

RESOLUTION NUMBER R- 308428

DATE OF FINAL PASSAGE SEP 10 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO GRANTING CONDITIONAL USE PERMIT NO.
1129466 AND SITE DEVELOPMENT PERMIT NO. 1129467
FOR THE AT&T – BOUNDARY STREET PROJECT NO.
226649.

WHEREAS, the CITY OF SAN DIEGO, Owner of the public right-of-way, and AT&T MOBILITY, Permittee, filed an application with the City of San Diego for a Conditional Use Permit (CUP) and Site Development Permit (SDP) to construct, operate, and maintain a Wireless Communication Facility (WCF) known as the AT&T – Boundary Street project, located at 4371 1/3 Boundary Street in a portion of the public right-of-way located to the north-east of the intersection of Boundary Street and Meade Avenue, in the Greater North Park Community Plan area, in the MCCPD-MR-800B zone; and

WHEREAS, on June 20, 2013, the Planning Commission of the City of San Diego considered CUP No. 1129466 and SDP No. 1129467, and pursuant to Resolution No. 4921-PC voted to recommend approval of the Permit; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on September 10, 2013, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to CUP No. 1129466 and SDP No. 1129467:

A. **SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0504**

1. **Findings for all Site Development Permits – SDMC section 126.0504(a):**

a. **The proposed development will not adversely affect the applicable land use plan.** The purpose of the Mid-City Communities Planned District is to assist in implementing the goals and objectives of the adopted community plans for older, developed communities and to assist with implementation of the City’s General Plan. While the proposed development is not residential, it is located adjacent to the Mid-City Communities Planned District MR-800B zone, and the Planned District aims to provide an attractive street environment in the MR zones. The project is located in an area identified as Urban Design Area 2 and page 130 of the Greater North Park Community Plan, identifies this intersection as an opportunity to “enhance entryways to the community.” The proposed landscape improvements, hardscape, and water tank community monument structure create an aesthetically pleasing entry to the community in a currently unutilized portion of public right-of-way. The landscape and water tank structure will be maintained by Permittee.

The goal of the Urban Design section of the Greater North Park Community Plan is to, “Enhance the unique character and community image of Greater North Park.” The Community Planning Group’s close involvement with AT&T during the design of this project generated a design that is unique to North Park. One of the objectives in the Community Plan is to, “Develop a varied urban character within the community.” The proposed WCF is not a typical design and creates an urban plaza and monument tailored by the community.

While the Greater North Park Community Plan does not specifically address WCFs, the City’s General Plan (UD-15) requires that the visual impact of wireless facilities be minimized by concealing wireless facilities in existing structures or using screening techniques to hide or blend them into the surrounding area. The General Plan also calls for these facilities to be designed to be aesthetically pleasing and respectful of the neighborhood context. Furthermore, the General Plan states that equipment associated with wireless facilities be concealed from public view. This project implements the recommendations of the General Plan by screening the antennas and associated equipment within a faux water tank structure, surrounding by landscape and hardscape improvements. The project design has been closely coordinated with input from the Community Planning Group to generate a WCF that is aesthetically pleasing and respectful of the neighborhood context and character. Based on the design of this facility and its siting, this WCF will not adversely affect the applicable land use plans.

b. **The proposed development will not be detrimental to the public health, safety, and welfare.** The Telecommunications Act of 1996 preempts local governments from regulating the “placement, construction and modification of wireless communication

facilities on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the Federal Communication Commission's (FCC) standards for such emissions." The proposed project would be consistent with the FCC's regulations for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit to require that Permittee perform a model RF test and submit the finding in a report to the City of San Diego prior to the issuance of a building permit. Therefore, based on the above, the project will not be detrimental to the public health, safety, and welfare.

c. The proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. The proposed WCF is designed as a faux water tank, capable of concealing twelve (12) panel antennas behind RF transparent materials. Landscape and hardscape improvements surround the water tank, in an unused portion of public right-of-way. The WCF regulations allow WCFs with above-ground equipment with a CUP, Process 3. In this case, due to the size of the structure and other improvements proposed as part of this project, a SDP, Process 5, is also required. In addition, deviations are requested to the WCF regulations as they apply to WCFs located in the public right-of-way and the WCF Design Requirement's equipment area size limitation. These deviations are permitted with the approval of this Mid-City Communities Development Permit, which is processed as a SDP.

