



STAFF REPORT

TO: PLANNING COMMISSION

PREPARED BY: Tim Tucker, City Engineer

APPROVED BY: Albert Lopez, Deputy Community Development Director

RE: Use Permit for a replacement and lowering of the existing 1.25 million gallon water reservoir with a new steel 1.65 million gallon water reservoir to meet the current and future needs of the City as determined in the 2005 Water System Master Plan. The replacement reservoir will remain within the footprint of the City's existing Harbor View Reservoir property located approximately 1200 feet south of Shell Avenue. In addition to reservoir construction, the project includes: site grading to accommodate the reservoir, landscaping, replacement of water transmission main from the Reservoir to Shell Avenue, construction of transmission pipeline from Reservoir to Vista Way; and

Use Permit for installation of new telecommunication facilities to replace existing (T-Mobile), and to co-locate an additional carrier (AT&T Mobility) in conjunction with City's Harbor View Reservoir replacement project.

GENERAL INFORMATION:

GENERAL PLAN: Residential, 0-6 units per acre
ZONING: R-3.5 Residential, 4,000 sq ft. minimum lot area
EXISTING CONDITIONS: Existing reservoir and wireless communication facility (T-Mobile)

RECOMMENDATION

- a) Adopt *Draft Resolution PC-03*, approving proposed mitigated negative declaration, and application by City of Martinez (UP 08-04) for Use Permit to construct replacement reservoir; and
- b) Adopt *Draft Resolution PC-04*, allowing relocation of existing wireless communication facility (T-Mobile) and approving Use Permit application by AT&T Wireless (UP 05-22) to allow construction and operation a new co-located wireless communication facility.

DISCUSSION

Water tank; Background

The residential zoning designation of the water tank parcel requires a Use Permit approval for water tanks. All impacts identified in the Draft Mitigated Negative Declaration will be incorporated in the construction documents and specifications. Harbor Reservoir is a critical facility within the City's water system network. The tank is within the City's Zone II pressure zone serving residents, businesses and other customers at elevations between 100 and 300 feet above sea level. In addition to providing water for our customers the new tank will help us meet needed fire protection capacity.

The tank has experienced significant signs of deterioration including leakage, cracking and spilling. The existing tank is twenty feet higher than other Zone II tanks. This results in a need for additional pumping, piping, valves and regulators. This adds unnecessary cost, complexity and wastes energy in the operation of this facility.

The City Council has allocated funding for the project in the current Capital Improvement budget. A workshop was held for the neighborhood although only one resident attended. Staff has met with the adjoining church representatives regarding the project on several occasions.

Water tank; Environmental Determination

A 20-day public comment period on the Initial Study / Draft Mitigated Negative Declaration began on Wednesday, January 30, 2008 and ended on Tuesday, February 19, 2008. No comments were received by the City. The Initial Study and Draft Mitigated Negative Declaration/Mitigation Monitoring Program (Prepared by ESA and dated December 2007) is provided as a separate exhibit.

Wireless Communication Facilities; Existing equipment to be relocated

T-Mobile currently has City approved telecommunication facilities at the Harbor View site. Their agreement with the City requires we not interrupt their operation and use of the facility. The City is bound by the agreement to reestablish their facilities as part of our project. The only visible equipment of their facilities is, and will be, their antennas. The current antennas are ground mounted at the western edge of the City owned parcel. Staff proposes to mount the replacement antennas on the new tank. This will maintain their critical current height while avoiding tall ground mounted structures. The antennas will be approximately 48-inches tall and 12-inches wide.

Wireless Communication Facilities; Application for new AT&T facility

The City has recently been contacted by AT&T to construct new wireless facilities at the Harbor View site. (see Attachment "A" for the applicant's description for the proposed AT&T Wireless facility) With their recent merger with Cingular Wireless they were required to divest many of their assets. They are in the process of replacing these lost assets so as to maintain their current service capacity. Staff felt it important to include this potential new cell site as part of the overall project versus returning to the Planning Commission in a piece mill fashion.

AT&T proposes to install several antennas of similar design as to the new T-Mobile antennas. All cell ground mounted facilities will be obscured from surrounding properties. The Water tank is primarily visible from the upper areas of Alhambra High School approximately a half mile away. At this distance the antennas will blend into the new tank.

