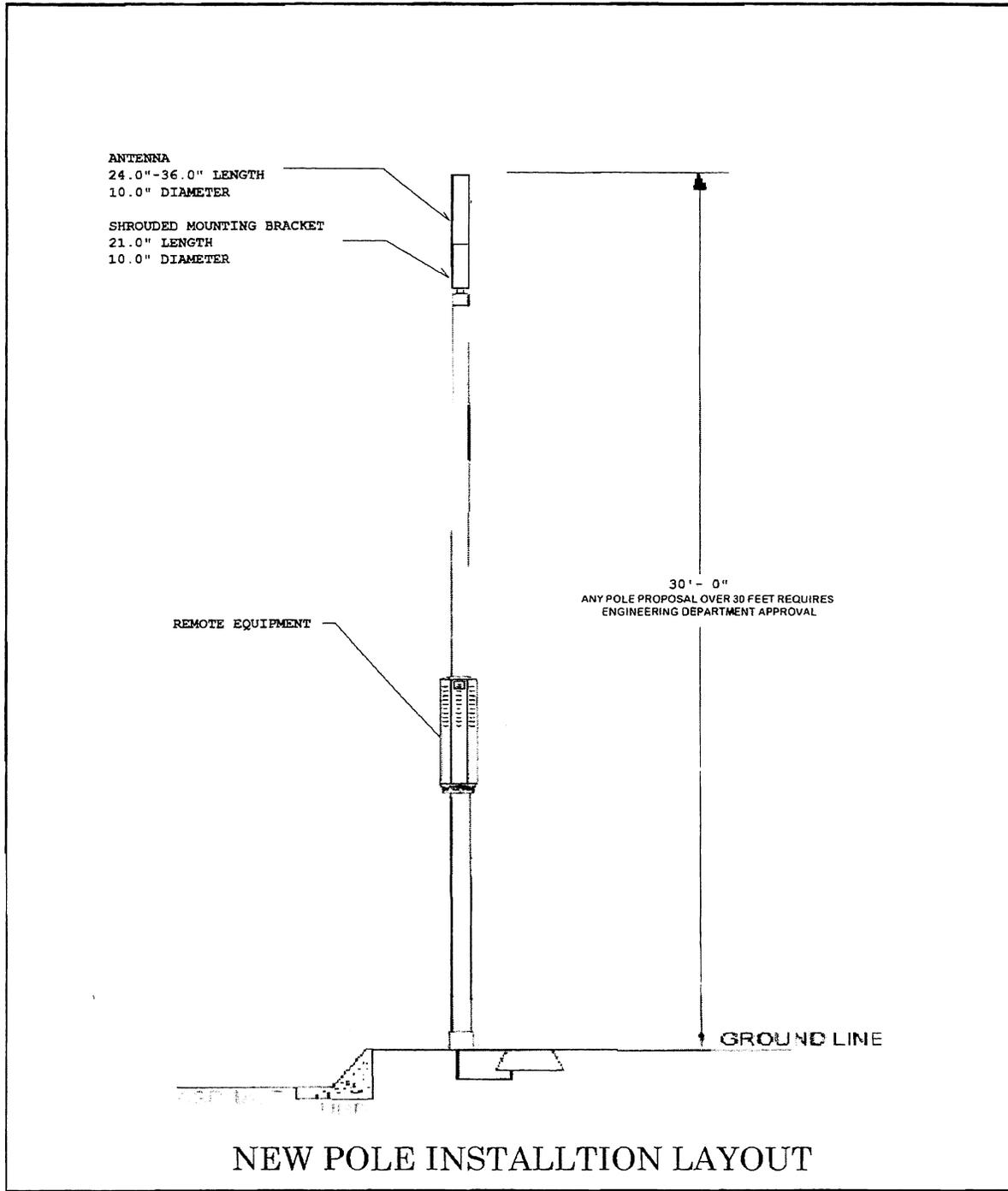
STREET LIGHT LAMP POST LAYOUT
SCALE: 1/2" = 1'-0"



**NEXTG NETWORKS
EQUIPMENT CONFIGURATIONS**

EXHIBIT "A"

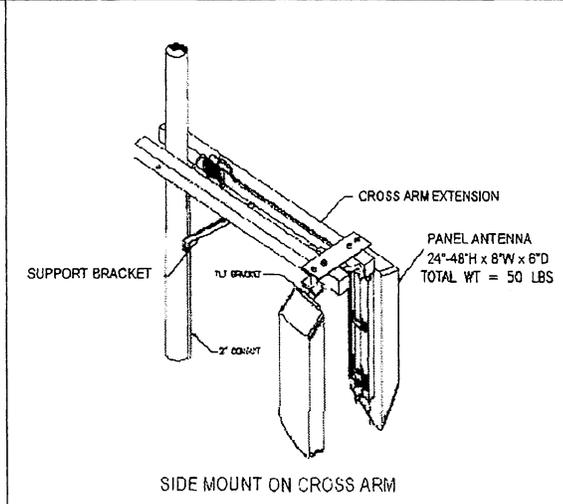
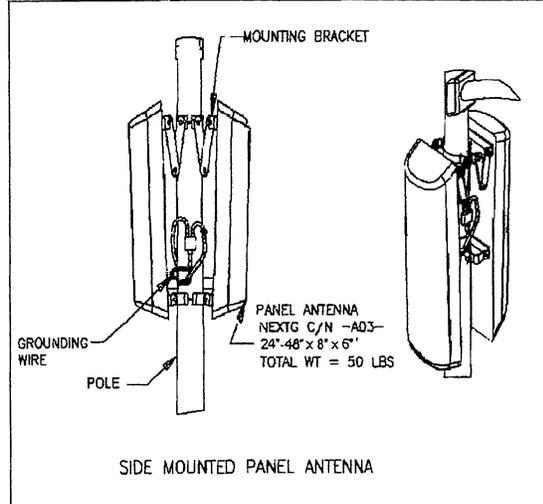
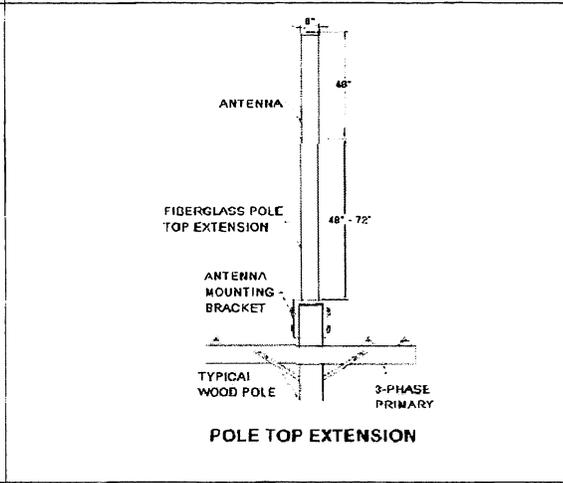
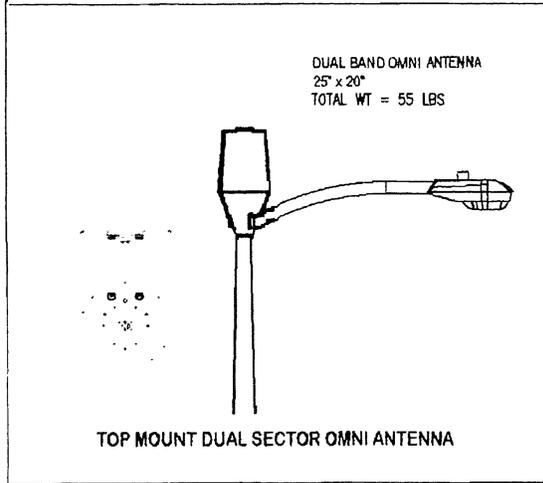
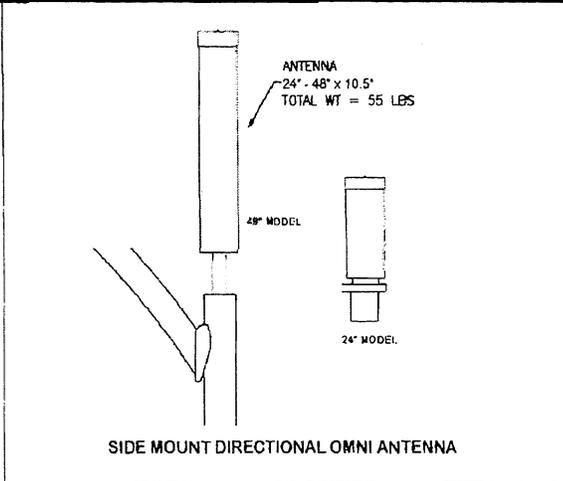
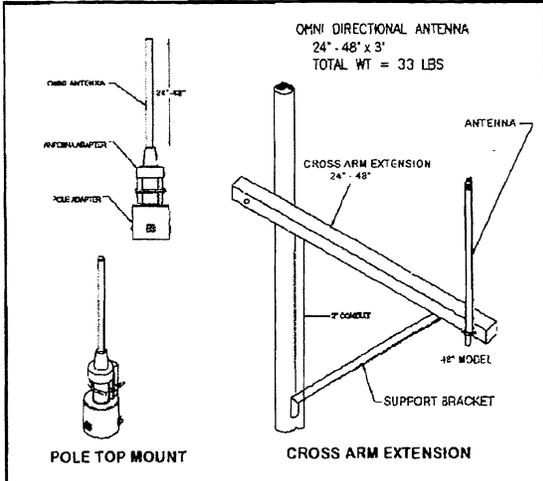
SITE ADDRESS	
TITLE: STANDARD STEEL LAMP POST HIKOH MMR8/19 REMOTE UNIT NON-METERED UNIT CONFIGURATION	
CONTRACT NO.	SHEET: 2
DRAWING NO.	
DATE DRAWN 06 11-2009	
SCALE: AS SHOWN	
PLOT DATE: 06-06-2010	