WCFs are required to adhere to Design Requirements outlined in Land Development Code (LDC) section 141.0420(g). WCFs "shall utilize the smallest, least visually intrusive antennas, components, and other necessary equipment." [LDC section 141.0420(g)(1).] AT&T Mobility has been able to achieve this requirement by locating the antennas and equipment inside a faux water tank that functions as a type of community monument. In addition, "the applicant shall use all reasonable means to conceal or minimize the visual impacts of the WCFs through integration. Integration with existing structures or among other existing uses shall be accomplished through the use of architecture, landscape, and siting solutions." [LDC section 141.0420(g)(2).] With this project, AT&T Mobility has minimized the visual impacts of the WCF by integrating the facility into the neighborhood. By closely coordinating with the Community Planning Group, the applicant developed a design that incorporates an architectural and landscape design sited to act as a community monument.

LDC section 141.0420(g)(3) limits the size of equipment enclosures to 250 square feet. In this case, the enclosure, at 313 square feet, exceeds the allowable area. This deviation can be supported as the equipment area is incorporated as part of the faux water tank structure.

LDC section 141.0420(h) provides regulations for WCFs located in the public right-of way. These regulations, when adopted, did not contemplate antenna installations on anything other than vertical elements in the public right-of-way, such as light standards and utility poles. As such, a WCF designed as a faux water tank was not considered as an option at the time the regulations were developed, necessitating a deviation for alternative designs such as this one. Therefore the design proposed does not comply with the following LDC sections: section 141.0420(h)(2), which requires that antennas be mounted to the pole no more than 6 inches from the pole; section 141.0420(h)(3), which requires that no more than four panel antennas or two omni-directional antennas shall be mounted on a pole; and section

141.0420(h)(4) which states that antennas shall be painted to match the color of the surface of the pole.

Therefore, the proposed WCF complies with the applicable regulations of the LDC, with the exceptions listed above, which are permitted with the approval of a Mid-City Communities Development Permit, which is processed as a SDP.

2. Supplemental Findings - Public Right-of Way Encroachments – SDMC section 126-0504(o):

a. The proposed encroachment is reasonably related to public travel, or benefits a public purpose, or all record owners have given the applicant written permission to maintain the encroachment on their property. The proposed WCF and accompanying development of the existing unused portion of public right-of-way benefits a public purpose in two main ways: 1) the WCF will allow for greater wireless coverage and capacity for the surrounding neighborhood and travelers along Interstate 805, and 2) the proposed improvements to the public right-of-way consisting of a community monument, landscape, and hardscape will result in an aesthetically pleasing space, to be developed and maintained by Permittee.

b. The proposed encroachment does not interfere with the free and unobstructed use of the public right-of way for public travel. The proposed encroachment is located in an unused portion of public right-of-way and does not obstruct the use of the existing road or sidewalk. In fact, the proposed development should create a more pedestrian-friendly environment that will enhance the public's use of the public right-of-way.

c. The proposed encroachment will not adversely affect the aesthetic character of the community. The proposed WCF has been designed in coordination with the Community Planning Group to achieve a design that is appropriate and acceptable to the community. Various architectural designs and renderings were provided to the Community Planning Group for consideration at this location. Therefore, the proposed encroachment will not adversely affect the aesthetic character of the community.

d. The proposed encroachment does not violate any other Municipal Code provisions or other local, state, or federal law. The proposed WCF complies with the applicable regulations of the Municipal Code and would be permitted with the approval of a SDP and CUP.

e. For coastal development in the coastal overlay zone, the encroachment is consistent with Section 132.0403 (Supplement Use Regulations of the Coastal Overlay Zone). This project is not located in the Coastal Overlay Zone. Therefore, this finding is not applicable to this project.