ATTACHMENTS

“A” Site Context Map
“B” AT&T project description
Draft Resolutions

EXHIBITS

- Reservoir Plans (11x17 excerpts)
- Initial Study, Draft Mitigated Negative Declaration and Mitigation Monitoring Program for Reservoir (ESA, December 2007)

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ATTACHMENT A

SITE CONTEXT



ATTACHMENT B

PROJECT DESCRIPTION

**AT&T Wireless
Proposed PCS Telecommunications Facility
Harbor View Tank
Martinez, CA 94533**



Proposed Use

AT&T Wireless is currently deploying the infrastructure of its wireless communications network in California. AT&T proposes to mount a total of twelve (12) panel antennas to an existing water tank at the above address. Each antenna will measure approximately 42" tall and 12" wide. The corresponding equipment cabinets will be located near the tank. We are proposing to install seven (7) equipment cabinets approximately 5' tall and 4' wide.

AT&T's facility is an unmanned facility, which will operate 24 hours per day, 7 days per week. The facility will require access by company representatives less than twice a month.

AT&T will utilize existing roads and parking to access the site. After the initial construction, no noise, odors, dust, glare, or additional traffic will be generated by this project. AT&T does not plan any future use for this site other than the use being proposed by this application.

Type of Technology

As previously mentioned, AT&T is currently deploying the infrastructure of its wireless communications network in California, called a "Personal Communication Service" (PCS). PCS is, in essence, simply another form of radio communication. PCS uses radio frequencies to send and receive information or conversations from an antenna to a wireless telephone. The PCS technology works through a series of transmitting facilities, which carry and hand off phone signals as a caller moves from one area to another. As the caller moves from one cell area (the area where there is a transmitter and an antenna) to the next, signals to and from the first cell area fade and then "hand" the call off to an available channel in the cell area where the caller is entering.

Consumer Services

The consumer service offered by AT&T's network is wireless voice communication. In addition, PCS phones can receive pages, e-mail, news and stock information.

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Performance Agreement

AT&T is prepared to enter into an agreement with the City of Martinez to remove abandoned facilities, to maintain any required landscaping, and to perform periodic monitoring of radio frequency (RF) emissions. AT&T is also prepared to defend, indemnify, and hold harmless the City of Martinez from any claims, actions, or proceedings from connection with the project.

Location Standards

The proposed facility at the end of Harbor Drive is located in a Residential zone. This facility was designed to have a minimal visual impact and will not be significantly visible from any vantage point within the City of Martinez. The site is not near schools, daycare facilities, open spaces, or ridgelines. The nearest residential property is approximately 150' away from the proposed site.

Co-Location and Shared Location Standards

The proposed facility location will be a shared location with T-Mobile. AT&T has a non-exclusive lease with the property owner. The design allows for the consolidation of future facilities (none are planned at this time).

Radio Frequency Report

This project complies with the Federal Communication Commission (FCC) standards. FCC guidelines are based on standards and recommendations developed by expert committees of physicians, scientists and engineers, most of whom are researchers from leading universities and government research laboratories.

These guidelines were extensively reviewed and endorsed by the major government agencies responsible for public health and the environment – the U.S. Food and Drug Administration, the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health. The standards and guidelines, which are based on careful scientific review and interpretation, prescribe specific exposure levels that are extremely protective.

The radio frequency emissions transmit non-ionizing radio waves. Non-ionizing electromagnetic emissions, at the low levels associated with this type of wireless technology **have not been** proven to be harmful to the public. Police/Fire/EMS radios, television broadcasts, CB radios, microwave ovens, and a variety of common household electronics including garage door openers and baby monitors all produce non-ionizing electromagnetic emissions.

Road and Accessway Standards

AT&T will utilize existing roads and parking to access the site. No new access roads or parking spaces are required for the facility.

Vegetation and Landscaping Standards

AT&T is not proposing the removal of vegetation as part of this project. The project area is currently being developed by the City of Martinez. Therefore, the AT&T project will not cause any new disturbance to vegetation and natural surroundings.

Noise and Traffic Standards

AT&T's equipment operates quietly or virtually noise free. After construction, AT&T's maintenance personnel will access the site less than twice a month.

Visual Compatibility and Facility Design Standards

The facility will not be visible from the roadway or surrounding residential neighborhoods. The design will be completely integrated into the existing structure and will be screened from public view including the pedestrian line-of-sight and the street.

The proposed facility does not interfere with residential views, vistas or public view corridors. The proposed facility does not display any advertising signage or identifying logos.