NEXTG NETWORKS
EQUIPMENT CONFIGURATIONS

EXHIBIT "A"

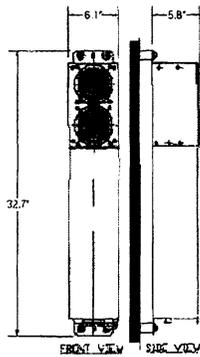
SITE ADDRESS	
TITLE: NEW UTILITY/STREETLIGHT POLE DUAL ION SHROUD CABINET	
CONTRACT NO.	SHEET
DRAWING NO.	3
DATE DRAWN: 06-11-2009	
SCALE: AS SHOWN	
PLDT DATE: 06-06-2003	



NEXTG NETWORKS
EQUIPMENT CONFIGURATIONS

EXHIBIT "A"

SITE ADDRESS:	
TITLE: ANTENNA CONFIGURATIONS OMNI AND PANELS	
CONTRACT NO:	SHEET:
DRAWING NO:	4
DATE DRAWN: 06-11-2009	
SCALE: AS SHOWN	
PLOT DATE: 06-06-2009	

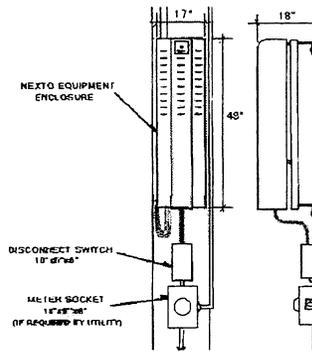


EQUIPMENT_TYPE_A-I_01

SPECIFICATIONS
 32.7" - H
 6.1" - W
 5.8" - D
 60 - Lbs

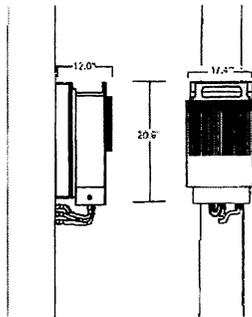


**REMOTE EQUIPMENT
 DETAIL (E-1)**



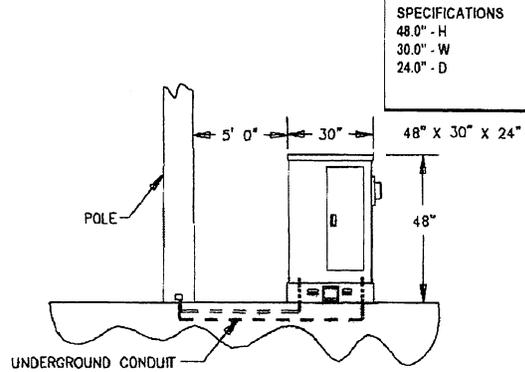
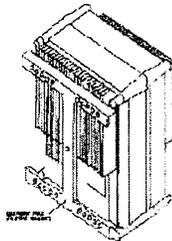
REMOTE EQUIPMENT SPEC E-1
 WITH DISCONNECT AND METER (IF REQUIRED BY LOCAL UTILITY)

SPECIFICATIONS
 48.0" - H
 17.0" - W
 18.0" - D
 125 - Lbs



EQUIPMENT_TYPE_PW_01

SPECIFICATIONS
 21.0" - H
 18.0" - W
 12.0" - D
 80 - Lbs.



NEXTG CONFIGURATION - GROUND PEDESTAL
 APPLICATION IF POLE MOUNTED EQUIPMENT NOT APPROVED

SPECIFICATIONS
 48.0" - H
 30.0" - W
 24.0" - D



**NEXTG NETWORKS
 EQUIPMENT CONFIGURATIONS**

EXHIBIT "A"

SITE ADDRESS:	
TITLE: EQUIPMENT CONFIGURATIONS	
CONTRACT NO:	SHEET:
DRAWING NO:	5
DATE DRAWN: 06-11-2009	
SCALE: AS SHOWN	
PLOT DATE: 06-16-2009	

TELECOMMUNICATION NETWORK LICENSE AND ENCROACHMENT AGREEMENT

This License and Encroachment Agreement (“Agreement”) is entered into this _____ day of, _____, 2009, by and between the **City of Oceanside**, a California municipal corporation, hereinafter referred to as the (“City”) and **NextG Networks of California, Inc.** hereinafter referred to as (“NextG” or “Licensee”) (collectively, the “Parties”). The effective date shall be the date this Agreement is approved by the Oceanside City Council, as evidenced by the date indicated hereinabove (the “Effective Date”).

RECITALS

WHEREAS, City is responsible for management of the public right of way and performs a wide range of vital tasks necessary to preserve the physical integrity of public streets and ways, to control the orderly flow of vehicles, to promote the safe movement of pedestrians, and to manage a number of gas, water, sewer, electric, cable television, telephone and telecommunications facilities that are located in, under and over the streets and public right of ways; and

WHEREAS, Licensee builds, owns, and leases fiber optic distributed antenna systems to improve wireless coverage and capacity for telecommunications carriers; and

WHEREAS, Licensee balances the needs of communities and consumers with the needs of wireless service providers by using a patented fiber-optic architecture, low-impact, low-emission equipment without the need for tall cellular towers; and

WHEREAS, Licensee’s networks are protocol and frequency agnostic, they can carry cellular, PCS, WiFi, or any combination of wireless frequencies and standards; and

WHEREAS, Licensee’s networks can serve a variety of wireless service providers thereby promoting collocation with aesthetic pleasing designs; and

WHEREAS, Licensee does not own or manage Federal Communications Commission regulated and licensed frequencies but owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the California Public Utilities Commission, a telecommunications Network or Networks (as defined below) serving Licensee’s established wireless carrier customers and utilizing microcellular optical repeater equipment (referred to herein as “Licensee’s Facilities” or “Nodes”) certified by the Federal Communications Commission; and

WHEREAS, for purpose of operating the Network, Licensee wishes to locate, place, attach, install, operate, control, and maintain Licensee’s Facilities in the Public Rights-of-Way, on facilities owned by the City, as well as on facilities owned by third parties therein; and

WHEREAS, in addition to normal published right-of-way and/or encroachment-related permitting fees, Licensee shall compensate the City for (1) processing fees on a per Node basis,

(2) a grant of location and the right to use and physically occupy portions of the Public Rights-of-Way, and (3) access to Municipal Facilities located in the rights-of-way owned by the City; and

WHEREAS, Licensee has voluntarily submitted a request to enter into this Agreement with the City to encroach upon and occupy portions of the public right of way in certain streets, easements, and upon certain public improvements for the purposes of installing Licensee's facilities; and

WHEREAS, in consideration of Licensee's request, City is willing to approve Licensee's use and occupation of certain public right of way and certain public improvements upon the terms, conditions and other considerations set forth herein.

A G R E E M E N T

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

Section 1. Definitions. The following definitions shall apply generally to the provisions of this Agreement:

City. "City" means the City of Oceanside, California.

Decorative Streetlight Pole. "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles and does not have a mast arm for electrolier support. Decorative Streetlight Poles may not be used for the Network without prior written approval by City. The term Decorative Streetlight Pole includes any historically or architecturally significant or designated light poles owned by the City located on Public Rights-of-Way.

Fee. "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body (excluding utility users' tax, franchise fees, communications tax, or similar tax or fee).

