

PIEDMONT CITY COUNCIL

Special Meeting Minutes for Monday, October 30, 2017

A Special Session of the Piedmont City Council was held October 30, 2017, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54957(b), the agenda for this meeting was posted for public inspection on October 26, 2017.

CALL TO ORDER

The City Council met at 6:30 p.m. in Closed Session for (a) Public Employee Performance Evaluation (Government Code Section 54957 (b) - Title: City Administrator.

Mayor McBain called the meeting to order at 7:33 p.m. with the Pledge of Allegiance.

ROLL CALL

Present: Mayor Robert McBain, Vice Mayor Teddy Gray King, and Councilmembers Betsy Smegal Andersen, Jennifer Cavanaugh, and Tim Rood

Staff: City Administrator Paul Benoit, City Attorney Michelle Marchetta Kenyon, Planning Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell and City Clerk John Tulloch

SPECIAL SESSION

Wireless Communications Facilities Permits and Variances

Planning Director Kevin Jackson provided a summary of the state and federal regulatory landscape applying to applications for wireless facilities in the public right-of-way and stated that blanket denial of all of the applications would be in conflict with state and federal laws. Mr. Jackson stated that the applicant had submitted documentation indicating that the proposed antennas meet federal radio frequency emission requirements. He also indicated that the applicant had submitted documentation that a significant gap in coverage or capacity does exist and that no substantial counter evidence has been entered into the record that would overcome or refute the documents provided by Crown Castle.

Mr. Jackson reminded the Council that the three sites under consideration at this meeting are PHS01 across from 340-370 Highland Avenue, PHS03 799 Magnolia Avenue and PHS04 across from 740 Magnolia Avenue. He indicated that staff had recommended the approval, with conditions, of each of these applications, and reminded Council that the shot clock under federal law for these applications will expire on October 31, 2017.

Mr. Jackson stated that staff had prepared two resolutions for each of the sites under consideration at this meeting, one which would approve the application with conditions and another which would deny the application. Mr. Jackson summarized the proposed conditions of approval. He reviewed prior Council consideration of the applications and concerns raised by residents.

City Attorney Michelle Marchetta Kenyon confirmed the restrictions on the Council's ability to regulate radio frequency emissions, indicating the conditions of approval addressed, to the maximum extent possible by law, what the Council is able to regulate. She discussed the Council's ability to regulate noise and that the noise ordinance was enforceable with regard to Crown Castle's application.

Mr. Jackson stated periodic testing of noise was not a condition and enforcement of conditions of approval regarding noise issues would be complaint driven. He indicated that one of the proposed conditions of approval is the submission of and

adherence to a construction management plan. He also indicated that the proposed conditions of approval contained operation and maintenance standards.

Public Testimony was received from:

Sharon James and Michael Shonafelt, representing applicant Crown Castle, expressed disappointment over the denials of five sites at the October 16th Council meeting, expressed an opinion that the procedures under which the Council has considered the applications were disproportionately unfair to the applicant, objected to the conditions of approval, and complained of harassment by residents prior to this Council meeting.

Suat Yoksuloglu and Morgan Hunt, also representing applicant Crown Castle, discussed noise issued related to the vaults, the noise study on the vaults in Santa Cruz and the fact that the site on Skyline Boulevard to which council had been directed as an analog to the sites being considered tonight was a different design and contained different equipment than the proposed site in Piedmont.

Shary Nunan, Lionel Chan, Peter Harvey, Miranda Liu, Jessica Liu, and Sherk Chung spoke in opposition to the applications. Speakers reiterated concerns expressed at earlier meetings that a significant gap in coverage had not been proven, concerns regarding the health effects of the proposed antennas, concerns regarding the noise which would be generated by the proposed sites, and asserted that the Board of Education had sent a letter stating its opposition to these applications.

City Administrator Paul Benoit stated the City had not received a letter from the Board of Education stating an opinion on these applications.

With regard to the issue of coverage and capacity, Mr. Jackson reiterated that the City's independent experts had reviewed the evidence of a gap in coverage and/or capacity submitted by the applicant and that no evidence had been provided which substantially refuted Crown Castle's assertion. City Attorney Michelle Marchetta Kenyon explained that, under the City Code, the applicant had to show a gap in capacity or coverage.

There was extensive discussion regarding the noise requirements under the City code and the proposed conditions of approval related to noise, how noise would be calculated, and the requirements placed on the applicant by the proposed conditions of approval.

Mr. Jackson and Ms. Kenyon discussed the City's lack of ability to regulate regarding potential damages to trees from antenna emissions, but that the City did have the authority to place reasonable restrictions on the location of towers and poles which might affect the root systems and/or tree canopies.

Responding to questions from Council, Morgan Hunt, representing Crown Castle, provided detail on the preventative maintenance schedule for the proposed sites, indicating that preventative maintenance is done on an annual basis, lasting less than an hour at each site. Suat Yoksuloglu, also of Crown Castle, indicated that, if approved, the construction of the sites would take approximately two weeks and described its impact on roads and pedestrians.

The Council thanked the community for its interest in these applications and the significant amount of community input which has been received.

Councilmembers indicated that the issues of these applications had been one of the most difficult items they have considered in their time on the Council. Councilmembers expressed the complicated nature of these issues and the weighing of their duties as representatives of the people and fiduciary stewards of the City.

Resolution No. 88-17

WHEREAS, Crown Castle NG West LLC (“Applicant”) is requesting a permit for a wireless communication facilities (“WCF”) installation within the public right-of-way across from 340-370 Highland Avenue, Piedmont, California, a site identified in the application materials as PHS01. The proposed WCF installation includes a single canister pseudo omni-directional antenna atop an existing streetlight, cables within the hollow streetlight post, and a flush-to-grade vault in the sidewalk for communication equipment, the construction of which requires a wireless communication facilities permit; and

WHEREAS, as provided in Piedmont City Code section 17.46.080.C, the City Council is hearing this application for WCF permit because it is a facility proposed in Zone B on a City-owned streetlight located within the City-owned public right-of-way; and

WHEREAS, in accordance with Piedmont City Code section 17.46.080.B, the Planning Commission held a properly noticed public hearing on the proposed application materials and plans for a prior design for the PHS01 site (“May 2017 Plans”) on June 12, 2017, and based upon the evidence and providing findings of fact, voted to recommend that the City Council deny the application; and

WHEREAS, on June 23, 2017, the Applicant and City mutually agreed to an extension to October 31, 2017 of the applicable shot clock timelines set forth by the Federal Communications Commission (Petition for Declaratory Ruling (“Shot Clock Rule”), 24 F.C.C. Rcd. 13994 (2009) and any applicable State of California-required shot clock(s) for application processing time lines (“Shot Clock”). The purpose of the shot clock extension was to provide the Applicant with additional time to investigate and propose alternate designs intended to address the various concerns expressed by the Planning Commission regarding the May 2017 Plans during its meeting of June 12, 2017; and

WHEREAS, the Applicant subsequently withdrew the proposed May 2017 Plans and submitted revised application materials and plans (“September 2017 Plans”), including revised plans and materials for site PHS01 across from 340-370 Highland Avenue. The September 2017 Plans are a revised version of the May 2017 Plans and are the plans and materials currently being considered by the Piedmont City Council; and

WHEREAS, the applicant, in having proposed 24-inch tall canister antennas at five of the nine proposed sites included in the overall scope of this application, has demonstrated that the use of a 24-inch tall canister antenna is a feasible solution to solve significant gaps in service coverage or capacity, and therefore the 48-inch tall canister antenna proposed for this site is not the least intrusive means to close said gaps or to mitigate adverse visual impacts as required by City Code section 17.46.070.A.3. The solution is to require the canister antenna to have a maximum vertical length of 24 inches, which is a feasible solution to close significant gaps in coverage or capacity, and to adequately mitigate adverse visual impacts; and

WHEREAS, the equipment proposed to be installed, including the machinery in the vault, is considered to be an exterior installation and thereby subject to Building Code requirements related to mechanically-generated noise sources provided in City Code Section 5.4.11; and

WHEREAS, based upon the evidence and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the Piedmont City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15303 of the CEQA Guidelines, Construction or Conversion of Small Structures, subsection (d) (water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction) because the proposed wireless communication facilities are small utility structures located in a developed setting. No exceptions to the exemptions have been identified that would make the proposals ineligible for the categorical exemptions because the projects' settings are not environmentally sensitive and existing utilities are located at or near each of the proposed installations; and

WHEREAS, based upon the evidence and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the Piedmont City Council finds that the project, as conditioned, conforms to the criteria and standards of Piedmont City Code section 17.46.080.D.1, as follows:

- a. As evidenced in the materials submitted by the applicant, the facility is necessary to close a significant gap in the operator's service coverage or capacity; and
- b. The applicant has evaluated and met the priority for location standards of Piedmont City Code section 17.46.040.A.1 in that the proposed site is in Zone B and in the public right-of-way;
- c. The proposal satisfies each of the applicable development standards in Piedmont City Code section 17.46.070 as follows:

A. Development Standards:

1. Collocation. The new wireless communication facility is located on an existing City-owned streetlight and is designed to accommodate future collocation(s) of other wireless communication facilities unless the city determines that collocation would be infeasible because of physical or design issues specific to the site; and
2. Height limits; Screening. As conditioned, the new antenna will be a maximum 24 inches tall and the maximum height of the facility will be less than 35 feet in height, measured from the ground to the highest point of the wireless communication facility. Other proposed equipment not located on the streetlight will be located within a flush-to-grade vault; and
3. Visual impact. As conditioned, the proposed wireless communication facility is designed to minimize visual impacts in that the cables are proposed to be within the hollow streetlight or otherwise concealed; the flush-to-grade vault provides the concealment for the communication equipment; the antenna shall be no taller than 24 inches; the perimeter of

the antenna canister provides the concealment for the antenna; and the facility will have a non-reflective finish and be painted or otherwise treated to minimize visibility and the obstruction of views; and

As conditioned, the facility will not bear signs, other than required FCC certifications, warnings, emergency contacts, or other signage required by law or expressly required by the city; and

