



**CITY COUNCIL
AGENDA ITEM APPROVAL FORM**

AGENDA ITEM INFORMATION

MEETING DATE:	AUGUST 21, 2019	
AGENDA ITEM TITLE:	RESOLUTION NO. 19-28: A RESOLUTION OF THE CITY OF TAYLORSVILLE APPROVING A TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC.	
PUBLIC HEARING REQUIRED:	YES: _____	NO: <u> X </u>
ORDINANCE REQUIRED:	YES: _____	NO: <u> X </u>
RESOLUTION REQUIRED:	YES: <u> X </u>	NO: _____
PRESENTER:	TRACY S. COWDELL	
AGENDA ITEM SUMMARY: LIMIT 150 WORDS	New Cingular Wireless PCS, LLC is a mobile telecommunications company which provides wireless telecommunications services to various subscribers. New Cingular Wireless desires to obtain a franchise agreement from the City to provide certain telecommunications services within the City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future City rights-of-way and which will consist of antennas, telecommunication lines, cables, communications equipment, and all necessary appurtenances including, but not limited to, small cell facilities.	
ATTACHMENTS:	TELECOMMUNICATIONS FRANCHISE AGREEMENT BETWEEN THE CITY AND NEW CINGULAR WIRELESS PCS, LLC.	

TAYLORSVILLE, UTAH
RESOLUTION NO. 19-28

A RESOLUTION OF THE CITY OF TAYLORSVILLE
APPROVING A TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH NEW
CINGULAR WIRELESS PCS, LLC.

WHEREAS, the Taylorsville City Council (the "Council") met in regular session on August 21, 2019, to consider, among other things, approving a telecommunications franchise agreement with New Cingular Wireless PCS, LLC ("New Cingular Wireless"); and

WHEREAS, New Cingular Wireless is a mobile telecommunications company which provides wireless telecommunications services to various subscribers; and

WHEREAS, New Cingular Wireless desires to provide certain telecommunications services within the City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future City rights-of-way and which will consist of antennas, telecommunication lines, cables, communications equipment, and all necessary appurtenances including, but not limited to, small cell facilities; and

WHEREAS, after extensive consideration, the City, in exercising its management of public rights-of-way, has determined that it is in the best interest of the public to grant to New Cingular Wireless a non-exclusive franchise agreement to operate a telecommunications network within the City.

NOW, THEREFORE, BE IT RESOLVED by the Taylorsville City Council that the proposed franchise agreement with New Cingular Wireless PCS, LLC, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved and that the Mayor is hereby directed to promptly execute the same.

This Resolution, assigned Resolution No. 19-28, shall take effect immediately upon passage and acceptance as required herein.

PASSED AND APPROVED by the City Council of Taylorsville, Utah this ____ day of _____, 2019.

TAYLORSVILLE CITY COUNCIL

By _____
Daniel Armstrong, Council Chair

VOTING:

Meredith Harker	___	Yea	___	Nay
Ernest Burgess	___	Yea	___	Nay
Dan Armstrong	___	Yea	___	Nay
Curt Cochran	___	Yea	___	Nay
Brad Christopherson	___	Yea	___	Nay

PRESENTED to the Mayor of the City of Taylorsville for approval this ____ day of _____, 2019.

APPROVED this ____ day of _____, 2019.

Kristie S. Overson, Mayor

ATTEST:

Cheryl Peacock Cottle, City Recorder

DEPOSITED in the office of the City Recorder this ____ day of _____, 2019.

RECORDED this ____ day of _____, 2019.

**TELECOMMUNICATIONS FRANCHISE AGREEMENT
BETWEEN
THE CITY OF TAYLORSVILLE, UTAH
AND
NEW CINGULAR WIRELESS PCS, LLC**

THIS TELECOMMUNICATIONS FRANCHISE AGREEMENT (hereinafter "Agreement" or "Franchise") is entered into this _____ day of _____, 2019 (the "Effective Date") by and between the **CITY OF TAYLORSVILLE, UTAH**, a municipal corporation and political subdivision of Salt Lake County, State of Utah (hereinafter "CITY"), and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company with its primary place of business located at 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, Georgia, 30319 (hereinafter, "GRANTEE"). The CITY and GRANTEE are sometimes referred to collectively herein as the "Parties."

RECITALS

WHEREAS, the GRANTEE is a mobile telecommunications company which provides wireless telecommunications services to various subscribers; and

WHEREAS, the GRANTEE desires to provide certain telecommunications services within the City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future City rights-of-way and which will consist of antennas, telecommunication lines, cables, communications equipment, and all necessary appurtenances including, but not limited to, small cell facilities, a depiction of which is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Facilities"); and

WHEREAS, the CITY, in exercise of its management of public rights-of-way ("Rights-of-way"), has determined that it is in the best interest of the public to provide the GRANTEE a non-exclusive franchise to operate Facilities in the CITY, and is willing to allow GRANTEE to use the CITY'S rights-of-way subject to the certain terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the CITY and the GRANTEE hereby agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

1.1 Agreement. Upon execution by the Parties, this Agreement shall be deemed to constitute a contract by and between CITY and GRANTEE.