3/4

RESOLUTION NO. PC 08-03 [DRAFT]

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MARTINEZ,
ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION AND
MONITORING REPORTING PROGRAM , AND APPROVING A USE PERMIT FOR
THE REPLACEMENT AND LOWERING OF THE EXISTING 1.25 MILLION GALLON
WATER RESERVOIR WITH A NEW STEEL 1.65 MILLION GALLON WATER
RESERVOIR ON A 1.1 ACRE SITE LOCATED ON HARBOR VIEW DRIVE,
APPROXIMATELY 1200 FEET SOUTH OF SHELL AVENUE.
(APN: 376-010-005)
UP 08-04**

WHEREAS, the City of Martinez has requested use Permit approval for the construction of a replacement reservoir, in order to meet the current and future needs of the City as determined in the 2005 Water System Master Plan; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) the City has conducted an Initial Study to address the project's potential impacts on the environment; and

WHEREAS, on the basis of said initial study a mitigated negative declaration has been prepared (Exhibit "A" attached) that states the proposal will not have a significant effect on the environment.

WHEREAS, the Planning Commission of the City of Martinez held a duly noted public hearing on March 25, 2008, and listened to testimony from the public.

NOW, THEREFORE, the Planning Commission of the City of Martinez resolves as follows:

1. That the above recitals are found to be true and constitute part of the findings upon which this resolution is based.
2. That the Planning Commission hereby finds that on the basis of the whole record before it, including the Initial Study and any comments received, that there is no substantial evidence that the proposed project will have a significant effect on the environment, and that the proposed mitigated negative declaration reflects the City's independent analysis and judgment. Furthermore, the Mitigated Negative Declaration, proposed mitigation measures, and proposed mitigation monitoring program for said project are found to be complete and in compliance with CEQA and applicable CEQA guidelines and is hereby approved.
3. In order to approve the Use Permit application, the Commission must make the following findings, which it hereby does:

- (a) **The proposed location of the conditional use is in accord with the objectives of this title, and the purposes of the district in which the site is located.** The proposed location of the reservoir is within the footprint of the City's existing water storage facility. The upgrading of the City's water storage capacity is necessary for the public health safety and welfare, as documented by the City's 2005 Water System Master Plan.
- (b) **The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.** The location and design of the new reservoir will minimize visual disruption within its' residential context, to the degree possible, given existing topography and infrastructure. Landscaping and berming have been well incorporated into the reservoir design.
- (c) **The proposed conditional use will comply with each of the applicable provisions of this title.** The conditional use complies with all other provisions of this title, including the development standards of the R-3.5 Zoning district and exceptions for height of water tanks pursuant to Section 22.34.170 B.2, which allows a height of 25' more than the 25' maximum height normally allowed in the R-3.5 District.

4. All the findings contained above are part and parcel of this Resolution and are incorporated herein by this reference.

NOW, BE IT FURTHER RESOLVED that the Planning Commission Adopts the proposed Mitigated Negative Declaration, Mitigation Monitoring Program and Approves Use Permit 08-04

NOW, BE IT FURTHER RESOLVED that a Notice of Determination will be filed with the Clerk of Contra Costa County within 5 working days.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 25th day of March, 2008:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: _____
Frank Kluber
Planning Commission Chair

Corey M. Simon
Senior Planner

RESOLUTION NO. PC 08-04 [DRAFT]

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MARTINEZ, AMENDING USE PERMIT #96-09 FOR T-MOBILE WIRELESS TO RELOCATE AN EXISTING WIRELESS COMMUNICATION FACILITY, AND APPROVING USE PERMIT #05-22 FOR AT&T WIRELESS TO LOCATE A NEW WIRELESS COMMUNICATION FACILITY, IN CONJUNCTION WITH THE CITY'S REPLACEMENT OF THE EXISTING HARBOR VIEW RESERVOIR WITH A NEW STEEL 1.65 MILLION GALLON WATER RESERVOIR ON A 1.1 ACRE SITE LOCATED APPROXIMATELY 1200 FEET SOUTH OF SHELL AVENUE AND WITHIN THE R-3.5 ZONING DISTRICT (APN: 376-010-005)

WHEREAS, the City of Martinez approved Use Permit #96-09 in 1996, allowing Pac Bell Wireless to construct and operate a wireless communication facility on City Harbor View Reservoir property; and

WHEREAS, the City entered into a lease agreement with Pac Bell Wireless, which allows the operation of the facility in perpetuity, and which makes the City responsible for the relocation of the facility should the site be altered for water system upgrades; and

WHEREAS, the Harbor View Reservoir site is to be re-graded, and reservoir reconstructed, to meet to meet the current and future needs of the City as determined in the 2005 Water System Master Plan; and