4. Public health, peace and safety. As conditioned, the wireless communication facility will not adversely affect the public health, peace and safety. The City is aware of its duty and limits of authority under federal law. The applicant has submitted a report prepared by Hammett & Edison LLC, Consulting Engineers stating that the project as proposed will be in full compliance with the Federal Communications Commission guidelines limiting human exposure to radio frequency electromagnetic fields. Said report has been entered into the public record and relied upon by the City; and
5. Public right-of-way. The proposed wireless communication facility is located in the public right-of-way. Its design and location, and the placement of equipment does not cause: (i) physical or visual obstruction, or safety hazard, to pedestrians, cyclists, or motorists; or (ii) inconvenience to the public's use of the right-of-way. The equipment is located at least 18 inches from the front of the curb, has adequate vertical and horizontal clearance, and does not otherwise interfere with the public's use of the right-of-way. As conditioned, the cover of the flush-to-grade vault will have a slip resistant surface; and
6. Compliance with laws. The proposed wireless communication facility complies with federal and state statutes governing local agencies' land use authority regarding the siting of wireless communication facilities, including without limitation 47 USC §253, 332(c)(7), 1455(a); California Government Code §§ 50030, 65850.6 and 65964; and California Public Utilities Code sections 7901 and 7901.1. Each reference to federal and state statutes is to the statute as it may be as amended from time-to-time and to the extent the statute remains in effect; and
 - A. Operation and Maintenance Standards. As conditioned, the proposed wireless communication facility will comply with the operation and maintenance standards provided in Piedmont City Code section 17.460070.B; and
 - B. Term of permit. As conditioned, the approved permit for wireless communication facilities is valid for an initial period of ten years commencing on the approval date of this Resolution; and
- d. The proposed design is consistent with the Piedmont Design Guidelines in that the scale and mass of the communication equipment is appropriate for the streetlight and or is otherwise concealed from view within the streetlight post or flush-to-grade vault; and
- e. Although future collocation at this site may not be feasible, the proposed facility has been located and designed for future collocation to the greatest extent reasonable feasible, and the applicant has submitted a statement of its willingness to allow other wireless service

providers to collocated on the proposed facility, recognizing that such collocation may be subject to review by the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

SECTION 1. The above recitals are correct and are material to this Resolution and are incorporated into this Resolution as findings of the City Council.

SECTION 2. Based on the findings and facts set forth heretofore, the staff reports and evidence presented at the public hearings, the Piedmont City Council approves the application for wireless communication facilities permit for a proposed facility sited across from 340-370 Highland Avenue, in accordance with the plans and specification on file with the City, subject to the following conditions:

1. Conditions in construction documents. These conditions of approval shall be included as a sheet in the plan set submitted for any building permit or encroachment permit for the work approved herein.
2. Contract engineer. Prior to issuance of an encroachment permit for proposed work in the public right-of-way, the applicant shall file a deposit of \$15,000 for each installation site to be used by the City to cover the costs associated with contract engineer to monitor construction and excavation within the right-of-way. The applicant is responsible for the full cost of the contract engineer, and any unexpended funds after the completion of the monitoring process will be promptly returned to the applicant.
3. Patch and repair. The applicant shall patch and repair City sidewalks and other improvements in the public right-of-way affected by applicant's project construction, such as curbs or walls, to match the color, texture, materials, and scoring pattern of the existing improvements, including custom integral concrete color in accordance with City of Piedmont standard plans and as directed by the Director of Public Works. Directional bore shall be utilized over trenching at the reasonable discretion of the Public Works Director.
4. Alternative vault design and location – underground utilities. Prior to issuance of an encroachment permit, applicant or contractor shall provide detailed utility plans with existing utilities locations and shall pot-hole for utilities as required by the Director of Public Works. If an approved location is found to be unsuitable due to conflicts with underground utilities that cannot be relocated then the applicant shall relocate the flush-to-grade vault to: a) to another sidewalk or planting strip location subject to the approval of the Director of Public Works, or b) a location in the parking lane of the street immediately adjacent to the approved location, subject to the approval of the Director of Public Works. Street-rated flush-to-grade vault and construction shall be used for all street locations subject to review and approval of the City Engineer. If the street location is also unsuitable due to conflicts with tree roots, utilities, or other physical condition(s), then the project shall be subject to new application(s) and fees and shall be scheduled for review by the Planning Commission and City Council.
5. Contractor's general liability insurance. To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City

property or to neighboring property, the applicant shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and the applicant shall immediately arrange for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, then the applicant shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. The applicant's failure to provide such notice shall constitute grounds for revocation of the City's wireless communication facilities permit. If the applicant does not have a general contractor, the applicant shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

6. Defense of Legal Challenges. If there is a third party administrative, legal or equitable action challenging the project approvals, including without limitation to CEQA issues, the applicant, Crown Castle NG West LLC, shall defend, indemnify, and hold harmless the City against any and all liability, fees and costs arising out of the defense, including without limitation the costs of City's own selected legal counsel(s). If such an action is filed, the applicant, Crown Castle NG West LLC, and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.
7. Noise study and field testing of equipment noise. The applicant, Crown Castle NG West LLC, shall submit a study prepared by a licensed acoustical engineer for the specific equipment to be installed including manufacturers' specifications and field tested noise levels prior to issuance of an encroachment or building permit for the approved scope of work. Said study shall demonstrate that the equipment shall meet the limits provided in City Code Section 5.4.11 for mechanically-generated noise sources when the facility is under maximum operational capacity. Furthermore, prior to the scheduling of final inspection and the commencement of facility operation, the applicant shall provide an acoustical report by a licensed acoustical engineer which demonstrates that tested noise levels are 50 dBA or less at the nearest property line while the facility is at maximum operational capacity, including, but not limited to the fans, radio units and sump pumps. The facility may not begin operating until such time that the requisite analysis demonstrates that the mechanically-generated noise meets the requirements of Section 5.4.11. These requirements shall also apply to this facility at future times when machinery in the vault is added or replaced.
 - a. Peer Review. At the Applicant's sole expense, the City shall have the option to retain an independent acoustical consultant to perform a peer-review of the Applicant's acoustical report(s) and advise the City in connection with the facility's mechanically-generated noise. The City Engineer shall select this independent acoustical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. The independent acoustical consultant shall also review the construction

plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the vault as deemed necessary by the City Engineer. The Applicant shall provide payment for this service at the time of the Building or Encroachment Permit submittal.

8. Radio frequency emissions testing. Prior to issuance of an encroachment permit, the applicant shall provide a revised radio frequency emissions exposure report which demonstrates the project's compliance with applicable FCC health safety standards. Prior to completion of the project and the release of any bond or deposit, the applicant shall provide to the Planning Department the results of radio frequency and electromagnetic emissions testing conducted at each of the sites and prepared by a qualified electrical engineer following the methodology established by the FCC in Office of Engineering and Technology Bulletin 65 or any successor thereto. Should results of the testing reveal inconsistencies with the application and the provided radio frequency emissions exposure report, then the applicant shall alter the design of the antenna and communication equipment to bring the project's radio frequency and electromagnetic emissions levels to those specified in the application and reports, with the altered design receiving verification of compliance through further field tests. Should the applicant, Crown Castle NG West LLC, or owner of the WCF equipment be unable to comply with this condition of approval, the facility must be disconnected from all electrical power sources until the applicant is able to demonstrate to the City its compliance with the applicable FCC rules. The radio frequency and electromagnetic field emissions exposure report shall be peer reviewed by the City's selected and qualified reviewer at the expense of the applicant, Crown Castle NG West LLC, or owner of the WCF equipment. The radio frequency emissions exposure report shall be conducted on an annual basis within 30 days of each anniversary of the approval of this Resolution, and each study shall be coordinated in advance with the Director of Planning.
9. Future modifications. Future modifications of the approved installation that extend beyond the approved project site, increase excavation beyond the approved project site, or that remove or subvert the concealment design of the approved antennas and equipment, including the flush-to-grade vault, the body of the streetlight post, the perimeter of the canister concealing the antenna(s), shall constitute a new application and shall require new application forms and fees. Applications that extend beyond the approved project site, increase excavation beyond the approved project site, or that remove or subvert the concealment design of the approved antennas and equipment, or any other request to modify the installation that does not qualify for treatment as an eligible facilities request under Section 6409(a) shall not be eligible for Planning Director review under 47 U.S.C. §1455(a) processing.
10. Construction Management Plan. The applicant or contractor shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route and the days and hours permitted for heavy excavation. Outside construction involving high levels of noise, including excavation, hammering, and pile driving, shall be limited to Monday through Saturday, from 8:30 a.m. to 4:30

p.m. Construction personnel shall be instructed not to park in front of driveways to private residences. The plan shall specify the sequencing of pruning, demolition, and construction activities. The City Building Official may require modifications and amendments to the Construction Management Plan throughout the course of the Project and until the Final Inspection is approved by the City.

- a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. Prior to the issuance of a building permit, the Applicant shall submit a construction stormwater management plan prepared by a licensed Civil Engineer to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that must be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.
 - b. Continual Street Access for Emergency Vehicles. The Construction Management Plan shall specifically address methods of providing continual street access for emergency vehicles at all times by means of a traffic control permit application submitted by the applicant and reviewed and approved by the Public Works Director.
 - c. Haul routes. All equipment and vehicle haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction. Damage or observable and unusual wear and tear to haul routes on city roadways as specified by the City shall be repaired at the Property Owner's expense after Final Inspection.
11. Maintenance of Facilities. Maintenance of the communication equipment shall be conducted pursuant to an encroachment permit, the term of which is the same as that for the facility's lease term. The encroachment permit is subject to the review and approval of the Public Works Director. Except for emergency maintenance needs, the maintenance of the wireless communication facilities shall not occur from 7:30 a.m. to 9:30 a.m. or from 2:30 p.m. to 4:00 p.m. during regular school days of any public schools located in any direction within one-quarter mile of the wireless facility. The prohibited hours for regular maintenance may be adjusted by the Director of Planning upon at least 30 days written notice to the applicant to accommodate changes in the hours of instruction at the nearby public schools.
 12. Site Safety Security. The City and the public have an interest in not having an unfinished project blighting the neighborhood, restricting access, and undermining property values. These public interests are primarily safety and aesthetics, and diminishment of property values. Prior to the issuance of an encroachment permit for the approved project, Crown Castle NG West LLC shall provide to the City a specific cash deposit, letter of credit, bank

guarantee, or other similar financial vehicle (“Site Safety Security”) in the amount of \$100,000 for each site to ensure the Project site is not left in a dangerous or unfinished state, and if any funds are remaining, to complete repairs in the public right-of-way. City shall release such security to Crown Castle NG West LLC at the time it completes the final inspection and certification of compliance with all conditions of approval.