Gross Revenue Fee. "Gross Revenue Fee" shall mean and include any and all income and other consideration collected, received, or in any manner gained or derived by Licensee from or in connection with, the provision of Services, either directly by Licensee or indirectly through a reseller, if any, to customers of such services within the City of Vista, including any imputed revenue derived from commercial trades and barter equivalent to the full retail value of goods and services provided by Licensee. Gross Revenue shall not include: (a) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government (exclusive of the Municipal Facilities Annual Fee paid to the City provided herein); (b) retail discounts or other promotions; (c) non-collectable amounts due Licensee or its customers; (d) refunds or rebates; and (e) non-operating revenues such as interest income or gain from the sale of an asset.

Installation Date. "Installation Date" shall mean the date that the first Licensee Facility is installed by Licensee pursuant to this Agreement.

Laws. “Laws” means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdictions over the parties to this Agreement.

Licensee’s Facilities. “Licensee’s Facilities” or “Node(s)” means the optical repeaters, DWDM and CWDM multiplexers, antennae, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by Licensee hereunder. Only the installation design configurations of Licensee’s Facilities that are shown in the drawings and photographs attached hereto as Exhibit A and incorporated herein by reference may be used by Licensee on City Municipal Facilities. Any Licensee Facility installation or configuration not contained within Exhibit A or as the parties shall agree is not substantially similar thereto is subject to a separate City evaluation and approval process before it may be used on any City Municipal Facility or placed on or in the Public Rights-of-Way.

Municipal Facilities. “Municipal Facilities” means City-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, electroliers, or comparable facility located within the Public Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

Network. “Network” or collectively “Networks” means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by Licensee to serve its wireless carrier customers in the City.

NextG. “Licensee” means NextG Networks of California, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

Public Way, Right-of-Way, or Public Rights-of-Way. “Public Way,” “Right-of-Way, or “Public Rights-of-Way” means the space in, upon, above, along, across, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include any other property owned by the City or any property owned by any person or entity (e.g. county, state, or federal rights-of-way) other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or entity.

PUC. “PUC” means the California Public Utilities Commission.

Services. “Services” means the services provided through the Network by Licensee to its wireless carrier customers pursuant to one or more tariffs filed with and regulated by the PUC.

Streetlight Pole. “Streetlight Pole” shall mean any non-Decorative, standard-design concrete, fiberglass, or metal pole that has a mast arm for electrolier support and is used for streetlighting purposes.

Section 2. Authorization. Subject to the terms and conditions contained herein, City hereby authorizes Licensee to encroach upon and occupy a portion of the Public Rights-of-Way for the limited purpose of constructing, installing, operating and maintaining Licensee’s Facilities to provide service to wireless carriers. Other City owned property that is the subject of

this Agreement is “Streetlight Poles” and appurtenances thereto more particularly described in Exhibit A.

Licensee may have the right to draw compatible electricity for the operation of the Licensee’s Facilities from the power source associated with the Municipal Facility so long as Licensee’s Facilities are installed to all applicable codes and standards, do not interfere in the operation of the host Municipal Facility, and/or do not damage the host Municipal Facility. City shall not be responsible to provide any specified voltage or wattage of electricity that is compatible with any Licensee’s Facilities. Notwithstanding the foregoing, Licensee shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Licensee’s Facilities usage of electricity and applicable tariffs, and Licensee’s usage of electricity will, under no circumstances, be paid for by City. Licensee’s Facilities shall not draw compatible electricity from Municipal Facility until such time as Licensee has secured all required electrical approvals from the City and the electrical utility company and the electricity charging/payment agreement with the electrical utility company is in place.

In addition to authorization to attach to Municipal Facilities, subject to obtaining the written permission of the owner(s) of the affected property, the City hereby authorizes and permits Licensee, to enter upon the Public Rights-of-Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Licensee’s Facilities in or on poles or other third-party structures owned by public utility companies or other property owners located within the Public Way as may be permitted by the public utility company or property owner, as the case may be. At City’s request, Licensee shall furnish to the City documentation of such permission from the individual utility or property owner responsible. Exhibit A represents a good-faith description of Licensee’s Facilities, and a denial of an application for the attachment of Licensee’s Facilities equipment to City or third-party-owned poles or structures in the Public Way shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of Licensee’s Facilities equipment if the Licensee’s Facilities equipment proposed for such application substantially conforms to one of the design configurations and Node specifications set forth in Exhibit A unless such City denial is based on a clearly articulated safety issue related to the pole or structure.

In the event that the Parties disagree as to whether the proposed Licensee’s Facilities equipment or Node substantially conforms to one of the design configurations and Node specifications set forth in Exhibit A, the parties shall meet in good faith in an effort to resolve this dispute. The City Engineer or his or her designee shall represent the City in any such meetings.

Section 3. Term. The commencement date (“Commencement Date”) shall be the 1st day of the month following the Effective Date. This agreement shall be effective for a period of ten (10) years, renewable upon mutual consent of the Parties.

Section 4. Permitting and Location of Nodes. City agrees to permit Licensee to place the Nine (9) Nodes described in Exhibit B, attached hereto. If Licensee requests permits for additional Nodes beyond the nine Nodes described in Exhibit B, Licensee shall provide to the Public Works Department (or other administrative agency designated by the City) a new Exhibit with similar detail showing the location and type of Nodes. Such request shall be considered an Addendum to this Agreement and shall be processed pursuant to the Agreement, but the Addendum will not require further action from Council if the proposed additional Nodes are

consistent with Exhibit A. The Parties agree that Exhibit A represents a good-faith representation of the equipment that Licensee plans to attach to Municipal Facilities, that such design configurations and Node specifications may be attached to Municipal Facilities and to third-party facilities. Licensee shall present any deviation to the design configurations and Node specifications described in Exhibit A to the City, which shall review and either approve or deny within thirty (30) days. Any change to the design configurations and Node specifications in Exhibit A may be requested by Licensee and may be approved by the City so long as the equipment is substantially similar in size, weight shape, color, configuration or other physical properties. In the event that the Parties disagree as to whether the proposed Licensee's Facilities equipment or Node substantially conforms to one of the design configurations and Node specifications set forth in Exhibit A, the Licensee and the City Engineer or his or her designee shall meet in good faith in an effort to resolve this dispute.

Supporting Node equipment at its lowest point on the Streetlight pole or comparable facility located in the Public Way, must be placed at a minimum height of eight feet (8') above the ground.

For purposes of construction and maintenance permitting, City shall not consider Licensee to be a wireless carrier nor deem its installations wireless telecommunications facilities. Instead, City shall process all nine (9) initial infrastructure sites as a single Right-of-Way permit or other mutually agreeable non-discretionary process, so long as it complies with the terms and conditions of this Agreement. In addition to the City permitting process, Licensee agrees to seek any and all additional local, state and federal approvals that may be required for its deployments, such as approvals that might be required from the California Coastal Commission (to the extent that the City does not have California Coastal Commission permitting authority).

For Licensee's initial deployment, City shall make available to Licensee nine (9) suitable City-owned streetlights poles or comparable facility located within the City's Right-of-Way for the placement of Licensee's Nodes, substantially in the locations described in the Network Plan provided to the City on (add date), and attached hereto as Exhibit B. Notwithstanding, the use of any particular Municipal Facility Right-of-Way structure, comparable facility, or pole shall be subject to the City Engineer's sole discretion and approval in advance of the placement of the Licensee telecommunications infrastructure.

Section 5. Scope of Agreement. By entering into this Agreement, the Licensee certifies that it has sought its own independent legal opinions and retained competent counsel to advise it regarding this Agreement and that it has been made fully aware of all of the rights it has and all of the rights it waives herein, and that Licensee thereafter knowingly and voluntarily waives any current or future rights reserved under California Government Code Section 50030 et seq; the California Public Utility Code; and the Telecommunications Act of 1996 (the "Act") including but not limited to, those rights set forth in Section 253 (c), to the extent inconsistent with this Agreement. The foregoing waiver *only* applies to any revenue-sharing payments that NextG is making to the City, not to any other provisions under California or federal law. In the event a court finds the Licensee may not waive such rights, then the parties agree to modify this Agreement to conform to the future changes in a manner that will make and keep the City whole regarding the consideration flowing to the City under this Agreement. Additionally, Licensee covenants and represents that it is making the offer for revenue sharing at Licensee's own

initiative, and Licensee voluntarily and expressly waives any right that it may have to take any action to rescind the requirement for fees contemplated under this agreement.

Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint-venture or of any association whatsoever between City and Licensee, it being expressly understood and agreed that neither the computation of fees nor any other provisions contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between City and Licensee other than the relationship of City and Licensee.