3. Mid-City Communities Development Permit Findings – SDMC section 1512.0204:

a. Conformance with Community Plan and Design Manuals. The proposed use and project design meet the purpose and intent of the Mid-City Communities Planned District (Section 1512.0101), and the following documents, as applicable to the site: the Mid-City Community Plan, the Greater North Park Community Plan, the State University Community Plan, the Uptown Community Plan, the Mid-City Design Plan (California State Polytechnic University, Pomona; Graduate studies in Landscape Architecture; June, 1983), Design Manual for the Normal Heights Demonstration Area and the City Heights Demonstration Area (HCH Associates and Gary Coad; April, 1984), The Design Study for the Commercial Revitalization of El Cajon Boulevard (Land Studio, Rob Quigley, Kathleen McCormick), The North Park Design Study, Volume 1, Design Concept and Volume 2, Design Manual (The Jerde Partnership, Inc. and Lawrence Reed Moline, Ltd.), Sears Site Development Program (Gerald Gast and Williams-Kuebelbeck and Assoc.; 1987) and will not adversely affect the Greater North Park Community Plan, the Uptown Community Plan or the General Plan of the City of San Diego;

The purpose of the Mid-City Communities Planned District is to assist in implementing the goals and objectives of the adopted community plans for older, developed communities and to assist with implementation of the City's General Plan. While the proposed development is not residential, it is located adjacent to the Mid-City Communities Planned District MR-800B zone, and the Planned District aims to provide an attractive street environment in the MR zones. The project is located in an area identified as Urban Design Area 2 and page 130 of the Greater North Park Community Plan, identifies this intersection as an opportunity to "enhance entryways to the community." The proposed landscape improvements, hardscape, and faux water tank community monument structure create an aesthetically pleasing entry to the community in a currently unutilized portion of public right-of-way. The landscape and faux water tank structure will be maintained by Permittee.

The goal of the Urban Design section of the Greater North Park Community Plan is to, "Enhance the unique character and community image of Greater North Park." The Community Planning Group's close involvement with AT&T Mobility during the design of this project generated a design that is unique to North Park. One of the objectives in the Community Plan is to, "Develop a varied urban character within the community." The proposed WCF is not a typical design and creates an urban plaza and monument tailored by the community.

While the Greater North Park Community Plan does not specifically address WCFs, the City's General Plan (UD-15) requires that the visual impact of wireless facilities be minimized by concealing wireless facilities in existing structures or using screening techniques to hide or blend them into the surrounding area. The General Plan also calls for these facilities to be designed to be aesthetically pleasing and respectful of the neighborhood context. Furthermore, the General Plan states that equipment associated with wireless facilities be concealed from view. This project implements the recommendations of the General Plan by screening the antennas and associated equipment within a faux water tank structure, surrounded by landscape and hardscape improvements. The project design has been closely coordinated

with input from the Community Planning Group to generate a WCF that is aesthetically pleasing and respectful of the neighborhood context and character. Based on its design and siting, this WCF is in conformance with the Community Plan and Design Manuals.

b. Compatibility with surrounding development. The proposed development will be compatible with existing and planned land use on adjoining properties and will not constitute a disruptive element to the neighborhood and community. In addition, architectural harmony with the surrounding neighborhood and community will be achieved as far as practicable. The proposed WCF consists of a 49-foot tall faux water tank, concealing twelve (12) panel antennas. The facility has been designed to be compatible with the surrounding development. Landscape material and hardscape is proposed to surround the water tank structure, which will to improve views of the WCF as seen from the public right-of-way, reduce the apparent bulk and scale of the water tank, and create a public benefit to the community in the form of an aesthetically pleasing community monument. While the project is located within the public right-of-way, it does comply with the adjacent Mid-City Communities Planned District MR-800B zone height limit of 50 feet. During the design process, structures at 40-feet were proposed, however in order to incorporate the North Park signage and other water tank architectural details, 49 feet was necessary. The design proposes an architectural solution to effectively integrate the WCF with the surrounding neighborhood in a compatible manner.

c. No Detriment to Health, Safety and Welfare. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area, and will not adversely affect other property in the vicinity. The Telecommunications Act of 1996 preempts local governments from regulating the “placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the Federal Communication Commission’s (FCC) standards for such emissions.” The proposed project would be consistent with the FCC’s regulations for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit to require that Permittee perform a model RF test and submit the finding in a report to the City of San Diego prior to the issuance of a building permit. Therefore, based on the above, the project would not result in any significant health or safety risks to the surrounding area within the jurisdiction of the City.