- a. The Site Safety Security shall be in an amount to include three components:
 - i. safety, which means the cost to make the site and structure safe and accessible if construction should cease mid-way through the Project;
 - ii. aesthetics, which means an amount to install and maintain hardscape paving and landscaping all around the Project; and
 - iii. staff and consultant time to evaluate and implement this condition.
 - b. If, as the Project proceeds, the expected cost of these components increases beyond the original estimate in the opinion of the Director of Public Works, the City may require Crown Castle NG West LLC to increase the amount of the Site Safety Security by the additional amount. Crown Castle NG West LLC shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at Crown Castle NG West LLC’s expense, an independent estimator selected by the City after consulting with Crown Castle to verify the total expected costs to complete the Project and any subsequent revisions.
 - c. The form and amount of the Site Safety Security is subject to the reasonable approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of Public Works’ certification on information and belief that all or any specified part of such Performance Security is due to the City.
 - d. The Site Safety Security shall not be released until the Project has an approved Final Inspection by the Building Official. However, if sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, the Site Safety Security may be reduced to the extent the Director of Public Works in his reasonable discretion determines is appropriate.
13. City Facilities Security. The applicant (“Crown Castle NG West LLC) shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle (“City Facilities Security”) in the amount of \$100,000 per site as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Crown Castle NG West LLC’s contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The Crown Castle NG West LLC is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities

Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

- a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by Crown Castle NG West LLC or others working for or on behalf of Crown Castle NG West LLC, the City will document such facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the street surface. Crown Castle NG West LLC is responsible for the full cost of the documentation and repair work as determined by the City Engineer, and shall reimburse the City for those costs prior to the scheduling of final inspection.
 - b. When the City Facilities Security is in a form other than cash deposit with the City, the proceeds from the City Facilities Security shall be made payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of the proceeds are due to the City.
14. Neighboring Property Damage Security. The Applicant shall provide adequate and appropriate Insurance or bonds, as approved by the Director of Public Works and City Attorney against damage to neighboring properties by any construction, excavation, and related work in any way involving the project, such insurance or bonds to be in the amount of \$1,000,000.00 for each installation site and with any standard and/or special conditions established by the Director of Public Works after consultation with the Applicant (Crown Castle NG West LLC). If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any alternative method shall allow for claims to be made for up to one year after the final inspection of the Applicant's project. Any and all such insurance or any alternative method shall specifically indicate that it covers damages to neighboring private properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above named properties, any such further coverage shall be in addition to the \$1,000,000 earmarked for neighboring properties.
15. Height Verification. Prior to completion of the project and release of any bonds or security deposits, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the height of the new wireless communication equipment mounted on the streetlight is less than or equal to 35 feet in height measured from grade adjacent to the

streetlight. If the height exceeds 35-foot height limit, then the applicant or contractor shall immediately reduce the height of the equipment until it is in compliance with the maximum height requirement.

16. Antenna Design, Project Site, and Concealment Design. The antenna(s) and canister used at this facility shall have a maximum length of 24 inches. Each antenna canister and equipment vault shall be identified as the “concealment design” for each installation and shall be labeled as such on the plans. The outer edge of the equipment as shown in elevation and in ‘plan view’ shall be identified as the “project site” and shall be labeled as such on the plans.
17. Flush-to-Grade Vault Design. Prior to issuance of an encroachment permit, the applicant or contractor shall provide fully dimensioned plans and specifications drawn to scale set by the City Engineer for the flush-to-grade vault and venting, including manufacturer’s specifications for the vault cover, the non-slip cover surface material and color, vault materials, and reveal at the sidewalk. Said plans and specifications are subject to review and approval of the City Engineer.
18. Decommissioning Plan. The approval of the wireless communication facilities permit is valid for a term of 10 years, except as otherwise required by state or federal law or due to public safety or substantial land use reasons provided under California Government Code section 65964(b). Obsolete, decommissioned, and unleased equipment or accessories shall be removed with each modification of the installation or annually whichever comes first. All modifications shall incorporate the highest industry standards for compact designs that minimize visibility and that comply with the concealment strategies provided in Condition of Approval #16.
19. Cables and Cabling. To the best extent possible, the cables to the antenna(s) atop the streetlight shall be enclosed within the streetlight post and shroud. No more than 5 inches of exposed cables, cabling or wire(s) shall be evident on plans filed for building permit or evident on the wireless installation after completion of construction. If required by the Building Official, the applicant at its sole cost and expense shall install a full-scale mock-up of the installation at the City’s corporation yard prior to issuance of a building permit and remove the same upon ten-day written notice from the City Engineer.
20. Lease Requirement. This installation on a City-owned streetlight shall be subject to the terms and conditions of a lease approved by the City Council prior to issuance of a building permit or encroachment permit for the approved scope of work.
21. City Monitoring of City Street Trees. The applicant and its contractors are prohibited from performing any tree pruning related to construction, pre-construction clearance, or on-going maintenance and operation after construction. Tree trimming is restricted and may only occur with the approval of the Director of Public Works. No tree trimming will be permitted if it is to maintain or enhance the wireless transmissions from the facility. The pruning of trees in the public right-of-way or on City-owned property is the exclusive responsibility of the Piedmont Department of Public Works, or its designee.
22. Operation and Maintenance Standards. The facility shall comply with the provisions of City Code Section 17.46.070.B as follows:

- a. Contact and site information. The owner or operator of a wireless communication facility must submit basic contact and site information to the city, and notify the city within 30 days of any changes to this information, including the transfer of ownership. The contact and site information must include: (i) the name, address, email address, telephone number, and legal status of the owner of the facility, including official identification number and FCC certification, and, if different from the owner, the identity and legal status of the person or entity responsible for operating and maintaining the facility; and (ii) the name, address, email address, and telephone number of a local contact person for emergencies.
- b. Signage. The owner and/or operator must post an identification sign at each facility, including owner/operator emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to review and approval by the Director. If at any time a new owner or operator provider takes over operation of an existing personal wireless service facility, the new personal wireless service provider shall notify the Director of the change in operation within 30 days and the required and approved signs shall be updated within 30 days to reflect the name and phone number of the new wireless service provider. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than two square feet in size unless required by law. The facility shall not bear signs other than certification, warning, emergency contacts, or other signage required by law or expressly required by the City.
- c. Non-Interference. Each wireless communication facility must at all times comply with laws, codes, and regulations, and avoid interfering with any city property, facilities, operations, utilities, or equipment.
- d. Facility maintenance. Each wireless communication facility must at all times be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism. The operator must repair any damage as soon as reasonably possible, but no later than the earlier of 10 days from the time of itself becoming aware of the non-compliance or the receipt of written notification from the City.
- e. Landscaping. Landscaping elements at a wireless communication facility site must be maintained in good condition, and in compliance with the approved landscape plan. The owner or operator is responsible for replacing any damaged, dead, or decayed landscape materials and making necessary irrigation and equipment repairs as soon as reasonably possible.
- f. Noise. A wireless communication facility must be operated to comply with Chapter 5 of the City Code. Should the noise emanating from the facility be found to exceed the limits provided in City Code Chapter 5, operation of the facility shall cease immediately and shall not resume until a noise verification study prepared by a licensed acoustical engineer shows the facility's compliance with City Code Chapter 5 noise limits. The acoustical engineer shall be selected by the City and the cost of the engineer's services shall be paid by the applicant or wireless communications service provider.

- g. Removal. All wireless communication facility equipment must be removed within 30 days of the discontinuation of the use, and the site and other property restored to its original, preconstruction condition. In addition, the service provider must provide the city with a notice of intent to vacate a site a minimum of 30 days before the vacation. For a wireless communication facility to be located on public property, this removal requirement will be included within the lease. For a facility to be located on private property, the property owner will jointly and severally be responsible for removal and restoration.
23. Required Corrections. Prior to issuance of an encroachment permit or building permit for the approved scope of work, as modified herein, the applicant shall provide a construction drawing site plan detail drawn to scale that verifies that the proposed antenna and all related cabling and equipment meet the 18-inch setback to the front of curb in plain view. The applicant shall reference a fixed point in the plans for the terms, such as “3 o’clock View,” to the satisfaction of the Building Official. Plans shall show all improvements within a radius and scale which must be provided in the construction drawings.
24. Modifications to Public Facilities. Should the public facilities in the area of this facility be removed, replaced or modified, the wireless communication facility equipment shall, if necessary as determined by the Director of Public Works, be removed or relocated at the applicant’s expense subject to review and approval of the Director of Public Works.
25. Expiration of Wireless Communication Facilities Permit. An encroachment permit and building permit must be issued within one year of the approval of the City Council, and construction completed within two years of the approval of the City Council, or this approval shall be null and void.
26. Construction Completion Schedule. Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.
- a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks as needed: i) Completion of Excavation and vault installation; ii) Completion of Electrical; iii) Completion of Plumbing; iv) Completion of Mechanical; v) Completion of Home; vi) Completion of Hardscaping and Landscaping; and any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.
 - b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the “Approved Schedule” and be binding on the Applicant. The City may, at the Applicant’s sole cost, engage the services of a consultant to review the Applicant’s proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

- c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to make a claim against the Applicant's Site Security, if one is required, in order to complete the benchmark. The Director of Public Works has the option to refer the application to the City Council for public review.

SECTION 4. All portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

Moved by Rood, Seconded by McBain

Ayes: Andersen, Cavanaugh, King, Rood, McBain

Noes: None

Resolution No. 88-17

WHEREAS, Crown Castle NG West LLC ("Applicant") is requesting a permit for a wireless communication facilities ("WCF") installation within the public right-of-way 799 Magnolia Avenue, Piedmont, California, a site identified in the application materials as PHS03. The proposed WCF installation includes a single canister pseudo omni-directional antenna atop an existing streetlight, cables within the hollow streetlight post, and fake mailbox radio unit cabinet at the sidewalk for communication equipment, the construction of which requires a wireless communication facilities permit; and

WHEREAS, as provided in Piedmont City Code section 17.46.080.C, the City Council is hearing this application for WCF permit because it is a facility proposed in Zone B on a City-owned streetlight located within the City-owned public right-of-way; and

WHEREAS, in accordance with Piedmont City Code section 25.5(a), the Park Commission held a properly noticed public hearing on the proposed application materials and plans for a prior design for the PHS03 site ("May 2017 Plans") on June 7, 2017, and based upon the evidence and providing findings of fact related to the project's impact on street trees and curbside planting strip, voted to recommend that the City Council deny the application; and

WHEREAS, in accordance with Piedmont City Code section 17.46.080.B, the Planning Commission held a properly noticed public hearing on the proposed application materials and plans for a prior design for the PHS03 site ("May 2017 Plans") on June 12, 2017, and based upon the evidence and providing findings of fact, voted to recommend that the City Council deny the application; and