Licensee hereby acknowledges, agrees and covenants that this Agreement only allows for the occupation of the Right of Way and Municipal Facilities by Licensee's Facilities identified in Exhibit A and does not authorize or bestow any interest in real property including any fee, leasehold interest or easement.

a. Limitations on License. Nothing in this Agreement is intended to create an interest or estate of any kind or extent in the property or premises. Licensee further acknowledges and agrees that this Agreement does not create a landlord-tenant relationship and Licensee is not entitled to avail itself of any rights afforded to tenants under the laws of the State of California.

b. Preference for Municipal Facilities. In any situation where Licensee has a choice of attaching its Equipment to either Municipal Facilities, or to third-party-owned property in the public right of way or on private property, or to its own facilities that it would construct in the public right of way within one hundred (100) feet of Municipal Facilities, Licensee agrees to first apply to the City to attach to and use City Municipal Facilities. The City shall advise Licensee within thirty (30) days whether or not City wishes to exercise its first right under this Paragraph. Where in the opinion of the Licensee there is no choice of or option to attach to Municipal Facilities as provided herein, Licensee shall provide technically accurate and sufficient information to City to justify Licensee's proposed use of its own facilities or third party owned property in the public right of way or on private property. Failure to comply with this section will constitute default of a material covenant pursuant to Section 33. Prior to issuance of any permit hereunder, the City may require NextG to provide evidence that its design has carefully considered the availability of any Municipal Facilities and to establish to the reasonable satisfaction of the City engineer that Municipal Facilities have been reviewed and considered. Failure to comply with this section, will constitute default of a material covenant pursuant §33, below.

c. No Warranty. City makes no warranty or representation that the premises are suitable for Licensee's use. Licensee has inspected the premises and accepts the same "AS IS". City is under no obligation to perform any work or provide any materials to prepare the Premises for Licensee.

Section 6. Compensation.

a. Administration Fee. In addition to normal published encroachment-related-permitting fees and as additional consideration for the processing of Licensee's permit applications, and in lieu of any separate planning or zoning fees, Licensee shall pay an additional

one-time fee ("Processing Fee") for the initial deployment of Three Thousand Dollars. Said processing fee shall be valid for up to ten nodes. Thereafter, Licensee shall pay Three Thousand Dollars for each subsequent deployment, which fee shall be valid for up to ten additional nodes. Said fee shall be paid prior to the Effective Date of this Agreement for the initial deployment and/or prior to the Effective Date of any Addendum to Exhibit B adding additional nodes.

b. Compensation for Use of City Infrastructure (Infrastructure Use Fee).

Licensee will compensate City for the use of City infrastructure a fee of Five Hundred Dollars (\$500.00) per year (the "Infrastructure Use Fee") for each streetlight pole or comparable facility located within the City's Right-of-Way used by Licensee.

c. Gross Revenue Payments (Right-of-Way Use Fee). In addition to the Infrastructure Use Fee, Licensee waives any claim that it is not obligated to pay for the use of the Right-of-Way and shall compensate City for such use by providing the City a five percent (5%) annual revenue-sharing fee or Five Hundred Dollars (\$500.00) per Node per year, whichever is greater ("Right-of-Way Use Fee"). Licensee has voluntarily waived all of its rights to challenge the validity of the Right-of-Way Use Fee in §5, above.

d. Payment Terms and Audit. Licensee shall pre-pay the fees specified in subsections (a) and (b) above, for the period from issuance of necessary permits through the end of 2009; subsequent payments in connection with subsection (a) shall be made at the time of application and in connection with subsection (b) shall be made annually in advance commencing on January 1, 2010. Additionally, payments anticipated for the Right-of-Way Use Fee specified in subsection (c) above, shall also be pre-paid through the end of 2009. However, after January 1, 2010, the Right-of-Way Use Fee specified in subsection (c), above, shall be computed and paid quarterly in arrears ("Quarterly Payment"). Each Quarterly Payment shall be calculated for the calendar quarter ending March 31, June 30, September 30, and December 31, and such Quarterly Payments shall be due and payable no later than thirty (30) days after said dates. For the period from issuance of necessary permits through the end of 2009, any additional funds owing based upon the "whichever is greater" provision in subsection (c) above, shall be paid with the March 31 Quarterly Payment.

Any annual fees shall be pro-rated for the calendar year. Licensee shall keep accurate books of account at its principal office in San Jose or such other location of its choosing for the purpose of determining the amounts due to the City hereunder. Licensee shall keep all records related to the Agreement for a minimum of four years. The City may inspect Licensee's books of account, including all relevant books and records relative to the City and this Agreement at a mutually convenient location within 50 miles of the City of Oceanside at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under this Agreement. In the event that the City discovers that Licensee's payments are in error in an amount greater than two percent (2%) of that which is due to City under this Agreement, all costs including without limitation travel related expenses to the audit shall be borne and reimbursed by Licensee in addition to the amount due the City under this Agreement. No acceptance of any payment to the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable or for the performance on any other obligation under this Agreement. The City agrees to hold in

confidence any non public information it learns from Licensee to the fullest extent permitted by Law.

e. **Minimum Annual Fee Adjustment Date.** The Infrastructure Use Fee will be adjusted annually on the anniversary of the Commencement Date by the percentage increase in the most recently published Consumer Price Index – All Urban Consumers for the San Diego Metropolitan Statistical Area -- over the rate in effect on the Commencement Date of the prior year. But in any event, regardless of the CPI increase, this increase shall not be less than the three percent (3%) above the prior year's Infrastructure Use Fee.

f. **Delinquent Payment.** Payments not received within five days of the due dates as specified above shall accrue interest at a rate of 7% per annum from the due date. In addition, a late fee in the amount of ten percent (10%) of the amount due shall be imposed in the event a payment is not received within 30 days of the due date. Notwithstanding the provisions of this subparagraph, failure to make payments when they are due is considered a default of the terms of the Agreement, subject to the terms stated in Section 33, "Termination." Licensee assumes all risk of loss and responsibility for delinquent payments.

g. **Services to City.** Licensee agrees that at all times during the term of this Use Agreement it shall provide one (1) strand of fiber owned or operated by Licensee in the City (hereinafter, the "City Net") for the City's exclusive use in operating a noncommercial, City-owned wireless network or for any other noncommercial, City-operated data network or communications function. In consideration for approval of the Agreement at the next available Council date in October, 2009 and in consideration for the issuance of permits as soon as reasonably possible thereafter, NextG agrees to provide an additional strand of fiber, for a total of two (2) strands, for the City Net. The parties shall meet in good faith from time to time to determine and effectuate City Net fiber drop-off points and interconnection arrangements, however, City understands that the fiber available to City under this Agreement will only follow NextG's planned fiber routes, and any additions or laterals must be installed at City's expense.

h. **Payment Location.** Licensee agrees to make checks payable to the City of Oceanside and delivered to: City of Oceanside Property Management Division, 300 North Coast Hwy., Oceanside, CA 92054. The City reserves the right to change the place and time of payment at any time upon 60 days written notice pursuant to Section 32.

Section 7. Assignment or Transfer of Authorization. This Agreement shall not be assigned by Licensee without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Licensee to a parent, subsidiary, or other affiliate of Licensee or to any successor in interest or entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that Licensee reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of Licensee immediately prior to the transfer; (ii) any such transferee assumes all of Licensee's obligations hereunder; (iii) the corporate parent of the transferee guarantees the performance obligations of the transferee; and

(iv) the experience and technical qualifications of the proposed transferee, either alone or together with Licensee's management team, in the provision of telecommunications or similar services, evidences an ability to operate the Licensee Network. Licensee shall give at least sixty (60) days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why Licensee believes the Exempted Transfer Criteria have been satisfied. The City shall have a period of sixty (60) days (the "Exempted Transfer Evaluation Period") from the date that Licensee gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from Licensee any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives Licensee notice in writing of the additional information the City requires within thirty (30) days after the City's receipt of the original Exempted Transfer Notice. If the City fails to act upon Licensee's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City that Licensee has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

Section 8. Responsibility of Licensee/Maintenance. The Licensee, on the Licensee's own behalf and on behalf of any successor or assign, hereby acknowledges and assumes all responsibility, financial or otherwise, for the permitted use of the Public Rights-of-Way property and City Municipal Facilities and the planning, design, installation, construction, maintenance, repair, operation and removal of the Licensee's Facilities, which shall be undertaken without risk or liability on the part of the City. All of Licensee's constructions, installation, removal, repair and maintenance work including such work on the City Net (to the extent that the City Net is part of NextG's fiber and not part of a separate, City-installed segment) shall be performed at Licensee's sole cost and expense in accordance with applicable law, using generally accepted construction standards.