d. Adequate Public Facilities. For residential and mixed residential/commercial projects within the park-deficient neighborhoods shown on Map Number B-4104 that are not exempted by Section 1512.0203(b)(1)(A) or (B), the proposed development provides a minimum of 750 square feet of on-site usable recreational open space area per dwelling unit. The on-site usable recreational open space area shall not be located within any area of the site used for vehicle parking, or ingress and egress, and shall be configured to have a minimum of 10 feet in each dimension. The area will be landscaped and may also include hardscape and recreational facilities. This project consists of a WCF, which does not involve a residential use. Therefore, as this finding applies to residential and mixed residential/commercial projects, this finding is not applicable to this project.

e. **Adequate Lighting. In the absence of a street light within 150 feet of the property, adequate neighborhood-serving security lighting consistent with the Municipal Code is provided on-site.** A street light is located within 150 feet of this project. However, in addition, the project is proposing lighted bollards around the project.

f. **The proposed use will comply with the relevant regulations in the San Diego Municipal Code.** The proposed WCF is designed as a faux water tank, capable of concealing twelve (12) panel antennas behind RF transparent materials. Landscape and hardscape improvements surround the water tank, in an unused portion of public right-of-way. The WCF regulations allow WCFs with above-ground equipment with a CUP, Process 3. In this case, due to the size of the structure and other improvements proposed as part of this project, a SDP, Process 5, is also required. In addition, deviations are requested to the WCF regulations as they apply to WCFs located in the public right-of-way, and the WCF Design Requirement's equipment area size limitation. To allow the requested deviations, a Mid-City Communities Development Permit, processed as a SDP, is required.

WCFs are required to adhere to Design Requirements outlined in LDC section 141.0420(g). WCFs "shall utilize the smallest, least visually intrusive antennas, components, and other necessary equipment." [LDC section 141.0420(g)(1)] Permittee has been able to achieve this requirement by locating the antennas and equipment inside a faux water tank that functions as a type of community monument. In addition, "the applicant shall use all reasonable means to conceal or minimize the visual impacts of the WCFs through integration. Integration with existing structures or among other existing uses shall be accomplished through the use of architecture, landscape, and siting solutions." [LDC section 141.0420(g)(2)] With this project, Permittee has minimized the visual impacts of the WCF by integrating the facility into the neighborhood. By closely coordinating with the Community Planning Group, the applicant developed a design that incorporates an architectural and landscape design sited to act as a community monument.

LDC section 141.0420(g)(3) limits the size of equipment enclosures to 250 square feet. In this case, the enclosure, at 313 square feet exceeds the allowable area. This deviation can be supported as the equipment area is incorporated as part of the faux water tank structure.

LDC section 141.0420(h) provides regulations for WCFs located in the public right-of-way. These regulations, when adopted, did not contemplate antenna installations on anything other than vertical elements in the public right-of-way, such as light standards and utility poles. As such, a WCF designed as a faux water tank was not considered as an option at the time the regulations were developed, necessitating a deviation for alternative designs such as this one. The proposed design does not comply with the following LDC sections: section 141.0420(h)(2), which requires that antennas be mounted to the pole no more than 6 inches from the pole; section 141.0420(h)(3), which requires that no more than four panel antennas or two omni-directional antennas shall be mounted on a pole; and section 141.0420(h)(4), which states that antennas shall be painted to match the color of the surface of the pole.

Therefore, the proposed WCF complies with the applicable regulations of the LDC, with the exceptions listed above, which are permitted with the approval of this Mid-City Communities Development Permit, which is processed as a SDP.

**B. CONDITIONAL USE PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC)
SECTION 126.0305**

1. Findings for all Conditional Use Permits – SDMC section 126.0305:

a. The proposed development will not adversely affect the applicable land use plan. The purpose of the Mid-City Communities Planned District is to assist in implementing the goals and objectives of the adopted community plans for older, developed communities and to assist with implementation of the City’s General Plan. While the proposed development is not residential, it is located adjacent to the Mid-City Communities Planned District MR-800B zone, and the Planned District aims to provide an attractive street environment in the MR zones. The project is located in an area identified as Urban Design Area 2 and page 130 of the Greater North Park Community Plan, identifies this intersection as an opportunity to “enhance entryways to the community.” The proposed landscape improvements, hardscape, and water tank community monument structure create an aesthetically pleasing entry to the community in a currently unutilized portion of public right-of-way. The landscape and faux water tank structure will be maintained by Permittee.