WHEREAS, on June 23, 2017, the Applicant and City mutually agreed to an extension to October 31, 2017 of the applicable shot clock timelines set forth by the Federal Communications Commission (Petition for Declaratory Ruling ("Shot Clock Rule"), 24 F.C.C. Rcd. 13994 (2009)) and any applicable State of California-required shot clock(s) for application processing time lines ("Shot Clock"). The purpose of the shot clock extension was to provide the Applicant with additional time to investigate and propose alternate designs intended to address the various concerns expressed by the Park Commission and Planning Commission regarding the May 2017 Plans during their respective meetings of June 7 and 12, 2017; and

WHEREAS, the Applicant subsequently withdrew the proposed May 2017 Plans and submitted revised application materials and plans (“September 2017 Plans”), including revised plans and materials for site PHS03 at 799 Magnolia Avenue. The September 2017 Plans are a revised version of the May 2017 Plans and are the plans and materials currently being considered by the Piedmont City Council; and

WHEREAS, the proposed fake mailbox radio unit cabinet has an adverse impact on public safety and is not in compliance with City Code section 17.46.070.A.5 in that it is an obstruction to pedestrian traffic, it inconveniences the public’s use of the right-of-way, and obstructs visual sight lines of vehicles exiting the driveway to 799 Magnolia Avenue. In addition, the proposed fake mailbox radio unit cabinet has an adverse visual impact that is not in compliance with City Code section 17.46.070.A.3 in that it does not minimize visual impacts and unnecessarily adds to the visual clutter of utility equipment in the public right-of-way. The solution is to require the radio unit and related equipment to be located in a flush-to-grade vault as a condition of approval; and

WHEREAS, the applicant, in having proposed 24-inch tall canister antennas at five of the nine proposed sites included in the overall scope of this application, has demonstrated that the use of a 24-inch tall canister antenna is a feasible solution to solve significant gaps in service coverage or capacity, and therefore the 48-inch tall canister antenna proposed for this site is not the least intrusive means to close said gaps or to mitigate adverse visual impacts as required by City Code section 17.46.070.A.3. The solution is to require the canister antenna to have a maximum vertical length of 24 inches, which is a feasible solution to close significant gaps in coverage or capacity, and to adequately mitigate adverse visual impacts; and

WHEREAS, as conditioned, the flush-to-grade vault and antenna atop the streetlight will not have a detrimental effect on the health of the nearby street tree. The antenna will be located outside the perimeter of the tree canopy and, as conditioned, any trimming of branches for construction or ongoing operations of the facility will be strictly under the control of the Piedmont Department of Public Works. As conditioned, the flush-to-grade vault will be located in the street at a location that does not adversely affect the tree’s root system; and

WHEREAS, the equipment proposed to be installed, including the machinery in the vault, is considered to be an exterior installation and thereby subject to Building Code requirements related to mechanically-generated noise sources provided in City Code Section 5.4.11; and

WHEREAS, based upon the evidence and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the Piedmont City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15303 of the CEQA Guidelines, Construction or Conversion of Small Structures, subsection (d) (water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction) because the proposed wireless communication facilities are small utility structures located in a developed setting. No exceptions to the exemptions have been identified that would make the proposals ineligible for the categorical exemptions because the projects’ settings are not environmentally sensitive and existing utilities are located at or near each of the proposed installations; and

WHEREAS, based upon the evidence and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the Piedmont City Council finds that the project, as conditioned, conforms to the criteria and standards of Piedmont City Code section 17.46.080.D.1, as follows;

- a. As evidenced in the materials submitted by the applicant, the facility is necessary to close a significant gap in the operator's service coverage or capacity; and
- b. The applicant has evaluated and met the priority for location standards of Piedmont City Code section 17.46.040.A.1 in that the proposed site is in Zone B and in the public right-of-way;
- c. The proposal satisfies each of the applicable development standards in Piedmont City Code section 17.46.070 as follows:

A. Development Standards:

1. Collocation. The new wireless communication facility is located on an existing City-owned streetlight and is designed to accommodate future collocation(s) of other wireless communication facilities unless the city determines that collocation would be infeasible because of physical or design issues specific to the site; and
2. Height limits; Screening. As conditioned, the new antenna will be a maximum 24 inches tall and the maximum height of the facility will be less than 35 feet in height, measured from the ground to the highest point of the wireless communication facility. As conditioned, other proposed equipment not located on the streetlight will be located within a flush-to-grade vault; and
3. Visual impact. As conditioned, the proposed wireless communication facility is designed to minimize visual impacts in that the shroud and hollow streetlight post provide the concealment for the cables; the flush-to-grade vault provides the concealment for the communication equipment; the antenna shall be no taller than 24 inches; the perimeter of the antenna canister provides the concealment for the antenna; and the facility will have a non-reflective finish and be painted or otherwise treated to minimize visibility and the obstruction of views; and

As conditioned, the facility will not bear signs, other than required FCC certifications, warnings, emergency contacts, or other signage required by law or expressly required by the city; and

4. Public health, peace and safety. As conditioned, the wireless communication facility will not adversely affect the public health, peace and safety. The City is aware of its duty and limits of authority under federal law. The applicant has submitted a report prepared by Hammett & Edison LLC, Consulting Engineers stating that the project as proposed will be in full compliance with the Federal Communications Commission guidelines limiting human exposure to radio frequency electromagnetic fields. Said report has been entered into the public record and relied upon by the City; and

5. Public right-of-way. The proposed wireless communication facility is located in the public right-of-way. However, as conditioned, the facility's design and location, and the placement of equipment in a flush-to-grade vault does not cause: (i) physical or visual obstruction, or safety hazard, to pedestrians, cyclists, or motorists; or (ii) inconvenience to the public's use of the right-of-way. The equipment is located at least 18 inches from the front of the curb or in a flush-to-grade vault in the street, has adequate vertical and horizontal clearance, and does not otherwise interfere with the public's use of the right-of-way. As conditioned, the cover of the flush-to-grade vault will have a slip resistant surface; and
 6. Compliance with laws. The proposed wireless communication facility complies with federal and state statutes governing local agencies' land use authority regarding the siting of wireless communication facilities, including without limitation 47 USC §253, 332(c)(7), 1455(a); California Government Code §§ 50030, 65850.6 and 65964; and California Public Utilities Code sections 7901 and 7901.1. Each reference to federal and state statutes is to the statute as it may be as amended from time-to-time and to the extent the statute remains in effect; and
- B. Operation and Maintenance Standards. As conditioned, the proposed wireless communication facility will comply with the operation and maintenance standards provided in Piedmont City Code section 17.460070.B; and
- C. Term of permit. As conditioned, the approved permit for wireless communication facilities is valid for an initial period of ten years commencing on the approval date of this Resolution; and
- d. As conditioned, the proposed design is consistent with the Piedmont Design Guidelines in that the scale and mass of the communication equipment is appropriate for the streetlight or is otherwise concealed from view within the streetlight post or flush-to-grade vault; and
 - e. Although future collocation at this site may not be feasible, the proposed facility has been located and designed for future collocation to the greatest extent feasible, and the applicant has submitted a statement of its willingness to allow other wireless service providers to collocated on the proposed facility, recognizing that such collocation may be subject to review by the City; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

SECTION 1. The above recitals are correct and are incorporated into this Resolution as findings of the City Council.

SECTION 2. Based on the findings and facts set forth heretofore, the staff reports and evidence presented at the public hearings, the Piedmont City Council approves the application for wireless communication facilities permit for a proposed facility sited across from 799 Magnolia Avenue, in accordance with

the plans and specification on file with the City, subject to the following conditions:

1. Conditions in construction documents. These conditions of approval shall be included as a sheet in the plan set submitted for any building permit or encroachment permit for the work approved herein.
2. Contract engineer. Prior to issuance of an encroachment permit for proposed work in the public right-of-way, the applicant shall file a deposit of \$15,000 for each installation site to be used by the City to cover the costs associated with contract engineer to monitor construction and excavation within the right-of-way. The applicant is responsible for the full cost of the contract engineer, and any unexpended funds after the completion of the monitoring process will be promptly returned to the applicant.
3. Patch and repair. The applicant shall patch and repair City sidewalks and other improvements in the public right-of-way affected by applicant's project construction, such as curbs or walls, to match the color, texture, materials, and scoring pattern of the existing improvements, including custom integral concrete color in accordance with City of Piedmont standard plans and as directed by the Director of Public Works. Directional bore shall be utilized over trenching at the reasonable discretion of the Public Works Director.
4. Radio and Equipment enclosure. The proposed fake mailbox radio equipment unit is not approved and the radio(s) and other related equipment shall be enclosed in a flush-to-grade vault located in the street directly in front of the streetlight in a location that will not adversely affect the root system of the nearby street tree(s). The final location is subject to the review and approval of the Director of Public Works. The size and design of the vault shall match that used for site PHS01, subject to the review and approval of the City Engineer (See Condition of Approval #18).
5. Alternative vault design and location – underground utilities. Prior to issuance of an encroachment permit, applicant or contractor shall provide detailed utility plans with existing utilities locations and shall pot-hole for utilities as required by the Director of Public Works. If an approved location is found to be unsuitable due to conflicts with underground utilities that cannot be relocated then the applicant shall relocate the flush-to-grade vault to another location that does not adversely affect the health of a street tree or public safety, subject to the approval of the Director of Public Works. Street-rated flush-to-grade vault and construction shall be used for all street locations subject to review and approval of the City Engineer. If the street location is also unsuitable due to conflicts with tree roots, utilities, or other physical condition(s), then the project shall be subject to new application(s) and fees and shall be scheduled for review by the Planning Commission and City Council.
6. Contractor's general liability insurance. To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the applicant shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The

insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and the applicant shall immediately arrange for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, then the applicant shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. The applicant's failure to provide such notice shall constitute grounds for revocation of the City's wireless communication facilities permit. If the applicant does not have a general contractor, the applicant shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

7. Defense of Legal Challenges. If there is a third party administrative, legal or equitable action challenging the project approvals, including without limitation to CEQA issues, the applicant, Crown Castle NG West LLC, shall defend, indemnify, and hold harmless the City against any and all liability, fees and costs arising out of the defense, including without limitation the costs of City's own selected legal counsel(s). If such an action is filed, the applicant, Crown Castle NG West LLC, and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.
8. Noise study and field testing of equipment noise. The applicant, Crown Castle NG West LLC, shall submit a study prepared by a licensed acoustical engineer for the specific equipment to be installed including manufacturers' specifications and field tested noise levels prior to issuance of an encroachment or building permit for the approved scope of work. Said study shall demonstrate that the equipment shall meet the limits provided in City Code Section 5.4.11 for mechanically-generated noise sources when the facility is under maximum operational capacity. Furthermore, prior to the scheduling of final inspection and the commencement of facility operation, the applicant shall provide an acoustical report by a licensed acoustical engineer which demonstrates that tested noise levels are 50 dBA or less at the nearest property line while the facility is at maximum operational capacity, including, but not limited to the fans, radio units and sump pumps. The facility may not begin operating until such time that the requisite analysis demonstrates that the mechanically-generated noise meets the requirements of Section 5.4.11. These requirements shall also apply to this facility at future times when machinery in the vault is added or replaced.
 - a. Peer Review. At the Applicant's sole expense, the City shall have the option to retain an independent acoustical consultant to perform a peer-review of the Applicant's acoustical report(s) and advise the City in connection with the facility's mechanically-generated noise. The City Engineer shall select this independent acoustical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. The independent acoustical consultant shall also review the construction plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the vault as deemed necessary by the City Engineer. The Applicant shall provide payment for this service at the time of the Building or Encroachment Permit submittal.