1.2 Definitions. The definitions in the CITY's Telecommunications License Tax, TAYLORSVILLE MUNICIPAL CODE §3.12.020, shall apply herein unless a different meaning is indicated.

1.3 Scope of Franchise and General Right-of-Way Conditions. The CITY hereby grants to the GRANTEE a non-exclusive franchise which authorizes GRANTEE to construct, lease, operate and maintain the Facilities in, along, among, upon, across, above, over, under, or in any manner connected with public ways or CITY- owned

easements and/or rights of access to private property within the boundaries of the CITY, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, remove, or retain in, on, over, under, upon, across, or along any public way such facilities and equipment as may be necessary or appurtenant to the Facilities. This Franchise Agreement is limited to the scope of GRANTEE providing certain telecommunications services, together with any wireless communications services that GRANTEE may lawfully provide, within the City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future City rights-of-way and which will consist of telecommunication lines, cables, and all necessary appurtenances including, but not limited to, small cell facilities, as depicted in Exhibit "A" and nothing more. GRANTEE's right of access to CITY-owned easements and/or rights of access to private property shall be subject to any noticing and/or permission requirements to private property owners that are mandated in said right of access or CITY-owned easement.

The CITY may at any time grant authorization to use the rights-of-way for any purpose not incompatible with GRANTEE'S authority under this Franchise and for such additional franchises for telecommunication systems as the CITY deems appropriate.

(a) No rights shall pass to GRANTEE by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) any other permit or authorization required for the privilege of transacting and carrying on a business within the CITY that may be required by the laws of the CITY;

(2) any permit, agreement or authorization required by the CITY for right-of-way users in connection with operations on or in rights-of-way or public property including, by way of example and not limitation, right-of-way permits, conditional use permits, and excavation permits; or

(3) any permits or agreements for occupying any other property of the CITY or private entities to which access is not specifically granted by this Franchise, including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(b) Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the CITY or of the CITY's right to require GRANTEE to secure the appropriate permits or authorization for such use. Prior to doing any work in the right-of-way or other public property, GRANTEE shall apply for, and obtain, appropriate permits from the CITY. As part of the permitting process, the CITY may impose such conditions and regulations as are necessary and consistent with applicable laws and regulations. Such conditions for permits or authorizations may include, but is not limited to, the provision of a construction schedule and maps showing the location of the Facilities to be installed in the right-of-way. GRANTEE shall pay all applicable fees, consistent with applicable law, for the requisite CITY permits received by GRANTEE.

(c) GRANTEE shall comply with all applicable CITY construction codes, including, without limitation, all building codes, zoning codes, relevant CITY regulations and any applicable federal and state codes, rules and regulations, including the National Electrical Safety Code.

(d) This Franchise is intended to convey limited rights and interests only as to those rights-of-way in which the CITY has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not

provide the GRANTEE with any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. Nothing in this Agreement shall be construed as a waiver or release of the rights of the CITY in and to its rights-of-way, any of its other property, or any property interest(s).

(e) Subject to the CITY's lawful supervision and control, GRANTEE may erect, install, construct, repair, replace, reconstruct, maintain, retain or remove in, on, over, under, upon, across, and along the rights-of-way within the CITY such facilities as are necessary and appurtenant to the operation of the Facilities within the CITY.

(f) GRANTEE must follow CITY requirements, consistent with applicable law, for placement of telecommunication Facilities in rights-of-way, including the specific location of Facilities in the rights-of-way, and must in any event install telecommunication Facilities in a manner that minimizes interference with the use of the rights-of-way by others, including others that may be installing communications facilities.

(g) This Franchise does not grant to the GRANTEE the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the GRANTEE from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the GRANTEE's system within the CITY for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

(h) GRANTEE shall provide to the CITY a list of GRANTEE-approved, licensed contractors and sub-contractors which GRANTEE intends to use to install, construct, operate and/or maintain the Facilities. This list of approved contractors and sub-contractors shall be included in this Franchise Agreement as Exhibit "B," and is incorporated herein by this reference. GRANTEE shall have a continuing obligation to update and maintain the list of approved contractors and sub-contractors as necessary to apprise the CITY of any contractor or sub-contractor who may apply to the CITY for a permit relating to the installation, construction, operation and/or maintenance of the Facilities. The CITY shall not, under any circumstances, issue any permit to an applicant who is not listed on the GRANTEE's approved list of contractors and sub-contractors.