The goal of the Urban Design section of the Greater North Park Community Plan is to, “Enhance the unique character and community image of Greater North Park.” The Community Planning Group’s close involvement with AT&T Mobility during the design of this project generated a design that is unique to North Park. One of the objectives in the Community Plan is to, “Develop a varied urban character within the community.” The proposed WCF is not a typical design and creates an urban plaza and monument tailored by the community.

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b. The proposed development will not be detrimental to the public health, safety, and welfare. The Telecommunications Act of 1996 preempts local governments from regulating the “placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such

facilities comply with the Federal Communication Commission's (FCC) standards for such emissions." The proposed project would be consistent with the FCC's regulations for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit to require that AT&T Mobility perform a model RF test and submit the finding in a report to the City of San Diego prior to the issuance of a building permit. Therefore, based on the above, the project would not be detrimental to the public health, safety, and welfare.

c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. The proposed WCF is designed as a faux water tank, capable of concealing twelve (12) panel antennas behind RF transparent materials. Landscape and hardscape improvements surround the faux water tank, in an unused portion of public right-of-way. The WCF regulations allow WCFs with above-ground equipment with a CUP, Process 3. In this case, due to the size of the structure and other improvements proposed as part of this project, a SDP, Process 5, is also required. In addition, deviations are requested to the WCF regulations as they apply to WCFs located in the public right-of-way, and the WCF Design Requirement's equipment area size limitation. To allow the requested deviations, a Mid-City Communities Development Permit, processed as a SDP, is required.

WCFs are required to adhere to Design Requirements outlined in LDC section 141.0420(g). WCFs "shall utilize the smallest, least visually intrusive antennas, components, and other necessary equipment." [LDC section 141.0420(g)(1).] AT&T Mobility has been able to achieve this requirement by locating the antennas and equipment inside a faux water tank that functions as a type of community monument. In addition, "the applicant shall use all reasonable means to conceal or minimize the visual impacts of the WCFs through integration. Integration with existing structures or among other existing uses shall be accomplished through the use of architecture, landscape, and siting solutions." [LDC section 141.0420(g)(2).] With this project, AT&T Mobility has minimized the visual impacts of the WCF by integrating the facility into the neighborhood. By closely coordinating with the Community Planning Group, the applicant developed a design that incorporates an architectural and landscape design sited to act as a community monument.

LDC section 141.0420(g)(3) limits the size of equipment enclosures to 250 square feet. In this case, the enclosure, at 313 square feet, exceeds the allowable area. This deviation can be supported as the equipment area is incorporated as part of the faux water tank structure.

LDC section 141.0420(h) provides regulations for WCFs located in the public right-of-way. These regulations, when adopted, did not contemplate antenna installations on anything other than vertical elements in the public right-of-way, such as light standards and utility poles. As such, a WCF designed as a faux water tank was not considered as an option at the time the regulations were developed, necessitating a deviation for alternative designs such as this one. The proposed design does not comply with the following LDC sections: section 141.0420(h)(2), which requires that antennas be mounted to the pole no more than 6 inches from the pole; section 141.0420(h)(3), which requires that no more than four panel antennas or two omni-directional antennas shall be mounted on a pole; and section 141.0420(h)(4), which states that antennas shall be painted to match the color of the surface of the pole.

Therefore, the proposed WCF complies with the applicable regulations of the LDC, with the exceptions listed above, which are permitted with the approval of the Mid-City Communities Development Permit, which is processed as a SDP.

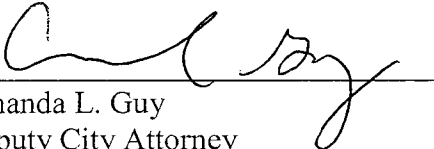
d. The proposed use is appropriate at the proposed location.