9. Radio frequency emissions testing. Prior to issuance of an encroachment permit, the applicant shall provide a revised radio frequency emissions exposure report which demonstrates the project's compliance with applicable FCC health safety standards. Prior to completion of the project and the release of any bond or deposit, the applicant shall provide to the Planning Department the results of radio frequency and electromagnetic emissions testing conducted at each of the sites and prepared by a qualified electrical engineer following the methodology established by the FCC in Office of Engineering and Technology Bulletin 65 or any successor thereto. Should results of the testing reveal inconsistencies with the application and the provided radio frequency emissions exposure report, then the applicant shall alter the design of the antenna and communication equipment to bring the project's radio frequency and electromagnetic emissions levels to those specified in the application and reports, with the altered design receiving verification of compliance through further field tests. Should the applicant, Crown Castle NG West LLC, or owner of the WCF equipment be unable to comply with this condition of approval, the facility must be disconnected from all electrical power sources until the applicant is able to demonstrate to the City its compliance with the applicable FCC rules. The radio frequency and electromagnetic field emissions exposure report shall be peer reviewed by the City's selected and qualified reviewer at the expense of the applicant, Crown Castle NG West LLC, or owner of the WCF equipment. The radio frequency emissions exposure report shall be conducted on an annual basis within 30 days of each anniversary of the approval of this Resolution, and each study shall be coordinated in advance with the Director of Planning.
10. Future modifications. Future modifications of the approved installation that extend beyond the approved project site, increase excavation beyond the approved project site, or that remove or subvert the concealment design of the approved antennas and equipment, including the flush-to-grade vault, the body of the streetlight post and shroud concealing the cables, the perimeter of the canister concealing the antenna(s), shall constitute a new application and shall require new application forms and fees. Applications that extend beyond the approved project site, increase excavation beyond the approved project site, or that remove or subvert the concealment design of the approved antennas and equipment, or any other request to modify the installation that does not qualify for treatment as an eligible facilities request under Section 6409(a) shall not be eligible for Planning Director review under 47 U.S.C. §1455(a) processing.
11. Construction Management Plan. The applicant or contractor shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route and the days and hours permitted for heavy excavation. Outside construction involving high levels of noise, including excavation, hammering, and pile driving, shall be limited to Monday through Saturday, from 8:30 a.m. to 4:30 p.m. Construction personnel shall be instructed not to park in front of driveways to private residences. The plan shall specify the sequencing of pruning, demolition, and construction activities. The City Building Official may require modifications and amendments to the Construction Management Plan throughout the course of the Project and until the Final Inspection is approved by the City.

- a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. Prior to the issuance of a building permit, the Applicant shall submit a construction stormwater management plan prepared by a licensed Civil Engineer to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that must be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.
 - b. Continual Street Access for Emergency Vehicles. The Construction Management Plan shall specifically address methods of providing continual street access for emergency vehicles at all times by means of a traffic control permit application submitted by the applicant and reviewed and approved by the Public Works Director.
 - c. Haul routes. All equipment and vehicle haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction. Damage or observable and unusual wear and tear to haul routes on city roadways as specified by the City shall be repaired at the Property Owner's expense after Final Inspection.
12. Maintenance of Facilities. Maintenance of the communication equipment shall be conducted pursuant to an encroachment permit, the term of which is the same as that for the facility's lease term. The encroachment permit is subject to the review and approval of the Public Works Director. Except for emergency maintenance needs, the maintenance of the wireless communication facilities shall not occur from 7:30 a.m. to 9:30 a.m. or from 2:30 p.m. to 4:00 p.m. during regular school days of any public schools located in any direction within one-quarter mile of the wireless facility. The prohibited hours for regular maintenance may be adjusted by the Director of Planning upon at least 30 days written notice to the applicant to accommodate changes in the hours of instruction at the nearby public schools.
13. Site Safety Security. The City and the public have an interest in not having an unfinished project blighting the neighborhood, restricting access, and undermining property values. These public interests are primarily safety and aesthetics, and diminishment of property values. Prior to the issuance of an encroachment permit for the approved project, Crown Castle NG West LLC shall provide to the City a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("Site Safety Security") in the amount of \$100,000 for each site to ensure the Project site is not left in a dangerous or unfinished state, and if any funds are remaining, to complete repairs in the public right-of-way. City shall release such security to Crown Castle NG West LLC at the time it completes the final inspection and certification of compliance with all conditions of approval.

- a. The Site Safety Security shall be in an amount to include three components:
 - i. safety, which means the cost to make the site and structure safe and accessible if construction should cease mid-way through the Project;
 - ii. aesthetics, which means an amount to install and maintain hardscape paving and landscaping all around the Project; and
 - iii. staff and consultant time to evaluate and implement this condition.
 - b. If, as the Project proceeds, the expected cost of these components increases beyond the original estimate in the opinion of the Director of Public Works, the City may require Crown Castle NG West LLC to increase the amount of the Site Safety Security by the additional amount. Crown Castle NG West LLC shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at Crown Castle NG West LLC's expense, an independent estimator selected by the City after consulting with Crown Castle to verify the total expected costs to complete the Project and any subsequent revisions.
 - c. The form and amount of the Site Safety Security is subject to the reasonable approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such Performance Security is due to the City.
 - d. The Site Safety Security shall not be released until the Project has an approved Final Inspection by the Building Official. However, if sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, the Site Safety Security may be reduced to the extent the Director of Public Works in his reasonable discretion determines is appropriate.
14. City Facilities Security. The applicant ("Crown Castle NG West LLC) shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("City Facilities Security") in the amount of \$100,000 per site as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Crown Castle NG West LLC's contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The Crown Castle NG West LLC is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

- a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by Crown Castle NG West LLC or others working for or on behalf of Crown Castle NG West LLC, the City will document such facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the street surface. Crown Castle NG West LLC is responsible for the full cost of the documentation and repair work as determined by the City Engineer, and shall reimburse the City for those costs prior to the scheduling of final inspection.
 - b. When the City Facilities Security is in a form other than cash deposit with the City, the proceeds from the City Facilities Security shall be made payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of the proceeds are due to the City.
15. Neighboring Property Damage Security. The Applicant shall provide adequate and appropriate Insurance or bonds, as approved by the Director of Public Works and City Attorney against damage to neighboring properties by any construction, excavation, and related work in any way involving the project, such insurance or bonds to be in the amount of \$1,000,000.00 for each installation site and with any standard and/or special conditions established by the Director of Public Works after consultation with the Applicant (Crown Castle NG West LLC). If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any alternative method shall allow for claims to be made for up to one year after the final inspection of the Applicant's project. Any and all such insurance or any alternative method shall specifically indicate that it covers damages to neighboring private properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above named properties, any such further coverage shall be in addition to the \$1,000,000 earmarked for neighboring properties.
16. Height Verification. Prior to completion of the project and release of any bonds or security deposits, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the height of the new wireless communication equipment mounted on the streetlight is less than or equal to 35 feet in height measured from grade adjacent to the streetlight. If the height exceeds 35-foot height limit, then the applicant or contractor shall immediately reduce the height of the equipment until it is in compliance with the maximum height requirement.
17. Antenna Design, Project Site, and Concealment Design. The antenna(s) and canister used at this facility shall have a maximum vertical length of 24

inches. Each antenna canister, shroud, streetlight post and equipment vault shall be identified as the “concealment design” for each installation and shall be labeled as such on the plans. The outer edge of the equipment as shown in elevation and in plan view shall be identified as the “project site” and shall be labeled as such on the plans.

18. Flush-to-grade Vault Design. Prior to issuance of an encroachment permit, the applicant or contractor shall provide fully dimensioned plans and specifications drawn to scale set by the City Engineer for the flush-to-grade vault and venting, including manufacturer’s specifications for the vault cover, the non-slip cover surface material and color, vault materials, and reveal at street grade. Said plans and specifications are subject to review and approval of the City Engineer.
19. Decommissioning Plan. The approval of the wireless communication facilities permit is valid for a term of 10 years, except as otherwise required by state or federal law or due to public safety or substantial land use reasons provided under California Government Code section 65964(b). Obsolete, decommissioned, and unleased equipment or accessories shall be removed with each modification of the installation or annually whichever comes first. All modifications shall incorporate the highest industry standards for compact designs that minimize visibility and that comply with the concealment strategies provided in Condition of Approval #17.
20. Cables and Cabling. To the best extent possible, the cables to the antenna(s) atop the streetlight shall be enclosed within the streetlight post and shroud. No more than 5 inches of exposed cables, cabling or wire(s) shall be evident on plans filed for building permit or evident on the wireless installation after completion of construction. If required by the Building Official, the applicant at its sole cost and expense shall install a full-scale mock-up of the installation at the City’s corporation yard prior to issuance of a building permit and remove the same upon ten-day written notice from the City Engineer.
21. Lease Requirement. This installation on a City-owned streetlight shall be subject to the terms and conditions of a lease approved by the City Council prior to issuance of a building permit or encroachment permit for the approved scope of work.
22. City Monitoring of City Street Trees. The applicant and its contractors are prohibited from performing any tree pruning related to construction, pre-construction clearance, or on-going maintenance and operation after construction. Tree trimming is restricted and may only occur with the approval of the Director of Public Works. No tree trimming will be permitted if it is to maintain or enhance the wireless transmissions from the facility. The pruning of trees in the public right-of-way or on City-owned property is the exclusive responsibility of the Piedmont Department of Public Works, or its designee.
23. Operation and Maintenance Standards. The facility shall comply with the provisions of City Code Section 17.46.070.B as follows:
 - a. Contact and site information. The owner or operator of a wireless communication facility must submit basic contact and site information to the city, and notify the city within 30 days of any changes to this information, including the transfer of ownership. The contact and site

information must include: (i) the name, address, email address, telephone number, and legal status of the owner of the facility, including official identification number and FCC certification, and, if different from the owner, the identity and legal status of the person or entity responsible for operating and maintaining the facility; and (ii) the name, address, email address, and telephone number of a local contact person for emergencies.

