ORDINANCE 2025-O-12

Ordinance No. 2025-O-12 Date: September 9, 2025

AN ORDINANCE OF THE MAGNA COUNCIL ADOPTING AND APPROVING A DEVELOPMENT AGREEMENT RELATED TO A SPECIFIED PROPERTY AND EXTENSION OF TELECOMMUNICATIONS INFRASTRUCTURE

RECITALS

WHEREAS, Magna ("**City**") is a municipality and has authority to adopt land use regulations, pursuant to Utah Code § 10-9a-501 in accordance with the Municipal Land Use, Development, and Management Act, Title 10, Section 9a, Utah Code;

WHEREAS, the applicant seeks to develop property within the City consisting of approximately 0.18 acres, identified as Salt Lake County Parcel No. 14-29-104-002-0000;

WHEREAS, the City seeks to promote the health, safety, and welfare of the inhabitants of the City through the establishment and administration of zoning and development regulations concerning the use and development of land in the City;

WHEREAS, the applicant's proposed project deviates from Chapter 19.42.350(E)(3)(a) of the Magna City Code, "Wireless Telecommunications Facilities," but may be nonetheless approved through legislative discretion of the Magna City Council;

WHEREAS, the Magna Planning Commission held a public hearing on August 14, 2025 to consider adoption of a "**Development Agreement**" in accordance with Utah Code §§ 10-9a-205 and 10-9a-502; and

WHEREAS, the Planning Commission has recommended that the Council adopt the Development Agreement as presented except with clarifications to appropriate parties for the protection and preservation of the public health, safety and general welfare; and

WHEREAS, it is in the best interests of both the applicant and the City that the Development Agreement be adopted and effective as a "development agreement" within the meaning, and subject to the provisions, of Utah Code Ann. Section 10-9a-103 et seq. and to consent to all the terms of the Development Agreement as valid conditions of development of the project.

THEREFORE, BE IT ORDAINED BY THE MAGNA CITY COUNCIL as follows:

1. The Development Agreement is hereby approved in substantially the form set forth in **Exhibit A**.

2. Severability. If a court of competent jurisdiction determines that any part of this Ordinance is unconstitutional or invalid, then such portion of this Ordinance, or

specific application of this Ordinance, shall be severed from the remainder, which shall continue in full force and effect.

3. Direction to Mayor. The Magna Mayor is hereby authorized and directed to execute the development agreement on behalf of the City.

4. Direction to Staff. Staff are authorized and directed to take such steps as may be needed: (a) for this ordinance to become effective under Utah law, including but not limited to compliance with the requirements of Utah Code § 10-3-711; and (b) to finalize and post the ordinance to Municode, including but not limited to making non-substantive edits to correct any scrivener's, formatting, and numbering errors.

5. Effective Date. This Ordinance will take effect immediately upon posting pursuant to Utah Code § 10-3-712.

{Signatures on Following Page}

PASSED AND **ADOPTED** this 9th day of September 2025.

MAGNA CITY COUNCIL

_____

By: Eric J. Barney, Mayor

ATTEST

_____

Diana Baun, City Recorder

Voting:

Council Member Barney voting _____
Council Member Hull voting _____
Council Member Pierce voting _____
Council Member Prokopis voting _____
Council Member Sudbury voting _____

(Complete as Applicable)

Date ordinance summary was posted to the Magna City website, the Utah Public Notice website, and in a public place within Magna City per Utah Code § 10-3-711:_____

Effective date of ordinance: _____

EXHIBIT A

Development Agreement

SUMMARY OF
MAGNA CITY
ORDINANCE NO. 2025-O-12

On September 9, 2025 the Magna Council enacted Ordinance No. 2025-O-12, adopting and approving a development agreement related to a specified property and extension of telecommunications infrastructure as outlined in the development agreement.

_____
By: Eric J. Barney, Mayor

ATTEST

_____
Diana Baun, Clerk Recorder

APPROVED AS TO FORM

_____
Paul Ashton, City Attorney

Voting:

Council Member Barney voting _____
Council Member Hull voting _____
Council Member Pierce voting _____
Council Member Prokopis voting _____
Council Member Sudbury voting _____

A complete copy of Ordinance No. 2025-O-12 is available in the office of the Magna City Recorder, 860 Levoy Dr., Taylorsville, UT 84123.

WHEN RECORDED, RETURN TO:
Magna City
Attn: City Manager
8952 West Magna Main Street
Magna, Utah 84044

COVER AND PROJECT INFORMATION SHEET

FOR MAGNA CITY DEVELOPMENT AGREEMENT

made as of the _____ day of _____ in the year 2025.

