



COUNCIL AGENDA: 04-26-05

ITEM: 2.15

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** SEE BELOW

**DATE:** 04-06-05

Approved

Date

4/13/05

Council District: 4

**SUBJECT: USE AGREEMENT WITH CINGULAR AND A RIGHT OF ENTRY/REVENUE SHARING AGREEMENT WITH NEW CINGULAR AND MIKE RAWITSER GOLF SHOP AT SAN JOSE MUNICIPAL GOLF COURSE**

## RECOMMENDATION

Approval of a five-year property use agreement, and one five-year option, with New Cingular Wireless PCS, LLC allowing for construction, installation, maintenance and operation of a telecommunications facility at San José Municipal Golf Course and the approval of a Right of Entry/Revenue Sharing agreement with Cingular and Mike Rawitser Golf Shop for the equal sharing of the revenue generated by this installation between the City and Rawitser Golf.  
CEQA: Exempt

## BACKGROUND

In February 2004, New Cingular Wireless PCS, LLC ("Cingular") approached the City with a request to install a telecommunications facility at the San José Municipal Golf Course. This telecommunications facility will provide more reliable public access to Cingular wireless communications network in the vicinity of the Golf Course.

In November 2002, a Use Agreement and Right of Entry/Revenue Share Agreement with Cingular Wireless and Mike Rawitser Golf Shop was approved by the City Council. The agreements being executed for this project are the same agreements used for the Cingular Wireless and MetroPCS projects. Both the existing agreement with Cingular Wireless and MetroPCS, and the proposed agreement with Cingular are non-exclusive, thus allowing additional cell phone providers the opportunity for placing telecommunications equipment at the San José Municipal Golf Course.

## **ANALYSIS**

Staff has negotiated a five-year use agreement with one five-year option with MetroPCS for the right to use an existing wooden pole located on the Golf Course driving range and the right to perform maintenance of their equipment. Cingular will pay \$25,542 in base rent for the use of the pole and equipment area. This amount will increase by the greater of four percent (4%) or increases in the Consumer Price Index All Urban Consumers, for the San Francisco-Oakland Metropolitan Area. The agreement and rate structure were approved by Council action, Council Policy 7-10, on October 8, 1996.

In addition, staff has negotiated a three-party Right of Entry/Revenue Sharing agreement between Mike Rawitser Golf Shop, Cingular and the City. The right of entry permits Cingular access to the site to install and maintain its telecommunications equipment. Because Rawitser has an existing property management agreement for this site, City staff have also negotiated a provision with Rawitser whereby Cingular will remit 50% of the base rent to Mike Rawitser Golf Shop for use of this site under the abovementioned five-year Use Agreement, and any option period. This is consistent with the Council's previous approval for placement of telecommunications equipment at the San José Municipal Golf Course.

## **OUTCOME**

The City will receive annual income from providing space for telecommunication equipment and the community will benefit by increasing the service area for Cingular customers.

## **PUBLIC OUTREACH**

Not applicable

## **COORDINATION**

This project and memorandum have been coordinated with the Departments of Parks, Recreation and Neighbor Services, Information Technology, Planning Building and Code Enforcement, the City Manager's Budget Office and Mike Rawitser Golf Shop. The City Attorney's Office has reviewed the Use Agreement and Right of Entry/Revenue Sharing agreement and approved as to form.

## **COST IMPLICATIONS**

The City's share of the total rent over the five-year term of this agreement shall be no less than \$69,171.86.

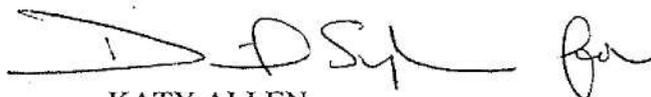
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**BUDGET REFERENCE**

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	2003-2004 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
518	8151	NA	000000	NA	NA	NA	12/14/2004,72442

**CEQA**

Exempt, PP TBD



KATY ALLEN  
Director, Public Works Department