- b. Signage. The owner and/or operator must post an identification sign at each facility, including owner/operator emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to review and approval by the Director. If at any time a new owner or operator provider takes over operation of an existing personal wireless service facility, the new personal wireless service provider shall notify the Director of the change in operation within 30 days and the required and approved signs shall be updated within 30 days to reflect the name and phone number of the new wireless service provider. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than two square feet in size unless required by law. The facility shall not bear signs other than certification, warning, emergency contacts, or other signage required by law or expressly required by the City.
- c. Non-Interference. Each wireless communication facility must at all times comply with laws, codes, and regulations, and avoid interfering with any city property, facilities, operations, utilities, or equipment.
- d. Facility maintenance. Each wireless communication facility must at all times be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism. The operator must repair any damage as soon as reasonably possible, but no later than the earlier of 10 days from the time of itself becoming aware of the non-compliance or the receipt of written notification from the City.
- e. Landscaping elements at a wireless communication facility site must be maintained in good condition, and in compliance with the approved landscape plan. The owner or operator is responsible for replacing any damaged, dead, or decayed landscape materials and making necessary irrigation and equipment repairs as soon as reasonably possible.
- f. Noise. A wireless communication facility must be operated to comply with Chapter 5 of the City Code. Should the noise emanating from the facility be found to exceed the limits provided in City Code Chapter 5, operation of the facility shall cease immediately and shall not resume until a noise verification study prepared by a licensed acoustical engineer shows the facility's compliance with City Code Chapter 5 noise limits. The acoustical engineer shall be selected by the City and the cost of the engineer's services shall be paid by the applicant or wireless communications service provider.
- g. Removal. All wireless communication facility equipment must be removed within 30 days of the discontinuation of the use, and the site and other property restored to its original, preconstruction condition. In addition, the service provider must provide the city with a notice of intent to vacate a site a minimum of 30 days before the vacation. For a wireless

communication facility to be located on public property, this removal requirement will be included within the lease. For a facility to be located on private property, the property owner will jointly and severally be responsible for removal and restoration.

24. Required Corrections. Prior to issuance of an encroachment permit or building permit for the approved scope of work, as modified herein, the applicant shall provide a construction drawing site plan detail drawn to scale that verifies that the proposed antenna and all related cabling and equipment meet the 18-inch setback to the front of curb in plan view. The applicant shall reference a fixed point in the plans for the terms, such as “3 o’clock View,” to the satisfaction of the Building Official. Plans shall show all improvements within a radius and scale which must be provided in the construction drawings.
25. Modifications to Public Facilities. Should the public facilities in the area of this facility be removed, replaced or modified, the wireless communication facility equipment shall, if necessary as determined by the Director of Public Works, be removed or relocated at the applicant’s expense subject to review and approval of the Director of Public Works.
26. Expiration of Wireless Communication Facilities Permit. An encroachment permit and building permit must be issued within one year of the approval of the City Council, and construction completed within two years of the approval of the City Council, or this approval shall be null and void.
27. Construction Completion Schedule. Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.
 - a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks as needed: i) Completion of Excavation and vault installation; ii) Completion of Electrical; iii) Completion of Plumbing; iv) Completion of Mechanical; v) Completion of Home; vi) Completion of Hardscaping and Landscaping; and any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.
 - b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the “Approved Schedule” and be binding on the Applicant. The City may, at the Applicant’s sole cost, engage the services of a consultant to review the Applicant’s proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.
 - c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to make a

claim against the Applicant's Site Security, if one is required, in order to complete the benchmark. The Director of Public Works has the option to refer the application to the City Council for public review.

SECTION 4. All portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

Moved by Rood, Seconded by McBain

Ayes: Andersen, Cavanaugh, King, Rood, McBain

Noes: None

Resolution No. 90-17

WHEREAS, Crown Castle NG West LLC ("Applicant") is requesting a permit for a wireless communication facilities ("WCF") installation within the public right-of-way across from 740 Magnolia Avenue, Piedmont, California, a site identified in the application materials as PHS04. The proposed WCF installation includes a single canister pseudo omni-directional antenna mounted on a pole extension atop an existing utility pole, cables within a cable management skirt atop the pole and within a riser attached to the surface of the pole, and fake mailbox radio unit cabinet at the sidewalk for communication equipment, the construction of which requires a wireless communication facilities permit; and

WHEREAS, as provided in Piedmont City Code section 17.46.080.C, the City Council is hearing this application for WCF permit because it is a facility proposed in Zone B on a utility pole located within the City-owned public right-of-way; and

WHEREAS, in accordance with Piedmont City Code section 25.5(a), the Park Commission held a properly noticed public hearing on the proposed application materials and plans for a prior design for the PHS04 site ("May 2017 Plans") on June 7, 2017, and based upon the evidence and providing findings of fact related to the project's impact on street trees and curbside planting strip, voted to recommend that the City Council deny the application; and

WHEREAS, in accordance with Piedmont City Code section 17.46.080.B, the Planning Commission held a properly noticed public hearing on the proposed application materials and plans for a prior design for the PHS04 site ("May 2017 Plans") on June 12, 2017, and based upon the evidence and providing findings of fact, voted to recommend that the City Council deny the application; and

WHEREAS, on June 23, 2017, the Applicant and City mutually agreed to an extension to October 31, 2017 of the applicable shot clock timelines set forth by the Federal Communications Commission (Petition for Declaratory Ruling ("Shot Clock Rule"), 24 F.C.C. Rcd. 13994 (2009)) and any applicable State of California-required shot clock(s) for application processing time lines ("Shot Clock"). The purpose of the shot clock extension was to provide the Applicant with additional time to investigate and propose alternate designs intended to address the various concerns expressed by the Park Commission and Planning Commission regarding the May 2017 Plans during their respective meetings of June 7 and 12, 2017; and

WHEREAS, the Applicant subsequently withdrew the proposed May 2017 Plans and submitted revised application materials and plans ("September 2017 Plans"), including revised plans and materials for site PHS04 across from 740 Magnolia Avenue. The September 2017 Plans are a revised version of the May 2017 Plans

and are the plans and materials currently being considered by the Piedmont City Council; and

WHEREAS, the proposed fake mailbox radio unit cabinet has an adverse impact on public safety and is not in compliance with City Code section 17.46.070.A.5 in that it is an obstruction to pedestrian traffic, it inconveniences the public's use of the right-of-way, and obstructs visual sight lines of vehicles navigating the curve of Magnolia Avenue. In addition, the proposed fake mailbox radio unit cabinet has an adverse visual impact that is not in compliance with City Code section 17.46.070.A.3 in that it does not minimize visual impacts and unnecessarily adds to the visual clutter of utility equipment in the public right-of-way. The solution is to require the radio unit and related equipment to be located in a flush-to-grade vault as a condition of approval; and

WHEREAS, the applicant, in having proposed 24-inch tall canister antennas at five of the nine proposed sites included in the overall scope of this application, has demonstrated that the use of a 24-inch tall canister antenna is a feasible solution to solve significant gaps in service coverage or capacity, and therefore the 48-inch tall canister antenna proposed for this site is not the least intrusive means to close said gaps or to mitigate adverse visual impacts as required by City Code section 17.46.070.A.3. The solution is to require the canister antenna to have a maximum vertical length of 24 inches, which is a feasible solution to close significant gaps in coverage or capacity, and to adequately mitigate adverse visual impacts; and

WHEREAS, as conditioned, the flush-to-grade vault and antenna atop the utility pole will not have a detrimental effect on the health of the nearby street tree. The antenna and the pole extension will be located at the periphery of the tree canopy and, as conditioned, any trimming of branches for construction or ongoing operations of the facility will be strictly under the control of the Piedmont Department of Public Works. As conditioned, the flush-to-grade vault will be located on City-owned property immediately east of the utility pole, a location that does not adversely affect the tree's root system; and

WHEREAS, the equipment proposed to be installed, including the machinery in the vault, is considered to be an exterior installation and thereby subject to Building Code requirements related to mechanically-generated noise sources provided in City Code Section 5.4.11; and

WHEREAS, based upon the evidence and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the Piedmont City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15303 of the CEQA Guidelines, Construction or Conversion of Small Structures, subsection (d) (water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction) because the proposed wireless communication facilities are small utility structures located in a developed setting. No exceptions to the exemptions have been identified that would make the proposals ineligible for the categorical exemptions because the projects' settings are not environmentally sensitive and existing utilities are located at or near each of the proposed installations; and

WHEREAS, based upon the evidence and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the Piedmont City Council finds that the project, as conditioned,

conforms to the criteria and standards of Piedmont City Code section 17.46.080.D.1, as follows:

- a. As evidenced in the materials submitted by the applicant, the facility is necessary to close a significant gap in the operator's service coverage or capacity; and
- b. The applicant has evaluated and met the priority for location standards of Piedmont City Code section 17.46.040.A.1 in that the proposed site is in Zone B and in the public right-of-way;
- c. The proposal satisfies each of the applicable development standards in Piedmont City Code section 17.46.070 as follows:

A. Development Standards:

1. Collocation. As conditioned, the new wireless communication facility is located on an existing utility pole and flush-to-grade vault and is designed to accommodate future collocation(s) of other wireless communication facilities unless the city determines that collocation would be infeasible because of physical or design issues specific to the site; and
2. Height limits; Screening. As conditioned, the new antenna will be a maximum 24 inches tall and the maximum height of the facility will be less than 37 feet in height, measured from the ground to the highest point of the wireless communication facility. As conditioned, other proposed equipment not located on the utility pole will be located within a flush-to-grade vault; and
3. Visual impact. As conditioned, the proposed wireless communication facility is designed to minimize visual impacts in that the cable management skirt and riser provide concealment for the cables; the flush-to-grade vault provides the concealment for the communication equipment; the antenna shall be no taller than 24 inches; the perimeter of the antenna canister provides the concealment for the antenna; and the facility will have a non-reflective finish and be painted or otherwise treated to minimize visibility and the obstruction of views; and

As conditioned, the facility will not bear signs, other than required FCC certifications, warnings, emergency contacts, or other signage required by law or expressly required by the city; and