Licensee shall ensure that Licensee's Facilities are maintained in a clean and safe condition, in good repair and free of any defects. Licensee shall employ reasonable care at all times in installing and maintaining Licensee's Facilities and will install and maintain in use commonly accepted methods and/or devices to reduce the likelihood of damage, injury or nuisance to the public. The construction, operation, and maintenance of Licensee's Facilities shall be performed by experienced and properly trained, and if required, licensed maintenance and construction personnel.

Section 9. Relocation/Removal. Licensee shall, at its sole expense, protect, support, temporarily disconnect, relocate, modify or remove all or any portion of Licensee's Facilities at the time and in the manner required by the City for any governmental purpose. Except in an emergency, the City shall give written notice pursuant to Section 32 describing where the work is to be performed at least thirty (30) days before the date the work is to be performed. Should the public health, safety or welfare require that the City undertake immediate maintenance, repair or other action, Licensee shall take the measures required under this Section 9 within 72 hours of receiving notice from the City.

If Licensee does not protect, temporarily disconnect, relocate, or remove Licensee's Facilities within the time period specified above, City may remove the equipment, facilities, and property and charge Licensee for the cost of removal and storage. Alternatively, upon Licensee's request, City in its sole discretion may approve the abandonment of Licensee's Facilities in place. Upon approval, Licensee shall execute, acknowledge and deliver any necessary documents to transfer ownership of the Licensee's Facilities to City for consideration by the City to allow the abandonment in place. In the event that the Licensee fails to execute, acknowledge and deliver any necessary documents to transfer ownership of the Licensee's Facilities to City within sixty (60) days of City's approval, this Section shall automatically operate and serve as the substitute necessary documents to transfer ownership of the Licensee's Facilities to the City.

In a true emergency, where there is an imminent danger to the public health, safety or property, the City may take the measures required by Licensee under this Section 9 without prior notice to Licensee; however, the City will make reasonable efforts to provide prior notice.

Section 10. Change in Equipment. If Licensee proposes to install Equipment, which is different in any material way from the specifications or design configurations attached hereto as Exhibit A, then Licensee shall first obtain the approval for the use and installation of the equipment from the City. In addition to any other submittal requirements, at City's request, Licensee shall provide "load" calculations for all Streetlight Poles it intends to install in the Public Rights-of-Way, 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 and such approval shall not be unreasonably withheld.

Section 11. Repair of Facility. Licensee shall repair or refinish, at Licensee's sole cost and expense, any surface or other portion of the Public Rights-of-Way property or City Municipal Facilities that is disturbed or damaged during the construction, installation, maintenance, operation, and/or removal of Licensee Facilities. Without limiting any other available remedies, if Licensee fails to repair or refinish such damage, City may, in its sole discretion, but without any obligation to do so, repair or refinish the disturbance or damage and Licensee shall reimburse City all costs and expenses incurred in the repair or refinishing.

Section 12. Relocation of Facilities. Licensee understands and acknowledges that City may require Licensee to relocate one or more of its Node installations. Licensee shall at City's direction relocate such Node equipment at Licensee's sole cost and expense, whenever City determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Node equipment is interfering with or adversely affecting proper operation of City owned street light 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 its best efforts to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate any Node equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, City shall be entitled to relocate the Node equipment at Licensee's sole cost and expense, without further notice to Licensee. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform Licensee of the displacement or removal of any streetlight pole or other Municipal Facility on which any Node equipment is located. Nothing in this section is intended to act as a waiver of available funds through "Rule

20” or similar proceedings, to the extent that such funds are being provided to other utilities in an equivalent manner.

Section 13. Licensee to Bear All Costs. The Licensee, or any successor or authorized assign, shall bear all costs incurred in connection with the planning, design, installation, construction, maintenance, repair, operation, modification, disconnection, relocation and removal of the Licensee Facilities. The Licensee shall be responsible and must bear all cost of any movement to, damage to or repair of Licensee’s Facilities due to repair, maintenance and/or failure/collapse of any existing gas, water and sewer lines or any other improvements or works approximate to Licensee’s Facilities. Licensee agrees to bear this cost regardless of whether or not such damage may be directly or indirectly attributable to the installation, operation, maintenance, repair or upgrade work on the Licensee’s Facilities, unless a court of competent jurisdiction determines that the damage results from the active negligence or willful misconduct of the City, its officers, agents or employees. These costs include electrical utility charges to the applicable utility company based upon the Licensee Facilities usage of electricity and applicable tariffs.

Section 14. Undergrounding. Licensee has been advised and understands that the utilities in the area of Licensee’s planned facilities are subject to future undergrounding requirements. In the event of an undergrounding project, Licensee and City agree to cooperate with each other in order to relocate or replace Licensee’s facilities in such a way so that Licensee may continue to operate its network for the Term of this Agreement, however under no condition shall City be required to bear the cost of any such relocation or undergrounding of Licensee’s facilities. Notwithstanding the foregoing, nothing in this Agreement is intended to act as a waiver of any available cost-sharing fees under related Rule 20 funds, inasmuch as they are provided to other utilities in an equivalent manner consistent with P.U. Code §7901.1(b).

Section 15. Future Rules or Orders. The Licensee, or any successor or authorized assign, shall abide by any agreements, rules, regulations, orders, or directives governing the use of the Public Rights-of-Way property or City Municipal Facilities as the City may find necessary and appropriate in executing its responsibilities for public right-of-way management and wireless site regulation.

Section 16. Licensee to Submit Acceptable Plans. Prior to the Commencement Date and prior to construction and installation of Licensee’s Facilities, Licensee shall, at its sole cost and expense, prepare and submit, together with payment of all related fees, any and all reasonable plans and specifications required by the City Engineer, which shall include detailed paper and/or electronic maps showing the planned construction, the size and the location and number, and any other details regarding the placement of appurtenant above-ground equipment to be located in the Public Rights-of-Way and on City Municipal Facilities or existing third-party infrastructure. The City Engineer shall be authorized to review the plans and specifications and to impose such requirements as are necessary to protect the public health and safety and to minimize any negative impact on aesthetics in the case of the above-ground improvements. The City Engineer shall be authorized to require an alternate location for the Licensee’s Facilities on Streetlight Poles or comparable facilities to avoid conflict with public safety as well as other permitted uses in or future public needs of the Public Rights-of-Way identified in this Agreement. Licensee shall, at its sole cost and expense, submit traffic control plans for approval by City Engineer. The City reserves the right to inspect the installation and maintenance of

Licensee's Facilities at any time. Licensee shall pay all plan check, inspection and other related fees prior to the issuance of any permit for the installation and construction of Licensee's Facilities. All work within the Public Rights-of-Way and Municipal Facilities or existing third-party infrastructure shall be performed in strict compliance with plans and permits approved by the City Engineer.

Section 17. Licensee to Secure Approval and Permits. In addition to obtaining and maintaining the permits, Licensee understands and agrees that Licensee's ability to use the Public Rights-of-Way and Municipal Facilities and any third-party infrastructure for the purposes contemplated by this Agreement is dependent upon Licensee obtaining and maintaining all of the certificates, permits and other approvals which may be required from other federal, state or local authorities, and any easements which are required from any third parties. City shall cooperate with Licensee in its efforts to obtain such approvals and/or easements, as may be required for Licensee's Facilities as approved in the permits. If (i) any application and/or negotiations by Licensee for any required certificate, permit, license, easement, approval, policy of title insurance, or agreement is finally denied, rejected and/or terminated, (ii) any such certificate, permit, license, easement, approval or agreement is canceled, or expires, or lapses or is otherwise withdrawn or terminated, (iii) any Hazardous Materials are discovered or otherwise become located on the Public Rights-of-Way and Municipal Facilities, other than as direct result of Licensee's activities, or (iv) due to technological changes, Licensee determines that it is no longer practical to use the Public Rights-of-Way and Municipal Facilities for Licensee's intended purposes, then Licensee shall have the right to terminate this Agreement, which termination shall be effective no sooner thirty (30) days from delivery of written notice from Licensee to City provided Licensee has removed Licensee's Facilities from the Public Rights-of-Way and Municipal Facilities by that time.

Section 18. As Built Drawings to be Provided. The Licensee shall provide as-built drawings, in any format acceptable to the City Engineer, detailing the location of Licensee's Facilities installed pursuant to this Agreement within 60 days after facilities are installed.

Section 19. Liability Insurance. Licensee shall obtain and maintain for the duration of this Agreement and any amendments hereto, adequate insurance against claims for injuries to persons or damage to property which in any way relate to, arise out of or are connected to the use of the Public Rights-of-Way and Municipal Facilities by Licensee or to the construction, operation or repair of Licensee's Facilities by Licensee or Licensee's agents, representatives, employees or contractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:-V".

a. Licensee shall maintain the types of coverage and minimum limits indicated below, unless the City Attorney or City Manager approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Licensee's indemnification obligations under this Agreement. The City, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Licensee pursuant to this Agreement are adequate to protect Licensee. If Licensee believes that any required insurance coverage is inadequate, Licensee will obtain such additional insurance coverage, as Licensee deems adequate, at Licensee's sole expense.

1. Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, the general aggregate will be twice the required per occurrence limit.
2. Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.
3. Workers Compensation and Employer's Liability. Worker's Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury.

b. Licensee will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

1. The City of Oceanside, its elected officials, officers, staff, contractors, and volunteers shall be named as additional insureds on General Liability.
2. Licensee will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.
3. This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) day's prior written notice to City sent by certified mail pursuant to the Notice endorsements to City.

c. Prior to City's execution of this Agreement and annually thereafter, Licensee will furnish certificates of insurance and endorsements to City.

d. Failure to maintain any of these insurance coverage's, shall be deemed a material default for purposes of Section 33.

e. City reserves the right to require at anytime, complete and certified copies of any or all required insurance policies and endorsements.

f. All insurance companies affording coverage to the Licensee shall be required to add the City of Oceanside, its elected officials, officers, staff, contractors, and volunteers, as "additional insureds" under the insurance policy(s) required in accordance with this Agreement. Insurance coverage provided to the City as an additional insured shall be primary insurance and other insurance maintained by the City, its officers, agents and employees shall be excess only and not contributing with the insurance provided pursuant to this Agreement.

g. All insurance companies affording coverage to the Licensee shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California and must carry a rating by Best of not less than "A-".

h. City may require the revision of amounts and coverage at any time during the term of this Agreement by giving Licensee 60 day's prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Public Rights-of-Way and Municipal Facilities. Licensee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Agreement.

Section 20. Performance Bond. Prior to construction of Licensee's Facilities, Licensee shall post a bond with the City (in the form of a Letter of Credit issued by a reputable institution) in the amount of Twenty Five Thousand Dollars (\$25,000) ("Performance Bond") substantially in a form acceptable to the City Attorney. This Performance Bond shall remain in place for the term of the Agreement, and shall cover up to ten (10) Nodes. Any additional Nodes beyond 10 shall require increasing the amount of the Performance Bond at a rate of Two Thousand Five Hundred Dollars (\$2,500) per Node.

Section 21. Accident Reports. Licensee shall, within forty-eight (48) hours after occurrence report to City any accident causing property damage and report to City within one (1) hour after any serious injury to persons resulting from any of Licensee's activities under this Agreement. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

Section 22. Indemnification of City.

a. Licensee shall waive all claims against City for any damages to the personal property and equipment of Licensee or City in, upon or about the Public Rights-of-Way and Municipal Facilities and for injuries to any employees of Licensee or their agents in, upon, or about the Public Rights-of-Way and Municipal Facilities from any cause arising at any time, unless a court of competent jurisdiction determines that the damages and/or injuries arise out of the City's gross negligence or willful misconduct. In addition, Licensee will fully indemnify, hold harmless, and faithfully defend, the City, including its elected and appointed officials, officers, employees, contractors and agents ("Indemnified Parties"), from any damage or injury to any person, or any property, arising from the use of the Public Rights-of-Way and Municipal Facilities by Licensee or Licensee's officers, employees, contractors, or agents, or from the failure of Licensee to keep Licensee's Facilities and equipment in good condition and repair, as provided for in this Agreement.

b. Licensee's indemnification shall indemnify and hold harmless City and its employees from and against all claims, damages, losses, expenses, including attorneys fees arising out of or resulting from the performance by Licensee of the Agreement whether resolution proceeds to judgment or not. Should a conflict arise Licensee shall bear the cost of retaining independent counsel to represent the City, which counsel shall be chosen by the City.

c. Licensee acknowledges and agrees that Licensee bears all risks of loss or damage of its Nodes and materials installed in the Public Rights-of-Way and on Municipal Facilities pursuant to this Agreement from any cause, and the City shall not be liable for any cost of repair to damaged Node(s), including, without limitation, damage caused by the City's removal of the Node(s), except to the extent that a court of competent jurisdiction determines that such loss or

damage was solely caused by the willful misconduct or negligence of the City, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors.

Section 23. Revocation of Authorization. If the Licensee fails to comply with any of the material terms and conditions of this Agreement and/or any applicable law, the City may revoke the authorization granted herein, subject to the terms and conditions stated in Section 33, "Termination".

Section 24. Terms and Conditions Specific to this Agreement. The terms and conditions of this Agreement shall apply solely to the Licensee's Facilities and the Public Rights-of-Way and Municipal Facilities described in Exhibit A, and shall not apply to, nor establish any precedent for, the conditions the City may impose upon Licensee in the event Licensee seeks to provide other telecommunications services or cable services to the public for hire within the City.

Section 25 Reservation of Rights. The rights granted by this Agreement are granted based upon representations by Licensee that its federal and state grants or certificates authorize construction and operation of activities in relation to this Agreement.

Section 26. Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the United States and the State of California without reference to general conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the State courts of San Diego County, California or in the United States District Court, Southern District of California. Nothing in this section shall be interpreted to preclude either party's right to seek redress from the Federal Communications Commission.

Section 27. Amendment of Agreement. This Agreement shall not be modified or amended except by a writing signed by authorized representatives of the parties.

Section 28. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings, whether oral or written, between or among the parties relating to the subject matter of this Agreement, which are not fully expressed herein. Each party has relied on advice from its own attorneys, and the warranties, representations, and covenants of this Agreement itself.

The terms and conditions of this Agreement shall bind and inure to the benefit of City and Licensee and, except as otherwise provided in this Agreement, their respective heirs, distributees, executors, administrators, successors, and assigns.

Section 29. Severability. If any part of any provision of this Agreement or any other agreement, document, or writing given pursuant to or in connection with this Agreement is finally determined to be invalid or unenforceable under applicable law, that part or provision shall be ineffective to the extent of such invalidity only, and the remaining terms and condition shall be interpreted so as to give the greatest effect to them.

Section 30. Taxes. Licensee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Licensee or the Licensee's Facilities, including, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Licensee or levied by reason of the business or other Licensee activities related to this Agreement, including any licenses or permits. Licensee specifically acknowledges that the grant of this license may subject Licensee to certain taxes under California Revenue and Taxation Code Section 107.6 and agrees it is solely responsible for the payment of these taxes.

Licensee shall be responsible for all utilities and any property taxes imposed as a result of the use of the Property by Licensee. Licensee specifically acknowledges that the grant of this license may subject Licensee to certain taxes under California Revenue and Taxation Code section 107.6 and agrees it is solely responsible for the payment of these taxes.

Section 31. Non-exclusivity. Neither this Agreement nor the permits granted hereunder are exclusive. The City reserves the right to enter into co-location agreements with other parties, including but not limited to telecommunications and information services providers (hereinafter "Carriers") for use of the Public Rights-of-Way or Municipal Facilities.

Section 32. Notices. All notices under this Permit Agreement shall be in writing and, unless otherwise provided in this Agreement, shall be deemed validly given if sent by certified mail, return receipt requested, or via recognized overnight courier service, addressed as follows (or to any other mailing address which the party to be notified may designate to the other party by such notice). All notices properly given as provided for in this section shall be deemed to be given on the date when sent.

Should City or Licensee have a change of address, the other party shall immediately be notified as provided in this section of such change.

<u>LISENSEE:</u>	<u>CITY :</u>
NextG Networks of California, Inc.	City of Oceanside
2216 O'Toole Ave.	300 N. Coast Hwy
San Jose, CA 95131	Oceanside, CA 92054
Attn: Contracts Administration	Attn: City Manager

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur if (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

Section 33. Termination. This Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty five (45) days of receipt of written notice of default (or, if such default is not curable within forty five (45)

days, if the defaulting party fails to commence such cure within forty five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Should Licensee use the Licensee's Facilities for a purpose that requires additional City approvals that have not been obtained, City may terminate this Agreement in the manner authorized by this Section. Except as expressly provided for herein, the rights granted under this Agreement are irrevocable during the term, unless terminated in accordance with this Section.

Section 35. Most Favored Municipality Clause. If after the execution and delivery of this Agreement, Licensee enters into a license or agreement with another municipality in southern California, and which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of the Agreement, are substantially superior to those in this Agreement, City shall have the right to require Licensee modify this Agreement to incorporate the same or substantially similar benefits and such other terms and burdens by substitution, *mutatis mutandis*, of such other agreement or otherwise.