Council Policy 600-43 identifies the public right-of-way as a Preference 1 (most preferred) location for siting WCFs. WCFs proposing above-ground equipment are permitted by the WCF regulations with a CUP. The Council Policy outlines a variety of preference levels for locating WCFs. For example, a residential zone with a residential use is one of the least preferred locations for a WCF, while a commercial or industrial zone is one of the most preferred locations. With this project, AT&T Mobility is proposing to improve an unused portion of the public right-of-way with landscape, hardscape, and a community monument. Designed at the direction of the Community Planning Group, the faux water tank reflects the iconic North Park water tank, and at the same time conceals antennas. Based on the design of the WCF, Council Policy 600-43, and the WCF regulations, the proposed WCF use is appropriate at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, CUP No. 1129466 and SDP No. 1129467 are granted to the CITY OF SAN DIEGO, Owner, of the public right-of-way and AT&T MOBILITY, Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Amanda L. Guy
Deputy City Attorney

ALG:hm
6/27/2013
8/30/2013 COR.COPY
Or.Dept: DSD
Doc. No. 625896

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24001348

CONDITIONAL USE PERMIT NO. 1129466
SITE DEVELOPMENT PERMIT NO. 1129467
AT&T – BOUNDARY STREET, PROJECT NO. 226649
CITY COUNCIL

This CONDITIONAL USE PERMIT (CUP) No. 1129466 and SITE DEVELOPMENT PERMIT (SDP) No. 1129467 are granted by the City Council of the City of San Diego to the CITY OF SAN DIEGO, Owner of the public right-of-way, and AT&T MOBILITY, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 141.0420, 126.0501 et al., 1512.0204, and 126.0301 et al. The site is located at 4371 1/3 Boundary Street, in a portion of the public right-of-way to the north-east of the intersection of Boundary Street and Meade Avenue in the Mid-City Communities Planned District, MCCPD-MR-800B zone of the Greater North Park community plan area as shown on the approved Exhibit "A" dated September 10, 2013.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Permittee to construct, operate, and maintain a Wireless Communication Facility (WCF) described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 16, 2013, on file in the Development Services Department.

The project shall include:

- a. A 49-foot tall faux water tank structure containing twelve (12) panel antennas, measuring 8 feet by 12 inches by 9 inches, concealed behind radio-frequency transparent materials with "North Park" signage on the outside of the tank;
- b. A 313 square-foot equipment room located at the base of the faux water tank structure;
- c. This project requests the following deviations which are permitted with this Site Development Permit (Mid-City Communities Development Permit):

1. The project deviates from the following regulations for WCFs located in the public right-of-way, LDC section 141.0420(h). These regulations are intended for antennas located on a street light standard, utility pole, or similar type of installation in the public right-of-way. In this case, the antennas are concealed within a faux water tank structure and as such the project deviates from these regulations:
 - A. 141.0420(h)(2) requires that “panel antennas shall be vertically mounted to the pole in compliance with any applicable separation requirements and shall not exceed 6 inches in distance from the pole.”
 - B. 141.0420(h)(3) requires that “no more than four panel antennas or two omni-directional antennas shall be mounted on any utility pole by any one wireless communication facilities provider.”
 - C. 141.0420(h)(4) requires that “antennas shall be painted to match the color of the surface of the pole on which they are attached.”
 2. The project deviates from the WCF Design Requirements, LDC section 141.0420(g)(3) which limits equipment area square-footage to 250 square-feet. The equipment area is 313 square feet.
- d. Landscaping (planting, irrigation and landscape related improvements);
 - e. This structure is for the primary purpose of providing a community monument, but may have the secondary purpose of accommodating Permittee’s Operations on the Premises.
 - f. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer’s requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by September 10, 2016.
2. This Conditional Use Permit (CUP) and corresponding use of this site shall expire on September 10, 2023. Upon expiration of this Permit, the facilities and improvements described

herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit, unless a new permit is obtained as described in Condition No. 3.

3. No later than ninety (90) days prior to the expiration of this Permit, the Permittee may submit a new application to the Development Services Department for consideration with review and a decision by the appropriate decision maker at that time. Failure to submit prior to the deadline will be cause for enforcement for noncompliance, which may include penalties and fines.

4. Under no circumstances, does approval of this Permit authorize the Permittee to utilize this site for wireless communication purposes beyond the Permit expiration date. Use of this Permit beyond the expiration date of this permit is prohibited.