(i) GRANTEE shall provide sufficient documentation to prove that GRANTEE has the financial solvency to complete installation, construction, operation and maintenance of the Facilities. The CITY, at the CITY's sole discretion, shall make a final determination as to whether the provided documentation is sufficient to prove such financial solvency. Financial solvency may be proved by (i) providing financial statements for the GRANTEE; (ii) providing an opinion letter from a certified public accountant or other financial advisor attesting to GRANTEE's financial solvency; or (iii) providing any other documentation in accordance with generally accepted practices of the local industry to prove financial solvency. Evidence of financial solvency shall be attached hereto as Exhibit "C" and is incorporated herein by this reference.

1.4 Licenses. GRANTEE acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement.

1.5 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither Party is authorized to, nor shall either Party act toward third persons or the public

in a manner that would indicate any such relationship with each other.

ARTICLE 2. BOND

2.1 Bond Required. GRANTEE shall be required to post a performance bond with the CITY in accordance with applicable state and local laws. The bond amount shall be one hundred ten percent (110%) of the estimated total cost of construction of the Facilities, which estimate GRANTEE shall include in its permit application (the "Bond"). The GRANTEE shall post the Bond via (i) a certified cashier's check, (ii) a letter of credit, or (iii) an escrow agreement. GRANTEE must post the Bond prior to the issuance of any permit. GRANTEE hereby understands and agrees that any contractor and/or sub-contractor who applies for a permit to perform work on behalf of GRANTEE pursuant to this Franchise Agreement may also be required to post an additional bond for any work which falls outside the scope of this Franchise Agreement.

2.2 Release of Bond. GRANTEE shall have one (1) year to install/construct its Facilities. Upon completion of the installation/construction of the Facilities, GRANTEE may submit a written request to the City for release of the Bond. Upon receipt of such a request, and after verifying that the installation/construction of the Facilities is complete and that the CITY's rights-of-way have been restored to their original condition, the CITY shall release ninety percent (90%) of the posted Bond amount back to the GRANTEE. The CITY shall retain the remaining ten percent (10%) of the Bond amount for a duration of one (1) year (the "Warranty Period.") If all rights-of-way in which the Facilities are located are free from any and all defects (normal wear and tear excepted) at the end of the Warranty Period, the CITY shall release the remaining ten percent (10%) of the Bond amount back to the GRANTEE.

2.3 Failure to Install or Complete Facilities/Failure of Warranty. If (i) GRANTEE fails to complete the installation/construction of the Facilities within one (1) year, or (ii) the rights-of-way in which the Facilities are located are not free of any and all defects (normal wear and tear excepted) for the one (1) year Warranty Period, CITY inspectors shall provide GRANTEE with a notice of any deficiencies. GRANTEE shall correct all such deficiencies within thirty (30) days from the time GRANTEE received notification of the deficiencies. If all deficiencies are not corrected within thirty (30) days, the CITY may unilaterally (without consent or approval of any kind from the GRANTEE) at any time thereafter use a portion of or the full amount of the Bond to correct any such deficiencies. The CITY shall be deemed fully authorized (without any further action or notice whatsoever) to use as much of the Bond as is required, in the CITY's sole discretion, to satisfactorily remove the incomplete Facilities, and/or repair any damage or deficiencies in the CITY's rights-of-way caused by the GRANTEE's failure to complete installation/construction of the Facilities and/or failure to ensure that the CITY's rights-of-way remain free of any defects or deficiencies during the Warranty Period including, without limitation, the actual, reasonable, and documented cost of any and all incidental construction, legal, administrative or engineering fees or expenses incurred by the CITY to affect such work. Any balance of the Bond remaining after payment of all such costs, fees, and expenses, and a reasonable reserve in an amount to be determined by the CITY at the CITY's sole discretion, shall be refunded to GRANTEE. If the above actions require more than the posted Bond amount, the CITY shall send an invoice to the GRANTEE with the remaining balance due, and GRANTEE shall pay to the CITY the balance of the invoice within thirty (30) days after receiving the invoice.

ARTICLE 3. FRANCHISE TAX.

3.1 Franchise Tax. Grantee hereby acknowledges that it is already subject to the municipal

telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act, and shall therefore not be charged any additional rate, fee or compensation for the right to use or occupy the City's rights-of-way.

3.2 Equal Treatment. The CITY hereby agrees that if any service forming part of the base for calculating the franchise tax under this Agreement is, or becomes, subject to competition from a third party, the CITY will either impose and collect from such third party a tax on gross revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue or license tax in the then-current ordinances of the CITY, or waive collection of the tax provided for herein from GRANTEE that are subject to such competition.

ARTICLE 4. TERM AND RENEWAL.