Section 34. Other Regulations. All Licensee's use of the Public Rights-of-Way and Municipal Facilities under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicable rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

Section 35. Related Actions. By the granting of this Agreement, neither City nor the Council of the City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the use of the Public Rights-of-Way and Municipal Facilities. Discretionary action includes, but is not limited to, permits, environmental clearances or any other governmental agency approvals, which may be required for the development and operation of the Licensee's Facilities within the Public Rights-of-Way and Municipal Facilities.

Section 36. Use of the Public Rights-of-Way. Licensee acknowledges that the paramount use of Public Rights-of-Way Property or Municipal Facilities is for the public. Licensee agrees to coordinate use of the Public Rights-of-Way Property or Municipal Facilities with City so as not to conflict with City's programs and activities.

Section 37. Powers to Enter into Agreement. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Licensee and the City. Notwithstanding the foregoing, Licensee understands that execution of the Agreement is subject to City Council approval. No City action shall be authorized prior to City Council approval.

Section 38. Survival. Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

Section 39. Venue. This Agreement shall be governed under law of the State of California, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. Venue for any action brought hereunder shall be either in the Superior

Court of the State of California in San Diego County (the Court), or the Federal District Court in San Diego County. Licensee and City agree to be subject to in-personam and in-rem jurisdiction by the Court.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY: **THE CITY OF OCEANSIDE**

DATE: _____

By: _____
Peter Weiss, City Manager

LICENSEE: **NEXTG NETWORKS OF CALIFORNIA, INC.**

DATE: 10/12/2009

By: 
Robert L. Delsman, SVP & General Counsel

Notary Acknowledgement of Licensee signatures must be attached

Exhibits:

- Exhibit A: Equipment
- Exhibit B: Initial Deployment

APPROVED AS TO FORM:

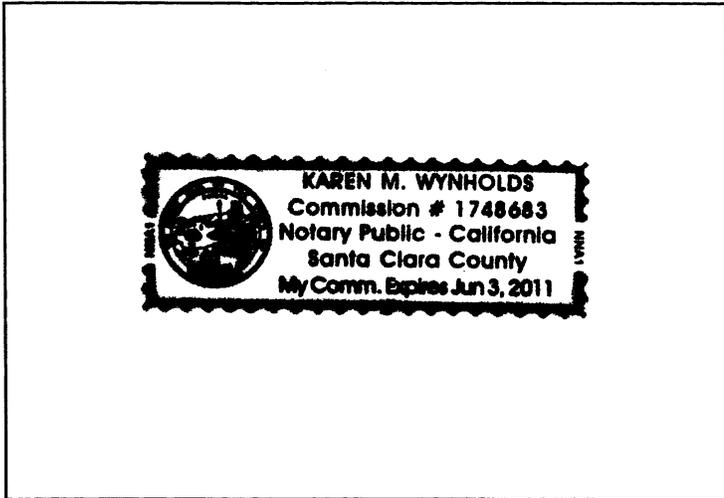
_____, City Attorney

By: 
Deputy City Attorney

California All-Purpose Acknowledgement

State of California }
County of Santa Clara

On October 12, 2009 before me, Karen Wynholds, a Notary Public
personally appeared Robert Delsman



Notary Public Seal

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature

OPTIONAL

Description of Attached Document

Title or Type of Document: Telecommunications Network License Encroachment Agreement
Document Date: Number of Pages:
Signer(s) Other than Named Above:

Capacity(ies) Claimed by Signer(s)

Thumbprint of Signer 1

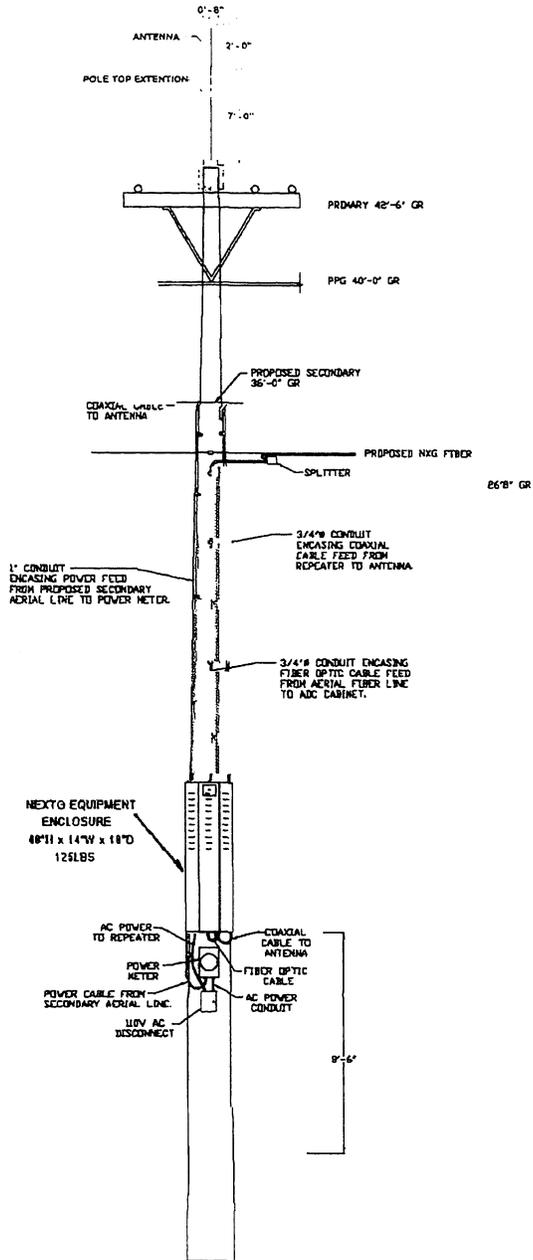
- Individual
Corporate Officer:
Partner - Limited General
Attorney-in-Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing:

Thumbprint of Signer 2

- Individual
Corporate Officer:
Partner - Limited General
Attorney-in-Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing:



WOOD UTILITY POLE LAYOUT



NextG Networks

NEXTG NETWORKS EQUIPMENT CONFIGURATIONS

EXHIBIT "A"

SITE ADDRESS:

TITLE: WOODEN DISTRIBUTION POLE
LARGE ADC DUAL BAND CABINET
NON-METERED UNIT CONFIGURATION

CONTRACT NO.

SHEET:

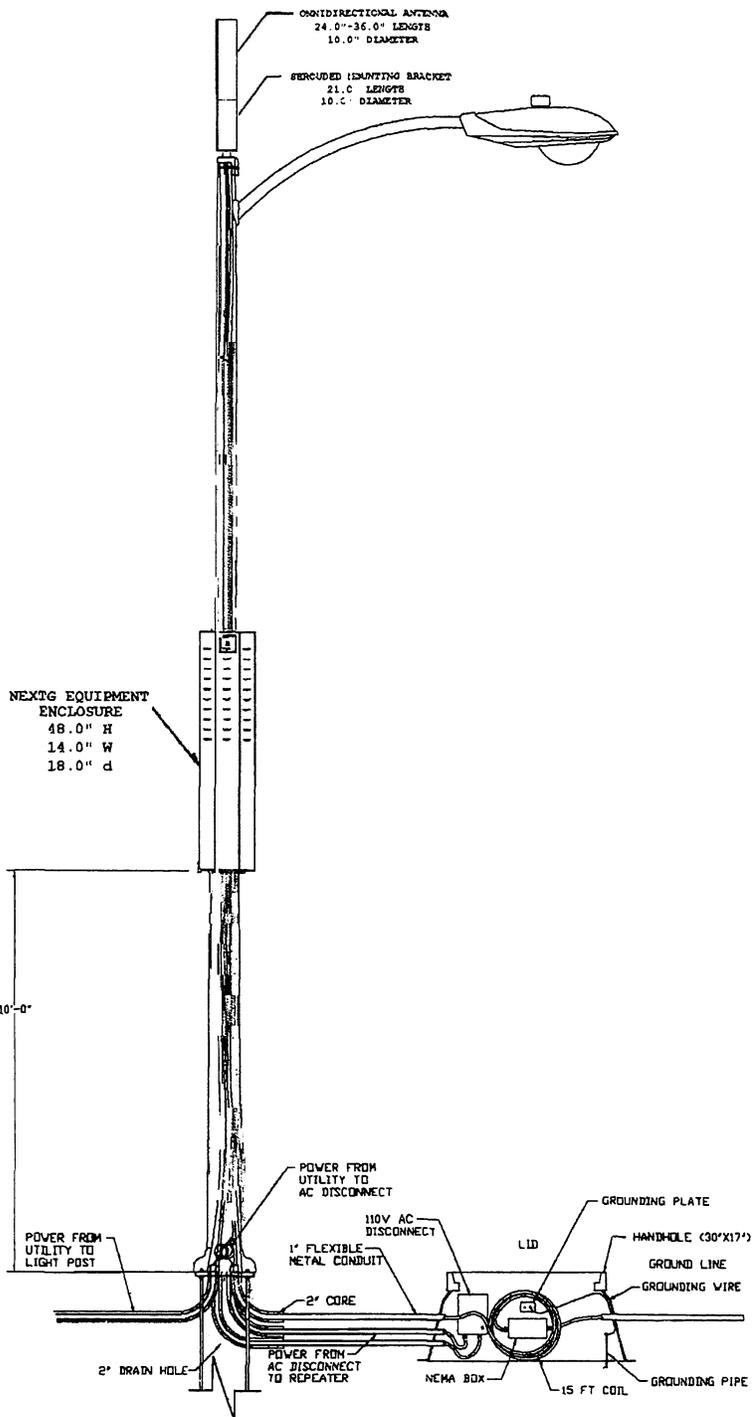
DRAWING NO.