5. No Permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Permittee signs and returns the Permit to the Development Services Department; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

6. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

7. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Permittee and any successor(s) in interest.

8. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

9. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

10. The Permittee shall secure all necessary building permits. The Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

11. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

12. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

13. The Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Permittee.

LANDSCAPE REQUIREMENTS:

14. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit "A" Landscape Development Plan.

15. Prior to issuance of any construction permits for buildings complete landscape and irrigation construction documents consistent with the Land Development Manual: Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit 'A,' Landscape

Development Plan, on file in the Office of the Development Services Department. Construction plans shall provide a 40 square foot area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)5.

16. Prior to issuance of any Certificate of Occupancy or activation of WCF, it shall be the responsibility of the Permittee to install all required landscape and pass all required landscape inspections.

17. All required landscape shall be maintained by the Permittee in a healthy condition, free of disease, weeds and litter at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

18. Any required planting that dies within 3 years of installation shall be replaced within 30 calendar days of plant death with the same size and species of plant material shown on the approved plan. Required shrubs or trees that die 3 years or more after installation shall be replaced with 15 gallon size or 60-inch box size material, respectively. Development Services may authorize adjustment of the size and quantity of replacement material where material replacement would occur in inaccessible areas or where the existing plant being replaced is larger than a 15 gallon shrub or 60-inch box tree.

PLANNING/DESIGN REQUIREMENTS:

19. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

20. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

21. All facilities and related equipment shall be: maintained in good working order; free from trash, debris, graffiti; and designed to discourage vandalism. Any damaged equipment shall be repaired or replaced within thirty (30) calendar days of notification by the City of San Diego.

22. The Permittee shall notify the City within 30 days of the sale or transfer of this site to any other provider or if the site is no longer operational requiring the potential removal and the restoration of this site to its original condition.

23. The photosimulation(s) for the proposed project shall be printed (not stapled) on the building plans. This is to ensure that the construction team building the project is in compliance with the approved Exhibit "A." The WCF shall conform to Exhibit "A" (consisting of the stamped approved plans and approved photosimulations) prior to receiving final telecom planning inspection approval.

24. No overhead cabling is allowed for this project.

25. Prior to the issuance of a construction permit, the telecommunication provider shall provide a certified radio frequency model study demonstrating compliance with the Federal Communications Commission's Radio Frequency Guidelines. All significant contributors to the ambient RF environment should be considered in the radio frequency model study.

26. All equipment, including transformers, emergency generators and air conditioners belonging to the Permittee shall be designed and operated consistent with the City noise ordinance. Ventilation openings shall be baffled and directed away from residential areas. Vibration resonance of operating equipment in the equipment enclosures shall be eliminated.

27. The Permittee shall place appropriate signage on the WCF as required by CAL-OSHA and FCC.

28. The approved antenna dimensions are 8 feet by 12 inches by 9 inches as illustrated on the Exhibit "A" dated July 16, 2013. Replacement of the antennas may occur in the future, subject to the Permittee notifying the Development Services Department prior to the replacement of the antennas and subject to the provision of providing an updated Radio Frequency (RF) report demonstrating compliance with the Federal Communication Commission's regulations in accordance with SDMC Section 141.0420(b)(1)(A) to the satisfaction of the Development Services Department.

29. Although the project is located within the public right-of-way, due to the characteristics of the proposed structure, the Permittee shall submit an application for and obtain the required Building, Electrical, and Mechanical Permits from the Development Services Department, prior to the commencement of any construction activity, in addition to any other required public right-of-way construction permits.

PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:

30. Prior to the issuance of any building permits, the Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Director of Public Utilities and the City Engineer.

31. All proposed public water facilities, including services and meters, must be designed and constructed in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto.

32. All proposed private water and sewer facilities located within a single lot are to be designed to meet the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check.