4.1 Term and Renewal. The franchise granted to GRANTEE shall be for a period of ten (10) years commencing on the first day of the month following the date of this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein may be renewed by the GRANTEE for additional ten (10) year terms, by providing to the CITY's representative designated herein written notice of the GRANTEE's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term. Either Party may request a good faith negotiation of the terms of the Agreement upon written notice to the other given at least one hundred twenty (120) days before the end of the initial term or any renewal period.

4.2 Rights of GRANTEE Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the GRANTEE and the CITY, or by revocation or forfeiture, the GRANTEE shall have the right to remove from the rights-of-way any and all of its Facilities, but in such event, it shall be the duty of the GRANTEE, immediately upon such removal, to restore the rights-of way from which such Facilities are removed to as good condition as the same was before the removal was effected, ordinary wear and tear excepted.

4.3 Removal of Unauthorized Facilities.

a. GRANTEE may abandon its underground Facilities in place provided, at the CITY's written request, GRANTEE shall, at its own expense, promptly remove abandoned Facilities which interfere with a CITY improvement project, but only to the extent those Facilities are uncovered by excavation as part of that CITY improvement project.

b. Unless otherwise agreed to in writing by the CITY, within sixty (60) days following written notice from the CITY or such other time agreed to in writing by the CITY, GRANTEE and any other person(s) or entity which owns, controls or maintains any abandoned or unauthorized Facility within a CITY right-of-way shall, at its own expense, remove the Facility and restore the right-of-way to CITY standards. GRANTEE shall be obligated to remove abandoned or unauthorized Facilities pursuant to this Section 4.3 even if other authorized facilities not owned by GRANTEE are located on and/or are in operation at the time the CITY issues written notice of removal of an abandoned or unauthorized Facility, provided CITY directs owners of such authorized facilities to cooperate with GRANTEE in fulfilling its obligations under this provision.

c. A Facility is unauthorized under any of the following circumstances:

1) The Facility is outside the scope of authority granted by the CITY under this license, franchise, or other written agreement. This includes Facilities that were never licensed or franchised and Facilities that were once licensed or franchised, but for which the license or franchise has expired or has been terminated;

2) The Facility has been abandoned. A Facility is abandoned if it is not in use and is not planned for further use. A Facility shall be presumed abandoned if it is not used for a consecutive period of one (1) year. GRANTEE may overcome this presumption by presenting plans for future use of the Facility to the CITY, and the CITY shall determine application of the presumption in its sole discretion;

3) The Facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, or franchise agreement; or

4) GRANTEE is in violation of a material provision of this Agreement and fails to cure such violation within thirty (30) days of the CITY sending written notice of such violation, unless the CITY extends such time period in writing.

d. In the event GRANTEE fails to remove an abandoned or unauthorized Facility pursuant to this Section 4.3, the CITY shall have the right to remove the Facility using qualified personnel and/or contractors consistent with applicable state and federal safety laws and regulations, and GRANTEE shall be responsible for paying the actual, reasonable, and documented cost of the removal and any administrative costs incurred by the CITY in removing the Facility and obtaining reimbursement. Upon receipt of a detailed invoice from the CITY, GRANTEE shall reimburse the CITY for the costs the CITY incurred within thirty (30) days. The obligation to remove pursuant to this Section 4.3 shall survive the termination or expiration of the franchise or this Agreement. A violation of this Section 4.3 shall constitute a material violation of this Agreement.

e. The CITY shall not be liable to GRANTEE for any damage to a Facility, or for any consequential losses resulting directly or indirectly therefrom, by the CITY or its contractor(s) in removing the Facility pursuant to this Section 4.3 unless such damage arises directly from the CITY's negligence or willful misconduct.

ARTICLE 5. PUBLIC USE RIGHTS.

5.1 CITY Uses of Poles and Overhead Structures. The CITY shall have the right, without cost, to use all poles owned by GRANTEE within the CITY for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the CITY shall be for activities owned, operated or used by the CITY for any public purposes and shall not include the provision of telecommunications service to third parties or otherwise in a manner which would compete with GRANTEE's operations and services.

5.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require GRANTEE to increase pole capacity, alter the manner in which the GRANTEE attaches equipment to the poles, or alter the manner in which the GRANTEE operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of GRANTEE and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by

GRANTEE, which approval shall be processed in a timely manner and shall not be unreasonably withheld or delayed.

5.3 Maintenance of CITY Facilities. The CITY's use rights shall also be subject to the Parties reaching an agreement in writing regarding the CITY's maintenance of the CITY attachments.

ARTICLE 6. POLICE POWERS.

The CITY expressly reserves, and GRANTEE expressly recognizes, the CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 7. CHANGING CONDITIONS AND SEVERABILITY.