WHEREAS, T-Mobile Wireless is Pac Bell Wireless' successor in interest; and

WHEREAS, The City is obligated by its lease agreement to facilitate a relocation of T-Mobile's antennae and equipment once the new reservoir is completed; and

WHEREAS, such antennae and equipment can be relocated on the site so that the off site visual impact is equal or lesser than that of the existing equipment; and

WHEREAS, the City received a separate request from Cingular Wireless, now AT&T wireless, to co-locate a new antennae facility on the reconstructed reservoir, and the City's Wireless regulations encourages co-location of such facilities; and,

WHEREAS, the AT&T Wireless application has substantially complied with the Wireless Telecommunications Facilities regulations requirement that the use of Residentially zoned sites be limited to where documentation shows that there are no nearby non-residential sites that can be used to provided the adequate coverage by the subject wireless service provider; and

WHEREAS, AT&T wireless, per tentative agreements with the City, will facilitate the City's re-installation of T-Mobile's facilities, as is required of the City per T-Mobile's

lease agreement with City; and

WHEREAS, both T-Mobile Wireless and AT&T Wireless will continue to contribute to the City's financial well being with their lease payments for use of the City of the City owned property; and

WHEREAS, the project is categorically exempt from the requirements of CEQA, under Section 15311, Accessory Structures, applicable to both public and private structures; and

WHEREAS, the Planning Commission of the City of Martinez held a public hearing on March 25, 2008 on a Use Permit application for the wireless telecommunications facility and listened to testimony from the public; and

NOW, THEREFORE, the Planning Commission of the City of Martinez resolves as follows:

1. The above recitals are found to be true and constitute part of the findings upon which this resolution is based.
2. The Planning Commission approves the relocation of T-Mobile Wireless's facility within the Harbor View Reservoir site, as an amendment to UP #96-09.
3. In order to approve the AT & T Wireless Use Permit application #05-22, the Planning Commission must make the following findings, which it hereby does:
 - (a) **The proposed location of the conditional use is in accord with the objectives of this title, and the purposes of the district in which the site is located.** The proposed wireless telecommunications co-located facility is appropriate for the Harbor View Reservoir site. The visual impacts of the facility will be minimal due to the context of the water tank and existing wireless facilities on the site. Final location and design details of the facility will be subject to Design Review approval to assure the anticipated minimal visual impact is not exceeded.
 - (b) **The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.** The proposed wireless telecommunications tower/facility will be fenced and secured. The carrier equipment will make minimal to no noise and will require maintenance every four to six weeks; thus, not increasing traffic activity at the site. Therefore, the wireless telecommunications tower/facility will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.
 - (c) **The proposed conditional use will comply with each of the applicable**

provisions of this title. The wireless facility is permitted in subject zoning district with the issuance of a Use Permit. In addition, the project shall meet the Federal Communications Commission (FCC) requirements for levels of Radio Frequency Radiation.

- 4. All the findings contained above are part and parcel of this Resolution and are incorporated herein by this reference.

NOW, BE IT FURTHER RESOLVED that the Planning Commission approves Use Permit #05-22 for construction of a telecommunications facility within the Harbor View Reservoir site, subject to conditions of approval, incorporated herein by this reference.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 25th day of March, 2008:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: _____
Frank Kluber
Planning Commission Chair

Corey M. Simon
Senior Planner

CONDITIONS OF APPROVAL **[DRAFT]**

AS APPROVED BY PLANNING COMMISSION

Project Name: AT&T Wireless

Location: Harbor View Reservoir (City owned property)(APN: 376-010-005)

I. Description of Permit

These conditions apply to and constitute the approval of Use Permit #05-22 to allow AT& T Wireless to locate a new wireless communication facility, in conjunction with the city's replacement of the existing harbor view reservoir.

II. Exhibits

All construction plans shall conform to the conceptual exhibits as provided by AT&T Wireless at the Planning Commission meeting of March, 11. 2008. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division and/or Building Division, or as noted.

III. Special Conditions that Apply to Use Permit #05-22

A. Final antennas configuration, and location on tank shall not occur prior to Design Review approval per Municipal Code Section 22.39. Design review may occur at Staff level, but application may be referred to the Design Review Committee and/or returned to the Planning Commission for final action if such is deemed appropriate by Staff.

B. Permit applications for wireless telecommunications facilities shall be valid for a period of up to ten (10) years from date of final discretionary approval and may be renewed prior to expiration by administrative action.

C. Contra Costa County Fire Protection District approval of plans must be received prior to an issuance of a building permit.