ENGINEERING REQUIREMENTS:

33. The project proposes to export 46 cubic yards of material from the project site. All excavated material listed to be exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2009 edition and Regional Supplement Amendments adopted by Regional Standards Committee.
34. The drainage system proposed for this development, as shown on the site plan, is private and subject to approval by the City Engineer.
35. Prior to the issuance of any construction permit, the Permittee shall obtain a Nonexclusive Right-of-Way Use Agreement from the City of San Diego for the proposed work in the Meade Avenue, Boundary Street and Iowa Street Right-of-Way.
36. Prior to the issuance of any construction permit, the Permittee shall obtain a Public Right-of-Way permit for the proposed work in the Meade Avenue, Boundary Street and Iowa Street Right-of-Way.
37. Prior to the issuance of any construction permits, the Permittee shall assure by permit to construct a current City Standard sidewalk, with historic scoring, adjacent to the site on Boundary Street, satisfactory to the City Engineer.
38. Prior to the issuance of any construction permit, the Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
39. Prior to the issuance of any construction permit, the Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.
40. Prior to the issuance of any construction permit the Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.
41. The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Permittee and successors in interest and shall not adversely affect the public's health, safety or general welfare.
42. The Permittee must agree to remove or relocate the encroachment within 180 days after notice by the City Engineer (i) based on a threat to public health, safety or welfare, (ii) when necessary to make way for a proper governmental use, or (iii) under any other applicable law, or the City Engineer may cause such work to be done.
43. The Permittee agrees to provide an alternate right-of-way or to relocate any existing or proposed City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that any existing or proposed City facility cannot be

economically placed, replaced, or maintained due to the presence of the encroaching structure over or under the public right-of-way.

44. Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroaching structure.

45. The Permittee shall maintain a policy of \$1 million liability insurance, satisfactory to the City Engineer, to protect the City from any potential claims which may arise from the encroachment.

46. In the event the City is required to place, replace, or maintain a public improvement over which the Permittee has constructed an encroaching structure, the Permittee shall pay the City that portion of the cost of placement, replacement, or maintenance caused by the construction, or existence of the Permittee's permanent encroaching structure.

47. The Permittee shall pay the City for all the cost of placing, replacing, or maintaining a public improvement within the public right-of-way when the City's facility has failed as a result of the construction or existence of the Permittee's encroaching structure.

48. The costs of placing, replacing, or maintaining the public improvement shall include the cost of obtaining a necessary alternate easement.

49. The Permittee shall pay the City or public utility for all cost of relocating, replacing, or protecting a facility within the public right-of-way when such relocation, replacement, or protection results from the construction of the encroachment.

AIRPORT REQUIREMENTS:

50. Prior to issuance of a right-of way, building permit, or any other construction permit, the Permittee shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration (FAA).

TRANSPORTATION DEVELOPMENT REQUIREMENTS:

51. Prior to any work starting in the City street right-of-way, the applicant shall apply for a "Public Right-of-Way Permit for Traffic Control."

52. Remove and replace concrete sidewalk as shown on the Site Plan to City Standards, SDG-155, to the satisfaction of the City Engineer.

53. Prior to the issuance of any construction permits, the Permittee shall agree upon a specific dollar amount and shall pay this amount to the City as a contribution for the cost of construction of two curb ramps and the associated sidewalks to the Public Utilities Department, Group Job #928, satisfactory to the City Engineer, in an amount not to exceed \$10,000.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- A “Telecom Planning Inspection” will be required prior to Final Clearance from the City's Building Inspector to ensure compliance with the approved plans, exhibits, and associated conditions. Prior to calling for your Final Inspection from your building inspection official, please contact the Project Manager listed below at 619-446-5349 to schedule an inspection of the completed WCF. Please request the telecom inspection at least five working days ahead of the requested Final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on September 10, 2013 and
[Approved Resolution Number]. *R-308428*

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Alex Hempton, AICP
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner or Permittee as specified hereunder.

CITY OF SAN DIEGO
Owner of the public right-of-way

By _____
WALT EKARD
INTERIM CHIEF
OPERATING OFFICER

AT&T MOBILITY
Permittee

By _____
KEVIN MCGEE
NETWORK MANAGER

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

SEP 10 2013

Passed by the Council of The City of San Diego on _____, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SEP 10 2013

Date of final passage _____.

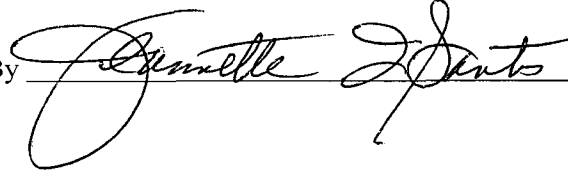
(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **308428**