7.1 Meet to Confer. GRANTEE and the CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the GRANTEE conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, the GRANTEE and the CITY each agree, upon request of the other Party during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to affect a proper accommodation of any such developments.

7.2 Relocation for the CITY.

a. Upon its receipt of reasonable advance written notice under the circumstances, but no less than sixty (60) calendar days, GRANTEE, at its own expense, shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the public way, any property of the GRANTEE when lawfully required by the CITY by reason of traffic conditions, public safety, street abandonment, freeway and street construction or demolition, sidewalk or parking strip construction or demolition, wall construction or demolition, change or establishment of street grade, installation or removal of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the GRANTEE's services. Further, GRANTEE and its successors and assigns may maintain and operate such facilities with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. In the event that the CITY requests relocation efforts from GRANTEE for reasons not included in this paragraph, or for aesthetic reasons, the CITY agrees to pay all costs associated with relocation.

b. In the event of an emergency, the CITY shall notify GRANTEE, who shall immediately respond to the emergency. Should GRANTEE be unable to respond in a timely manner, the CITY shall take such action as is necessary to meet the emergency at the expense of GRANTEE, if such action by the CITY would otherwise have been at the expense of GRANTEE.

c. The GRANTEE shall in all cases have the right of abandonment of its property in accordance with the terms of Section 4.3 herein. If public funds are available to any person(s) using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, then the CITY shall make funds available on behalf of the GRANTEE.

7.3 Relocation for a Third Party. GRANTEE shall, on the request of any person holding a lawful permit issued by the CITY, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the public way as necessary any property of the GRANTEE, provided: (A) the expense of such is paid by said person benefiting from the relocation, including, if required by GRANTEE, making such payment in advance; and (B) GRANTEE is given reasonable advance written notice to prepare for such changes, which notice shall be no less than thirty (30) calendar days.

7.4 Trimming of Trees and Shrubbery. GRANTEE shall have the authority to trim trees or other natural growth in the public way to the extent necessary to access and maintain the Facilities; however, GRANTEE shall not trim, remove or otherwise modify any tree owned or maintained by the CITY without first notifying the forestry division of the CITY's power department of the intended work. Bona fide emergencies are not subject to this requirement. For all trimming, GRANTEE shall use generally accepted pruning standards of modern arboriculture in a manner which is least damaging to the health and aesthetic appearance of the trees, etc., being trimmed.

7.5 Severability. If any section, sentence, paragraph, term or provision of this Agreement is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal(s) thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the Parties shall negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the CITY is its ability to collect the Franchise Tax during the term of this Agreement and its ability to manage the rights-of-way in a manner similar to that provided in this Agreement. For GRANTEE, "material consideration" is the Franchise Tax it is required to pay the CITY and its ability to use the rights-of-way for telecommunication purposes in accordance with a lawful compensation mechanism in a manner similar to that provided in this Agreement.

ARTICLE 8. ENFORCEMENT AND TERMINATION OF AGREEMENT.

8.1 Notice of Violation. In the event that the CITY believes that GRANTEE has not complied with the terms of this Agreement, the CITY shall informally discuss the matter with GRANTEE. If these discussions do not lead to a resolution of the problem, the CITY shall notify GRANTEE in writing of the exact nature of the alleged noncompliance.

8.2 Grantee's Right to Cure or Respond. GRANTEE shall have ninety (90) days from receipt of the notice described in subsection 8.1 to (A) respond to the CITY, contesting the assertion of non-compliance; (B) cure such default; or (C) in the event that, by the nature of default, such default cannot be cured within the sixty (60) day

period, initiate reasonable steps to remedy such default and notify the CITY of the steps being taken and the projected date that they will be completed.

8.3 Public Hearing. In the event that GRANTEE fails to respond to the notice described in subsection 8.1 pursuant to the procedures set forth in subsection 8.2, or in the event that the alleged default is not remedied within sixty (60) days or the date projected pursuant to 8.2 (C) above, if it intends to continue its investigation into the default, then the CITY shall schedule a public hearing before the CITY's legislative governing body. The CITY shall provide GRANTEE at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide GRANTEE the opportunity to be heard.

8.4 Enforcement. Subject to applicable federal and state law, in the event the CITY, after the public hearing set forth in subsection 8.3, determines that GRANTEE is in default of any provision of the Agreement, the CITY may:

- a. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- b. Commence an action at law for monetary damages or seek other equitable relief; or
- c. In the case of a substantial default of a material provision of the Agreement, seek to revoke the Agreement in accordance with subsection 8.5.