IV. Site Plan

A. Design Review and/or building permit plans shall include a site plan that shows all existing features and proposed structures.

B. Fences, walls and retaining walls:

1. All fencing, retaining walls, barriers, etc., shall be shown on the site and landscape plan.

2. The maximum height for all walls, fences and/or fences on retaining walls shall be 6 feet. The fence shall be chain link as indicated on the approved plans. Alternate materials will be subject to staff review and approval.

V. Noise Control and Dust

- A. All construction activities shall be restricted to Monday - Friday and to the hours of 7:00 a.m. to 7:00 p.m. Work on weekends and holidays shall be permitted between 9:00 a.m. to 5:00 p.m. The permittee shall post a sign on the site notifying all workers of this restriction.
- B. Telecommunication facilities shall operate in compliance with the noise exposure standards contained in the Martinez General Plan.
- C. Normal testing and maintenance activities shall occur between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding emergency repairs. Normal testing and maintenance activities, which do not involve the use or operation of telecommunications and maintenance equipment that is audible from residences and other nearby sensitive receptors, may occur at all other times. The level of any equipment used in routine maintenance and repairs shall not exceed the City standards at any adjacent property line.
- D. Backup generators shall comply with the same noise standards referenced above and shall only be operated during power outages, emergency occurrences, or for testing and maintenance in accordance with item VC above.
- E. All construction equipment shall be muffled in accordance with State Law.

VI. Radio Frequency Radiation

- A. Wireless telecommunications facilities operating alone and in conjunction with other telecommunications facilities shall not emit Radio Frequency Radiation (RFR) in excess of the standards for permissible human exposure to RFR as adopted by the Federal Communications Commission (FCC).
- B. The City may require one or more (periodic) post-construction RFR reports as a condition of project approval to verify that actual levels of RFR emitted by the approved facilities, operating alone and in combination with other approved facilities, substantially conform to the pre-approval RFR report and do not exceed current standards for permissible human exposure to RFR as adopted by the FCC.

VII. Lighting

- A. Manually operated, low wattage, hooded and downward directed exterior lighting shall be permitted for safety purposes only and shall not operate

except when maintenance or safety personnel are present at night.

- B. Nighttime lighting of warning signs required near publicly accessible facilities must consist of low-wattage fixtures, and must be directed downward and hooded.
- C. Plans submitted for Building Permits shall include a detailed lighting plan including the location and type of all exterior lighting fixtures.

VII. Agreements, Fees and Bonds

- A. All required improvement agreement(s) and all required fees and security deposits in connection with the proposed project shall be submitted to and approved by City and any other agencies having jurisdiction prior to City issuance of the building or grading permit, whichever comes first.

VII. Validity of Permit and Approval

- A. Planning Commission approval is subject to appeal to the City Council within ten calendar days of the approval.
- B. The permit and approval shall expire one year from the date on which they became effective unless extended under C below, or a building permit is obtained and construction begun within the one year time period. The effective date of the permit and approval is March 11, 2008.
- C. The time extension of the expiration date, March 11, 2009, of a permit or approval can be considered if an application with required fee is filed at least 45 days before the original expiration date. (Otherwise a new application is required.) A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.
- D. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- E. The applicant (and successor in interest) shall properly maintain and ultimately remove, if required, the approved wireless telecommunications facilities in compliance with the provisions of the Standards and Criteria for Telecommunication Facilities and any conditions of permit approval. The applicant shall cover the costs of removal from the premises if it has been inoperative or abandoned for a two-year period, or upon expiration of the permit applications.
- F. Posting of a financial security may be required to pay for the cost of

preparation of electromagnetic frequency radiation reports evaluating the conformance of approved and operative facilities with applicable standards adopted by the Federal Communications Commission, if complaints are received. The applicant may post a single financial security in an amount not to exceed \$25,000.00 to satisfy electromagnetic frequency radiation reports for build out of the applicant's network facilities plan.

- G. The applicant, AT&T Wireless shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Planning Commission's decision to approve Use Permit #05-22 and any environmental document approved in connection therewith. The indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by AT&T Wireless, the City, and/or the parties initiating or bringing such action. The City shall promptly notify the applicant of any such claim, action or proceeding. The City shall retain the right to participate in any claim, action, or proceeding.
- H. AT&T Wireless shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if AT&T Wireless desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- I. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify AT&T Wireless of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that AT&T Wireless is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably be withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with AT&T Wireless in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where AT&T Wireless have already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.

- J. AT&T Wireless shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- K. Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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