Between the "Developer":

New Cingular Wireless PCS, LLC
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319

and the "City":

Magna City
8952 West Magna Main Street
Magna, Utah 84044

for the following **Project:**

Name:	AT&T Skyway Tower
Project Location:	8585 West Magna Main Street Magna, UT 84044
Description (detailed):	20 foot height increase and installation of a walk-in cabinet at existing cellular tower site

Underlying Zone(s): C-2

Effective Date: _____

Developer Contact: Jason Evans (Centerline Communications)
Program Manager
(208)866-7725

DRAFT RECOMMENDED BY PLANNING COMMISSION TO COUNCIL FOR AUGUST 26 COUNCIL MEETING

MAGNA CITY

MASTER DEVELOPMENT AGREEMENT

FOR

AT&T SKYWAY TOWER

THIS MASTER DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered as of the Effective Date by and between City and Developer, as each is defined in the Cover and Project Information Sheet ("**Cover Sheet**") for this Agreement, each a "Party" and collectively "Parties" herein.

RECITALS

WHEREAS, the Developer seeks to develop property within Magna City, Utah (the "**Project**"). The property consists of approximately 0.18 acres, identified as Salt Lake County Parcel No. 14-29-104-002-0000 and is more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Property**"); and

WHEREAS, the Property is entirely located in the Underlying Zone and is subject to all applicable Magna City Code and development standards;

WHEREAS, the Developer is the owner of a wireless communication site located on the Property, which Property is owned by Helen S. Ham, John S. Ham, and Skyway Towers; and

WHEREAS, the City seeks to promote the health, safety, and welfare of the inhabitants of the City through the establishment and administration of zoning and development regulations concerning the use and development of land in the City;

WHEREAS, the Developer's proposed Project deviates from Chapter 19.42.350(E)(3)(a) of the Magna City Code, "Wireless Telecommunications Facilities," but has been nonetheless approved through legislative discretion of the Magna City Council;

WHEREAS, the City is desirous of development of the Property for the purpose of developing the Project in the manner outlined to the City;

WHEREAS, the City Planning Commission held a meeting and recommended approval of the application for the Project on August 14, 2025, with the conditions specified in that approval and incorporated into this Agreement; and

WHEREAS, it is in the best interests of both the Developer and the City that this Agreement be adopted and effective as a "development agreement" within the meaning, and

subject to the provisions, of Utah Code Ann. Section 10-9a-103 *et seq.* and to consent to all the terms of this Agreement as valid conditions of development of the Project.

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged and accepted by both parties, the parties hereto mutually agree and covenant as follows:

1. Effective Date, Termination

1.1. The "Effective Date" of this Agreement is the last date upon which it is signed by any of the Parties hereto, and shall be indicated on the Cover Sheet. The City may not execute this Agreement until approved by the City in accordance with the Magna Municipal Code ("**MMC**").

1.2. This Agreement shall be in full force and effect until the earliest occurrence of: (i) such date as the Project is abandoned, defined as written notice from Developer to the City that it no longer intends to develop the Project; (ii) the use or active development is discontinued for a period of more than six (6) months; or (iii) the Developer defaults on any provision of this Agreement and the default is not resolved as specified in this Agreement. Failure to proceed with development pursuant to this Agreement shall be deemed failure to implement the application with reasonable diligence pursuant to Utah Code Ann. Section 10-9a-509.

2. Project Description

The Project is described more fully herein on the Cover Sheet; in AT&T's application materials, attached as **Exhibit B**; and as illustrated in the "**Site Plan**" for the Project, attached as **Exhibit C**.

3. Development Standards

3.1. Development Standards. The site development standards, procedures, and rules of the Underlying Zone and applicable code and law are modified as shown on **Exhibit D** "Development Standards." All development standards applicable to the Project not expressly modified by this Agreement, including the Utah Municipal Land Use Development and Management Act, remain in full force and effect. Together, Exhibit D standards and the remaining development standards in the City code are the "**Development Standards**" for the Project.

These Development Standards shall apply to all buildings comprising the Project.

3.2. Use of the Property. This Agreement does not modify, amend, or otherwise alter the uses permitted, conditioned, or restricted in the Underlying Zone. Developer acknowledges a separate rezoning request must be submitted to modify the permitted and conditional uses in the applicable zone.

3.3. Approvals. Development of the Project shall be in accordance with Utah's Land Use, Development and Management Act, MMC, the City's future laws which include the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a development application is submitted for a part of the Project (to the extent they are applicable as specified in this Agreement), the Site Plan and this Agreement. Approval of this Agreement by the City Council constitutes approval of the Site Plan, subject to health and safety review and fee payment compliance by prior to issuance of a building permit. Following approval by the City, the approved Site Plan and included in Exhibit C along with any supporting data and materials on which the Site Plan relies shall be made part of this Agreement and deemed to be an integral part of this Agreement. In the event of any inconsistency between approved plans and the terms of this Agreement, the terms of this Agreement shall govern. Any Development Review Submittals and approvals shall comply with the requirements of MMC for the appropriate development application.