8.5 Revocation. Should the CITY seek to revoke the franchise granted under this Agreement, the CITY shall give written notice to GRANTEE of its intent of revocation. The notice shall set forth the exact nature of the non-compliance. The GRANTEE shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the CITY has not received a satisfactory response from GRANTEE, it may then seek termination of the Agreement at a public hearing after following the procedures set forth in subsection 8.3 above. The CITY shall cause to be served upon GRANTEE, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Agreement. At the designated hearing, the CITY shall give GRANTEE an opportunity to state its position on the matter, after which it shall determine whether or not the Agreement shall be revoked. GRANTEE may appeal such determination to an appropriate court, which shall have the power to review the decision of the CITY de novo. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the CITY.

The CITY may, at its sole discretion, take any lawful action which it deems appropriate to enforce the CITY's rights under the Agreement in lieu of revocation of the Agreement.

8.6 Reserved Rights.

- a. Nothing contained herein shall be deemed to preclude GRANTEE from pursuing any legal or equitable rights or remedies it may have to challenge the action(s) of the CITY.
- b. The terms and conditions of this Agreement shall be subject to any and all applicable laws, judicial decisions, rules, or regulations now in effect and that subsequently may be prescribed or ordered by any federal,

state or local governmental authority or court having proper jurisdiction. To the extent required by any such subsequently prescribed law, judicial decision, rule, or regulation, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, judicial decision, rule, or regulation.

8.7 Remedies at Law. In the event GRANTEE or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or GRANTEE, whichever the case may be, shall have a breach of contract claim and remedy against the other if not cured within a reasonable time after receipt by the breaching Party of written notice from the non-breaching Party specifying the nature of the breach, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

8.8 Third Party Beneficiaries. The benefits and protections provided by this Agreement shall inure solely to the benefit of the CITY and GRANTEE. This Agreement shall not be deemed to create any right in any person who is not a Party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the successors and assigns of a Party hereto).

ARTICLE 9. PARTIES' DESIGNEES.

9.1 City Designee and Address. The CITY Administrator, or his/her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein, all notices from GRANTEE to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at:

City of Taylorsville
Attn: John Taylor, City Administrator
2600 W. Taylorsville Blvd.
Taylorsville, UT 84129

With a copy to: City of Taylorsville
Attn: Tracy S. Cowdell, City Attorney
2600 W. Taylorsville Blvd.
Taylorsville, UT 84129

or such other officer and address as the CITY may designate by written notice to GRANTEE.

9.2 Grantee Designee and Address. The Right-of-Way Specialist or his/her designee(s) shall serve as GRANTEE's representative regarding administration of this Agreement. All notices from the CITY to the GRANTEE pursuant to or concerning this Agreement, shall be delivered to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Site No. City of Taylorsville Franchise Agreement (UT)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept - Network Operations
Site No. City of Taylorsville Franchise Agreement (UT)
208 S. Akard Street
Dallas, TX 75202-4206

and such other office as the GRANTEE may designate by written notice to the CITY.

9.3 Failure of Designee. The failure or omission of the CITY's or GRANTEE's representative to act shall not constitute any waiver or estoppel by the CITY or GRANTEE.

ARTICLE 10. INSURANCE AND INDEMNIFICATION

10.1 Insurance. GRANTEE shall maintain in full force and effect, at its own cost and expense, during the term of this Agreement, Commercial General Liability Insurance under a form ISO CGL 00 01 or equivalent, with a combined single limit for bodily injury and property damage in the amount of one million dollars (\$1,000,000) per occurrence and in the aggregate. The CITY shall be **included as an additional insured**. GRANTEE shall provide the CITY with thirty (30) days prior written notice of cancellation or nonrenewal of any required insurance that is not replaced. Upon written request, GRANTEE shall provide a Certificate of Insurance to the CITY showing evidence of the coverage required by this subsection and showing the CITY as an additional insured.

10.2 Insurance. Notwithstanding the foregoing, GRANTEE may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement; provided, however, that if GRANTEE elects to self-insure any coverage required herein, then the following provisions shall apply: (i) GRANTEE or its parent company shall have and continuously maintain a tangible net worth of at least Two Hundred Million Dollars (\$200,000,000) as evidenced by GRANTEE's or its parent company's most recent annual report; (ii) GRANTEE shall continuously maintain appropriate loss reserves for the amount of its self-insurance obligations under this section, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) GRANTEE shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of the CITY, at GRANTEE's sole cost and expense, with counsel selected by GRANTEE and reasonably acceptable to the CITY; (iv) GRANTEE shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for GRANTEE's election to self-insure; (v) GRANTEE shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if GRANTEE had carried the insurance policies, which amounts shall be treated as insurance proceeds for all purposes under this Agreement; and (vi) all amounts which GRANTEE pays or is required to pay and all loss or damages resulting from risks for which GRANTEE has elected to self-insure shall not limit GRANTEE's indemnification obligations set forth in this Agreement.