4. Public health, peace and safety. As conditioned, the wireless communication facility will not adversely affect the public health, peace and safety. The City is aware of its duty and limits of authority under federal law. The applicant has submitted a report prepared by Hammett & Edison LLC, Consulting Engineers stating that the project as proposed will be in full compliance with the Federal Communications Commission guidelines limiting human exposure to radio frequency electromagnetic fields. Said report has been entered into the public record and relied upon by the City; and

5. Public right-of-way. The proposed wireless communication facility is located in the public right-of-way. However, as conditioned, the facility's design and location, and the placement of equipment in a flush-to-grade vault located on City-owned property immediately east of the utility pole does not cause: (i) physical or visual obstruction, or safety hazard, to pedestrians, cyclists, or motorists; or (ii) inconvenience to the public's use of the right-of-way. The equipment is located at least 18 inches from the front of the curb or in a flush-to-grade vault in the street, has adequate vertical and horizontal clearance, and does not otherwise interfere with the public's use of the right-of-way. As conditioned, the cover of the flush-to-grade vault will have a slip resistant surface; and
6. Compliance with laws. The proposed wireless communication facility complies with federal and state statutes governing local agencies' land use authority regarding the siting of wireless communication facilities, including without limitation 47 USC §253, 332(c)(7), 1455(a); California Government Code §§ 50030, 65850.6 and 65964; and California Public Utilities Code sections 7901 and 7901.1. Each reference to federal and state statutes is to the statute as it may be as amended from time-to-time and to the extent the statute remains in effect; and
- B. Operation and Maintenance Standards. As conditioned, the proposed wireless communication facility will comply with the operation and maintenance standards provided in Piedmont City Code section 17.460070.B; and
- C. Term of permit. As conditioned, the approved permit for wireless communication facilities is valid for an initial period of ten years commencing on the approval date of this Resolution; and
- d. As conditioned, the proposed design is consistent with the Piedmont Design Guidelines in that the scale and mass of the communication equipment is appropriate for the utility pole location or is otherwise concealed from view within the cable management skirt, riser or flush-to-grade vault; and
- e. Although future collocation at this site may not be feasible, the proposed facility has been located and designed for future collocation to the greatest extent feasible, and the applicant has submitted a statement of its willingness to allow other wireless service providers to collocated on the proposed facility, recognizing that such collocation may be subject to review by the City; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

SECTION 1. The above recitals are correct and are incorporated into this Resolution as findings of the City Council.

SECTION 2. Based on the findings and facts set forth heretofore, the staff reports and evidence presented at the public hearings, the Piedmont City Council approves the application for wireless communication facilities permit for a proposed facility sited across from 740 Magnolia

Avenue, in accordance with the plans and specification on file with the City, subject to the following conditions:

1. Conditions in construction documents. These conditions of approval shall be included as a sheet in the plan set submitted for any building permit or encroachment permit for the work approved herein.
2. Contract engineer. Prior to issuance of an encroachment permit for proposed work in the public right-of-way, the applicant shall file a deposit of \$15,000 for each installation site to be used by the City to cover the costs associated with contract engineer to monitor construction and excavation within the right-of-way. The applicant is responsible for the full cost of the contract engineer, and any unexpended funds after the completion of the monitoring process will be promptly returned to the applicant.
3. Patch and repair. The applicant shall patch and repair City sidewalks and other improvements in the public right-of-way affected by applicant's project construction, such as curbs or walls, to match the color, texture, materials, and scoring pattern of the existing improvements, including custom integral concrete color in accordance with City of Piedmont standard plans and as directed by the Director of Public Works. Directional bore shall be utilized over trenching at the reasonable discretion of the Public Works Director.
4. Radio and Equipment enclosure. The proposed fake mailbox radio equipment unit is not approved and the radio(s) and other related equipment shall be enclosed in a flush-to-grade vault located on the uphill side of the retaining wall on City-owned property immediately east of the utility pole, a location that will not adversely affect the root system of the nearby street tree(s). The final location of the vault and design of the cable connection between the pole and vault is subject to the review and approval of the Director of Public Works. The size and design of the vault shall match that used for site PHS01, subject to the review and approval of the City Engineer (See Condition of Approval #18).
5. Alternative vault design and location – underground utilities. Prior to issuance of an encroachment permit, applicant or contractor shall provide detailed utility plans with existing utilities locations and shall pot-hole for utilities as required by the Director of Public Works. If an approved location is found to be unsuitable due to conflicts with underground utilities that cannot be relocated then the applicant shall relocate the flush-to-grade vault to another location that does not adversely affect the health of a street tree or public safety, subject to the approval of the Director of Public Works. Street-rated flush-to-grade vault and construction shall be used for all street locations subject to review and approval of the City Engineer. If a street location is also unsuitable due to conflicts with tree roots, utilities, or other physical condition(s), then the project shall be subject to new application(s) and fees and shall be scheduled for review by the Planning Commission and City Council.
6. Contractor's general liability insurance. To ensure that the contractor doing work in the City will be responsible for damages

caused by the work to City property or to neighboring property, the applicant shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and the applicant shall immediately arrange for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, then the applicant shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. The applicant's failure to provide such notice shall constitute grounds for revocation of the City's wireless communication facilities permit. If the applicant does not have a general contractor, the applicant shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

7. Defense of Legal Challenges. If there is a third party administrative, legal or equitable action challenging the project approvals, including without limitation to CEQA issues, the applicant, Crown Castle NG West LLC, shall defend, indemnify, and hold harmless the City against any and all liability, fees and costs arising out of the defense, including without limitation the costs of City's own selected legal counsel(s). If such an action is filed, the applicant, Crown Castle NG West LLC, and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.
8. Noise study and field testing of equipment noise. The applicant, Crown Castle NG West LLC, shall submit a study prepared by a licensed acoustical engineer for the specific equipment to be installed including manufacturers' specifications and field tested noise levels prior to issuance of an encroachment or building permit for the approved scope of work. Said study shall demonstrate that the equipment shall meet the limits provided in City Code Section 5.4.11 for mechanically-generated noise sources when the facility is under maximum operational capacity. Furthermore, prior to the scheduling of final inspection and the commencement of facility operation, the applicant shall provide an acoustical report by a licensed acoustical engineer which demonstrates that tested noise levels are 50 dBA or less at the nearest property line while the facility is at maximum operational capacity, including, but not limited to the fans, radio units and sump pumps. The facility may not begin operating until such time that the requisite analysis demonstrates that the mechanically-generated noise meets the requirements of Section 5.4.11. These requirements shall also apply to this facility at future times when machinery in the vault is added or replaced.

- a. Peer Review. At the Applicant's sole expense, the City shall have the option to retain an independent acoustical consultant to perform a peer-review of the Applicant's acoustical report(s) and advise the City in connection with the facility's mechanically-generated noise. The City Engineer shall select this independent acoustical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. The independent acoustical consultant shall also review the construction plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the vault as deemed necessary by the City Engineer. The Applicant shall provide payment for this service at the time of the Building or Encroachment Permit submittal.
9. Radio frequency emissions testing. Prior to issuance of an encroachment permit, the applicant shall provide a revised radio frequency emissions exposure report which demonstrates the project's compliance with applicable FCC health safety standards. Prior to completion of the project and the release of any bond or deposit, the applicant shall provide to the Planning Department the results of radio frequency and electromagnetic emissions testing conducted at each of the sites and prepared by a qualified electrical engineer following the methodology established by the FCC in Office of Engineering and Technology Bulletin 65 or any successor thereto. Should results of the testing reveal inconsistencies with the application and the provided radio frequency emissions exposure report, then the applicant shall alter the design of the antenna and communication equipment to bring the project's radio frequency and electromagnetic emissions levels to those specified in the application and reports, with the altered design receiving verification of compliance through further field tests. Should the applicant, Crown Castle NG West LLC, or owner of the WCF equipment be unable to comply with this condition of approval, the facility must be disconnected from all electrical power sources until the applicant is able to demonstrate to the City its compliance with the applicable FCC rules. The radio frequency and electromagnetic field emissions exposure report shall be peer reviewed by the City's selected and qualified reviewer at the expense of the applicant, Crown Castle NG West LLC, or owner of the WCF equipment. The radio frequency emissions exposure report shall be conducted on an annual basis within 30 days of each anniversary of the approval of this Resolution, and each study shall be coordinated in advance with the Director of Planning.
 10. Future modifications. Future modifications of the approved installation that extend beyond the approved project site, increase excavation beyond the approved project site, or that remove or subvert the concealment design of the approved antennas and equipment, including the flush-to-grade vault, the cable management skirt and riser concealing the cables, the perimeter of the canister concealing the antenna(s), shall constitute a new application and shall require new application forms and fees. Applications that extend beyond the approved project site, increase excavation beyond the approved project site, or that remove or

subvert the concealment design of the approved antennas and equipment, or any other request to modify the installation that does not qualify for treatment as an eligible facilities request under Section 6409(a) shall not be eligible for Planning Director review under 47 U.S.C. §1455(a) processing.

11. Construction Management Plan. The applicant or contractor shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route and the days and hours permitted for heavy excavation. Outside construction involving high levels of noise, including excavation, hammering, and pile driving, shall be limited to Monday through Saturday, from 8:30 a.m. to 4:30 p.m. Construction personnel shall be instructed not to park in front of driveways to private residences. The plan shall specify the sequencing of pruning, demolition, and construction activities. The City Building Official may require modifications and amendments to the Construction Management Plan throughout the course of the Project and until the Final Inspection is approved by the City.
 - a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. Prior to the issuance of a building permit, the Applicant shall submit a construction stormwater management plan prepared by a licensed Civil Engineer to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that must be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.
 - b. Continual Street Access for Emergency Vehicles. The Construction Management Plan shall specifically address methods of providing continual street access for emergency vehicles at all times by means of a traffic control permit application submitted by the applicant and reviewed and approved by the Public Works Director.
 - c. Haul routes. All equipment and vehicle haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction. Damage or observable and unusual wear and tear to haul routes on city roadways as

specified by the City shall be repaired at the Property Owner's expense after Final Inspection.