DATE DRAWN: 06-11-2009

SCALE: AS SHOWN

PLBT DATE: 06-06-2009

1



STREET LIGHT LAMP POST LAYOUT
 SCALE: 1/2" = 1'-0"



NEXTG NETWORKS
EQUIPMENT CONFIGURATIONS

EXHIBIT " " "

SITE ADDRESS:	
TITLE: STANDARD STEEL LAMP POST H1KDM HNRB/19 REMOTE UNIT NON-METERED UNIT CONFIGURATION	
CONTRACT NO:	SHEET: 2
DRAWING NO:	
DATE DRAWN: 06-11-2009	
SCALE: AS SHOWN	
PLOT DATE: 06-06-2009	

ANTENNA
24.0" - 36.0" LENGTH
10.0" DIAMETER

SHROUDED MOUNTING BRACKET
21.0" LENGTH
10.0" DIAMETER

REMOTE EQUIPMENT

30' - 0"
ANY POLE PROPOSAL OVER 30 FEET REQUIRES
ENGINEERING DEPARTMENT APPROVAL

GROUND LINE

NEW POLE INSTALLTION LAYOUT



NextG Networks

NEXTG NETWORKS
EQUIPMENT CONFIGURATIONS

EXHIBIT"

SITE ADDRESS: _____

TITLE
NEW UTILITY/STREET LIGHT POLE
DUAL ION SHROUD CABINET

CONTRACT NO. _____

SHEET

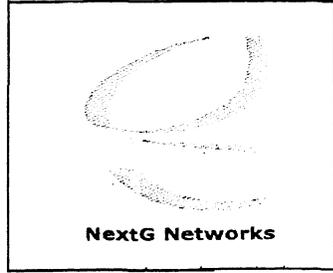
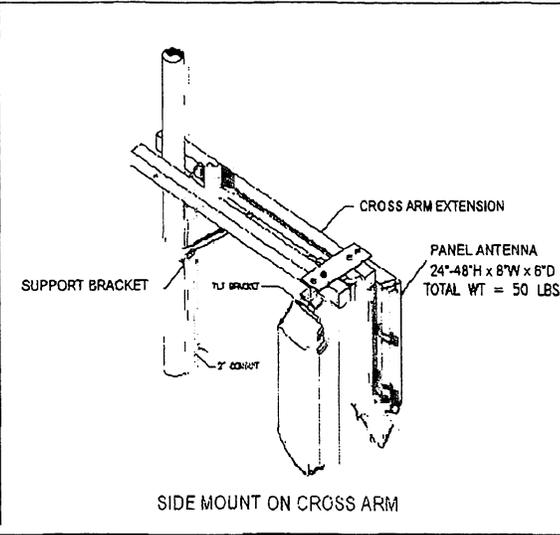
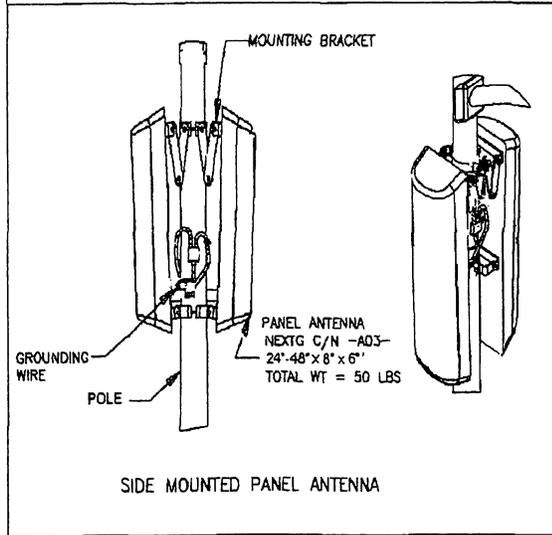
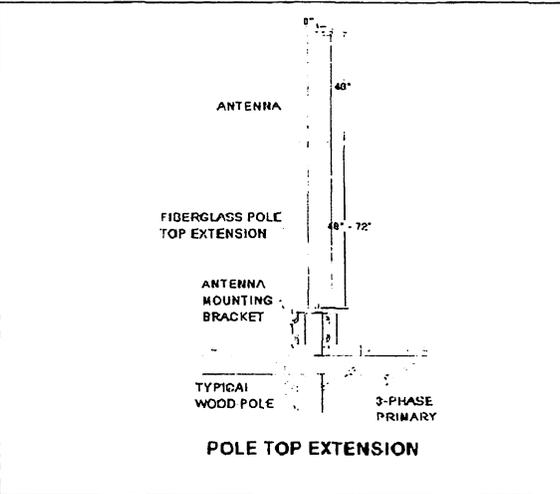
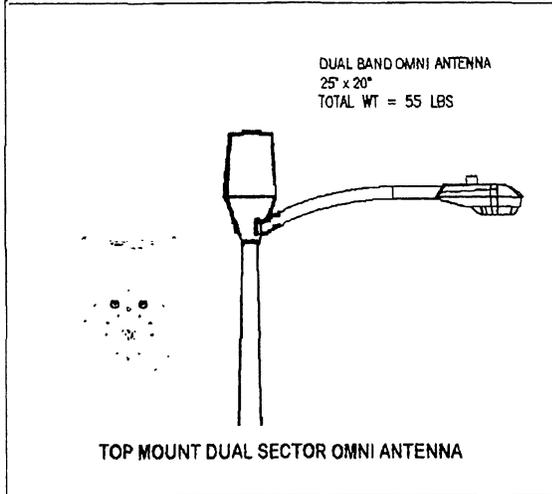
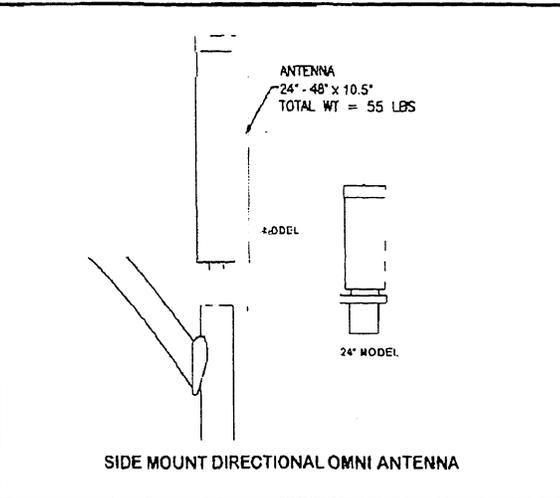
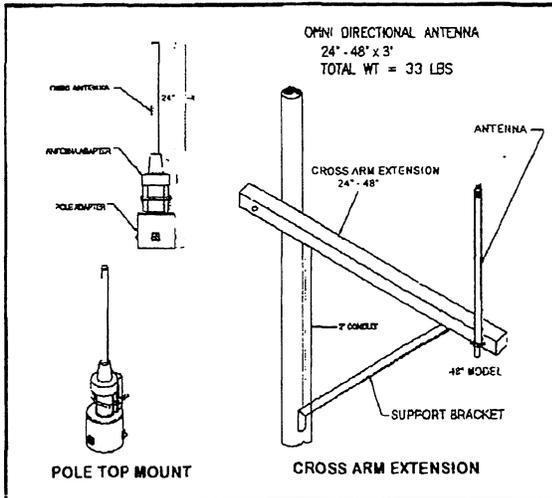
DRAWING NO. _____

3

DATE DRAWN 06-11-2009

SCALE: AS SHOWN

PLOT DATE: 06-06-2009



NEXTG NETWORKS
EQUIPMENT CONFIGURATIONS

EXHIBIT"

SITE ADDRESS: _____	
TITLE: ANTENNA CONFIGURATIONS OMNI AND PANELS	
CONTRACT NO. _____	SHEET: _____
DRAWING NO. _____	←
DATE DRAWN: 06-11-2009	
SCALE: AS SHOWN	
PLOT DATE: 06-16-2003	