10.3 Indemnification. GRANTEE agrees to indemnify, save and hold harmless, and defend the CITY, its elected and appointed officials, officers, agents, boards, employees, successors and assigns, from and against any

liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the GRANTEE's construction, operation, lease or maintenance of its Facilities provided that the CITY shall give the GRANTEE written notice of its obligation to indemnify the CITY within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the GRANTEE shall not indemnify the CITY for any damages, liability or claims resulting from breach by the CITY of any obligation under this Agreement or the willful misconduct or negligence of the CITY or its elected and appointed officials, agents, boards, employees, successors and assigns.

ARTICLE 11. INSTALLATION, USE AND MAINTENANCE

11.1 Coordinated Installation. In order to prevent and/or minimize the number of cuts to and excavations within the CITY rights-of-way, GRANTEE shall coordinate with the CITY and other grantees or users of the CITY rights-of-way, when such cuts and excavations will be made. When feasible, installation, construction, repairs, or maintenance of lines and Facilities within the CITY rights-of-way shall be made in the same trench(es) and at the time other installations, construction, repairs or maintenance of facilities are conducted within the CITY rights-of-way.

11.2 Compliance with Permits and Plans. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the Facilities. The CITY and its representatives shall be provided access to the work and such further information as it may require to ensure compliance with such requirements. Upon order of the CITY, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Agreement, shall be removed at the sole expense of GRANTEE.

11.3 Underground Installation. GRANTEE shall comply with the CITY's guidelines to install its lines underground. Nothing herein shall require GRANTEE to convert existing overhead facilities to underground facilities until and unless other similarly situated grantees in the same location are required to do so. Placing facilities underground does not preclude the use of ground-mounted appurtenances, small cells or associated facilities.

11.4 Digital Data. During the period of construction of any of GRANTEE Facilities, GRANTEE shall furnish the CITY with mutually acceptable digital data, including maps, indicating in detail the area of construction. Such periodic reports shall be furnished following completion of construction done pursuant to the first road-cut permit. Thereafter, GRANTEE shall furnish the CITY said digital data annually in the event modifications were made to GRANTEE's Facilities during the immediately preceding calendar year. GRANTEE shall, within sixty (60) days after completion of construction, furnish the CITY with two (2) complete sets of as-built plans, drawn to scale and certified to the CITY as accurately depicting the actual location of all telecommunications Facilities constructed pursuant to the permit.

11.5 Use of Poles. GRANTEE shall utilize existing utility poles and conduit wherever possible and economically feasible.

a. GRANTEE shall not attach to, or otherwise use or commit to use any existing or future pole owned by the CITY until a separate pole attachment agreement has been executed by the CITY and GRANTEE.

b. In the event GRANTEE cannot obtain access to the necessary CITY poles and related Facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for GRANTEE to make all needed excavations in the rights-of-way for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of GRANTEE'S telecommunication Facilities. All poles or other such related facilities of GRANTEE shall be located as designated by the proper CITY authorities and only upon written consent of the CITY. GRANTEE shall apply for and obtain appropriate permits and/or authorization prior to the construction or installation of poles or related facilities.

11.6 Emergency Permits. In the event that emergency repairs are necessary, GRANTEE shall immediately notify the CITY of the need for such repairs. GRANTEE may initiate such emergency repairs immediately and shall apply for the appropriate permits within forty-eight (48) hours after the discovery of the emergency.

11.7 Minimal Interference. Work in the rights-of-way, on other public property, near public property, or on or near private property shall be done in a manner that causes minimal interference with the rights and reasonable convenience of property owners and residents. GRANTEE'S telecommunications Facilities shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, drains, or any other property of the CITY, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the rights-of-way by, or under, the CITY'S authority. GRANTEE'S telecommunications Facilities shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the CITY may deem proper to make or to unnecessarily hinder or obstruct the free use of the rights-of-way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, replacement or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the CITY may require the removal or relocation of GRANTEE'S lines, cables, equipment and other appurtenances from the property in question at GRANTEE'S expense.

11.8 Restoration of Rights-of-Way. Immediately after installation, repair or extension of the telecommunication Facilities or any portion thereof, or any cut by GRANTEE in any public way of the CITY, the incidental trenches or excavations shall be refilled by GRANTEE in a manner acceptable to the Public Services Director consistent with CITY ordinances and published standards. Pavement, sidewalks, curbs, gutters or any other portions of public ways damaged, disturbed or destroyed by such work shall be promptly restored and replaced with like materials to their former condition by GRANTEE at GRANTEE'S own expense; however, where it is necessary, and if authorized by the CITY, in order to achieve the former conditions, GRANTEE shall use materials whose type, specification and quantities exceed or are different from those used in the installation, then GRANTEE shall provide such different materials at GRANTEE'S own expense. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, GRANTEE shall replace the full width of the existing sidewalk or appropriate sections of paving as determined by the Public Services Director. GRANTEE shall maintain, repair and keep in good condition for a period of two (2) years following such disturbance all portions of public ways disturbed by GRANTEE, to the extent that such maintenance and repair is necessary because of defective workmanship or materials supplied by GRANTEE.