12. Maintenance of Facilities. Maintenance of the communication equipment shall be conducted pursuant to an encroachment permit, the term of which is the same as that for the facility's lease term. The encroachment permit is subject to the review and approval of the Public Works Director. Except for emergency maintenance needs, the maintenance of the wireless communication facilities shall not occur from 7:30 a.m. to 9:30 a.m. or from 2:30 p.m. to 4:00 p.m. during regular school days of any public schools located in any direction within one-quarter mile of the wireless facility. The prohibited hours for regular maintenance may be adjusted by the Director of Planning upon at least 30 days written notice to the applicant to accommodate changes in the hours of instruction at the nearby public schools.
13. Site Safety Security. The City and the public have an interest in not having an unfinished project blighting the neighborhood, restricting access, and undermining property values. These public interests are primarily safety and aesthetics, and diminishment of property values. Prior to the issuance of an encroachment permit for the approved project, Crown Castle NG West LLC shall provide to the City a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("Site Safety Security") in the amount of \$100,000 for each site to ensure the Project site is not left in a dangerous or unfinished state, and if any funds are remaining, to complete repairs in the public right-of-way. City shall release such security to Crown Castle NG West LLC at the time it completes the final inspection and certification of compliance with all conditions of approval.
 - a. The Site Safety Security shall be in an amount to include three components:
 - i. safety, which means the cost to make the site and structure safe and accessible if construction should cease mid-way through the Project;
 - ii. aesthetics, which means an amount to install and maintain hardscape paving and landscaping all around the Project; and
 - iii. staff and consultant time to evaluate and implement this condition.
 - b. If, as the Project proceeds, the expected cost of these components increases beyond the original estimate in the opinion of the Director of Public Works, the City may require Crown Castle NG West LLC to increase the amount of the Site Safety Security by the additional amount. Crown Castle NG West LLC shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at Crown Castle NG West LLC's expense, an independent

estimator selected by the City after consulting with Crown Castle to verify the total expected costs to complete the Project and any subsequent revisions.

- c. The form and amount of the Site Safety Security is subject to the reasonable approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such Performance Security is due to the City.
 - d. The Site Safety Security shall not be released until the Project has an approved Final Inspection by the Building Official. However, if sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, the Site Safety Security may be reduced to the extent the Director of Public Works in his reasonable discretion determines is appropriate.
14. City Facilities Security. The applicant ("Crown Castle NG West LLC) shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("City Facilities Security") in the amount of \$100,000 per site as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Crown Castle NG West LLC's contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The Crown Castle NG West LLC is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.
- a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by Crown Castle NG West LLC or others working for or on behalf of Crown Castle NG West LLC, the City will document such facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the street surface. Crown Castle NG West LLC is responsible for the full cost of the documentation and repair work as determined by the City Engineer, and shall reimburse the City for those costs prior to

the scheduling of final inspection.

- b. When the City Facilities Security is in a form other than cash deposit with the City, the proceeds from the City Facilities Security shall be made payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of the proceeds are due to the City.
15. Neighboring Property Damage Security. The Applicant shall provide adequate and appropriate Insurance or bonds, as approved by the Director of Public Works and City Attorney against damage to neighboring properties by any construction, excavation, and related work in any way involving the project, such insurance or bonds to be in the amount of \$1,000,000.00 for each installation site and with any standard and/or special conditions established by the Director of Public Works after consultation with the Applicant (Crown Castle NG West LLC). If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any alternative method shall allow for claims to be made for up to one year after the final inspection of the Applicant's project. Any and all such insurance or any alternative method shall specifically indicate that it covers damages to neighboring private properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above named properties, any such further coverage shall be in addition to the \$1,000,000 earmarked for neighboring properties.
16. Height Verification. Prior to completion of the project and release of any bonds or security deposits, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the height of the new wireless communication equipment mounted on the utility pole is less than or equal to 37 feet in height measured from grade adjacent to the utility pole. If the height exceeds this 37-foot height limit, then the applicant or contractor shall immediately reduce the height of the equipment until it is in compliance with the maximum height requirement.
17. Antenna Design, Project Site, and Concealment Design. The antenna(s) and canister used at this facility shall have a maximum vertical length of 24 inches. Each antenna canister, cable management skirt, riser and equipment vault shall be identified as the "concealment design" for each installation and shall be labeled as such on the plans. The outer edge of the equipment as shown in elevation and in plan view shall be identified as the "project site" and shall be labeled as such on the plans.
18. Flush-to-grade Vault Design. Prior to issuance of an encroachment permit, the applicant or contractor shall provide fully dimensioned plans and specifications drawn to scale set by the City Engineer for

the flush-to-grade vault and venting, including manufacturer's specifications for the vault cover, the non-slip cover surface material and color, vault materials, and reveal at grade. Said plans and specifications are subject to review and approval of the City Engineer.

19. Decommissioning Plan. The approval of the wireless communication facilities permit is valid for a term of 10 years, except as otherwise required by state or federal law or due to public safety or substantial land use reasons provided under California Government Code section 65964(b). Obsolete, decommissioned, and unleased equipment or accessories shall be removed with each modification of the installation or annually whichever comes first. All modifications shall incorporate the highest industry standards for compact designs that minimize visibility and that comply with the concealment strategies provided in Condition of Approval #17.
20. Cables and Cabling. To the best extent possible, the cables to the antenna(s) atop the utility pole shall be enclosed within the riser on the surface of the pole and the cable management skirt atop the pole. No more than 5 inches of exposed cables, cabling or wire(s) shall be evident on plans filed for building permit or evident on the wireless installation after completion of construction, unless otherwise allowed by the Director of Public Works. If required by the Building Official, the applicant at its sole cost and expense shall install a full-scale mock-up of the installation at the City's corporation yard prior to issuance of a building permit and remove the same upon ten-day written notice from the City Engineer.
21. Lease Requirement. This installation of the equipment vault and cables on City-owned property shall be subject to the terms and conditions of a lease approved by the City Council prior to issuance of a building permit or encroachment permit for the approved scope of work.
22. City Monitoring of City Street Trees. The applicant and its contractors are prohibited from performing any tree pruning related to construction, pre-construction clearance, or on-going maintenance and operation after construction. Tree trimming is restricted and may only occur with the approval of the Director of Public Works. No tree trimming will be permitted if it is to maintain or enhance the wireless transmissions from the facility. The pruning of trees in the public right-of-way or on City-owned property is the exclusive responsibility of the Piedmont Department of Public Works, or its designee.
23. Operation and Maintenance Standards. The facility shall comply with the provisions of City Code Section 17.46.070.B as follows:
 - a. Contact and site information. The owner or operator of a wireless communication facility must submit basic contact and site information to the city, and notify the city within 30 days of any changes to this information, including the transfer of ownership. The contact and site information must include: (i) the name, address, email address, telephone number, and legal

status of the owner of the facility, including official identification number and FCC certification, and, if different from the owner, the identity and legal status of the person or entity responsible for operating and maintaining the facility; and (ii) the name, address, email address, and telephone number of a local contact person for emergencies.

- b. Signage. The owner and/or operator must post an identification sign at each facility, including owner/operator emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to review and approval by the Director. If at any time a new owner or operator provider takes over operation of an existing personal wireless service facility, the new personal wireless service provider shall notify the Director of the change in operation within 30 days and the required and approved signs shall be updated within 30 days to reflect the name and phone number of the new wireless service provider. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than two square feet in size unless required by law. The facility shall not bear signs other than certification, warning, emergency contacts, or other signage required by law or expressly required by the City.
- c. Non-Interference. Each wireless communication facility must at all times comply with laws, codes, and regulations, and avoid interfering with any city property, facilities, operations, utilities, or equipment.
- d. Facility maintenance. Each wireless communication facility must at all times be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism. The operator must repair any damage as soon as reasonably possible, but no later than the earlier of 10 days from the time of itself becoming aware of the non-compliance or the receipt of written notification from the City.
- e. Landscaping. Landscaping elements at a wireless communication facility site must be maintained in good condition, and in compliance with the approved landscape plan. The owner or operator is responsible for replacing any damaged, dead, or decayed landscape materials and making necessary irrigation and equipment repairs as soon as reasonably possible.
- f. Noise. A wireless communication facility must be operated to comply with Chapter 5 of the City Code. Should the noise emanating from the facility be found to exceed the limits provided in City Code Chapter 5, operation of the facility shall cease immediately and shall not resume until a noise verification study prepared by a licensed acoustical engineer shows the facility's compliance with City Code Chapter 5 noise limits. The acoustical engineer shall be selected by the City and the cost of the engineer's services shall be paid by the applicant or wireless communications service provider.

- g. Removal. All wireless communication facility equipment must be removed within 30 days of the discontinuation of the use, and the site and other property restored to its original, preconstruction condition. In addition, the service provider must provide the city with a notice of intent to vacate a site a minimum of 30 days before the vacation. For a wireless communication facility to be located on public property, this removal requirement will be included within the lease. For a facility to be located on private property, the property owner will jointly and severally be responsible for removal and restoration.
- 24. Required Corrections. Prior to issuance of an encroachment permit or building permit for the approved scope of work, as modified herein, the applicant shall provide a construction drawing site plan detail drawn to scale that verifies that the proposed antenna and all related cabling and equipment meet the 18-inch setback to the front of curb in plan view. The applicant shall reference a fixed point in the plans for the terms, such as “3 o’clock View,” to the satisfaction of the Building Official. Plans shall show all improvements within a radius and scale which must be provided in the construction drawings.
- 25. Utility Undergrounding District. Should the area of an installation become part of a utility undergrounding district, then all equipment shall be placed in conduit and vaults underground and the antenna shall be relocated to a streetlight location within the undergrounding district. Street light design shall be subject to the review and approval of the underground district and City Council.
- 26. Modifications to Public Facilities. Should the public facilities in the area of this facility be removed, replaced or modified, the wireless communication facility equipment shall, if necessary as determined by the Director of Public Works, be removed or relocated at the applicant’s expense subject to review and approval of the Director of Public Works.
- 27. Expiration of Wireless Communication Facilities Permit. An encroachment permit and building permit must be issued within one year of the approval of the City Council, and construction completed within two years of the approval of the City Council, or this approval shall be null and void.
- 28. Construction Completion Schedule. Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.
 - a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks as needed: i) Completion of Excavation and vault installation; ii) Completion

of Electrical; iii) Completion of Plumbing; iv) Completion of Mechanical; v) Completion of Home; vi) Completion of Hardscaping and Landscaping; and any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

- b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the “Approved Schedule” and be binding on the Applicant. The City may, at the Applicant’s sole cost, engage the services of a consultant to review the Applicant’s proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.
- c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to make a claim against the Applicant’s Site Security, if one is required, in order to complete the benchmark. The Director of Public Works has the option to refer the application to the City Council for public review.

SECTION 4. All portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

Moved by Rood, Seconded by McBain
Ayes: Andersen, Cavanaugh, King, Rood, McBain
Noes: None

ADJOURNMENT

There being no further business, Mayor McBain adjourned the meeting at 8:46 p.m.