3.4. Modification. The terms and conditions of this Agreement or of any Development Review approval issued in accordance with this Agreement may be modified administratively by the Planning Commission upon written request by Developer, as described in MMC 19.69.130 notwithstanding this Agreement is not made in conjunction with a planned community development application.

3.5. Fees. Nothing herein shall be construed to relieve Developer of the standard obligations to also pay any City fees and charges as part of the development process, as set forth in the existing City fee schedule. These costs will be paid pursuant to procedures set forth in City ordinances and policies.

3.6. Timeline. Developer shall satisfactorily complete construction of all Project improvements in a good and workmanlike manner, no later than six (6) months after the Agreement, subject to reasonable delays due to events of force majeure.

4. Recording.

The responsibilities and commitments of Developer and the City as detailed in this document, when executed shall constitute a covenant and restriction running with the land and shall be binding upon the Developer/Owner of the Property, their assignees and successors in interest and this Agreement or a notice thereof shall be recorded in the Office of the Salt Lake County Recorder by City at Developer's cost.

5. Default.

5.1. Failure to provide any reasonably requested information related to the Site Plan or any modifications thereto, obtain building permits, or complete construction of the Project

specified in this Agreement shall constitute a default by Developer, its successors or assigns in interest.

5.2. Notice. If the Developer or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide a written "**Notice of Default**" to the other Party.

5.3. Contents of the Notice of Default. The Notice of Default shall:

5.3.1. Specify the claimed event of default;

5.3.2. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default; and

5.3.3. If the City chooses, in its discretion, it may propose a method and time for curing the default which shall be of no less than thirty (30) days duration, if weather conditions permit.

5.4. Remedies. Upon the occurrence of any default, and after notice as required above, then the parties may have all rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

5.5. Default of Assignee. A default of any obligations expressly assumed by an assignee shall be deemed a default of Developer.

5.6. Limitation on Recovery for Default – No Damages against the City. Anything in this Agreement notwithstanding Developer may not be entitled to any claim for any monetary damages as a result of any breach of this Agreement and Developer waives any claims thereto. The sole remedy available to Developer and any assignee shall be that of specific performance.

6. Vesting.

Upon the Effective Date of this Agreement the Developer's right to construct the Project, under the terms and conditions of this Agreement shall be vested to the fullest extent allowable under Utah Code Ann. Section 10-9a-509. Except as expressly and mutually agreed in writing by the Parties, all development of the Project, including any later phases, shall be governed by the applicable law in effect on the Effective Date of this Agreement. Nothing in this Agreement will limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation will not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet

the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

6.1. Exceptions. The vested rights and the restrictions on the applicability of the City's future laws to the Project as specified in Section 3 are subject to the following exceptions:

6.1.1. Master Developer Agreement. The City's future laws or other regulations to which the Developer agrees in writing;

6.1.2. State and Federal Compliance. The City's future laws or other regulations which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

6.1.3. Codes. Any City's future laws that are updates or amendments to existing building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

6.1.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

6.1.5. Fees. Changes to the amounts of fees for the processing of development applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

6.1.6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 *et seq*.;

6.1.7. Planning and Zoning Modification. Changes by the City to its planning principles and design standards as permitted by Local, State or Federal law; and

6.1.8. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. Section 10-9a-509.

7. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, sent by a nationally recognized overnight courier

service, or sent by email. Notice by email shall be effective upon receipt of electronic confirmation of delivery. Notices to the parties shall be sent to the addresses set forth on the Cover Sheet to this Agreement or such other address as a party may designate by notice to the other party.

8. General Provisions.

8.1. Both parties recognize the advantageous nature of this Agreement which provides for the accrual of benefits and protection of interests to both parties.

8.2. The recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits to this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

8.3. The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidence of intent.

8.4. This Agreement with any amendments shall be in full force and effect until all construction and building occupancy has taken place as per the Project development plans or expiration or termination of this Agreement as provided herein.

8.5. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

8.6. In the event that legal action is required in order to enforce the terms of this Agreement, the prevailing party shall be entitled to receive from the defaulting party any costs and attorney's fees incurred in enforcing this Agreement from the defaulting party.

8.7. This Agreement constitutes the entire agreement between the parties. No changes or modifications may be made in this Agreement except in writing signed by both parties.

8.8. The requirements, obligations and conditions contained within this Agreement shall be binding upon Developer, its successors and assigns, and if different than Developer, the legal title holders and any ground lessors. All rights granted hereunder to Developer shall inure to the benefit of the Developer's successors and assigns, and if different than Developer, the legal title holder and any ground lessors.