11.9 Repair and Restoration of Property.

a. GRANTEE shall protect public and private property from damage. If damage occurs as a result of GRANTEE'S actions pursuant to this Franchise Agreement, the GRANTEE shall promptly notify the property

owner within twenty-four (24) hours in writing. Whenever GRANTEE disturbs or damages any right-of-way, other public property or any private property, GRANTEE shall promptly restore the right-of-way or other property to at least its prior condition, normal wear and tear excepted, at GRANTEE's own expense. The provisions of this section shall survive the expiration, revocation or termination of this Franchise Agreement.

b. If restoration is not satisfactorily performed by GRANTEE within a reasonable time, the CITY may, after prior notice to GRANTEE, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the actual, reasonable, and documented cost of those repairs from GRANTEE. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the GRANTEE shall pay the CITY for such restoration work.

11.10 Compliance and Non-Interference. GRANTEE, in any opening it shall make in the public ways of the CITY, shall be subject to the provisions of this Agreement and to all applicable ordinances, codes and regulations of the CITY. The telecommunications Facilities of GRANTEE shall be located so as not to interfere with the public safety or with the convenience of persons using the public ways.

11.11 Safety and Reliability. All work involved in the installation, construction, operation, maintenance, repair and removal of the Facilities shall be performed in a safe, thorough and reliable manner using materials of good and durable quality, and in the case of installations on CITY utility poles, shall be performed in a manner and using materials consistent with the CITY's reasonable requirements. If, at any time, it is reasonably determined by the CITY (acting within the scope of its lawful proprietary and/or governmental authority) or any other governmental agency or authority of competent jurisdiction that any part of the Facilities is harmful to the public health or safety, then the GRANTEE shall, at GRANTEE's own cost and expense, promptly correct any and all such harmful conditions.

ARTICLE 12. GENERAL PROVISIONS.

12.1 Binding Agreement. The Parties represent that (a) when executed by their respective Parties, this Agreement shall constitute legal and binding obligations of the Parties; and (b) that each Party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

12.2 Utah Law. This Agreement shall be construed, interpreted and governed by the laws of the State of Utah and any applicable federal law. In the event of a conflict regarding this Agreement, the Parties hereto agree to first submit to mediation with a mediator of the CITY's choice located within Salt Lake County, State of Utah. In the event mediation fails to resolve a conflict regarding this Agreement and litigation ensues, the Parties hereby agree to submit to a court of competent jurisdiction located within Salt Lake County, State of Utah or the United States District Court serving Salt Lake County, Utah.

12.3 Time of Essence. Time shall be of the essence of this Agreement.

12.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do

not constitute a part of the provisions hereof.

12.5 No Presumption. All Parties have participated in preparing this Agreement. Therefore, the Parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting Party.

12.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

12.8 No Waiver. GRANTEE shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the CITY, upon any one or more occasions, to insist upon GRANTEE'S performance or to seek GRANTEE'S compliance with any one or more of such terms or conditions of this Agreement.

12.9 Force Majeure. GRANTEE shall not be held in default under, or in non-compliance with, the provisions of the Agreement, nor suffer any enforcement or penalty relating to non-compliance or default, where such non-compliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the GRANTEE to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the GRANTEE's Facilities is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the Parties hereby agree that it is not the CITY's intention to subject the GRANTEE to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the service area, or where strict performance would result in practical difficulties and hardship to the GRANTEE which outweigh the benefit to be derived by the CITY.

NOW, WHEREFORE, the Parties hereto have caused this Agreement to be executed effective as of the date first written above.

SIGNED this ____ day of _____, 2019.

THE CITY OF TAYLORSVILLE,

a municipal corporation and political subdivision of Salt Lake County, State of Utah

By: _____
Mayor Kristie S. Overson

ATTEST:

APPROVED AS TO FORM:

City Recorder

Taylorsville City Attorney

GRANTEE:
NEW CINGULAR WIRELESS PCS, LLC
BY: AT&T MOBILITY CORPORATION
ITS: MANAGER

By: _____

Title: _____
(Print Name and Title)

CORPORATE ACKNOWLEDGMENT

State of _____)

:SS

County of _____)

On this _____ day of _____, 20____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the _____ of _____, and that said document was signed in behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, or other applicable authorization, and acknowledged to me that said corporation executed the same.

Notary Public

EXHIBIT A

Detailed Description or Depiction of GRANTEE's Small Cell Facilities

EXHIBIT B

List of Approved Contractors and Sub-contractors

EXHIBIT C

Evidence of Financial Solvency