8.9. This Agreement does not create a joint venture relationship, partnership or agency relationship or fiduciary relationship between the City, or Developer. Except as specifically set forth herein, the parties do not intend this Agreement to create any third-party beneficiary rights.

8.10. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction

to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, will continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

8.11. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

8.12. Each Party will execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the conditions to development, and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

8.13. The singular will include the plural; the masculine gender will include the feminine; "will" and "shall" are mandatory; "may" is permissive.

8.14. Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against any Party based on which Party drafted any particular portion of this Agreement.

8.15. The Developer may sell, convey, reassign, or transfer the Property or the Project to another entity at any time.

8.16. This Agreement shall be recorded against the Property senior to any respective covenants and any debt security instruments encumbering the Property.

8.17. This Agreement is entered into in Salt Lake County in the State of Utah and shall be construed under the laws of the state of Utah, irrespective of Utah's choice of law rules, and the parties hereto intend that Utah law shall apply to the interpretation thereof.

8.18. Any action to enforce this Agreement may be brought only in the Third District Court, Salt Lake County in and for the State of Utah.

8.19. Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

8.20. To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representatives for the City and Developer are hereby appointed as indicated on the Cover Sheet.

The Parties may change their designated representatives by providing written notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

8.21. No action taken by any Party may be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a waiver by such Party of any subsequent breach.

8.22. The City may not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and applicable law. Nothing in this Agreement will require that the City take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the City concerning subject matter and provisions of this Agreement.

8.23. Each party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated and to execute, deliver, and perform its obligations under this Agreement. Specifically, on behalf of the City, the signature of the City Manager or Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to the Approval Resolution indicated on the Cover Sheet.

8.24. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties, notwithstanding that each of the parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by email shall be deemed originally signed copies of this Agreement.

8.25. Except as expressly modified by this Agreement, any statute or municipal code referred to in this Agreement shall be deemed to include that statute as amended, restated, and/or replaced from time to time, and any successor legislation to the same general intent and effect.

DRAFT RECOMMENDED BY PLANNING COMMISSION TO COUNCIL FOR AUGUST 26 COUNCIL MEETING

8.26. The undersigned certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel during the term of this Agreement. The undersigned further acknowledges that its engagement in a boycott of the State of Israel would be in violation of Utah Code Ann. Section 63G-27-201 and could result in termination of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto, having been duly authorized, have executed this Agreement this _____ day of _____, 20__.

CITY ACCEPTANCE

_____
Magna City
By: _____
Its: Mayor

Attest:

_____
Magna City Recorder

Approval as to Form:

_____
Magna City Attorney

DRAFT RECOMMENDED BY PLANNING COMMISSION TO COUNCIL FOR AUGUST 26 COUNCIL MEETING

DEVELOPER ACCEPTANCE

_____
Developer
By: _____
Its: _____

STATE OF UTAH)
:ss.
COUNTY OF _____)

On the _____ day of _____, 20__, personally appeared before me _____, who being by me duly sworn, did say that he/she is the [POSITION] of New Cingular Wireless PCS, LLC, a Delaware limited liability company, that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

_____
NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

DRAFT RECOMMENDED BY PLANNING COMMISSION TO COUNCIL FOR AUGUST 26 COUNCIL MEETING

Exhibit A

Description of Property

DRAFT RECOMMENDED BY PLANNING COMMISSION TO COUNCIL FOR AUGUST 26 COUNCIL MEETING

Exhibit B

Application Materials

DRAFT RECOMMENDED BY PLANNING COMMISSION TO COUNCIL FOR AUGUST 26 COUNCIL MEETING

Exhibit C

Site Plan

DRAFT RECOMMENDED BY PLANNING COMMISSION TO COUNCIL FOR AUGUST 26 COUNCIL MEETING

Exhibit D

Development Standards Modifications

D-1. For purposes of this Agreement and only for the Property, an exception to Magna Municipal Code Section 19.42.350 is added providing the following:

> Notwithstanding Magna Municipal Code Section 19.42.350.E.3 (copied below), the Magna City Council may approve a twenty foot (20') height increase to an existing monopole that was properly approved at a height of sixty feet (60'), to allow for a total height of eighty feet (80'), within the three hundred foot (300') setback from the residential zone boundary by making a written determination that such improvement is in the best interests of the City.

Existing Magna Municipal Code Section 19.42.350.E.3. Monopole:

a. The height limit for monopoles is sixty feet (60'), except that the Planning Commission may allow a monopole up to eighty feet (80') in the C-2, C-3, M-1, and M-2 zones if it finds:

    (1) The monopole will blend in with surrounding structures, poles, or trees and is compatible with surrounding uses,

    (2) The monopole will be available for co-location with other companies, and

    (3) The monopole will be setback at least three hundred feet (300') from any residential zone boundary.